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

**OCT 31 2022**

BY

  
GLORIA MARIN, DEPUTY

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

WILLIAM DAVIS, an individual, on behalf  
of himself and others similarly situated

PLAINTIFF,

v.

GATEWAY SHIPPING, INC.; and DOES 1  
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVSB2207708

[Case Assigned for All Purposes to Hon. David  
Cohn in Dept. S26]

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.



1 Plaintiff WILLIAM DAVIS, an individual, on behalf of himself, all others similarly  
2 situated, and as an “aggrieved employee” under Labor Code Private Attorneys General Act of  
3 2004, §2699, *et seq.* (hereafter “PAGA”), complains of Defendant GATEWAY SHIPPING, INC.  
4 (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §  
8 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who are employed or have been employed as a non-  
10 exempt employee by GATEWAY SHIPPING, INC., in the State of  
11 California since four (4) years prior to the filing of this action to the  
12 present plus any additional time during which the statutes of  
13 limitation for the causes of action herein were tolled pursuant to  
Emergency Rule 9 of the California Rules of Court, the ‘Emergency  
Rules Related to COVID-19’. (“Proposed Class”)

14 2. Any limitations period referenced in this complaint is extended pursuant to  
15 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the  
16 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of  
17 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020  
18 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action  
19 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the  
20 relevant time period or statute of limitations referenced in this complaint is extended into the past  
21 by the number of days in which this tolling was in effect.

22 3. From at least four (4) years prior to the filing of this action and continuing to the  
23 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with  
24 meal periods and failed to provide compliant first and second meal periods as required by law.  
25 Further, Defendant failed to pay such employees one (1) hour of pay at the employees’ regular rate  
26 of compensation for each workday that a compliant meal period was not provided.

27 4. For at least four (4) years prior to the filing of this action and continuing to the  
28 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for business-related

1 expenses. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using  
2 their personal cell phones necessary to perform their job duties. These cell phones were a  
3 necessary business expenditure under California law and Defendant failed to reimburse the  
4 Proposed Class.

5 5. For at least one (1) year prior to the filing of this action continuing to the present,  
6 Defendant has failed to comply with Labor Code § 226(a). Plaintiff and the Proposed Class are  
7 furnished wage statements that do not accurately show the number of total hours worked and all  
8 applicable hourly rates in effect during the pay period and the corresponding number of hours  
9 worked at each hourly rate by Plaintiff and the Proposed Class in violation of Labor Code  
10 §226(a)(2) and (9). Further, Plaintiff and the Proposed Class are issued wage statements that do  
11 not include meal premiums as a result of the claims alleged above and when they do, they are not  
12 the accurate rate.

13 6. For at least three (3) years prior to the filing of this action continuing to the present,  
14 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and  
15 the Proposed Class.

16 7. Plaintiff, on behalf of himself and all Proposed Class members brings this action  
17 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802; Wage Order 9-2001; and  
18 California Code of Regulations, Title 8, Section 11090, seeking meal period penalties,  
19 unreimbursed expenses, accurate itemized wage statements, other penalties, injunctive and other  
20 equitable relief, and reasonable attorneys' fees and costs.

21 8. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to  
22 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and  
23 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

24 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce  
25 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to  
26 PAGA and continuing to the present, and as extended by Emergency Rule 9 referenced in  
27 paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise  
28 to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently

1 or formerly employed by Defendant during the liability period as defined in his PAGA notice  
2 letter, brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for  
3 Defendant's violation of Labor Code Sections 201, 202, 203, 226(a), 226.7, 512, and 2802. A true  
4 and correct copy of Plaintiff's notice letter is attached hereto as Exhibit "1".

## 5 **II.**

### 6 **JURISDICTION AND VENUE**

7 10. This Court has subject matter jurisdiction over all causes of action asserted herein  
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure  
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive  
10 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the  
11 State of California or is subject to adjudication in the courts of the State of California.

12 11. This Court has personal jurisdiction over Defendant because Defendant has caused  
13 injuries in the County of San Bernardino and the State of California through their acts, and by their  
14 violation of the California Labor Code, California state common law, and California Business &  
15 Professions Code § 17200, *et seq.*

16 12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
17 Civil Procedure § 395. Defendant operates within California and does business within San  
18 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and all  
19 Proposed Class members within the State of California and the county of San Bernardino.

20 13. This case should be classified as complex according to Rule 3.400 of the California  
21 Rules of Court, and assigned to a complex litigation judge and department, as it will involve  
22 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive  
23 motion practice raising difficult or novel issues that will be time-consuming to resolve and would  
24 require substantial post judgment judicial supervision.

25 14. Plaintiff files this amended complaint adding a claim for penalties under Labor  
26 Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C).)

## 27 **III.**

### 28 **PARTIES**

1           **A. PLAINTIFF**

2           15. Plaintiff WILLIAM DAVIS is a resident of California.

3           16. Plaintiff and all Proposed Class members, were regularly required to:

4               a. Work without being provided compliant meal periods;

5               b. Work without being reimbursed for necessary business-related expenses;

6 and,

7               c. Work without being furnished itemized wage statements in writing that  
8 accurately show total hours worked, all applicable hourly rates in effect during the pay period and  
9 the corresponding number of hours worked at each hourly rate by the employee, and accurate meal  
10 premiums.

11           17. Defendant willfully failed to compensate Plaintiff and all Proposed Class members  
12 for wages at the termination of their employment with Defendant.

13           18. As a result of this conduct, Defendant has engaged in unfair competition and  
14 unlawful business practices.

15           19. Plaintiff and all aggrieved employees, as defined in his notice letter to the LWDA,  
16 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code  
17 §2699(c).)

18           **B. DEFENDANTS**

19           20. Defendant GATEWAY SHIPPING, INC. is believed to be a California corporation  
20 operating within the State of California. Defendant’s corporate address is believed to be 8560  
21 Vineyard Ave. Ste 105, Rancho Cucamonga, CA 91730. Upon information and belief, Defendant  
22 employed Plaintiff and similarly situated persons as hourly employees within California.  
23 Defendant has done and does business throughout the State of California.

24           21. The true names and capacities, whether individual, corporate, associate, or  
25 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to  
26 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure  
27 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants  
28 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred

1 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
2 capacities of the Defendants designated hereinafter as DOES when such identities become known.

3 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
6 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the  
7 employer and/or joint employer of Plaintiff and the Proposed Class members.

8 23. Furthermore, Defendants acted in all respects as the employers or joint employers  
9 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or  
10 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or  
11 engaged, thereby creating a common law employment relationship, with the Proposed Class.  
12 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

13 **IV.**

14 **FACTUAL BACKGROUND**

15 24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been  
16 classified as non-exempt employees by Defendant. Defendant hires employees who work as  
17 hourly employees who are paid on an hourly basis.

18 25. Upon information and belief, Plaintiff and the Proposed Class are covered by  
19 California Industrial Welfare Commission Occupational Wage Order No. 9-2001 (Title 8 Cal.  
20 Code of Regs. § 11090).

21 26. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights  
22 associated with meal periods and failed to provide compliant meal periods. Defendant has had a  
23 consistent policy and practice of: (1) failing to provide Plaintiff and the aggrieved employees with  
24 compliant meal periods in violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such  
25 employees one (1) hour of pay at the employees' regular rate of compensation for each workday  
26 that the complaint meal period was not provided.

27 27. On a regular and consistent basis, Plaintiff and the Proposed Class have not been  
28 properly reimbursed for business expenses necessary for the completion of their job duties.

1 Plaintiff and the Proposed Class have not been compensated for the use of their personal cellphones  
2 necessary to complete their jobs.

3 28. For at least one (1) year prior to the filing of this action continuing to the present,  
4 Defendant has failed to comply with Labor Code § 226(a). Plaintiff and the Proposed Class are  
5 furnished wage statements that do not accurately show the number of total hours worked and all  
6 applicable hourly rates in effect during the pay period and the corresponding number of hours  
7 worked at each hourly rate by Plaintiff and the Proposed Class in violation of Labor Code  
8 §226(a)(2) and (9). Further, Plaintiff and the Proposed Class are issued wage statements that do  
9 not include meal premiums as a result of the claims alleged above and when they do, they are not  
10 the accurate rate.

11 29. Defendant willfully failed to pay wages and compensation, when Plaintiff and all  
12 Proposed Class members quit or were discharged. This failure was willful, without legal  
13 justification, and interfered with Plaintiff's and Class members' rights.

14 30. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

15 **V.**

16 **CLASS ACTION ALLEGATIONS**

17 31. Plaintiff brings this action on behalf of himself, and all others similarly situated as  
18 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a  
19 proposed class composed of and defined as follows:

20 All persons who are employed or have been employed as a non-  
21 exempt employee by GATEWAY SHIPPING, INC., in the State of  
22 California since four (4) years prior to the filing of this action to the  
23 present plus any additional time during which the statutes of  
24 limitation for the causes of action herein were tolled pursuant to  
Emergency Rule 9 of the California Rules of Court, the 'Emergency  
Rules Related to COVID-19'. ("Proposed Class")

25 32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to  
26 amend or modify the class description with greater specificity, by division into subclasses, or by  
27 limitation to particular issues.

28 33. This action has been brought and may properly be maintained as a class action

1 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined  
2 community of interest in the litigation and the Proposed Classes are easily ascertainable.

3 **A. NUMEROSITY**

4 34. The potential members of the Proposed Class as defined are so numerous that  
5 joinder of all the members of the Proposed Class is impracticable. While the precise number of  
6 Proposed Class members has not been determined at this time, Plaintiff is informed and believes  
7 that Defendant currently employ, and during the relevant time periods employed over 50 members  
8 of the Proposed Class.

9 35. Plaintiff alleges that Defendant's employment records would provide information  
10 as to the number and location of all Proposed Class members. Joinder of all members of the  
11 Proposed Class is not practicable.

12 **B. COMMONALITY**

13 36. There are questions of law and fact common to the Proposed Class that predominate  
14 over any questions affecting only individual Proposed Class members. These common questions  
15 of law and fact include, without limitation:

16 a. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC Wage  
17 Order 9-2001 or other applicable IWC Wage Orders by failing to provide required first and second  
18 meal periods throughout the term of employment and/or failing to compensate said employees one  
19 (1) hour of wages at their regular rate of compensation in lieu of meal periods;

20 b. Whether Defendant violated Labor Code § 2802 and/or Wage Order 9-2001  
21 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost  
22 of using their personal cell phones;

23 c. Whether Defendant violated Labor Code § 226(a) by failing to provide  
24 accurate itemized wage statements that accurately report the total hours worked and the applicable  
25 rates for all hours worked and the corresponding number of hours worked at each hourly rate by  
26 the employee and premiums;

27 d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay  
28 compensation due and owing at the time that any Proposed Class member's employment with

1 Defendant terminated;

2 e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions  
3 Code by engaging in the acts previously alleged; and

4 f. Whether Plaintiff and the members of the Proposed Class are entitled to  
5 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

6 **C. TYPICALITY**

7 37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and  
8 all members of the Proposed Class sustained injuries and damages arising out of and caused by  
9 Defendant's common course of conduct in violation of laws, regulations that have the force and  
10 effect of law, and statutes as alleged herein.

11 38. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts  
12 alleged herein.

13 **D. ADEQUACY OF REPRESENTATION**

14 39. Plaintiff will fairly and adequately represent and protect the interests of the  
15 members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are  
16 competent and experienced in litigating large employment class actions.

17 **E. SUPERIORITY OF CLASS ACTION**

18 40. A class action is superior to other available means for the fair and efficient  
19 adjudication of this controversy. Individual joinder of all Proposed Class members is not  
20 practicable, and questions of law and fact common to the Proposed Class predominate over any  
21 questions affecting only individual members of the Proposed Class. Each member of the Proposed  
22 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or  
23 practice of failing to provide meal periods, failing to reimburse expenses, failing to provide  
24 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

25 41. Class action treatment will allow those similarly situated persons to litigate their  
26 claims in the manner that is most efficient and economical for the parties and the judicial system.  
27 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
28 action that would preclude its maintenance as a class action.

1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

5 **LABOR CODE § 226.7 AND LABOR CODE § 512**

6 42. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
7 by reference all previous paragraphs.

8 43. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of  
9 compensation for each meal period the employer fails to provide. Employees are entitled to a first  
10 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the  
11 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts  
12 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after  
13 no more than ten (10) hours of work.

14 44. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of  
15 these rights.

16 On a regular and consistent basis, Defendant failed to provide compliant meal periods. Plaintiff  
17 and the Proposed Class were regularly required to work through meal periods, take them late, take  
18 short meal periods or forego them altogether. There was too much work to be done and dispatch  
19 regularly interrupted meal periods, cut them short, and forced Plaintiff and the Proposed Class to  
20 take them late or miss them altogether. Plaintiff and the Proposed Class were required to continue  
21 working and therefore were unable to take lawful meal periods.

22 45. Plaintiff and the Proposed Class consistently worked shifts over ten (10) hours.  
23 Defendant failed to provide Plaintiff and the Proposed Class with timely second meal periods of  
24 not less than thirty (30) minutes within the first ten (10) hours for shifts over ten (10) hours work  
25 as required by the Labor Code during the relevant time period.

26 46. Defendant has had a consistent policy of failing to pay Plaintiff and the Proposed  
27 Class one (1) hour of pay at the employees' regular rate of compensation for each workday that  
28 the first meal period was not provided within the first (5) hours of the shift. On July 15, 2021, in

1 *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for  
2 calculating the one extra hour of premium pay that employees are owed if an employer fails to  
3 provide a compliant meal period or rest break. Specifically, the Court held that those premium  
4 payments must include the hourly value of any nondiscretionary earnings (such as a  
5 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here,  
6 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the  
7 appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

8 47. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to  
9 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per  
10 missed meal break, per day in a sum to be proven at trial.

11 **VII.**

12 **SECOND CAUSE OF ACTION**

13 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

14 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

15 **LABOR CODE § 2802**

16 48. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
17 by reference all previous paragraphs.

18 49. Labor Code § 2802 requires employers to indemnify employees for all necessary  
19 expenditures incurred by employees in the discharge of their duties.

20 50. Defendant required that Plaintiff and the Proposed Class use cell phones while  
21 working, and this was necessary to perform their job duties. The cell phones provided by  
22 Defendant would often not work, requiring Plaintiff and the Proposed Class to use their personal  
23 cell phones and download and use an application for business-related duties such as to scan  
24 packages, barcodes, take pictures, and get directions.

25 51. Additionally, Defendant required Plaintiff and the Proposed Class to download the  
26 Amazon Flex application on their personal cell phones to clock in and out for work.

27 52. Despite the fact that Plaintiff and the Proposed Class used their personal cell phones  
28 as a necessary part of their jobs, Defendant has failed to reimburse Plaintiff and the Proposed Class

1 for the cost of using their personal cell phones necessary for the performance of their job duties.

2 53. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have  
3 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to  
4 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

5 **VIII.**

6 **THIRD CAUSE OF ACTION**

7 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

8 **VIOLATION OF LABOR CODE § 226(A)**

9 54. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
10 by reference all previous paragraphs.

11 55. Labor Code §226(a) requires employers to furnish accurate itemized wage  
12 statements in writing that show total hours worked by the employee and all applicable hourly rates  
13 in effect during the pay period and the corresponding number of hours worked at each hourly rate  
14 by the employee. (Labor Code §§ 226(a)(2) and (9) respectively.) Defendant furnishes Plaintiff  
15 and the Proposed Class members with itemized wage statements that do not accurately show total  
16 hours worked or all applicable hourly rates in effect during the pay period and the corresponding  
17 number of hours worked at each hourly rate.

18 56. Further, Plaintiff and the Proposed Class are issued wage statements that do not  
19 include accurate meal premiums as a result of the claims alleged above.

20 57. Defendant's failure to provide accurate itemized wage statements according to  
21 Labor Code § 226(a) was all done on a regular and consistent basis.

22 58. An employee suffering injury as a result of a knowing and intentional failure by an  
23 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual  
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
25 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an  
26 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
27 reasonable attorneys' fees.

28 **IX.**

1 **FOURTH CAUSE OF ACTION**

2 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

3 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

4 59. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
5 by reference all previous paragraphs.

6 60. Numerous members of the Proposed Class including the Plaintiff are no longer  
7 employed by Defendant. They were either fired or quit Defendant's employ.

8 61. Defendant's failure to pay wages, as alleged above was willful in that Defendant  
9 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to  
10 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a  
11 penalty until paid for a period of up to thirty (30) days from the time they were due.

12 62. Defendant has failed to pay Plaintiff and others a sum certain at the time of  
13 termination or within seventy-two (72) hours of their resignation, and have failed to pay those  
14 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and  
15 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class  
16 members' daily wage multiplied by thirty (30) days.

17 **X.**

18 **FIFTH CAUSE OF ACTION**

19 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

20 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

21 63. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
22 by reference all previous paragraphs.

23 64. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,  
24 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to  
25 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this  
26 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general  
27 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public  
28 interest within the meaning of Code of Civil Procedure § 1021.5.

1           65. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,  
2 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
3 appropriate equitable relief.

4           66. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business  
5 practices.

6           67. California’s wage and hour laws express fundamental public policies. Providing  
7 employees with proper wages and compensation are fundamental public policies of this State and  
8 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce  
9 vigorously minimum labor standards, to ensure that employees are not required or permitted to  
10 work under substandard and unlawful conditions, and to protect law-abiding employers and their  
11 employees from competitors who lower their costs by failing to comply with minimum labor  
12 standards.

13           68. Defendant has violated statutes and public policies as alleged herein. Through the  
14 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have  
15 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
16 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,  
17 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
18 guaranteed to all employees under law.

19           69. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in  
20 violation of § 17200, *et seq.* of the Business & Professions Code.

21           70. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise  
22 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of  
23 § 17200, *et seq.* of the Business & Professions Code.

24           71. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and  
25 others similarly situated have been damaged in a sum as may be proven.

26           72. Unless restrained, Defendant will continue to engage in the unlawful conduct as  
27 alleged above. Pursuant to the Business & Professions Code, this court should make such orders  
28 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or

1 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices  
2 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution  
3 and disgorgement of profits which may be necessary to restore Plaintiff and members of the  
4 proposed Class the money Defendant has unlawfully failed to pay.

5 **XI.**

6 **SIXTH CAUSE OF ACTION**

7 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

8 73. Plaintiff, on behalf of himself and all aggrieved employees, realleges and  
9 incorporates by reference all previous paragraphs.

10 74. As a result of the acts alleged above and specifically incorporated herein, Plaintiff  
11 seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§  
12 201, 202, 203, 226(a), 226.7, 512, and 2802; Wage Order 9-2001; and California Code of  
13 Regulations, Title 8, Section 11090, which call for civil penalties.

14 75. For each such penalty, Plaintiff and the aggrieved employees are entitled to  
15 penalties in an amount to be shown at trial, subject to the following formula:

16 a. \$100 for the initial violation per employee per pay period.

17 b. \$200 for each subsequent violation per employee per pay period.

18 76. These penalties shall be allocated seventy-five percent (75%) to the LWDA and  
19 twenty-five percent (25%) to the affected employees.

20 77. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the  
21 LWDA<sup>1</sup> and mailed a letter by certified mail to Defendant, as proscribed by the Code, on August  
22 24, 2022, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a),  
23 226.7, 512, and 2802. (*see* Exhibit "1".) Plaintiff also obtained an e-filing confirmation from the  
24 LWDA confirming receipt of the notice, a true and correct copy of which is attached hereto as  
25 Exhibit "2".

26 78. As no letter evidencing the LWDA's intention to investigate was received by

27 <sup>1</sup> Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California  
28 Labor and Workforce Development Agency / Department of Industrial Relations website  
(<https://dir.tfaforms.net/308>).

1 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil  
2 action as though the LWDA had not chosen to investigate pursuant to Labor Code  
3 §2699.3(a)(2)(A).

4 79. Plaintiff will also provide the LWDA with a filed-stamped copy of the First  
5 Amended Class and Representative Action Complaint immediately.

6 **RELIEF REQUESTED**

7 **WHEREFORE**, Plaintiff prays for the following relief:

8 1. For compensatory damages in the amount of Plaintiff's and each Proposed Class  
9 members' hourly wage for each meal period missed or taken late from at least four (4) years prior  
10 to the filing of this action to the present as may be proven;

11 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class  
12 members' unreimbursed out of pocket expenses as a requirement of employment;

13 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)  
14 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one  
15 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding  
16 an aggregate penalty of four thousand dollars (\$4,000);

17 4. For penalties pursuant to Labor Code § 203 for all employees who were terminated  
18 or resigned equal to their daily wage times thirty (30) days;

19 5. An award of prejudgment and post judgment interest;

20 6. An order enjoining Defendant and its agents, servants, and employees, and all  
21 persons acting under, in concert with, or for it from providing Plaintiff with proper meal periods,  
22 unreimbursed expenses, accurate itemized wage statements, and wages upon  
23 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, 2802, and  
24 IWC 9-2001;

25 7. For restitution for unfair competition pursuant to Business & Professions Code  
26 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

27 8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor  
28 Code §§ 201, 202, 203, 226(a), 226.7, 512, 2802, and Wage Order 9-2001;

- 1           9.     An award providing for payment of costs of suit;  
2           10.    An award of attorneys' fees; and  
3           11.    Such other and further relief as this Court may deem proper and just.

4                               **DEMAND FOR JURY TRIAL**

5           Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

7   DATED: October 31, 2022

KINGSLEY & KINGSLEY, APC

8  
9   By: \_\_\_\_\_

Kelsey M. Szamet  
Attorneys for Plaintiff William Davis and the  
Proposed Class

# **EXHIBIT "1"**

# KINGSLEY & KINGSLEY

| L A W Y E R S |

August 24, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
*Via Electronic Submission:* <https://dir.tfaforms.net/308>

GATEWAY SHIPPING, INC.  
8972 La Cintura Ct  
San Diego, CA 92129  
*Via Certified Mailing No.: 7018 1130 0001 5815 4698*

Re: WILLIAM DAVIS v. GATEWAY SHIPPING, INC.  
*California Labor Code § 2699 Penalties*

Gentlepersons:

This office represents WILLIAM DAVIS (“Plaintiff”) and a proposed group of current and former employees working for GATEWAY SHIPPING, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by GATEWAY SHIPPING, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”)

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has engaged in practices that violate Labor Code §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees. Labor Code §§ 226.7 and 512 require an employer to pay

## LABOR & WORKFORCE DEVELOPMENT AGENCY

### *California Labor Code §2699 Penalties*

August 24, 2022

Page 2 of 3

an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to work shifts over five (5) hours without providing a first meal period of thirty minutes in length altogether; (2) requiring Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (3) failing to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that a second meal period was not provided.

Defendant failed to adequately allow employees to be relieved. Plaintiff and the aggrieved employees were regularly required to work through meal periods, take them late, take short meal periods or forego them altogether. There was too much work to be done and dispatch regularly interrupted meal periods, cut them short, and forced employees to take them late or miss them altogether. Plaintiff and the aggrieved employees were required to continue working and therefore were unable to take lawful meal periods.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Labor Code § 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. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business-related purposes. Defendant required that Plaintiff and the aggrieved employees use cell phones while working, and this was necessary to perform their job duties. The cell phones provided by Defendant would often not work, resulting in Plaintiff and the aggrieved employees to use their personal cell phones and download an application for

LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

August 24, 2022

Page 3 of 3

business-related duties such as to scan packages, barcodes, take pictures, and get directions. Additionally, Defendant required Plaintiff and the aggrieved employees to download the Amazon Flex application on their personal cell phones to clock in and out for work. Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to furnish accurate itemized wage statements that include total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). Further, Plaintiff and all aggrieved employees are issued wage statements that do not include accurate meal premiums as a result of the claims alleged above.

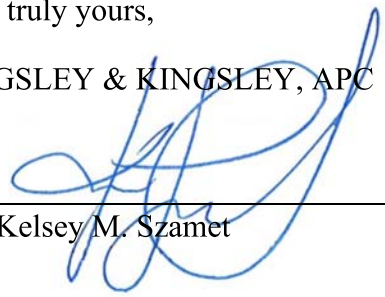
Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

## **EXHIBIT "2"**



State of California

Labor and Workforce Development Agency /  
Department of Industrial Relations

## Private Attorneys General Act (PAGA) – Filing

## New PAGA Claim Notice

## Your Information (Person Who is Filing)

Your First Name \*

Kelsey

Your Last Name \*

Szamet

Firm Name (if any) \*

Kingsley &amp; Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address \*

kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt \*

16133 Ventura Blvd.

Your Mobile Phone Number

8189908300

Your City \*

Encino

Your Work Phone Number

Your State \*

California ▼

Your Zip/Postal Code \*

91436

## Plaintiff Information

Plaintiff/Aggrieved Employee Name \*

William Davis

Plaintiff/Aggrieved Employee Occupation \*

Delivery Driver

[Add Additional Plaintiffs](#)

## Employer Information

Employer Entity Type

Please select... ▼

Employer Name \*

Gateway Shipping, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt \*

Employer City \*

**Employer State \*****Employer Zip/Postal Code \*****Employer Industry \*****Employer Industry for "Other" \*****Add additional defendants**

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

**Notice General Information****Estimated Number of Employees Impacted by Violations \***

**Notice Violations – Check All that Apply \*****Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

**PAGA Claim Type – Check All that Apply \***

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

## Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

## IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

## Billing information

Billing First Name \*

Eric

Billing Last Name \*

Kingsley

Billing Email \*

kimberly@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt \*

16133 Ventura Blvd., Suite 1200

Billing City \*

Encino

Billing State \*

California

Billing Zip/Postal Code \*

91436

Credit Card Type \*

[REDACTED]

Credit Card Number \*

[REDACTED]

CVV Number \*

[REDACTED]

Credit Card Expiration Month \*

[REDACTED]

mm

Credit Card Expiration Year \*

[REDACTED]

yyyy

## Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) \*

 LWDA Letter - ...ping, Inc..pdf

Other Attachment - (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact [PAGAInfo@dir.ca.gov](mailto:PAGAInfo@dir.ca.gov)

**IMPORTANT NOTICE OF REDACTION RESPONSIBILITY:** All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, If I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)

[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

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**From:** noreply@salesforce.com on behalf of LWDA DO NOT REPLY  
<lwdadonotreply@dir.ca.gov>  
**Sent:** Wednesday, August 24, 2022 1:15 PM  
**To:** Kimberly Madrid  
**Subject:** Thank you for submission of your PAGA Case.

External Email!

8/24/2022

LWDA Case No. LWDA-CM-903731-22  
Law Firm : Kingsley & Kingsley, APC  
Plaintiff Name : William Davis  
Employer: Gateway Shipping, Inc.  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website:

[https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate\\_Attorneys\\_General\\_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7C3340038ef7d24679a3dc08da860d5d5e%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637969689234470594%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjA%7CwMDAiLCJQIjojV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=OZDkT6dOBShwAA1y%2FX9E1raB%2FZGNZuxRqqa8N7k4KpU%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7C3340038ef7d24679a3dc08da860d5d5e%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637969689234470594%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjA%7CwMDAiLCJQIjojV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=OZDkT6dOBShwAA1y%2FX9E1raB%2FZGNZuxRqqa8N7k4KpU%3D&reserved=0)

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**From:** noreply@salesforce.com on behalf of LWDA DO NOT REPLY  
<lwdadonotreply@dir.ca.gov>  
**Sent:** Wednesday, August 24, 2022 1:16 PM  
**To:** Kimberly Madrid  
**Subject:** State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-903731-22

Order Number: ORD-000190960

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 8/24/2022

---

Billing Information

Name: Eric Kingsley

Email: kimberly@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436