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SALOMON GARCIA and LUIS MIGUEL GUIZAR

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

SALOMON GARCIA and LUIS MIGUEL
GUIZAR, individually, and on behalf of other
members of the general public similarly situated,

Plaintiffs,

vs.

ATLAS FREIGHT FORWARDING, INC., a
California corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 37-2022-00039724-CU-OE-CTL

[Assigned to Ronald F. Frazier, Dept. C-65]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

1. Violation of California Labor Code Sections 510 and 1198 (Unpaid Overtime);
2. Violation of California Labor Code Sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
3. Violation of California Labor Code Sections 226.7 and 512 (Unpaid Meal Period Premiums);
4. Violation of California Labor Code Section 226.7 (Unpaid Rest Period Premiums);
5. Violation of California Labor Code Sections 226(a) (Failure to Provide Accurate Wage Statements);
6. Violation of California Labor Code Sections 201, 202, and 203 (Final Wages

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- Not Timely Paid);
7. Violation of California Labor Code Sections 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); and
 8. Violation of California Business and Professions Code Sections 17200 et seq. (Unfair and Unlawful Business Practices)
 9. Violation of Cal. Labor Code §§ 2698, *et. seq.* (Private Attorneys General Act)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs SALOMON GARCIA and LUIS MIGUEL GUIZAR (“Plaintiffs”), individually and on behalf of all members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This is a class action is brought pursuant to California Code of Civil Procedure section 382.

2. The monetary damages, restitution, statutory penalties, and other applicable legal and equitable relief sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

4. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

5. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of San Diego. The majority of the acts, events, and violations alleged herein relating to Plaintiffs occurred in the State of California, County of San Diego.

THE PARTIES

6. At all times herein mentioned, Plaintiff SALOMON GARCIA was a resident of Ventura County in the State of California.

7. At all times herein mentioned, Plaintiff LUIS MIGUEL GUIZAR was a resident of Orange County in the State of California.

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1 8. At all times herein mentioned, Defendant ATLAS FREIGHT FORWARDING, INC.,
2 was and is, upon information and belief, a California corporation, and at all times hereinafter
3 mentioned, an employer whose employees are engaged throughout this county and the State of
4 California.

5 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein
6 under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint
7 and serve such fictitiously named Defendants once their names and capacities become known.

8 10. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
9 omissions alleged herein were performed by, or are attributable to, ATLAS FREIGHT
10 FORWARDING, INC., and/or DOES 1 through 25 (collectively "Defendants"), each acting as the
11 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
12 Defendants and within the course and scope of such agency, employment, joint venture, or concerted
13 activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent
14 and were in accordance with Defendants' official policy.

15 11. At all relevant times, Defendants were the employers of Plaintiffs within the meaning
16 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
17 working conditions, wages, working hours, and conditions of employment of Plaintiffs so as to make
18 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

19 12. Defendants had the authority to hire and terminate Plaintiffs and the other class
20 members and aggrieved employees, to set work rules and conditions governing Plaintiffs and the
21 other class members' or aggrieved employees' employment, and to supervise their daily employment
22 activities.

23 13. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs
24 and the other class members', and aggrieved employees' employment for them to be joint employers
25 of Plaintiffs and the other class members, and aggrieved employees.

26 14. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class
27 members, and aggrieved employees.

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15. Defendants continue to employ hourly paid and/or non-exempt employees within the State of California.

16. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

18. Defendants, jointly and severally, employed Plaintiff SALOMON GARCIA as a forklift driver since approximately November 2021 at its location in San Diego, California.

19. Defendants, jointly and severally, employed Plaintiff LUIS MIGUEL GUIZAR as a forklift driver from approximately May 2021 until approximately November 30, 2022, at its location in San Diego, California.

20. Defendants hired Plaintiffs and the other class members and aggrieved employees but failed to properly pay them all overtime wages and minimum wages for all hours worked, failed to provide meal and rest breaks to which they were entitled, failed to timely pay wages upon termination of employment, failed to provide accurate wage statements, failed to reimburse necessary business-related expenses, and failed to adhere to other related protections afforded by the California Labor Code and applicable Industrial Welfare Commission Wage Order.

21. Plaintiffs and the other class members and aggrieved employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

22. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that pursuant to California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, Plaintiffs and the other class members and aggrieved employees were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

1 23. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
2 should have known that pursuant to California Labor Code sections 1194, 1197, 1197.1, and the
3 applicable IWC Wage Order, Plaintiffs and the other class members and aggrieved employees were
4 entitled to receive at least minimum wages for all hours worked, and that they were not receiving
5 minimum wages for all hours worked.

6 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
7 should have known that pursuant to California Labor Code sections 226.7, 512, and the applicable
8 IWC Wage Order, Plaintiffs and the other class members and aggrieved employees were entitled to
9 receive a meal period or payment of one (1) additional hour of pay at their regular rate of compensation
10 when they were not provided with a timely, uninterrupted meal period of no less than thirty (30)
11 minutes for a work period of more than five hours per day, and that Plaintiffs and the other class
12 members and aggrieved employees were entitled to receive a second meal period or payment of one
13 (1) additional hour of pay at their regular rate of compensation when they were not provided with a
14 timely, uninterrupted second meal period of no less than thirty (30) minutes for a work period of more
15 than ten (10) hours per day. However, Plaintiffs and the other class members and aggrieved employees
16 did not receive all meal periods or payment of one (1) additional hour of pay at their regular rate of
17 compensation when a meal period was missed, shortened, taken late, and/or interrupted.

18 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
19 should have known that, pursuant to California Labor Code section 226.7 and the applicable IWC
20 Wage Order, Plaintiffs and the other class members and aggrieved employees were entitled to receive
21 all rest periods or payment of one (1) additional hour of pay at their regular rate of compensation when
22 they were not provided with an uninterrupted rest period of no less than ten (10) minutes for every
23 four hours, or major fraction thereof, worked. However, Plaintiffs and the other class members and
24 aggrieved employees did not receive all rest periods or payment of one (1) additional hour of pay at
25 their regular rate of compensation when a rest period was missed, shortened, taken late, and/or
26 interrupted.

27 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
28 or should have known that they were required to provide Plaintiffs and the other class members and

1 aggrieved employees with complete and accurate itemized wage statements pursuant to California
2 Labor Code section 226, but failed to do so.

3 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
4 or should have known pursuant to California Labor Code sections 2800 and 2802 that Plaintiffs and
5 the other class members and aggrieved employees were entitled to reimbursement for necessary
6 business-related expenses, but, in fact, did not reimburse them for necessary business-related
7 expenses.

8 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
9 should have known that Plaintiffs and the other class members and aggrieved employees were entitled
10 to receive all wages upon termination of employment, including, without limitation, overtime wages,
11 minimum wages, meal period premium wages, and rest period premium wages, and that they did not
12 receive payment of all wages upon termination of employment in violation of California Labor Code
13 sections 201 and 202. Further, Plaintiffs are informed and believe, and based thereon allege that
14 Defendants intentionally withheld final payment of wages from Plaintiff Guizar, other class members,
15 and aggrieved employees until Plaintiff Guizar, and on information and belief, other class members
16 and aggrieved employees, signed documents under duress falsely affirming, among other things, that
17 they were paid appropriately under California wage and hour laws.

18 **CLASS ACTION ALLEGATIONS**

19 29. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others
20 similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure
21 section 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance,
22 and superiority requirements under California Code of Civil Procedure section 382.

23 30. The proposed class is defined as follows:

24 All current and former hourly-paid and/or non-exempt employees who worked for
25 Defendants in the State of California at any time during the period from four years prior
26 to the date of the filing of this Complaint until final judgment.

27 31. Plaintiffs reserve the right to establish additional subclasses as appropriate.

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1 32. There is a well-defined community of interest in the litigation and the Class is easily
2 ascertainable.

3 33. The Class is so numerous that the individual joinder of all its members is impracticable.
4 While the exact number and identities of class members are unknown to Plaintiffs at this time, the
5 exact numbers of class members and their identities can be ascertained through appropriate discovery
6 from records maintained by Defendants and their agents.

7 34. Common questions of fact and law exist as to all class members, which predominate
8 over any questions affecting only individual members of the Class. The common legal and factual
9 questions which do not vary from class member to class member and which may be determined
10 without reference to the individual circumstances of any class member include, but are not limited to,
11 the following:

- 12 i. Whether Defendants had a policy and practice of failing to pay overtime wages to
13 Plaintiffs and the other class members for all overtime hours worked;
- 14 ii. Whether Defendants had a policy and practice of failing to pay minimum wages to
15 Plaintiffs and the other class members for all hours worked;
- 16 iii. Whether Defendants had a policy and practice of failing to provide meal periods to
17 Plaintiffs and the other class members;
- 18 iv. Whether Defendants had a policy and practice of failing to provide rest periods to
19 Plaintiffs and the other class members;
- 20 v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in
21 the State of California for all hours worked, and for all missed, short, late, and/or
22 interrupted meal periods and rest breaks;
- 23 vi. Whether Defendants' failure to pay wages, without abatement or reduction, in
24 accordance with the California Labor Code, was willful;
- 25 vii. Whether Defendants failed to pay all wages due to Plaintiffs and the other class
26 members within the required time upon their discharge or resignation;
- 27 viii. Whether Defendants failed to comply with wage reporting as required by the California
28 Labor Code; including, *inter alia*, section 226;

- ix. Whether Defendants failed to reimburse Plaintiffs and the other class members for necessary business-related expenses and costs;
- x. Whether Defendants' conduct was willful or reckless;
- xi. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- xii. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- xiii. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

35. Plaintiffs' claims are typical of the claims of the Class, and Plaintiffs' interests are coincident with and not antagonistic to those of the other class members they seek to represent. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions and Plaintiffs intend to prosecute this action vigorously.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual litigation of the claims of all class members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each class member.

37. Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However,

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1 class actions provide the class members who are not named in the complaint anonymity that allows
2 for the vindication of their rights.

3 **PAGA ALLEGATIONS**

4 38. At all times set forth herein, PAGA was applicable to Plaintiffs' employment by
5 Defendants.

6 39. At all times set forth herein, PAGA provides that any provision of law under the
7 California Labor Code that provides for a civil penalty, including unpaid wages and premium wages,
8 to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA")
9 for violations of the California Labor Code may, as an alternative, be recovered through a civil action
10 brought by an aggrieved employee on behalf of himself and other current or former employees
11 pursuant to procedures outlined in California Labor Code section 2699.3.

12 40. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is
13 any person that was employed by the alleged violator and against whom one or more of the alleged
14 violations was committed.

15 41. Plaintiffs were employed by Defendants and the alleged violations were committed
16 against them during their time of employment and they are, therefore, aggrieved employees. Plaintiffs
17 and the other employees are "aggrieved employees" as defined by California Labor Code section
18 2699(c) in that they are current or former employees of Defendants and one of more of the alleged
19 violations were committed against them.

20 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
21 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements
22 have been met:

23 (a) The aggrieved employee shall give written notice by certified mail (hereinafter
24 "Employee's Notice") to the LWDA and the employer of the specific provisions of the
25 Labor Code alleged to have been violated, including the facts and theories to support the
26 alleged violations.

27 (b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the
28 aggrieved employee by certified mail that it does not intend to investigate the alleged

violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

43. On September 30, 2022, Plaintiffs provided notice by electronic submission to the LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3. Plaintiffs did not receive an LWDA Notice within sixty-five calendar days of providing the Employee's Notice.

44. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 have been satisfied.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)

45. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

46. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-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.

47. Specifically, the applicable IWC Wage Order provides that Defendants were required to pay Plaintiffs and the other class members at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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1 48. The applicable IWC Wage Order further provides that Defendants were required to pay
2 Plaintiffs and the other class members overtime compensation at a rate of two (2) times their regular
3 rate of pay for all hours worked in excess of twelve (12) hours in a day.

4 49. California Labor Code section 510 codifies the right to overtime compensation at one-
5 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
6 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
7 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours
8 in a day or in excess of eight (8) hours in a day on the seventh day of work.

9 50. During the relevant time period, Plaintiffs and the other class members regularly
10 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess
11 of forty (40) hours in a week. However, Defendants did not record Plaintiffs and the other class
12 members' actual hours worked and intentionally and willfully failed to pay all overtime wages owed
13 to Plaintiffs and the other class members. Defendants' failure to pay overtime wages included, *inter*
14 *alia*, requiring Plaintiffs and the other class members to respond to Defendants and work-related
15 requests during purported meal breaks; perform work before clocking in at the start of their shift,
16 including but not limited to donning uniforms; and perform work after clocking out at the end of their
17 shift, including but not limited to responding to Employer's work-related questions and calls.

18 51. Defendants' failure to pay Plaintiffs and the other class members as outlined above
19 violates California Labor Code sections 510 and 1198, and is therefore unlawful.

20 52. Pursuant to California Labor Code section 1194, Plaintiffs and the other class members
21 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'
22 fees.

23 **SECOND CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

25 **(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)**

26 53. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
27 allegations in all preceding paragraphs.

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1 54. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
2 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
3 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
4 Plaintiffs and the other class members were not paid the appropriate minimum wage for all of the
5 hours they worked. Plaintiffs and the other class members were not paid the minimum wage for work
6 performed beyond their scheduled shifts, and the wages paid to them were not sufficient to compensate
7 them for all hours they worked at a minimum wage rate on a cumulative basis. Defendants failed to
8 pay Plaintiffs and the other class members for time spent working “off-the-clock” performing duties
9 including, but not limited to, amongst other things, requiring Plaintiffs and the other class members to
10 respond to Defendants and work-related requests during purported meal breaks; perform work before
11 clocking in at the start of their shift, including but not limited to donning uniforms; and perform work
12 after clocking out at the end of their shift, including but not limited to responding to Employer’s work-
13 related questions and calls. Accordingly, Defendants regularly failed to pay at least minimum wages
14 to Plaintiffs and the other class members for all hours he worked in violation of California Labor Code
15 sections 1194, 1197, and 1197.1.

16 55. Defendants’ failure to pay Plaintiffs and the other class members the minimum wage
17 as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections,
18 Plaintiffs and the other class members are entitled to recover the unpaid balance of their minimum
19 wage compensation, as well as interest, costs, and attorneys’ fees.

20 56. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
21 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
22 and interest thereon.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512**

25 **(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)**

26 57. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
27 allegations in all preceding paragraphs.

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1 58. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California
2 Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs and the other class members'
3 employment by Defendants.

4 59. At all relevant times herein set forth, California Labor Code section 226.7 provides that
5 no employer shall require an employee to work during any meal period mandated by an applicable
6 IWC Order.

7 60. At all relevant times herein set forth, California Labor Code section 512(a) provides
8 that an employer may not require, cause, or permit an employee to work for a period of more than five
9 (5) hours per day without providing the employee with a meal period of not less than thirty (30)
10 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
11 the meal period may be waived by mutual consent of both the employer and the employee.

12 61. During the relevant time period, Plaintiffs and the other class members who were
13 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
14 legally-mandated meal periods by mutual consent, were required to work for periods longer than five
15 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

16 62. During the relevant time period, Plaintiffs and the other class members
17 who were scheduled to work for a period of time in excess of six (6) hours, were required to work for
18 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
19 minutes.

20 63. During the relevant time period, Plaintiffs and the other class members,
21 who were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve
22 (12) hours, and who did not waive their legally-mandated meal periods by mutual consent, were
23 required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of
24 not less than thirty (30) minutes.

25 64. During the relevant time period, Plaintiffs and the other class members,
26 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work
27 for periods longer than ten (10) hours without a second uninterrupted meal period of not less than
28 thirty (30) minutes.

65. During the relevant time period, Defendants willfully required Plaintiffs and the other class members to work during meal periods and failed to compensate Plaintiffs and the other class members for work performed during meal periods. As a result, Plaintiffs worked through meal periods, took late meal periods, took interrupted meal periods, or took short meal periods, if at all.

66. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members all meal period premiums due pursuant to California Labor Code section 226.7 and 512. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor Code sections 226.7 and 512(a).

67. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at their regular rate of compensation for each workday that a meal period was not provided.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226.7

(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)

68. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

69. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs and the other class members' employment by Defendants.

70. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

71. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

72. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the other class members were entitled to recover from Defendants one (1) additional hour of pay at their regular hourly rate of compensation for each workday that the rest period was not provided.

73. During the relevant time period, Defendants required Plaintiffs and the other class members to work three and one-half (3 ½) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period, or major fraction thereof, worked.

74. During the relevant time period, Defendants willfully required Plaintiffs and the other class members to work during rest periods. Defendants failed to relieve Plaintiffs and the other class members of all duties such that they could take compliant rest breaks. As a result, Plaintiffs worked through rest periods, took late rest periods, took interrupted rest periods, or took short rest periods, if at all.

75. Defendants also had no policy and/or practice to pay a premium when rest periods were missed, short, late, and/or interrupted and thus failed to pay Plaintiffs and the other class members the full rest period premium due in violation of California Labor Code section 226.7.

76. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code section 226.7.

77. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at their regular rate of compensation for each workday that a rest period was not provided.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226(a)

(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)

78. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

79. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement

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1 in writing, including, but not limited to, the name and address of the legal entity that is the employer,
2 total hours worked, and all applicable hourly rates.

3 80. Defendants have intentionally and willfully failed to provide Plaintiffs and the other
4 class members with complete and accurate wage statements. The deficiencies include, among other
5 things, the failure to state all hours worked and the failure to state all hourly rates.

6 81. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs
7 and the other class members have suffered injury and damage to their statutorily protected rights.

8 82. Specifically, Plaintiffs and the other class members have been injured by Defendants'
9 intentional violation of California Labor Code section 226(a) because they were denied both their legal
10 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
11 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate
12 number of total hours worked on wage statements, Plaintiffs and the other class members been
13 prevented by Defendants from determining if all hours worked were paid and the extent of the
14 underpayment. Plaintiffs had to file this lawsuit, and will further have to conduct discovery,
15 reconstruct time records, and perform computations in order to analyze whether in fact Plaintiffs and
16 the other class members were paid correctly and the extent of the underpayment, thereby causing
17 Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and
18 incur these costs had Defendants provided the accurate number of total hours worked. This has also
19 delayed Plaintiffs' ability to demand and recover the underpayment of wages from Defendants.

20 83. Plaintiffs and the other class members are entitled to recover from Defendants the
21 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
22 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

23 **SIXTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

25 **(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)**

26 84. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
27 allegations in all preceding paragraphs.

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1 85. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
2 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
3 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
4 at the time of discharge are due and payable immediately. California Labor Code section 202
5 mandates that if an employee quits, his or her wages shall become due and payable not later than
6 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
7 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
8 quitting.

9 86. California Labor Code section 203 provides that if an employer willfully fails to pay,
10 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
11 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
12 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
13 continue for more than thirty (30) days.

14 87. At the time that Plaintiffs and the other class members' employment with Defendants
15 ended, Defendants knowingly and willfully failed to pay Plaintiffs and the other class members all
16 wages owed to them pursuant to California Labor Code sections 201 and 202, including, without
17 limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium
18 wages. Moreover, Defendants engaged in practices wherein Defendants unlawfully refused to
19 relinquish the final paycheck of Plaintiff Guizar and, on information and belief, similarly situated class
20 members until they signed documents under duress falsely affirming various statements such as having
21 been paid appropriately under California wage and hour laws.

22 88. As a result, Plaintiffs and the other class members are entitled to all available
23 statutory penalties, including the waiting time penalties provided in California Labor Code section
24 203, together with interest thereon, as well as other available remedies.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

3 **(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)**

4 89. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
5 allegations in all preceding paragraphs.

6 90. Pursuant to California Labor Code sections 2800 and 2802, an employer must
7 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
8 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
9 consequence of his or her obedience to the directions of the employer.

10 91. Plaintiffs and the other class members incurred necessary business-related expenses
11 and costs that were not fully reimbursed by Defendants, including, but not limited to, the purchase of
12 steel-toe boots for work-related purposes.

13 92. Defendants intentionally and willfully failed to reimburse Plaintiffs and the other class
14 members for all necessary business-related expenses and costs. Plaintiffs and the other class members
15 are entitled to recover from Defendants their business-related expenses and costs incurred during the
16 course and scope of her employment, plus interest accrued from the date on which Plaintiffs and the
17 other class members incurred the necessary expenditures at the same rate as judgments in civil actions
18 in the State of California.

19 **EIGHTH CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES IN**

21 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 ET. SEQ.**

22 **(Against ATLAS FREIGHT FORWARDING, INC. and DOES 1-25)**

23 93. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
24 allegations in all preceding paragraphs.

25 94. Each and every one of Defendants' acts and omissions in violation of the California
26 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
27 Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay
28 minimum wages, Defendants' failure and refusal to provide required meal periods, Defendants' failure

1 and refusal to provide required rest periods, Defendants' failure and refusal to furnish accurate
2 itemized wage statements, Defendants' failure and refusal to reimburse business-related expenses, and
3 Defendants' failure to timely pay wages upon termination constitutes an unfair and unlawful business
4 practice under California Business and Professions Code § 17200 et seq.

5 95. Defendants' violations of California wage and hour laws constitute unfair and unlawful
6 business practices because Defendants' aforementioned acts and omissions were done repeatedly over
7 a significant period of time, and in a systematic manner, to the detriment of Plaintiffs and the other
8 class members.

9 96. Defendants have avoided payment of overtime wages, minimum wages, meal period
10 premiums, rest period premiums, reimbursement of work-related expenditures, and other benefits as
11 required by the California Labor Code, the California Code of Regulations, and the applicable IWC
12 Wage Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment
13 to the state authorities under the California Labor Code and other applicable regulations.

14 97. As a result of Defendants' unfair and unlawful business practices, Defendants have
15 reaped unfair and illegal profits during Plaintiffs and the other class members' tenure at the expense
16 of Plaintiffs, the other class members, and members of the public. Defendants should be made to
17 disgorge their ill-gotten gains and to restore them to Plaintiffs and the other class members.

18 98. Defendants' unfair and unlawful business practices entitle Plaintiffs and the other class
19 members to seek preliminary and permanent injunctive relief, including but not limited to orders that
20 Defendants account for, disgorge, and restore to Plaintiffs and the other class members the wages and
21 other compensation unlawfully withheld from them. Plaintiffs and the other class members are entitled
22 to restitution of all monies to be disgorged from Defendants in an amount according to proof at the
23 time of trial.

24 **NINTH CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2698 *ET SEQ.***

26 **(Against HADLEY TOWING EQUIPMENT, INC. and DOES 1-25)**

27 99. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
28 allegations in all preceding paragraphs.

1 100. PAGA expressly establishes that any provision of the California labor Code which
2 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
3 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
4 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
5 herself, and other current or former employees.

6 101. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
7 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
8 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

9 102. Plaintiffs and the other hourly-paid, non-exempt employees are “aggrieved employees”
10 as defined by California Labor Code section 2699(c) in that they are all current or former employees
11 of Defendants, and one or more of the alleged violations were committed against them.

12 103. Defendants’ conduct, as alleged herein, violates numerous sections of the California
13 Labor Code, including, but not limited to, the following:

- 14 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay
15 overtime wages, as set forth more fully below;
- 16 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to
17 pay minimum wages, as set forth more fully below;
- 18 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
19 legally required meal periods, as set forth more fully below;
- 20 (d) Violation of California Labor Code section 226.7 for failure to provide legally
21 required rest periods, as set forth more fully below;
- 22 (e) Violation of California Labor Code section 204 for failure to timely pay wages to
23 Plaintiffs and aggrieved employees during employment, as set forth more fully
24 before;
- 25 (f) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all
26 wages at time of discharge from employment, as set forth more fully below;

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- (g) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and aggrieved employees, as set forth more fully below;
- (h) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiff and aggrieved employees, as set forth more fully below; and
- (i) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiffs and aggrieved employees for necessary business-related expenses, as set forth more fully below.

104. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiffs, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for Plaintiffs, all aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the aggrieved employees. Further, and as authorized by the California Labor Code sections 210, 218.5, and 2699, Plaintiffs seek recovery of his attorneys' fees and costs.

Failure to Pay Overtime Wages

105. California Labor Code section 1198 and the applicable IWC Wage Order have provided that it is unlawful to employ persons without compensating them at a rate of pay either time-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.

106. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and aggrieved employees employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

107. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiffs and aggrieved employees employed by Defendants, and working more than
2 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

3 108. California Labor Code section 510 codifies the right to overtime compensation at one-
4 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
5 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
6 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours
7 in a day or in excess of eight (8) hours in a day on the seventh day of work.

8 109. During the relevant time period, Plaintiffs and aggrieved employees regularly worked
9 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty
10 (40) hours in a week performing work duties “off-the-clock,” including, but not limited to, requiring
11 Plaintiffs and other aggrieved employees to (1) respond to Defendants for work-related requests during
12 purported breaks; (2) perform work before clocking in at the start of Plaintiffs and aggrieved
13 employees’ shifts, including but not limited to donning uniforms; and (3) performing work after
14 clocking out at the end of shifts, including but not limited to responding to Defendants’ work-related
15 questions and calls. Defendants failed to compensate Plaintiffs and other aggrieved employees for any
16 of this off-the-clock work, in violation of California Law. Defendants also failed to accurately record
17 the actual time worked by Plaintiffs and the aggrieved employees.

18 110. Moreover, the uncompensated work described herein was often performed when
19 Plaintiffs and other aggrieved employees had already worked eight (8) hours in a day and/or forty (40)
20 hours in a week, resulting in a failure to pay overtime compensation. Finally, Defendants failed to pay
21 overtime to Plaintiffs and aggrieved employees for all overtime hours worked based on regular rates
22 of pay correctly calculated to include all applicable remuneration, including non-discretionary
23 commissions, non-discretionary bonuses, and non-discretionary performance pay.

24 111. Defendants’ failure to pay Plaintiffs and aggrieved employees the unpaid balance of
25 overtime compensation, as required by California law, violates the provisions of California Labor
26 Code sections 510 and 1198, and is therefore unlawful.

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1 117. At all relevant times herein set forth, California Labor Code section 512(a) has
2 provided that an employer may not require, cause, or permit an employee to work for a period of more
3 than five (5) hours per day without providing the employee with a meal period of not less than thirty
4 (30) minutes, except that if the total work period per day of the employee is not more than six (6)
5 hours, the meal period may be waived by mutual consent of both the employer and the employee.

6 118. During the relevant time period, Plaintiffs and aggrieved employees who were
7 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally
8 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
9 without a meal period of not less than thirty (30) minutes.

10 119. During the relevant time period, Plaintiffs and the aggrieved employees,
11 who were scheduled to work for a period of time in excess of six (6) hours, were required to work for
12 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
13 minutes.

14 120. During the relevant time period, Plaintiffs and the aggrieved employees,
15 who were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve
16 (12) hours, and who did not waive their legally-mandated meal periods by mutual consent, were
17 required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of
18 not less than thirty (30) minutes.

19 121. During the relevant time period, Plaintiffs and the aggrieved employees,
20 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work
21 for periods longer than ten (10) hours without a second uninterrupted meal period of not less than
22 thirty (30) minutes.

23 122. During the relevant time period, Defendants willfully required Plaintiffs and the
24 aggrieved employees to work during meal periods and failed to compensate Plaintiffs and aggrieved
25 employees for work performed during meal periods. By way of example, Defendants failed to relieve
26 Plaintiff of all duties such that Plaintiff could take compliant meal periods. As a result, Plaintiffs
27 worked through mandated meal periods.

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123. Defendants failed to pay Plaintiffs and the aggrieved employees the full meal period premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a timely, uninterrupted meal period of at least thirty (30) minutes was not provided. Defendants failed to incorporate all nondiscretionary payments for work performed by Plaintiffs and the aggrieved employees in the regular rate of compensation.

124. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

125. At all relevant times, California Labor Code section 226.7 has provided that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

126. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

127. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the aggrieved employees are entitled to recover from Defendants one (1) additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest period was not provided.

128. During the relevant time period, Defendants required Plaintiffs and the aggrieved employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period, or major fraction thereof worked. During the relevant time period, Defendants willfully required Plaintiffs and the aggrieved employees to work during rest periods. By way of example, Defendants failed to relieve Plaintiffs of all duties such that Plaintiffs could take compliant rest periods. As a result, Plaintiffs worked through mandated rest periods.

129. Defendants failed to pay Plaintiffs and aggrieved employees the full rest period premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a

1 timely, uninterrupted rest period of at least ten (10) minutes was not provided. Defendants failed to
2 incorporate all nondiscretionary payments for work performed by Plaintiffs and the aggrieved
3 employees in the regular rate of compensation.

4 130. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
5 Code section 226.7.

6 **Failure to Timely Pay Wages During Employment**

7 131. At all relevant times herein set forth, California Labor Code section 204 has provided
8 that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of
9 any calendar month, other than those wages due upon termination of an employee, are due and payable
10 between the 16th and the 26th day of the month during which the labor was performed.

11 132. At all times herein set forth, California Labor Code section 204 has provided that all
12 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
13 calendar month, other than those wages due upon termination of an employee, are due and payable
14 between the 1st and the 10th day of the following month.

15 133. At all times herein set forth, California Labor Code section 204 has provided that all
16 wages earned for labor in excess of the normal work period shall be paid no later than the payday for
17 the next regular payroll period.

18 134. During the relevant time period, Defendants intentionally and willfully failed to pay
19 Plaintiffs and the aggrieved employees all wages due to them, within any time period permissible
20 under California Labor Code section 204, including wages for overtime compensation, minimum wage
21 compensation, meal period premiums, rest period premiums, and gratuities.

22 **Failure to Timely Pay Wages Upon Termination**

23 135. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
24 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
25 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
26 at the time of discharge are due and payable immediately. California Labor Code section 202
27 mandates that if an employee quits, his or her wages shall become due and payable not later than
28 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of

1 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
2 quitting.

3 136. California Labor Code section 203 provides that if an employer willfully fails to pay,
4 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
5 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
6 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
7 continue for more than thirty (30) days.

8 137. At the time that Plaintiffs and the aggrieved employees' employment with Defendants
9 ended, Defendants knowingly and willfully failed to pay Plaintiffs and the aggrieved employees all
10 wages owed to them pursuant to California Labor Code sections 201 and 202, including, without
11 limitation, overtime wages, minimum wages, meal period premium wages, rest period premium
12 wages, and gratuities.

13 **Failure to Provide Compliant Wage Statements**

14 138. At all relevant times set forth herein, California Labor Code section 226(a) provides
15 that every employer shall furnish each of its employees an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
17 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
18 deductions, provided that all deductions made on written orders of the employee may be aggregated
19 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
20 employee is paid, (7) the name of the employee and his or her social security number, (8) the name
21 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
22 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
23 The deductions made from payments of wages shall be recorded in ink or other indelible form,
24 properly dated, showing the month, day, and year, and a copy of the statement or a record of the
25 deductions shall be kept on file by the employer for at least three years at the place of employment or
26 at a central location within the State of California.

27 139. Defendants have intentionally and willfully failed to provide employees with complete
28 and accurate wage statements. The deficiencies include, among other things, the failure to state all

1 correct rates of pay, all hours worked, all meal period premium wages earned, all rest period premium
2 wages earned, and all gratuities earned.

3 **Failure to Keep Requisite Payroll Records**

4 140. At all relevant times set forth herein, California Labor Code section 1174(d) has
5 required an employer to keep, at a central location in the state or at the plants or establishments at
6 which employees are employed, payroll records showing the hours worked daily by and the wages
7 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
8 employed at the respective plants or establishments. These records shall be kept in accordance with
9 rules established for this purpose by the commission, but in any case shall be kept on file for not less
10 than two years.

11 141. Defendants have intentionally and willfully failed to keep accurate and complete
12 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the aggrieved
13 employees.

14 142. As a result of Defendants' violation of California Labor Code section 1174(d),
15 Plaintiffs and the aggrieved employees have suffered injury and damage to their statutorily-protected
16 rights.

17 143. More specifically, Plaintiffs and the aggrieved employees have been injured by
18 Defendants' intentional and willful violation of California Labor Code section 1174(d) because they
19 were denied both their legal right and protected interest, in having available, accurate and complete
20 payroll records pursuant to California Labor Code section 1174(d).

21 **Failure to Reimburse Necessary Business Expenses**

22 144. Pursuant to California Labor Code sections 2800 and 2802, an employer must
23 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
24 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
25 consequence of his or her obedience to the directions of the employer.

26 145. Plaintiffs and the aggrieved employees incurred necessary business-related expenses
27 and costs that were not fully reimbursed by Defendants, including, but not limited to protective
28 equipment such as steel-toe boots.

1 146. Defendants intentionally and willfully failed to reimburse Plaintiffs and the aggrieved
2 employees for all necessary business-related expenses and costs.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against
7 Defendants, jointly and severally, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiffs be appointed as the representatives of the Class;
11 3. That counsel for Plaintiffs be appointed as Class Counsel; and
12 4. That Defendants provide to Class Counsel immediately the names and most current/last
13 known contact information (address, e-mail and telephone numbers) of all class members.

14 **As to the First Cause of Action**

- 15 5. That the Court declare, adjudge and decree that Defendants violated California Labor
16 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
17 wages due to Plaintiffs and the other class members;
18 6. For general unpaid wages at overtime wage rates and such general and special damages
19 as may be appropriate;
20 7. For pre-judgment interest on any unpaid overtime compensation commencing from the
21 date such amounts were due;
22 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
23 Labor Code section 1194;
24 9. For such other and further relief as the Court may deem just and proper.

25 **As to the Second Cause of Action**

- 26 10. That the Court declare, adjudge and decree that Defendants violated California Labor
27 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiffs and the
28 other class members;

11. For general unpaid wages and such general and special damages as may be appropriate;
12. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs and the other class members in the amount as may be established according to proof at trial;
13. For pre-judgment interest on any unpaid compensation from the date such amounts were due;
14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);
15. For liquidated damages pursuant to California Labor Code section 1194.2;
16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods, (including second meal periods, to Plaintiffs and the other class members;
18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
19. For all actual, consequential, and incidental losses and damages, according to proof;
20. For premium wages pursuant to California Labor Code section 226.7(c);
21. For pre-judgment interest on any unpaid wages from the date such amounts were due;
22. For reasonable attorneys' fees and costs of suit incurred herein;
23. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause Action

24. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;
25. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

- 1 26. For all actual, consequential, and incidental losses and damages, according to proof;
2 27. For premium wages pursuant to California Labor Code section 226.7(c);
3 28. For pre-judgment interest on any unpaid wages from the date such amounts were due;
4 29. For such other and further relief as the Court may deem just and proper.

5 **As to the Fifth Cause of Action**

6 30. That the Court declare, adjudge and decree that Defendants violated the record keeping
7 provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs
8 and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

- 9 31. For actual, consequential and incidental losses and damages, according to proof;
10 32. For statutory penalties pursuant to California Labor Code section 226(e);
11 33. For injunctive relief to ensure compliance with this section, pursuant to California
12 Labor Code section 226(g);
13 34. For such other and further relief as the Court may deem just and proper.

14 **As to the Sixth Cause of Action**

15 35. That the Court declare, adjudge and decree that Defendants violated California Labor
16 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
17 termination of the employment of Plaintiffs and the other class members no longer employed by
18 Defendants;

- 19 36. For all actual, consequential, and incidental losses and damages, according to proof;
20 37. For statutory wage penalties pursuant to California Labor Code section 203 for
21 Plaintiffs and the other class members who have left Defendants' employ;
22 38. For pre-judgment interest on any unpaid compensation from the date such amounts
23 were due;
24 39. For such other and further relief as the Court may deem just and proper.

25 **As to the Seventh Cause of Action**

26 40. That the Court declare, adjudge, and decree that Defendants violated California Labor
27 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class members

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1 for all necessary business-related expenses as required by California Labor Code sections 2800 and
2 2802;

- 3 41. For actual, consequential and incidental losses and damages, according to proof;
- 4 42. For the imposition of civil penalties and/or statutory penalties;
- 5 43. For punitive damages and/or exemplary damages according to proof at trial;
- 6 44. For reasonable attorneys' fees and costs of suit incurred herein; and
- 7 45. For such other and further relief as the Court may deem just and proper.

8 **As to the Eighth Cause of Action**

9 46. That the Court declare, adjudge and decree that Defendants violated the following
10 California Labor Code sections as to Plaintiffs and the other class members: 510 and 1198 (by failing
11 to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a)
12 (by failing to provide meal and rest periods or compensation in lieu thereof); 226(a) (by failing to
13 provide accurate wage statements); and 201, 202, and 203 (by failing to pay all wages owed upon
14 termination); and 2800 and 2802 (by failing to reimburse business-related expenses).

15 47. For restitution of unpaid wages to Plaintiffs and all the other class members and all pre-
16 judgment interest from the day such amounts were due and payable;

17 48. For the appointment of a receiver to receive, manage and distribute any and all funds
18 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
19 result of violation of California Business and Professions Code sections 17200, et seq.;

20 49. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
21 Code of Civil Procedure section 1021.5; and

22 50. For injunctive relief to ensure compliance with this section, pursuant to California
23 Business and Professions Code sections 17200, et seq.

24 **As to the Ninth Cause of Action**

25 51. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g), plus
26 costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a),
27 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

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1 52. For such other and further relief as the Court may deem proper.

2
3 DATED: December 8, 2022

BLACKSTONE LAW, APC

4
5 By:



6 Jonathan M. Genish, Esq.
7 Attorneys for Plaintiffs SALOMON GARCIA
8 and LUIS MIGUEL GUIZAR
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2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I, Stephany Sinaguinan, certify and declare as follows:

5 I am over eighteen years of age and not a party to the within action; my business address is
6 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On December 8, 2022, I served a
copy of the following document(s):

7 **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND**
8 **ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT,**
CALIFORNIA LABOR CODE §§ 2698 ET. SEQ.

9 on the interested parties as follows:

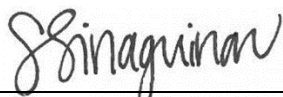
10 Amir Benakote
11 Sanjay Bansal
12 **KAUFMAN DOLOWICH VOLUCK LLP**
13 11111 Santa Monica Blvd., Suite 850
14 Los Angeles, CA 90025
15 Telephone: (310) 775-6511
16 E-mails: abenakote@kdvlaw.com; sanjay.bansal@kdvlaw.com; elange@kdvlaw.com;
17 michelle.korol@kdvlaw.com; nbernal@kdvlaw.com

18 *Attorneys for Defendant Atlas Freight Forwarding, Inc.*

19 ☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be
20 delivered to the addressee(s) listed above via email from email address
21 ssina@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1).
22 I did not receive any electronic message or other indication that the transmission was
23 unsuccessful.

24 ☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the
25 above is true and correct.

26 Executed on December 8, 2022 at Beverly Hills, California.

27
28 

Stephany Sinaguinan