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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

NOV 17 2022

BY: 
Michelle Gomez-Casillas, Deputy

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

JOSEPH CERVANTES, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

I-10 Towing and Recovery Inc., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CIV. SB 2226791
CASE NO.:

CLASS ACTION COMPLAINT:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Pay Timely Wages
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

This is a class action brought by Joseph Cervantes ("Plaintiff"), on behalf of himself and all other similarly situated individuals, against I-10 Towing and Recovery Towing Inc. ("I-10 Towing" or "Defendant"), in order to hold I-10 Towing accountable for its wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his respective personal knowledge

1. I-10 Towing is a professional towing and vehicle asset recovery company located in Montclair, California.

2. In order to minimize labor costs and thereby maximize profits, I-10 Towing has implemented unlawful policies with respect to meal and rest breaks. I-10 Towing also requires its non-exempt lot employees, who are informed that customer service is always the top priority, to work through meal and rest breaks, and to remain on call during such breaks. Tow truck drivers are unable to take meal and rest breaks based upon the scheduling and demands of the position as drivers are required to always be driving, on-call and/or servicing customers. As a result, Plaintiff and other non-exempt employees have been denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

3. I-10 Towing has implemented an unlawful rounding practice, which in conjunction with its strict attendance policy, results in the systematic underpayment of both regular and overtime wages to Plaintiff and other non-exempt employees.

4. Moreover, I-10 Towing has uniformly failed to pay Plaintiff and other non-exempt employees proper overtime wages due the fact that it willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of I-10 Towing's understaffing and imposition of an unreasonable workload.

5. Plaintiff and other non-exempt employees similarly do not receive reimbursements for the expenses they incur in the discharge of their job duties. These expenses include cellular phone usage.

6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself and a Class of all current and former non-exempt employees of I-10 Towing during the applicable limitations period to compensate these workers for the wages I-10 Towing has stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by I-10 Towing.

JURISDICTION AND VENUE

7. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident and citizen of California, and I-10 Towing is a California corporation that is qualified to do business in California and regularly conducts business in California. All putative class members and aggrieved employees are also residents of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

8. Venue is proper in this judicial district and the County of San Bernardino because Plaintiff, and other persons similarly situated, performed work for I-10 Towing in the County of San Bernardino, I-10 Towing runs its business through its corporate office and its towing facility is located in the County of San Bernardino, and I-10 Towing's illegal payroll policies and practices, which are the subject of this action were applied to Plaintiff, and other persons similarly situated, in the County of San Bernardino.

THE PARTIES

9. Plaintiff is a resident of the State of California and a former employee of I-10 Towing. At all relevant times herein, Plaintiff was employed by I-10 Towing as a lot supervisor, a non-exempt position, working at I-10 Towing's lot located in Montclair, California, during the statute of limitations period.

10. Plaintiff, on behalf of himself and all other similarly situated individuals, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, I-10 Towing's failure to provide legally compliant meal and rest breaks and failure to provide proper compensation for missed and otherwise unlawful meal and rest breaks, unpaid and illegally calculated regular and overtime compensation, failure to pay

1 minimum wages, failure to pay all wages due to discharged or quitting non-exempt employees,
2 and failure to maintain required records and failure to provide accurate itemized wage statements.

3 11. During the statute of limitations period, I-10 Towing has been a corporation
4 existing under the laws of the State of California and it has conducted business in the State of
5 California.

6 12. I-10 Towing conducts business as I-10 Towing and employs individuals who work
7 as tow truck drivers, lot hands and office positions.

8 13. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
9 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.
10 Upon information and belief, each Defendant designated as a DOE is in some manner highly
11 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
12 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
13 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
14 capacities of such DOE defendants when ascertained.

15 14. As a direct and proximate result of the unlawful actions of I-10 Towing, Plaintiff
16 and Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet
17 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

18 **CLASS ACTION ALLEGATIONS**

19 15. Plaintiff brings this action on behalf of himself and the following similarly situated
20 Class of individuals ("Class members"):

21 All non-exempt employees who have performed work for I-10 Towing in the state of
22 California at any time during the relevant statute of limitations period.

23 16. Plaintiff reserves the right to name additional Class representatives as may be
24 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
25 the proposed Class and/or add subclasses before the Court determines whether certification is
26 appropriate.

27 17. This action is appropriately suited for a class action because:
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1 A. The proposed Class is a significant number. Plaintiff is informed and believes that
2 the proposed Class consists of at least 75 current and former non-exempt employees. Joinder of
3 all current and former non-exempt employees individually would be impractical.

4 B. This action involves common questions of law and fact to the proposed Class
5 because the action focuses on the I-10 Towing's systematic course of illegal payroll practices and
6 policies, which was applied to all non-exempt employees in uniform violation of the California
7 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
8 prohibits unfair business practices arising from such violations. Here are a few common questions
9 of law and fact that can be answered on a classwide basis:

- 10 • Whether I-10 Towing failed to provide non-exempt employees with legally
11 compliant meal periods and rest breaks;
- 12 • Whether I-10 Towing failed to pay overtime to non-exempt employees in
13 compliance with California law;
- 14 • Whether I-10 Towing failed to pay minimum wages to non-exempt employees
15 in compliance with California law;
- 16 • Whether I-10 Towing failed to timely pay wages to non-exempt employees in
17 compliance with California law;
- 18 • Whether I-10 Towing failed to maintain required records and accurate wage
19 statements for non-exempt employees;
- 20 • Whether I-10 Towing failed to reimburse employees for business expenses
21 incurred; and
- 22 • Whether I-10 Towing engaged in unfair and/or unlawful business practices.

23 C. Plaintiff's claims are typical of the proposed Class because I-10 Towing subjected
24 all of its non-exempt employees to the similar and overlapping violations of the California Labor
25 Code, the applicable IWC wage order, and the California Business and Professions Code.

26 D. Plaintiff is able to fairly and adequately protect the interests of all members of the
27 proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
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1 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff
2 has also retained counsel that is experienced in wage and hour class action litigation.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

6 **(On Behalf of Plaintiff and the Class Against all Defendants)**

7 18. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 17.

9 19. During the statute of limitations period, as part of I-10 Towing's unlawful policies
10 and practices to deprive its non-exempt employees of all wages earned and due, I-10 Towing
11 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
12 their meal periods, to completely skip their meal periods, to take late and short meal periods, and
13 I-10 Towing has otherwise failed to provide the required meal periods to Plaintiff and Class
14 members as required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC
15 Order.

16 20. I-10 Towing has implemented several common policies and practices that have
17 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
18 periods.

19 21. I-10 Towing grossly understaffs its facility such that Class members regularly miss
20 or take non-compliant meal periods. As a direct consequence of this understaffing, Plaintiff and
21 Class members have so much work to complete within their scheduled shifts that they are forced
22 to skip their meal periods altogether, to take them after working longer than five (5) hours, to
23 perform work during their meal periods, or return to work after taking less than a thirty (30)
24 minute meal period.

25 22. Moreover, I-10 Towing failed to implement adequate policies or procedures to
26 provide meal periods to its non-exempt employees. Among other things, I-10 Towing overworked
27 Plaintiff and Class members and did not adequately advise them of their rights to take meal
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1 periods, and systematically denied them the opportunity to take meal periods, including second
2 meal periods during shifts of ten hours or longer.

3 23. I-10 Towing has also violated California Labor Code §§ 226.7, IWC Wage Order
4 No. 9-2001, § 11, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200
5 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and
6 permitted to take a complete, timely, uninterrupted meal period, in accordance with the applicable
7 wage order, one additional hour of compensation at the proper regular rate of pay for each
8 workday that such a meal period was not authorized or permitted.

9 24. I-10 Towing further violated California Labor Code sections 226.7, 510, 1194,
10 1197, and IWC Wage Order No. 9-2001 by failing to compensate Plaintiff and Class members for
11 all hours worked during their meal periods.

12 25. As a proximate result of the aforementioned violations, Plaintiff and Class
13 members have been damaged in an amount according to proof at trial, and seek all wages earned
14 and due, interest, penalties, expenses, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Provide Required Rest Breaks**

17 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

18 **(On Behalf of Plaintiff and the Class Against all Defendants)**

19 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 25.

21 27. At all times relevant herein, as part of I-10 Towing's illegal policies and practices
22 to deprive its non-exempt employees of all wages earned and due, I-10 Towing failed to permit
23 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
24 and 512, and § 12 of the applicable IWC Wage Order.

25 28. As with meal periods, I-10 Towing's policies and practices caused Plaintiff and
26 Class members to miss or otherwise take non-compliant rest periods by, among other things,
27 giving them unreasonable amounts of work that had to be completed within their shift such that
28 rest periods simply could not be taken. This was the result of systematic understaffing. In

1 addition, I-10 Towing did not adequately notify Plaintiff and Class members of their rights to take
2 rest periods, and systematically denied them the opportunity to take rest periods, including all rest
3 periods required during long shifts, which at times exceeded 12 consecutive hours.

4 29. I-10 Towing further violated California Labor Code § 226.7, IWC Wage Order No.
5 9-2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et*
6 *seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest break, in
7 accordance with the applicable wage order, one additional hour of compensation at the proper
8 regular rate of pay for each workday that a rest break was not provided.

9 30. As a proximate result of the aforementioned violations, Plaintiff and Class
10 members have been damaged in an amount according to proof at trial, and seek all wages earned
11 and due, interest, penalties, expenses, and costs of suit.

12 **THIRD CAUSE OF ACTION**

13 **Failure to Pay Overtime Wages**

14 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

15 **(On Behalf of Plaintiff and the Class against all Defendants)**

16 31. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 30.

18 32. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
19 2001, § 3, I-10 Towing is required to compensate Plaintiff and Class members for all overtime,
20 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
21 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours
22 on the seventh consecutive workday, with double time for all hours worked in excess of twelve
23 (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
24 consecutive day of work in any workweek.

25 33. Plaintiff and Class members are current and former non-exempt employees entitled
26 to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001.
27 During the Class period, I-10 Towing failed to compensate Plaintiff and Class members for all
28 overtime hours worked as required under the foregoing provisions of the California Labor Code

1 and IWC Wage Order by, among other methods: failing to properly calculate the regular rate of
2 pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering
3 Plaintiff and Class members to work off the clock; requiring tow truck drivers to remain on-call
4 between towing assignments; requiring, suffering, or permitting Plaintiff and Class members to
5 work through meal and rest periods but not compensating them for this time, failing to include this
6 time in all hours worked; rounding the time worked by Plaintiff and Class members unfavorably;
7 and other methods to be discovered.

8 34. In a short-sighted attempt to maximize profits, I-10 Towing has understaffed its
9 facility and its tow drivers are not adequately scheduled. Not only has this practice resulted in
10 widespread missed meal and rest breaks, but it has also caused Plaintiff and Class members to
11 perform significant amounts of work while off-the-clock. I-10 Towing knows that Plaintiff and
12 Class members perform this work off-the-clock work because I-10 Towing's owner and operator
13 was aware of them doing this work well before the beginning of the start of their scheduled shifts.

14 35. Plaintiff and Class members also work perform substantial work off-the-clock as a
15 result of I-10 Towing's unlawful rounding practice. I-10 Towing implements a rounding practice
16 wherein it rounds the time worked by non-exempt employees to the nearest quarter-hour. I-10
17 Towing pays Plaintiff and Class members based on rounded time. This rounding practice, in
18 conjunction with I-10 Towing's strict attendance and mandatory meeting policies, results in
19 systematic off-the-clock work and unpaid overtime.

20 36. Plaintiff and Class members must get to work by no later than the start of their
21 shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
22 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory job
23 duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts. This
24 results in the widespread underpayment of time worked, including overtime.

25 37. In violation of California law, I-10 Towing has knowingly and willfully refused to
26 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
27 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
28 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment

1 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
2 I-10 Towing to fully perform its obligations under state law, all to their respective damages in
3 amounts according to proof at time of trial, and within the jurisdiction of this Court.

4 38. I-10 Towing's conduct described herein violates California Labor Code §§ 510,
5 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code
6 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
7 Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid
8 balance of wages owed to them by I-10 Towing, plus interest, penalties, attorneys' fees, expenses,
9 and costs of suit.

10 **FOURTH CAUSE OF ACTION**

11 **Failure to Pay Minimum Wages**

12 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

13 **(On Behalf of Plaintiff and the Class against all Defendants)**

14 39. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 38.

16 40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 9,
17 payment to an employee of less than the applicable minimum wage for all hours worked in a
18 payroll period is unlawful.

19 41. During the statute of limitations period, the hourly rates for Plaintiff and Class
20 members were precisely at minimum wage. Based on this common practice, I-10 Towing failed to
21 actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring,
22 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
23 rest breaks, but not compensating them for this time, and failing to include this time in all hours
24 worked, and other methods to be discovered.

25 42. I-10 Towing's conduct described herein violates Cal. Lab. Code §§ 1194, 1197,
26 and § 4 of IWC Wage Order No. 9. As a proximate result of the aforementioned violations,
27 Plaintiff and Class members have been damaged in an amount according to proof at trial.
28 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other

1 applicable law, Plaintiff and Class members are entitled to recover the unpaid balance of wages
2 owed to them by I-10 Towing, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 **[Cal. Lab. Code §§ 201, 202, 203]**

6 **(On Behalf of Plaintiff and the Class against all Defendants)**

7 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 42.

9 44. Pursuant to California Labor Code §§ 201, 202, and 203, I-10 Towing is required to
10 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
11 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
12 at the time of discharge are due and payable immediately.

13 45. Furthermore, pursuant to California Labor Code § 202, I-10 Towing is required to
14 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee
15 quits his or her employment, unless the employee provided seventy-two (72) hours previous notice
16 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
17 of quitting.

18 46. California Labor Code § 203 provides that if an employer willfully fails to pay, in
19 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
20 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
21 compensation to the employee at the same rate for up to thirty (30) workdays.

22 47. During the statute of limitations period, I-10 Towing has willfully failed to pay
23 accrued wages and other compensation to Plaintiff and Class members in accordance with
24 California Labor Code §§ 201 and 202. I-10 Towing does not have a sufficient policy to provide
25 Plaintiff and Class members with their final paychecks within the timeframes required under
26 California law. In addition, because I-10 Towing has failed and continues to fail to properly
27 compensate Plaintiff and Class members for all hours worked when due, overtime wages,
28 minimum wages, and compensation for non-compliant meal and rest breaks, I-10 Towing has also

1 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
2 Class members in accordance with California Labor Code §§ 201 and 202. Moreover, I-10 towing
3 fails to pay Class members employed on a temporary basis weekly in accordance with Labor Code
4 §201.3.

5 48. As a result, Plaintiff and Class members are entitled to all available statutory
6 penalties, including the waiting time penalties provided in California Labor Code § 203, together
7 with interest thereon, as well as other available remedies.

8 49. As a proximate result of I-10 Towing's unlawful actions and omissions, Plaintiff
9 and Class members have been deprived of compensation in an amount according to proof at the
10 time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
11 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code §
12 1194.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Pay Timely Wages**

15 **[Cal. Lab. Code §§ 204, 210]**

16 **(On Behalf of Plaintiff and the Class against All Defendants)**

17 50. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 49.

19 51. California Labor Code § 204 provides that all wages earned by any person in any
20 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
21 wages due upon termination of an employee, are due and payable between the 16th and 26th day
22 of the month during which the labor was performed. California Labor Code § 204 further
23 provides that all wages earned by any person in any employment between the 16th and the last
24 day, inclusive, of any calendar month, other than those wages due upon termination of an
25 employee, are due and payable between the 1st and the 10th day of the following month.
26 California Labor Code § 204 further provides that all wages eared for labor in excess of the
27 normal work period shall be paid no later than the payday for the next regular payroll period.
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1 52. During the statute of limitations period, I-10 Towing, among other things, willfully
2 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
3 limited to, meal and rest break premiums, overtime and minimum wages, and payment for work
4 performed off-the-clock, within any time period permissible under Labor Code § 204.

5 53. As a proximate result of I-10 Towing's unlawful actions and omissions, Plaintiff
6 and Class members are entitled to all available statutory penalties, including but not limited to,
7 civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and
8 other applicable provisions under the California Labor Code and IWC Wage Orders, and an award
9 of costs, expenses, and reasonable attorneys' fees.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure to Maintain Required Records**

12 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]**

13 **(On Behalf of Plaintiff and the Class against all Defendants)**

14 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 53.

16 55. During the statute of limitations period, as part of I-10 Towing's illegal payroll
17 policies and practices to deprive Plaintiff and Class members of all wages earned and due, I-10
18 Towing knowingly and intentionally failed to maintain records as required under California Labor
19 Code §§ 226, 1174, and IWC Wage Order No. 9-2001, § 7, including but not limited to, the
20 following records: total daily hours worked by each non-exempt employee; applicable rates of
21 pay; all deductions; meal periods; time records showing when each non-exempt employee begins
22 and ends each workday; and accurate itemized wage statements.

23 56. As a proximate result of I-10 Towing's unlawful actions and omissions, Plaintiff
24 and Class members have been damaged in an amount according to proof at trial, and are entitled to
25 all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
26 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
27 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
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1 reasonable attorneys' fees, including but not limited to those provided in California Labor Code §
2 226(e), as well as other available remedies.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Furnish Accurate Itemized Wage Statements**

5 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 9-2001, § 7]**

6 **(On Behalf of Plaintiff and the Class against all Defendants)**

7 57. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 56.

9 58. During the statute of limitations period, I-10 Towing routinely failed to provide
10 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
11 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
12 earned, and all applicable hourly rates in effect during each pay period and the corresponding
13 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC
14 Wage Order No. 9-2001, § 7.

15 59. I-10 Towing's wage statements violate Labor Code § 226 by, among other things,
16 failing to provide Plaintiff and Class members with proper meal and rest breaks and not including
17 in their wage statements one (1) additional hour of compensation at their regular rates of pay for
18 each non-compliant meal or rest break. In addition, I-10 Towing required Plaintiff and Class
19 members to work off-the-clock without compensation and illegally rounded the time that they
20 worked, rendering the wage statements inaccurate.

21 60. I-10 Towing knowingly and intentionally failed to provide Plaintiff and Class
22 members with timely, accurate, and itemized wage statements in accordance with California Labor
23 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
24 they were being paid for, among other things, all of the hours they worked and at the proper rates
25 of pay.

26 61. As a proximate result of I-10 Towing's unlawful actions and omissions, Plaintiff
27 and Class members have been damaged in an amount according to proof at trial, and seek all
28 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are

1 entitled to all available penalties, including but not limited to penalties pursuant to California
2 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
3 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
4 well as other available remedies.

5 **NINTH CAUSE OF ACTION**

6 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

7 **[Cal. Lab. Code § 2802]**

8 **(On Behalf of Plaintiff and the Class against All Defendants)**

9 62. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 61.

11 63. California Labor Code § 2802(a) requires an employer to indemnify an employee
12 for all necessary expenditures or losses incurred by the employee in direct consequence of the
13 discharge of his or her duties, or of his or her obedience to the directions of the employer.

14 64. During the statute of limitations period, I-10 Towing knowingly and willfully failed
15 to indemnify Plaintiff and Class Members for all business expenses and/or losses incurred in direct
16 consequence of the discharge of their duties while working under the direction of Defendant,
17 including but not limited to, cellular phone usage and other employment-related expenses, in
18 violation of California Labor Code § 2802.

19 65. As a proximate result of I-10 Towing's unlawful actions and omissions, Plaintiff
20 and Class members have been damaged in an amount according to proof at trial, and seek
21 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
22 Code § 2802(b). Additionally, Plaintiff and Class Members are entitled to all available statutory
23 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided
24 in California Labor Code § 2802(c), as well as other available remedies.

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71. I-10 Towing's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders that I-10 Towing account for, disgorge, and restore to Plaintiff and Class members the wages and other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution of all monies to be disgorged from I-10 Towing in an amount according to proof at the time of trial.

ELEVENTH CAUSE OF ACTION

Representative Action for Civil Penalties Pursuant to the Private Attorneys

General Act (“PAGA”)

[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)

72. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 71, with exception of the allegations in Paragraphs 15 through 17 (A) – (D).

73. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of I-10 Towing pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by I-10 Towing and the alleged violations of the California Labor Code were committed against Plaintiff.

74. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

75. Pursuant to California Labor Code §§ 2699.3, on August 23, 2022, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) and I-10 Towing of the specific provisions of the California Labor Code and IWC

1 Wage Orders alleged to have been violated, including the facts and theories to support the alleged
2 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the
3 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.
4 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
5 2699.3 to commence a representative action under PAGA.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
8 situated, respectfully prays for relief against I-10 Towing and DOES 1 through 50, inclusive, and
9 each of them, as follows:

- 10 1. For compensatory damages in an amount to be ascertained at trial;
- 11 2. For restitution of all monies due to Plaintiff and Class members, as well as
12 disgorged profits from the unfair and unlawful business practices of I-10 Towing;
- 13 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
14 and IWC Wage Order No. 9-2001;
- 15 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 16 5. For preliminary and permanent injunctive relief enjoining I-10 Towing from
17 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and
18 from engaging in the unlawful business practices complained of herein;
- 19 6. For waiting time penalties pursuant to California Labor Code § 203;
- 20 7. For statutory and civil penalties according to proof;
- 21 8. For interest on the unpaid wages at 10 percent per annum pursuant to California
22 Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other
23 applicable provision providing for pre-judgment interest;
- 24 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
25 218.5, 226, 1194, 2802, and 2699, and California Civil Code § 1021.5, and/or any other applicable
26 provisions providing for attorneys' fees and costs;
- 27 10. For declaratory relief;

1 11. For an order requiring and certifying the First through Tenth Causes of Action as a
2 class action;

3 12. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
4 Class counsel; and

5 13. For such further relief that the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
8 with respect to all issues triable of right by jury.

9 DATED: November 17, 2022

THE LAW OFFICE OF SCOTT E. WHEELER

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11
12 Scott E. Wheeler

13 The Wand Law Firm, PC
14 Aubry Wand

15 *Attorneys for Plaintiff and the Putative Class*
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