

1 Elliot J. Siegel (Bar No. 286798)
elliot@kingsiegel.com
2 Julian Burns King (Bar No. 298617)
julian@kingsiegel.com
3 Brent R. Boos (Bar. No. 292808)
brent@kingsiegel.com
4 **KING & SIEGEL LLP**
5 724 S. Spring Street, Suite 201
6 Los Angeles, California 90014
7 tel: (213) 465-4802
fax: (213) 465-4803

8 Attorneys for Plaintiffs and the Putative Class

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 **Rene Luna and Randall Smith**, individually
13 and on behalf of all similarly situated individuals;

14 Plaintiffs,

15 vs.

16 **Ashiku Trucking, Inc.**, a California corporation;
17 **Alfred Ashiku**, an individual; **O.S.T. Freight Inc.**,
a California corporation; **Jonirda Hoxha**, an individual;
18 **FedEx Ground Package System, Inc.**, a Delaware corporation;
19 **FedEx Corporation**, a Delaware corporation; and
Does 1-10, inclusive;

20 Defendants.
21
22
23
24
25
26
27
28

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

AUG 11 2022

BY Marcia Martinez
MARICIA MARTINEZ, DEPUTY

CASE NO. **CIV SB 22 178 008**

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages for All Hours Worked (Lab. Code §§ 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198);
- 2) Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, and 1198);
- 3) Failure to Provide and Maintain Accurate Payroll Records (Lab. Code §§ 226(a)/(f)/(h), 226.3, and 1174(d));
- 4) Failure to Timely Pay Wages Due (Lab. Code §§ 201-204, 210);
- 5) PAGA Penalties (Labor Code § 558, 2698, *et seq.*); and
- 6) Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*)

Demand for Jury Trial

FILED

1 Plaintiffs Rene Luna and Randall Smith, hereby bring this action, on behalf of themselves and
2 all similarly situated individuals, and allege as follows, by and through their counsel of record:

3 **PARTIES**

4 1. Defendant Ashiku Trucking, Inc. (“Ashiku Trucking”) is a California corporation
5 with its principal executive office located at 32580 Lama Ct., Temecula, CA 92592. Ashiku Trucking
6 exclusively contracts with FedEx to provide vehicles and drivers for the pickup and delivery of
7 FedEx’s cargo trailers, and operates out of FedEx’s distribution and sorting facility in Rialto, CA.

8 2. Defendant Alfred Ashiku (“Mr. Ashiku”) is the Chief Executive Officer, Chief Fi-
9 nancial Officer, the sole Director of Ashiku Trucking, and upon information and belief, the owner of
10 Ashiku Trucking. Since Mr. Ashiku is an owner, managing agent, director, and/or officer of Ashiku
11 Trucking, and because he caused or directed the acts described herein, he is personally liable for the
12 Labor Code violations and PAGA penalties complained of herein per Labor Code § 558.1.

13 3. Defendant O.S.T. Freight, Inc. (“OST”) is a California corporation with its principal
14 executive office located at 18957 Van Buren Blvd., Ste. C, Riverside, CA 92508. OST exclusively
15 contracts with FedEx to provide vehicles and drivers for the pickup and delivery of FedEx’s cargo
16 trailers, and operates out of FedEx’s distribution and sorting facility in Rialto, CA.

17 4. Defendant Jonirda Hoxha (“Mr. Hoxha”) is the Chief Executive Officer, Chief Fi-
18 nancial Officer, the sole Director of OST, and upon information and belief, the owner of OST. Since
19 Mr. Hoxha is an owner, managing agent, director, and/or officer of the OST, and because he caused
20 or directed the acts described herein, he is personally liable for the Labor Code violations and PAGA
21 penalties complained of herein per Labor Code § 558.1.

22 5. Defendant FedEx Ground Package System, Inc. (“FedEx Ground”) is a Delaware
23 corporation that conducts business within California. Its principal office is located at 1000 FedEx
24 Drive, Moon Township, PA 15108. FedEx Ground operates distribution and sorting facilities at nu-
25 merous locations throughout California and the rest of the United States.

26 6. Defendant FedEx Corporation (“FedEx Corp.”) is a Delaware corporation that con-
27 ducts business within California. Its principal executive office is located at 942 South Shady Grove
28 Road, Memphis, TN 38120. In general, FedEx is in the package pickup and delivery business.

1 7. Plaintiff Rene Luna (“Luna”) is a resident of the County of Los Angeles. Mr. Luna
2 was directly employed by Ashiku Trucking, and jointly employed by FedEx Ground and FedEx
3 Corp., as a truck driver from approximately August 2018, through December 2020. From approxi-
4 mately April 2021 to September 2021, Mr. Luna was directly employed by both Ashiku Trucking and
5 OST, while jointly employed by FedEx Ground and FedEx Corp. Mr. Luna was paid a piece rate of
6 approximately \$0.52 to \$0.56 per mile driven, which did not include any compensation for time spent
7 working on non-driving tasks.

8 8. Plaintiff Randall Smith (“Smith”) is a resident of the County of Riverside. Mr. Smith
9 was jointly employed by Defendants as a truck driver from approximately August 2018, through Sep-
10 tember 2019, during which time he was directly employed by Ashiku Trucking – then from February
11 2021, through September 2021, during which time he was directly employed by OST. Mr. Smith was
12 paid a piece rate of approximately \$0.50 to \$0.52 per mile driven, which did not include compensa-
13 tion for time spent working on non-driving tasks.

14 9. Mr. Luna and Mr. Smith are not currently aware of the names and true identities of
15 Does 1-10 (hereinafter “Defendants,” collectively with Ashiku Trucking, Mr. Ashiku, OST, Mr.
16 Hoxha, FedEx Ground, and FedEx Corp.). Accordingly, Plaintiffs bring this lawsuit against them by
17 fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiffs reserve the
18 right to amend this complaint to show their true names and capacities once that information is ascer-
19 tained. Each Doe defendant is responsible for the damages alleged pursuant to each of the causes of
20 action asserted, either through its own conduct, or vicariously through the conduct of others. All
21 further references in this complaint to the named Defendants also includes the fictitiously named
22 defendants.

23 10. At all times alleged herein, except as otherwise noted, Defendants participated in the
24 acts alleged herein and/or were the agents, servants, employees, or representatives of the other De-
25 fendants. At all times relevant to this complaint, Defendants acted within the course, scope, and au-
26 thority of their agency and employment such that the acts of one Defendant are legally attributable to
27 the other Defendants. Defendants, in all respects, acted as employers and/or joint employers of Plain-
28 tiffs and Class Members in that each of them exercised control over the wages, hours, and/or working

1 conditions of Plaintiffs and Class Members. Moreover, the conduct of every individual Defendant
2 was ratified by each other Defendant.

3 VENUE AND JURISDICTION

4 11. This Court has subject matter jurisdiction over any and all causes of action asserted
5 herein pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
6 Procedure sections 88 and 410.10 by virtue of the fact that this is a civil action in which the matter in
7 controversy, not including attorneys' fees, interests, and costs, exceeds \$25,000, and because each
8 cause of action asserted arises under the laws of the State of California or is subject to adjudication in
9 the courts of the State of California.

10 12. This Court has personal jurisdiction over Defendants because Defendants have
11 caused injuries in the County of San Bernardino and State of California through their acts, and by
12 their violations of the California Labor Code, California state common law, and California Business
13 & Professions Code sections 17200, *et seq.* Venue is proper in San Bernardino County, pursuant to
14 Code of Civil Procedure section 395(a), because Defendants do business in San Bernardino County
15 and because at all times relevant to this complaint Mr. Luna and Mr. Smith worked, earned wages,
16 and suffered the harms set forth herein in San Bernardino County.

17 FACTUAL ALLEGATIONS

18 *Defendants' Over-the-Road Freight Transportation Business*

19 13. FedEx Ground and FedEx Corp. (collectively, "FedEx") operate a network of distri-
20 bution and sorting facilities ("Hubs") in California and throughout the rest of the United States.
21 These Hubs unload and sort packages that are transported to the facilities via over-the-road trucks,¹
22 then consolidate said packages into loads on cargo trailers for over-the-road transport to another Hub
23 or satellite station. To service its Hubs, FedEx contracts with numerous small "motor carriers," such
24 as the Ashiku Trucking and OST, who provide the vehicles and drivers needed to transport FedEx's
25 cargo trailers, or "freight," back and forth between FedEx owned and operated Hubs, which are lo-
26 cated anywhere from hundreds to thousands of miles apart.

27 _____
28 ¹ Over-the-road trucks haul freight over long distances, often across state lines and even national bor-
ders.

1 14. For example, Defendants Ashiku Trucking and Mr. Ashiku (collectively, “Ashiku De-
2 fendants”) operate an over-the-road trucking company that contracts exclusively with FedEx to pro-
3 vide vehicles and drivers for the transport of FedEx’s freight back and forth between FedEx’s Hubs.
4 The Ashiku Defendants’ entire business model is to provide a labor force in service to FedEx. The
5 Ashiku Defendants operate out of FedEx’s Hub in Rialto, CA, where they store their trucks and di-
6 rect Plaintiffs and Class Members to report to FedEx for work.

7 15. Likewise, Defendants OST and Mr. Hoxha (collectively, “OST Defendants”) oper-
8 ate an over-the-road trucking company that contracts exclusively with FedEx to provide vehicles and
9 drivers for the transport of FedEx’s freight back and forth between FedEx’s Hubs. The OST De-
10 fendants’ entire business model is to provide a labor force in service of FedEx. The OST Defendants
11 operate out of FedEx’s Rialto Hub, where they store their trucks and direct Plaintiffs and Class Mem-
12 bers to report to FedEx for work.

13 16. Together, Defendants operate an integrated over-the-road freight transportation op-
14 eration with long-haul and short-haul components. The labor force provided by the Ashiku and OST
15 Defendants is part and parcel of FedEx’s regular freight transportation business and is indistinguish-
16 able from that business.

17 ***Defendants’ Jointly Employ the Drivers***

18 17. Defendants directly employed and/or jointly employed Plaintiffs and Class Members
19 as long-haul team drivers and short-haul solo drivers in California (collectively, the “Drivers”), who
20 work the long hours necessary to carry out FedEx’s freight transportation operation. The Drivers,
21 including Plaintiffs work exclusively as FedEx Drivers, transporting freight back and forth between
22 FedEx owned and operated Hubs, at FedEx’s direction, while driving trucks and hauling trailers
23 bearing FedEx’s name and logo.

24 18. For example, Plaintiffs Rene Luna and Randall Smith worked for Defendants typically
25 as long-haul team drivers, but sometimes as short-haul solo drivers, physically driving the vehicles
26 and hauling the freight necessary to complete FedEx’s day-to-day freight transportation operations.
27 As long-haul team drivers they worked day and night, in teams of two, to transport FedEx’s freight
28 over thousands of miles between Hubs. As short-haul solo drivers, they transported FedEx’s freight

1 over relatively short distances to other Hubs, which could be completed in one day.

2 19. From time to time, based on information and belief, the Ashiku and OST Defendants
3 share employees and/or trucks with each other in service of FedEx's freight transportation needs.

4 20. To start each workweek, Plaintiffs reported to and were dispatched out of one FedEx
5 Hub in particular, located in Rialto, CA. From there, the Drivers transported FedEx's freight back
6 and forth between other FedEx Hubs, before finally returning to the Rialto Hub to end their work-
7 week. Each delivery began at a FedEx Hub, ended at a FedEx Hub, and was completed in service of
8 FedEx's freight transportation operation.

9 21. On long-haul team trips, Drivers drive day and night, in teams of two, to transport
10 FedEx's freight over thousands of miles between FedEx Hubs. At any given time, one team member
11 drives while the other rests in the truck's sleeper berth, allowing the truck to move continuously
12 throughout the entire day. Each team performs one round-trip per week, beginning and ending at
13 FedEx's Rialto Hub and lasting five or more days. For example, Plaintiffs typically teamed up with
14 each other or another Driver to haul freight back and forth between FedEx Hubs in Rialto, CA and
15 other distant locations such as Ocala, FL, for 16 or more hours per day *each*² (including driving, riding
16 in a moving truck, fueling, coordinating with FedEx dispatchers, hooking and unhooking cargo trail-
17 ers, standing by for additional freight to become available, among other tasks). Each week, the long-
18 haul team Drivers typically drive a route beginning and ending in Rialto, CA, over the course of five
19 or more days per trip, pushing their hours worked to 80 or more per week. However, the Drivers
20 were paid for only a fraction of this work on a per-mile piece-rate basis for time spent driving only.

21 22. On short-haul solo trips, Drivers work similarly long hours, in the range of 60 to 80
22 hours or more per week. For example, Plaintiffs delivered freight from FedEx's Rialto Hub to another
23 nearby Hub, such as in Sacramento, that could be reached within 11 hours of driving time and 14
24 hours of on-duty time, as defined by the Department of Transportation's ("DOT") safety regula-
25 tions.³ Unlike team Drivers, solo Drivers are not confined to the sleeper berth of a moving truck while

26 ² Some of the time worked by long-haul team Drivers overlapped with their partners, such that each
27 could work more than 12 hours in a 24-hour period.

28 ³ The DOT's safety regulations limit Drivers to working 14 hours and driving up to 11 hours of the

1 “off duty” under DOT regulations.⁴ Otherwise, short-haul solo trips are substantially similar to long-
 2 haul team trips. Short-haul solo Drivers typically work for 12 – 16 hours per day (including driving,
 3 fueling, hooking and unhooking cargo trailers, and coordinating with FedEx dispatchers, among other
 4 tasks), for five or more days per week. Short-haul solo Drivers are also paid for only a fraction of this
 5 work on a per-mile piece-rate basis for time spent driving only.

6 23. The work performed by the Drivers is an integral part of FedEx’s regular business
 7 because FedEx is in the business freight transportation and local delivery, and the Drivers physically
 8 drive the trucks and haul the freight to make this possible. Further, the work performed by the Drivers
 9 is indistinguishable from FedEx’s regular business, as the Drivers provide labor exclusively for
 10 FedEx’s freight transportation business.

11 24. While FedEx takes the benefit of the Drivers’ long hours of work, which it requires
 12 and oversees, it attempts to offload responsibility onto the service providers, such as the Ashiku and
 13 OST Defendants, who contract exclusively with FedEx. However, the Ashiku and OST Defendants
 14 are little more than employing entities who provide a labor force exclusively for FedEx’s business –
 15 they are deeply integrated within FedEx’s business, and are fully in service of FedEx’s needs to the
 16 exclusion of all other business.

17 25. Despite labeling the Drivers as employees of Ashiku Trucking and/or OST, the Drivers
 18 are, in fact, joint employees of FedEx under well-established legal criteria for defining the em-
 19 ployee-employer relationship. Notably, FedEx retains the right to exercise extensive control over
 20 how the Drivers perform their job duties, including, among other things, the right to control the
 21 Driver’s schedules, routes, equipment, and other terms and conditions of the job. For example:

22 a. Long-haul team Drivers are required to report to FedEx’s Rialto Hub to start and
 23

24 14-hour “on-duty” period, until such Driver takes 10 consecutive hours of off-duty time. *See* 49 CFR
 25 395.

26 ⁴ Time during which an employee is considered on duty under the DOT’s safety regulations is not
 27 governed by the same principles as apply under the California Labor Code. *See* WHD Opinion Letter
 28 SCA-118 (June 22, 1979) (“DOT’s Motor Carrier Safety Regulations (49 CFR Part 395) are con-
 cerned primarily with the safe operation of motor vehicles and not with compensable hours of
 work.”); *see also* FLSA2019-10 (“To the extent that FLSA2019-10 withdrew prior opinion letters on
 this issue, *see, e.g.,* WHD Opinion Letter SCA-118 (June 22, 1979) [...] those letters are reinstated.”)

1 end each workweek, as well as other FedEx owned and operated Hubs in between.
2 Short-haul solo Drivers are required to report to a FedEx designated Hub at the
3 start and end of each workday. At each Hub, the Drivers receive paperwork and
4 instructions from FedEx dispatchers to transport FedEx freight to other FedEx
5 owned and operated Hubs.

- 6 b. FedEx assigns specific routes, trailers, and cargo that the Drivers must transport
7 to assigned Hubs and sets time windows within which freight must be delivered to
8 those Hubs. These assignments are issued solely at the discretion of FedEx.
- 9 c. The Drivers are subject to *de facto* discipline and/or disqualification by FedEx. If
10 the Drivers turn down a route assignment, then FedEx dispatchers require them
11 to wait 6 or more hours, sometimes a day or more, for a new assignment, which is
12 meant to be punitive. FedEx also posts notices at their Hubs warning the Drivers
13 of the potential for suspension or disqualification for breaking FedEx's rules.
- 14 d. FedEx requires that the Drivers use specific equipment and have such equipment
15 on their vehicles when they perform work for FedEx. For example, the Drivers are
16 directed by FedEx to use its dollies and hooks to attach its trailers to the trucks.
17 FedEx also supplies a parking lot, where Ashiku Trucking and OST store their
18 trucks between trips and where the Drivers store their personal vehicles during
19 trips.
- 20 e. FedEx requires that the trucks used by the Drivers to perform their work bear the
21 "FedEx" name and are operated under FedEx's "operating authority" (MC
22 number) and USDOT number. The trailers transported by the Drivers also prom-
23 inently bear the "FedEx" name and logo.
- 24 f. The Drivers are required to carry identification badges showing their affiliation
25 with FedEx Ground and displaying a FedEx-associated ID number, which must
26 be presented at FedEx Hubs.
- 27 g. The Drivers' work is supervised by FedEx, including through random inspections
28 conducted by FedEx employees, GPS monitoring of the cargo trailers being

1 transported, and phone calls from FedEx dispatchers, who periodically contact the
2 Drivers to check in on their progress and require the Drivers to reach out if they
3 expect to arrive late to their destinations.

4 26. For these reasons and others discussed herein, FedEx is a joint employer of the Driv-
5 ers under California law. *See Martinez v. Combs*, 49 Cal.4th 35, 64 (2010) (“to employ ... under the
6 [wage order], has three alternative definitions. It means: (a) to exercise control over the wages, hours,
7 or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common
8 law employment relationship.”).

9 ***Defendants’ Failure to Pay Wages for All Hours Worked***

10 27. Despite working 60 or more hours per hours per week hauling freight for FedEx, De-
11 fendants only compensate the Drivers on a per-mile piece-rate basis for time spent driving, i.e., when
12 the truck is moving, resulting in payment for only a fraction of the work they perform. This unpaid
13 work is comprised of, at least, (1) the time that long-haul and short-haul Drivers spend performing
14 non-driving tasks at the direction of Defendants and (2) time that long-haul Drivers are confined to a
15 small sleeper berth of a moving truck while under the control of Defendants and in service to FedEx’s
16 objectives.

17 28. *First*, Defendants fail to compensate the Drivers for all time spent performing specific
18 non-driving tasks. This uncompensated time includes, but is not limited to, time spent at FedEx Hubs
19 coordinating with FedEx dispatchers, locating cargo and trailer assignments, hooking up and unhook-
20 ing cargo trailers, undergoing truck inspections, and/or standing by for FedEx freight to become
21 available. *See* 8 C.C.R. § 11070 (“‘Hours worked’ means the time during which an employee is sub-
22 ject to the control of an employer and includes all the time the employee is suffered or permitted to
23 work, whether or not required to do so.”).

24 29. For instance, regardless of whether driving long-haul or short-haul routes, Plaintiffs
25 were required to report to FedEx’s Rialto Hub to start and end each workweek. Before 2020, the
26 Drivers were required to pick up the trucks owned by the Ashiku and OST Defendants from a nearby
27 parking lot where they were stored, and then drive the trucks to FedEx’s Rialto Hub. In approxi-
28 mately 2020 or 2021, FedEx expanded its Rialto Hub to include a large parking lot where the Ashiku

1 and OST Defendants began storing their trucks between trips, and where the Drivers park their per-
2 sonal vehicles during trips.

3 30. At the Rialto Hub, Plaintiffs reported to FedEx's linehaul office where they waited in
4 line to check in with dispatchers, process paperwork, and receive initial load assignments, including
5 trailer and dolly identifications, and other information. Then, Plaintiffs spent time locating their as-
6 signed trailer and dolly (which bore FedEx's corporate name, logo, MC number, and USDOT num-
7 ber), hooked the trailer to the truck, and returned to the linehaul office where FedEx dispatchers
8 provided additional paperwork regarding their routes, including destinations, delivery deadlines,
9 paid-for mileage, trailer numbers, and other information. From time to time, FedEx employees would
10 also conduct truck inspections and/or repairs before Plaintiffs could depart. This dispatching process
11 typically took Plaintiffs 2 to 4 hours to complete, but occasionally took up to 6 hours to complete.

12 31. From there, Plaintiffs would begin their hundreds or even thousands of miles long
13 journey from Rialto, CA to some other distant FedEx Hub, often as far away as Ocala, FL, either
14 driving the truck, or resting in the truck's small sleeper berth while their team member drove. During
15 these trips, the truck might stop briefly for Plaintiffs to fuel up, use restrooms, and/or take a DOT-
16 mandated 30-minute driving break, but would stop for little else given the time pressures imposed by
17 FedEx's delivery deadlines. FedEx monitored Plaintiffs' progress via GPS devices equipped to its
18 cargo trailers and FedEx dispatchers would periodically contact Plaintiffs to check in on their pro-
19 gress and required Plaintiffs to reach out if they expected to arrive late to a destination.

20 32. Once Plaintiffs completed delivery at the second Hub on their route, FedEx dispatch-
21 ers instructed Plaintiffs to either deliver freight back to the Rialto Hub, or to deliver freight to one or
22 more additional Hubs along the way. Each time that Plaintiffs reported to a Hub beyond the first, they
23 spent at least 1 – 3 additional hours waiting in line to check in with dispatchers, receiving paperwork
24 regarding their next route, trailer, and dolly assignment, unhooking from the last cargo trailer, re-
25 hooking to the next cargo trailer, and continuing onward to the next designated FedEx Hub. How-
26 ever, if Plaintiffs arrived at a FedEx Hub outside of its linehaul office's operating hours, or if FedEx
27 simply did not have their next load ready, then Plaintiffs were first required to wait on standby –
28 sometimes up to 12 hours – for the office to reopen and/or make ready their next load. On rarer

occasions, Plaintiffs had to stand by for 1 – 2 days for their next load to become available.

33. Because the Drivers were not compensated for any non-driving time under their piece rate pay scheme, each additional stop at a FedEx Hub along the way resulted in yet more unpaid time during which Plaintiffs were suffered or permitted to work by Defendants. Ideally, long-haul routes would entail driving a truck (with freight) from a FedEx Hub at Point A to another FedEx Hub at Point B, and directly back to Point A. However, FedEx often assigned Plaintiffs routes going from Point A to Point B to Point C and so on, until eventually returning to Point A. In fact, until Plaintiffs arrived at the next Hub and received their next assignment, they did not know if their route would send them back to Rialto, CA or some other distant Hub, or if their load would be made available immediately or up to 12 hours later.

34. FedEx leverages its control over the Drivers to send them to as many FedEx owned and operated Hubs along their routes as possible. For instance, Plaintiffs' first route assignment often sent them from Rialto, CA to Ocala, FL. From there, FedEx sometimes rerouted Plaintiffs to a third or even a fourth Hub (such as in Texas, Kansas, or Colorado), before allowing them to deliver a final load back to the Rialto Hub. If Plaintiffs attempted to turn down such a rerouting, then FedEx dispatchers threatened to make them "stand by" for extended periods of time to get their next cargo trailer. At various times, FedEx did in fact make Plaintiffs wait for alternative loads for anywhere from six hours to a day or more. It was made clear to Plaintiffs that this practice was meant to be punitive.

35. When driving short-haul routes, FedEx instructed Plaintiffs to deliver freight to other Hubs within a range of approximately 500 miles, such as from Rialto to Sacramento, which could be driven to in a single day, i.e., within 11 hours of driving time and 14 hours of total on-duty time under DOT safety regulations. Unlike long-haul team Drivers, who might drive multiple days without stopping at a Hub, short-haul solo Drivers are required to check in with FedEx dispatchers at the start of each work shift, at which time the Driver is provided a route assignment. Short haul solo Drivers begin and end each workday at a FedEx Hub and spend approximately 1 – 3 hours checking in with dispatchers, processing paperwork, receiving route assignments, and unhooking and hooking up cargo trailers.

1 36. *Second*, Defendants fail to compensate long-haul team Drivers for time spent in the
2 sleeper berth of a moving truck. Long-haul Drivers work in a team configuration whereby one team
3 member drives while the other rests in the truck's sleeper berth. By having the drivers switch off in a
4 team configuration, Defendants can require the truck to move continuously (except for fueling and
5 other short stops), without stopping for 10 hours, like short-haul solo Drivers must. This team con-
6 figuration maximizes efficiency for Defendants by enabling them to meet tighter delivery schedules.
7 The time the Drivers spend in the sleeper berth is primarily for Defendants' benefit because it allows
8 the trucks to move as quickly as possible and maximizes the amount of freight that FedEx can deliver
9 to its customers in the shortest amount of time.

10 37. Because the truck is constantly moving, long-haul team Drivers are forced to take their
11 DOT-mandated rests in the cramped sleeper berth of a moving truck. While in the sleeper berth of a
12 moving truck, the Drivers cannot get out and do what they want; they are subject to Defendants'
13 control and are waiting in a workplace prescribed by Defendants, for Defendants' benefits. Time
14 during which employees are subject to the control of the employer and/or are unable to use the time
15 effectively for their own purposes is compensable under California law. *See Morrillion v. Royal Packing*
16 *Co.*, 22 Cal. 4th 575 (2000); *see also* WHD Opinion Letter SCA-118 (June 22, 1979) ("[T]ruck drivers
17 in the sleeping berth were in fact on duty, because they were in a place they would not be if they had
18 been totally free to do what they pleased.")

19 38. However, Defendants have maintained a policy and practice of denying the Drivers
20 any compensation for time spent performing non-driving tasks and/or time spent resting in the
21 truck's sleeper berth, even though Plaintiff and Class Members were under Defendants' control dur-
22 ing these times, entirely for Defendants' benefit. As a result of Defendants' wage policies and prac-
23 tices, as described herein, Defendants have failed to compensate Plaintiffs and Class Members for
24 hour worked outside of actual driving time, and thus failed to pay the minimum wage that the Drivers
25 were entitled to for each hour worked under Labor Code section 1197 and Wage Order 9-2001.

26 ***Defendants' Failure to Pay Overtime and Double Time Premiums***

27 39. Plaintiff and Class Members regularly worked more than eight (8) hours in a workday
28 and/ or more than forty (40) hours in a workweek, which Defendants knew and required. However,

1 at all times relevant to this complaint, Defendants implemented a company-wide policy that failed to
2 pay Plaintiff and Class Members earned overtime wages for hours worked after the eighth hour in a
3 day and for hours worked after the fortieth hour in a week. Plaintiffs and Class Members also some-
4 times worked more than twelve (12) hours in day, or in excess of eight (8) hours on the seventh con-
5 secutive day in a workweek, but were not paid double time wages for such work pursuant to Defend-
6 ants' policies.

7 40. Specifically, Defendants implement a uniform policy that only compensates the Driv-
8 ers with a fixed piece-rate for each mile driven, which did not increase at a rate of 1.5x or 2x the
9 Drivers' "regular rate" of pay, depending on the number of consecutive days and hours worked. Fur-
10 ther, much of the Drivers' uncompensated nonproductive time would have been compensable at
11 overtime or double-time rates of pay. As such, Defendants failed to pay Plaintiff and Class members
12 earned overtime and double time premiums in violation of California Labor Code § 510.

13 CLASS ACTION ALLEGATIONS

14 41. As a matter of uniform and systemic policy, Defendants failed to pay at least minimum
15 wages for all time worked; failed to pay required overtime wages; failed to provide complete and ac-
16 curate wage and hour statements; and failed to timely pay all wages due.

17 42. **Class Definition:** Plaintiffs brings this action on behalf of themselves and as a class
18 action on behalf of the following defined Class:

19 "All individuals who drove commercial motor vehicles for FedEx Ground Package System,
20 Inc. ("FedEx Ground") and were dispatched out of a FedEx Ground facility in California,
21 while labeled as employees of Ashiku Trucking, Inc. and O.S.T. Freight Inc., with whom
22 FedEx Ground contracts, but who are not paid as employees of FedEx Ground, at any time
beginning four years before the filing of this Complaint, until resolution of this action."
("Class").

23 43. Common methods of proof exist for determining these issues on a class-wide basis,
24 including but not limited to, Defendants' written policies, Defendants' time-keeping records, De-
25 fendants' payroll and payment records, and testimony from Plaintiffs, certain Class Members, and
26 Defendants' corporate designees. There is a well-defined community of interest among the Class,
27 and Class Members are readily ascertainable. The proposed Class satisfies numerosity, typicality,
28 adequacy, and superiority requirements as set forth below:

1 44. **Numerosity:** The Class Members are sufficiently numerous that joinder of all mem-
2 bers would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs
3 and the Class at this time; however, the class is estimated to be greater than twenty-five (25) individ-
4 uals and the identity of such membership is readily ascertainable by inspection of Defendants' em-
5 ployment records.

6 45. **Typicality:** Plaintiffs are qualified to, and will, fairly and adequately protect the inter-
7 ests of each class member with whom they have a well-defined community of interest, and Plaintiffs'
8 claims (or defenses, if any) are typical of all Class Members.

9 46. **Commonality:** The Class's claims involve substantially similar questions of law and
10 fact that predominate over questions affecting individual Class Members. These common questions
11 include, but are not limited to, the following:

12 a. Whether the FedEx Defendants are employers and/or joint em-
13 ployers of the Drivers under applicable law;

14 b. Whether Defendants maintained a policy and/or practice of fail-
15 ing to pay Class Members the legally mandated minimum wage for all non-driv-
16 ing hours worked;

17 c. Whether Defendants maintained a policy and/or practice of fail-
18 ing to pay Class Members the legally mandated minimum wage for time spent
19 confined to the sleeper berth of a moving truck;

20 d. Whether Defendants maintained a policy and/or practice of fail-
21 ing to pay Class Members the legally mandated minimum wage for all layover
22 time;

23 e. Whether Defendants' policies and/or practices required Class
24 Members to work over eight hours per day or over forty hours per week without
25 being paid all legally required overtime compensation;

26 f. Whether Defendants failed to provide Class Members with
27 complete and accurate wage statements as required by California Labor Code
28 section 226;

g. Whether Defendants failed to pay all wages owed to Class Members within the time limits prescribed by Labor Code sections 201, 202 and/or 204;

h. Whether Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;

i. Whether Plaintiffs and similarly aggrieved employees are entitled to recoup civil penalties under the Private Attorneys General Act ("PAGA"), Lab. Code § 2698, *et seq.*, by violating the above provisions of law; and & Prof. Code § 17200, *et seq.*, by treating Plaintiffs and Class Members unfairly by failing to pay minimum wages for all time worked, failing to pay overtime compensation, failing to furnish accurate and timely itemized wage statements upon payment of wages, and failing to pay all compensation due upon discharge or regularly established paydays.

47. **Adequacy:** Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims. There are no material conflicts between the claims of the representative Plaintiffs and Class Members that would make class certification inappropriate. Plaintiffs understand their obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiffs will fairly and adequately represent and protect the interests of the Class and have retained as counsel trial lawyers who are competent and skilled in complex and class action litigation. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

48. **Superiority:** Questions of law and fact common to the Class predominate over the questions affecting only individual members of the Class and a class action is superior to other

available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford such individual litigation, the court system would be overwhelmed by the individual lawsuits. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistency or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

49. **Public Policy Considerations:** Employers in the State of California routinely violate employment and labor laws. Current and former employees are often afraid to assert their rights due to the power wielded by employers over their livelihoods. Class actions provide the Class Members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy and providing for a method of adjudication that allows individuals to assert claims that could not be brought individually due to cost and other public policy considerations.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

California Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1, and 1198

Failure to Pay Minimum Wages

(Plaintiffs and Class Against Defendants)

50. Plaintiffs repeat, replead, and incorporate by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

51. During the applicable statutory period, California Labor Code §§1182.11, 1182.12 and 1197, and the Minimum Wage Order were in full force and effect and required that Plaintiffs and Class Members receive the minimum wage for all hours worked at a rate not less than eleven dollars

1 (\$11.00) per hour from January 1, 2018 to December 31, 2018; at a rate not less than twelve dollars
2 (\$12.00) per hour from January 1, 2019 to December 31, 2019; at a rate not less than thirteen dollars
3 (\$13.00) per hour from January 1, 2020 to December 31, 2020; at a rate not less than fourteen dollars
4 (\$14.000) per hour from January 1, 2021 to December 31, 2021; and at a rate not less than fifteen
5 dollars (\$15.00) per hour commencing on January 1, 2022.

6 52. Class Members, including Plaintiffs, are paid a piece rate, consisting of a flat, non-
7 negotiable amount for each mile driven.

8 53. This piece rate failed to compensate Class Members, including Plaintiffs, at all appli-
9 cable minimum wages and failed to compensate them for all hours worked. Additionally, as piece rate
10 workers, Plaintiff and Class Members were required to be paid separately and hourly for all “non-
11 productive” time. *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013); *see also Rein-*
12 *hardt v. Gemini Motor Transport*, 869 F.Supp.2d 1158, 1168 (E.D. Cal.2012).

13 54. Such time included, without limitation, the time drivers spend waiting at the FedEx’s
14 facilities to be given assignments by dispatchers, locating cargo and trailer assignments, hooking up
15 and unhooking cargo trailers, undergoing truck inspections, and/or standing by for FedEx freight to
16 become available. These activities were required to be compensated as non-productive time in service
17 of piece rate activities and/or because the Class remained under the control of Defendants and suf-
18 fered or permitted to work for Defendants during this time.

19 55. Further, the long-haul team Drivers are not paid for the extensive time they must
20 spend confined to the truck’s “sleeper berth” while the truck is in motion (being driven by the other
21 “team” Driver), even though the Drivers are under Defendants’ control while they wait in the
22 truck’s sleeper berth, entirely for Defendants’ benefit.

23 56. As a result of Defendants’ improper pay policy and/or practice, as described herein,
24 Defendants failed to pay Plaintiffs and other Class Members any compensation at all for each hour of
25 work outside of actual driving time, and thus failed to pay the minimum wages that these Drivers
26 were entitled to, for each hour worked, under Labor Code section 1197 and Wage Order 9-2001.

27 57. Plaintiffs are informed and believe, and based thereon allege, that Defendants’ failure
28 to pay the minimum wage for each hour worked, as described herein, was done willfully.

58. Defendants' failure to pay Plaintiffs and Class Members minimum wages for all hours worked violated California Labor Code sections 1182.11, 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, along with other applicable penalties.

SECOND CAUSE OF ACTION

California Labor Code §§ 510, 1194, and 1198

Failure to Pay Overtime Wages

(Plaintiffs and Class Against Defendants)

59. Plaintiffs repeat, replead, and incorporate by reference, as though fully set forth in this paragraph, all the allegations of this complaint.

60. California Labor Code § 510, 1198, and Industrial Wage Order No. 9-2001 provide that it is unlawful to employ persons without compensating them at a rate of pay equaling either one-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, Industrial Wage Order No. 9-2001 provides that Defendants are required to pay Plaintiffs and Class Members at the rate of one-and-one-half for hours worked in excess of 8 hours in a day or more than 40 hours in a workweek, and the rate of double time for hours worked in excess of 12 hours per day or in excess of 8 hours on the seventh consecutive day in a workweek.

62. Piece rate employees—like all other non-exempt employees—are entitled to overtime for hours worked in excess of 8 hours per day or 40 hours per week. Labor Code § 510; *see also Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 52 (2013).

63. An employee's rate of pay for purposes of overtime compensation must include all applicable pay adjustments in a given pay period, including non-hourly compensation such as bonuses or commissions. *See, e.g., Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018), *as modified* (Apr. 25, 2018); *see also* 29 C.F.R. § 778.111 ("For overtime work the piece- worker is entitled to be paid, in addition to the total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess

1 of 40 in the week.”).

2 64. Throughout the Class Period, Plaintiffs and other Class Members were not paid over-
3 time premiums for any hours worked in excess of eight hours in a day, in excess of twelve hours in a
4 day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of
5 forty hours in a week, because Defendants compensated the Drivers with a fixed piece-rate for each
6 mile driven, which did not increase at a rate of 1.5x or 2x the Drivers’ “regular rate” of pay, depending
7 on the number of consecutive days and hours worked. Further, non-driving hours worked were not
8 recorded as compensable time, much of which would have been compensable at overtime or double-
9 time rates of pay.

10 65. Defendants knew, or should have known, that Plaintiffs and Class Members worked
11 shifts in excess of 8 hours in a day, in excess of 12 hours in a day, and/or more than 40 hours in a
12 workweek, which qualified for overtime premium pay. Therefore, Plaintiffs and Class Members were
13 not paid overtime wages for all of the overtime hours they worked.

14 66. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to re-
15 cover their unpaid overtime compensation, as well as interest, costs, and attorneys’ fees, and appli-
16 cable civil penalties.

17 **THIRD CAUSE OF ACTION**

18 ***California Labor Code §§ 226(a), 226.3, and 1174(d)***

19 ***Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records***

20 **(Plaintiffs and Class Against Defendants)**

21 67. Plaintiffs repeat, replead, and incorporate by reference, as though fully set forth in this
22 paragraph, all the allegations of this complaint.

23 68. Labor Code section 226(a) provides that every employer shall furnish each of his or
24 her employees an accurate and complete itemized wage statement in writing, including but not lim-
25 ited to the name and address of the legal entity that is the employer, the inclusive dates of the pay
26 period, total hours worked, and all applicable rates of pay.

27 69. Labor Code section 226.2 provides that, in addition to the information required in
28 Section 226, employers shall provide employees paid on a piece rate with “the total hours of

1 compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those
2 periods during the pay period.” Cal. Lab. Code § 226.2.

3 70. Defendants have systematically provided Plaintiffs and Class Members with incom-
4 plete and inaccurate wage statements. Defendants violated, at least, sections 226(a)(1), 226(a)(2),
5 226(a)(5), and 226(a)(9).

6 71. Because Defendants failed to record all non-driving and sleeper berth time as com-
7 pensable time, failed to record hours worked over 8 in a day, 12 in a day, and/or 40 in one workweek,
8 failed to record the correct overtime rate and compensation earned, Defendants did not list the cor-
9 rect amount of gross wages earned by Plaintiff and Class Members in compliance with section
10 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned by
11 Plaintiff and Class Members in violation of section 226(a)(5). Further, their wage statements also
12 failed to set forth the correct number of total hours worked in violation of section 226(a)(2) and failed
13 to set forth the applicable hourly rates and corresponding hours worked at each hourly rate in viola-
14 tion of 226(a)(9).

15 72. Plaintiffs and Class Members are entitled to recover from Defendants the actual dam-
16 ages caused by Defendants’ failure to comply with Labor Code section 226(a) or an aggregate per-
17 member penalty not to exceed \$4,000.

18 **FOURTH CAUSE OF ACTION**

19 ***California Labor Code §§ 201-204, 210***

20 ***Wages Not Timely Paid During and After Employment***

21 **(Plaintiffs and Class Against Defendants)**

22 73. Plaintiffs repeat, replead, and incorporate by reference, as though fully set forth in this
23 paragraph, all the allegations of this complaint.

24 74. Labor Code sections 201 and 202 provide that if an employer discharges an employee,
25 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
26 employee voluntarily leaves his or her employment, his or her wages shall become due and payable
27 no later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous
28 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the

1 time of quitting.

2 75. Labor Code § 204 provides that all wages, other than those mentioned in Section 201
3 and 202, are due and payable twice during each calendar month, on days designated in advance by
4 the employer as regular paydays.

5 76. During the relevant period, Defendants willfully failed to pay Plaintiffs and former
6 Class Members the earned and unpaid wages set forth above, including but not limited to, minimum
7 wages and overtime premiums, either at the time of discharge, or within seventy-two hours of leaving
8 Defendants' employ, or upon Defendants' regularly schedule paydays.

9 77. Defendants' failure to timely pay Plaintiffs and former Class Members their wages
10 earned, violates Labor Code sections 201-202, and 204. Former Class Members are therefore entitled
11 to recover from Defendants the statutory penalty wages for each day they were not paid, at their
12 regular rate of pay, up to a 30-day maximum penalty under Labor Code section 203.

13 78. Employees are also entitled to civil penalties in the amount of \$100 per employee per
14 initial violation and \$200 per employee for every subsequent violation of Labor Code section 201,
15 202, and 204, plus 25% of the amount unlawfully withheld. Labor Code § 210.

16 **FIFTH CAUSE OF ACTION**

17 ***Labor Code §§ 558, 2698, et seq.***

18 ***Private Attorney General Act ("PAGA") Penalties***

19 **(Plaintiffs and Class Against Defendants)**

20 79. Plaintiffs repeat, replead, and incorporate by reference, as though fully set forth in this
21 paragraph, all the allegations of this complaint.

22 80. Entitlement to Penalties. Under the California Private Attorneys General Act
23 ("PAGA"), Labor Code § 2698, et seq., an aggrieved employee may bring a representative action as
24 a private attorney general, on behalf of himself and other current or former employees as well as the
25 general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage
26 Orders. These penalties are in addition to any other relief available under the Labor Code and are
27 allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five
28 percent to the affected employees.

81. These penalties may be “stacked” separately for each of Defendants’ violations of the Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17, n.77 (C.D. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore[s] the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers’ compensation.”).

82. Plaintiffs are each an “aggrieved employee” under PAGA, as they were employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, Plaintiffs seeks to recover, on behalf of themselves and all other current and former aggrieved employees of Defendants, the civil penalties provided for by PAGA, including civil penalties for Defendants’ violations of Labor Code §§ 201-204, 210, 226, 510, 1198 and Industrial Wage Order No. 9-2001, plus attorneys’ fees and costs.

83. Representative Action. Plaintiffs seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiffs and the Class may choose to seek certification of the PAGA claims.

84. Labor Code § 2699(a), which is part of PAGA, provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).”

85. Penalties. Labor Code § 2699(f), which is part of PAGA, provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollar (\$200) for each

aggrieved employee per pay period for each subsequent violation.”

86. Based on the foregoing, Plaintiffs and aggrieved employees are entitled to civil penalties, to be paid by Defendants and allocated as required by PAGA or other statute, in an amount to be shown at trial subject to the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period.

87. Plaintiffs are also entitled to recover for themselves, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely payment requirements of Labor Code § 204 (semimonthly payments) and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld.

88. Plaintiffs, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 9-2001 as alleged in this Complaint. Plaintiffs and the Class are also entitled to an award of attorneys’ fees and costs of suit per Labor Code § 2699(g).

89. Procedural Requirements Met. On August 10, 2022, Plaintiffs filed a notice of claims with the LWDA. As of 65 days from the date of that filing, should the LWDA not take action in response to Plaintiffs’ filing, Plaintiffs will meet all procedural requirements necessary to bring this claim. Accordingly, Plaintiffs are entitled to assert this claim. Labor Code § 2699.3(a)(2).

SIXTH CAUSE OF ACTION

California Business & Professions Code §§ 17200, et seq.

Unlawful Business Practices

(Plaintiff and Class Against Defendants)

90. Plaintiffs repeat, replead, and incorporate by reference, as though fully set forth in this paragraph, all the allegations of this complaint.

91. Defendants are each a “person” as defined by California Business & Professions Code sections 17201, as they are either natural persons, corporations, firms, partnerships, joint stock companies, associations, or other organizations of persons.

92. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, Class Members, and to the general public. Plaintiffs and Class Members have suffered injury in fact and have lost money as a result of Defendants' unlawful business practices. Plaintiffs and the Class seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

93. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, et seq.

94. A violation of California Business & Professions Code sections 17200, et seq. may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law as described above.

95. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and Class Members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

96. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiffs and Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; requiring Defendants to pay all outstanding wages due to Plaintiffs and Class Members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure section 631 and Section 16 of Article I of the California Constitution, Plaintiff demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

- A. For actual and liquidated damages according to proof at trial;
- B. For statutory and civil penalties and special damages, according to proof at trial;
- C. For punitive and exemplary damages according to proof at trial;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- D. For pre- and post-judgment interest on monetary damages;
- E. For reasonable attorneys' fees and costs and expert fees and costs as allowed by law;
- and
- F. For such other relief as this Court deems just and proper.

Dated: August 10, 2022

Respectfully submitted,
KING & SIEGEL LLP

By: *Elliot J. Siegel*
Elliot J. Siegel
Brent R. Boos
Attorneys for Plaintiff