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Superior Court of California
County of Fresno
By: C. York, Deputy

Attorneys for Plaintiff
EDUARDO VELAZQUEZ,
on behalf of herself and on behalf of all other
aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

EDUARDO VELAZQUEZ, on behalf of
himself and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

CARLUCCI TRANSPORT dba CARLUCCI
TRANSPORT INC., a California corporation;
and DOES 1 through 50, inclusive

Defendants.

Case No.: 22CECG03945

Assigned for All Purposes To:

Hon.

Dept.:

**COMPLAINT FOR REPRESENTATIVE
ACTION FOR PENALTIES UNDER
PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE § 2698 *et seq.* FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code §§ 226(a), 1174; and
6. Violation of Labor Code §§ 203, 204

DEMAND FOR JURY TRIAL

1 Plaintiff EDUARDO VELAZQUEZ (hereinafter “Plaintiff”) on behalf of himself and all
2 other similarly Aggrieved Employees complains of Defendants, and each of them, as follows:

3 **INTRODUCTION**

4 1. This is a Representative Action, pursuant to the Private Attorneys General Act of
5 2004 (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of Plaintiff and similarly situated
6 aggrieved non-exempt employees (“Aggrieved Employees” or “Employees”) who currently
7 work or formerly worked for Defendants CARLUCCI TRANSPORT dba CARLUCCI
8 TRANSPORT INC., and DOES 1 through 50 (all defendants being collectively referred to
9 herein as “Defendants”) during the liability period. From at least one (1) year prior to the filing
10 of this action and at least one (1) year prior to the date Plaintiff began the process of exhausting
11 the administrative requirements pursuant to Labor Code § 2698 *et seq.* on **September 15, 2022**,
12 and continuing to the present (the “liability period”), Defendants have had a consistent policy of
13 failing to pay all wages due to its California Employees during the course of employment and
14 timely upon separation from employment, failing to provide Employees with meal and rest
15 periods, and failing to issue accurately itemized wage statements to its California employees.
16 Plaintiff alleges that Defendants, and each of them, violated various provisions of the California
17 Labor Code and relevant orders of the Industrial Welfare Commission, and seeks redress for
18 these violations.

19 2. Plaintiff is a resident of California, and during the time period relevant to this
20 Complaint, was employed by Defendants as a non-exempt hourly employee based out of
21 Defendants’ office in Firebaugh, California.

22 3. Upon information and belief, Plaintiff was employed by Defendants and (1)
23 shared similar job duties and responsibilities; (2) was subjected to the same policies and
24 practices; and (3) endured similar violations at the hands of Defendants as the other Aggrieved
25 Employees who served in similar and related positions.

26 4. Plaintiff and the other similarly situated Employees of Defendants consistently
27 worked at Defendants’ behest without being paid all wages due. More specifically, Defendants
28 failed to record accurate time worked, failed to pay them at the appropriate rates for all hours

1 worked, requiring them to work off the clock. Additionally, Defendants provided Aggrieved
2 Employees with inaccurate wage statements that prevented them from learning of these unlawful
3 practices. Defendants also failed to provide Aggrieved Employees with lawful meal and rest
4 periods, as Employees were not provided with the opportunity to take full uninterrupted and
5 duty-free rest periods and meal breaks as required by the Labor Code.

6 5. Defendant CARLUCCI TRANSPORT dba CARLUCCI TRANSPORT INC.,
7 (“CT”) is a California corporation with its principle executive offices in Firebaugh, California, and
8 has been listed as the employer on the wage statements issued to Plaintiff during the relevant time
9 period. CT lists a California address in Firebaugh, California with the California Secretary of
10 State, and employs Plaintiff and the Class members in Fresno County, including at Defendants’
11 offices and facilities in Firebaugh, California, and throughout California and Defendants conduct
12 business throughout California.

13 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure § 410.10. This Action is brought as a PAGA representative action on behalf of
15 similarly situated Aggrieved Employees of Defendants pursuant to California Labor Code §
16 2698 *et seq.* Venue as to Defendants is also proper in this judicial district pursuant to California
17 Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities
18 giving rise to this lawsuit occurred in the County of Fresno and Defendants maintain and operate
19 facilities in Firebaugh, California, thus employing Plaintiff and other Aggrieved Employees in
20 Fresno County and in California.

21 7. The true names and capacities, whether individual, corporate, associate, or
22 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
23 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code
24 of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
25 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
26 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
27 this Complaint to reflect the true names and capacities of the Defendants designated herein as
28 Does 1 through 50 when their identities become known.

1 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted
2 in all respects pertinent to this action as the agent of the other Defendants, that Defendants
3 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the
4 acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants
5 acted in all respects as the employers or joint employers of Employees. Defendants, and each of
6 them, exercised control over the wages, hours or working conditions of Employees, or suffered
7 or permitted Employees to work, or engaged, thereby creating a common law employment
8 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
9 employed the Employee Aggrieved Employees.

10 **FACTUAL BACKGROUND**

11 9. The Aggrieved Employees, including Plaintiff, are non-exempt employees
12 pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in
13 non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the
14 Aggrieved Employees were either not paid by Defendants for all hours worked. Plaintiff also
15 contends that Defendants failed to pay Plaintiff and the Aggrieved Employees all wages due
16 and owing, including by requiring them to work off the clock, failing to provide meal and rest
17 breaks, and failing to furnish accurate wage statements, all in violation of various provisions of
18 the California Labor Code and applicable Wage Orders.

19 10. Additionally, Plaintiff and the Aggrieved Employees were not paid all wages
20 they were owed, including for all work performed and for all overtime hours worked resulting
21 in off the clock work. More specifically, Defendants required Plaintiff and the Aggrieved
22 Employees to work pre-shift and post-shift in excess of their scheduled shifts for which they
23 were not paid wages as Employees had to conduct pre-trip inspections, prepared trucks for trips,
24 unloaded trucks post-trip, performed other post trip duties such as completing reports and spent
25 time working while clocked out for meal breaks caused Aggrieved Employee.

26 11. As a result of the above described requirements to work off the clock, and the
27 other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved
28 Employees were not properly paid all wages earned and all wages owed to them by Defendants,

1 including when working more than eight (8) hours in any given day and/or more than forty (40)
2 hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff
3 and Aggrieved Employees incurred overtime hours worked for which they were not adequately
4 and completely compensated, in addition to the hours they were required to work off the clock.
5 To the extent applicable, Defendants also failed to pay Plaintiff and the Aggrieved Employees
6 at an overtime rate of 1.5 times the regular rate for the first eight hours of the seventh
7 consecutive work day in a week and overtime payments at the rate of 2 times the regular rate
8 for hours worked over eight (8) on the seventh consecutive work day, as required under the
9 Labor Code and applicable IWC Wage Orders.

10 12. Therefore, from at least one (1) year prior to the filing of this lawsuit and
11 continuing to the present, Defendants had a consistent policy or practice of failing to pay
12 Employees for all hours worked, and failing to pay minimum wages for all time worked, as
13 required by California law. Also, from at least one (1) year prior to the filing of this lawsuit and
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay
15 Employees overtime compensation at correctly calculated premium overtime rates for all hours
16 worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates
17 for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and
18 the corresponding sections of IWC Wage Orders.

19 13. Additionally, Defendants failed to provide all the legally required unpaid, off-
20 duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other
21 Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Defendants
22 did not have a policy or practice which provided or recorded all the legally required unpaid, off-
23 duty meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the
24 Aggrieved Employees. Plaintiff and Aggrieved Employees were required to perform work as
25 ordered by Defendants for more than five (5) hours during a shift, but were often required to do
26 so without receiving a meal break. In fact, as addressed above, Defendants followed a practice of
27 under-reporting hours worked in an effort to ensure that the timekeeping records for Employees
28 reflected a shift of less than six hours when in fact the Employee worked more than six hours in

an effort to avoid the meal period requirements under the Labor Code and applicable IWC Wage Orders through an alleged meal period waiver. As a result, Defendants' failure to provide the Plaintiff and Aggrieved Employees with all the legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. From at least one (1) year prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of wages at each Employee's effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.

14. Therefore, for at least one (1) year prior to the filing of this action and through to the present, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks due to Defendants' policies and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one (1) hour's wages in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

- (a) Aggrieved Employees were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Aggrieved Employees were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Aggrieved Employees were required to work through at least part of their daily meal period(s);

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(d) Meal periods were provided after five (5) hours of continuous work during a shift; and

(e) Aggrieved Employees were restricted in their ability to take a full thirty-minute meal period.

15. Plaintiff and the Defendants' Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises during rest breaks under Defendants' policies. Rest period violations therefore arose in one or more of the following manners:

(a) Aggrieved Employees were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;

(b) Aggrieved Employees were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and

(c) Aggrieved Employees were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

16. As a result of these illegal policies and practices, Defendants engaged in and enforced the following additional unlawful practices and policies against Plaintiff and the Aggrieved Employees he seeks to represent:

a. failing to pay all wages owed to Aggrieved Employees who either were discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, 203;

b. failing to pay all wages owed to the Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204;

- 1 c. failing to pay Aggrieved Employees all wages owed, including all meal and rest
2 period premium wages; and
- 3 d. failing to maintain accurate records of Aggrieved Employees' earned wages and
4 meal periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the
5 applicable IWC Wage Orders.

6 17. From at least one (1) year prior to the filing of this lawsuit, and continuing to the
7 present, Defendants have also consistently failed to provide Employees with timely, accurate,
8 and itemized wage statements, in writing, as required by California wage-and-hour laws. More
9 specifically, the wage statements also failed to account for unpaid wages and overtime due to off
10 the clock work, namely when Employees were required to work off the clock. Additionally, the
11 wage statements given to Employees failed to accurately account for premium pay for
12 deficiently provided meal periods and rest breaks, as discussed above. This violates Labor Code
13 § 226(a)(9). Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed
14 \$4,000.00 for each employee pursuant to Labor Code § 226(b).

15 18. From at least one (1) year prior to filing this lawsuit and continuing to the
16 present, Defendants have thus also had a consistent policy of failing to pay all wages owed to
17 Plaintiff and other similarly situated Employees at the time of their termination of within
18 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

19 19. In light of the foregoing, Plaintiff and the Aggrieved Employees bring this action
20 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512,
21 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 1670.5, 2698, and
22 2699, *et seq.*, and pursuant to the applicable IWC Wage Order provisions and California Code of
23 Regulations, Title 8, section 11000 *et seq.*

24 **PAGA NOTICE AND ALLEGATIONS**

25 20. Plaintiff brings this PAGA representative action on behalf of herself and all
26 others similarly situated Aggrieved Employees employed by Defendants during the liability
27 period pursuant to Labor Code § 2698 *et seq.* Plaintiff and Employees are aggrieved employees
28 as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this

1 Complaint and either were or are employed by the alleged violators, Defendants. Upon
2 information and belief, at all times during the liability period, Plaintiff and the Aggrieved
3 Employees were employees subject to the protections of the California Labor Code and the
4 applicable Industrial Welfare Commission (“IWC”) Wage Orders, including IWC Wage Order
5 No. 9-2001 regulating the wages, hours and working conditions in the Transportation Industry
6 (“Wage Order No. 9”).

7 21. In failing to pay Aggrieved Employees minimum wages and overtime, not
8 providing proper meal and rest periods, failing to provide accurate itemized wage statements,
9 and failing to pay Employees wages upon termination or timely upon resignation, all addressed
10 herein, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as
11 required under Labor Code § 204. Defendants also failed to maintain records showing accurate
12 hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code §
13 1174 and the applicable IWC Wage Orders.

14 22. As such, Plaintiff and the Aggrieved Employees seek wages and penalties under
15 Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included
16 under Labor Code § 2699.5, which includes the penalty provisions, without limitation, based
17 *inter alia* on the following California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3,
18 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199,
19 1670.5, 2698, and 2699, *et seq.*

20 23. More specifically, after complying with the notice procedures of Labor Code §
21 2699.3, Plaintiff asserts as a representative action on behalf of the California Attorney General
22 and the other similarly Aggrieved Employees a PAGA claim for violations of the underlying
23 claims addressed herein and seeking penalties as specified by the applicable corresponding
24 provisions, including as follows:

- 25 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
26 earned regular pay and minimum wages for regular hours worked and for failure to pay
27 overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a),
28 1197, and 1198, and Sections 2(K), 3(A) and 4 of the applicable IWC Wage Order(s)

1 seeking all civil and statutory penalties available and applicable, and wages, under Labor
2 Code §§ 510, 558, 1194.2, 1197.1, 2699(f)(2), and 2699.5, and also for attorneys' fees and
3 costs pursuant to Labor Code § 2699(g)(1);

4 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
5 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit
6 them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu
7 thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A) and 12(B) of
8 the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and
9 applicable, and wages, under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-
10 (3), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code §
11 2699(g)(1);

12 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
13 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements
14 and failure to maintain employment records for Plaintiff and Aggrieved Employees under
15 Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable
16 IWC Wage Order(s) seeking all civil and statutory penalties and wages available and
17 applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for
18 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

19 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including
20 at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201,
21 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and
22 wages, under Labor Code §§ 201, 202, 203, 204, 210, 558, 1197, and 2699(f)(2), and
23 Section 20 of the applicable IWC Wage Order(s), and also for attorneys' fees and costs
24 pursuant to Labor Code § 2699(g)(1); and

25 (e) All Alleged Violations of the IWC Wage Orders: For any above addressed
26 violation of the applicable provisions of the IWC Wage Orders constituting violations of
27 Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and
28 applicable under Labor Code § 2699(f)(2) and for attorneys' fees and costs pursuant to

1 Labor Code § 2699(g)(1).

2 24. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to
3 the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

4 25. As also addressed above, Plaintiff on behalf of the Aggrieved Employees also
5 seeks the penalties and remedies set forth in Labor Code § 558, which states:

6 (a) Any employer or other person acting on behalf of an employer
7 who violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the Industrial
9 Welfare Commission shall be subject to a civil penalty as follows: (1) For
10 any initial violation, fifty dollars (\$50) for each underpaid employee for
11 each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover underpaid wages. (2) For each subsequent
violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages. (3) Wages recovered
pursuant to this section shall be paid to the affected employee.

13 (b) If upon inspection or investigation the Labor Commissioner
14 determines that a person had paid or caused to be paid a wage for
15 overtime work in violation of any provision of this chapter, or any
16 provision regulating hours and days of work in any order of the Industrial
17 Welfare Commission, the Labor Commissioner may issue a citation. The
procedures for issuing, contesting, and enforcing judgments for citations
or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

18 (c) The civil penalties provided for in this section are in addition to
19 any other civil or criminal penalty provided by law.

20 26. Plaintiff has exhausted her administrative remedy by sending a certified letter to
21 the LWDA and Defendants postmarked on **September 15, 2022** addressing in detail the specific
22 provisions of the Labor Code Defendants have violated and addressing the facts and legal
23 theories to support the alleged violations. The LWDA has not provided notice of its intent to
24 investigate the alleged violations within 65 calendar days of the postmark date of the letter. As a
25 result, as a matter of law, Plaintiff is entitled to file this Complaint for full compliance and
26 exhaustion of the notice requirements under the PAGA and seeks civil penalty assessments
27 against Defendants as a Representative of the State of California as hereinafter alleged and in
28 accordance with the law, in addition to costs and reasonable attorneys' fees as provided by the

1 PAGA statute. A true and correct copy of the **September 15, 2022** Notice to the LWDA and the
2 Defendants is attached hereto **Exhibit A** and is expressly incorporated into this Complaint as if
3 set forth in full. Plaintiff alleges that the notice period provided by statute has expired and
4 amendment is proper pursuant to Labor Code § 2699.3(a)(2)(C).

5 27. This action has been brought and may properly be maintained as a representative
6 action under the provisions of Labor Code § 2698 *et seq.* seeking civil and statutory penalties
7 and wages based, *inter alia*, on the following claims addressed in detail herein:

- 8 a. Defendants failed to pay Employees minimum wages and wages for all hours
9 worked;
- 10 b. Defendants failed to pay Employees overtime as required under Labor Code § 510;
- 11 c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage
12 Orders, by failing to provide Employees with requisite meal periods or premium
13 pay in lieu thereof;
- 14 d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders,
15 by failing to authorize and permit Employees to take requisite rest breaks or
16 provide premium pay in lieu thereof;
- 17 e. Defendants violated Labor Code § 226(a) by providing Employees with inaccurate
18 wage statements;
- 19 f. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and
20 compensation due and owing at the time of termination of employment;
- 21 g. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by
22 failing to maintain accurate records of Aggrieved Employees' earned wages and
23 work periods; and
- 24 h. Defendants violated Labor Code § 1194 by failing to compensate all Employees
25 during the relevant time period for all hours worked, whether regular or overtime;
- 26 i. Defendants violated Labor Code § 204 by failing to pay Employees all wages
27 earned at least twice monthly;

28 ///

1 **FIRST CAUSE OF ACTION**

2 **PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES**

3 **(Against All Defendants)**

4 28. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
5 in full herein.

6 29. Defendants failed to pay Employees minimum wages for all hours worked.
7 Defendants had a consistent policy of requiring Employees to work off the clock and without
8 compensation. Employees would work hours and not receive wages, including as alleged above
9 in connection with off the clock work and requiring Aggrieved Employees to remain on duty
10 and under Defendants' control during breaks and due to the demands placed upon them by
11 Defendants'. During the liability period, Defendants thus regularly failed to pay minimum
12 wages to Plaintiff and the Aggrieved Employees. Defendants' uniform pattern of unlawful
13 wage and hour practices manifested, without limitation, applicable to all Aggrieved Employees,
14 as a result of implementing a uniform policy and practice that denied accurate compensation to
15 Plaintiff and the other Aggrieved Employees as to minimum wage pay.

16 30. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil
17 penalties and remedies for each Aggrieved Employee for each pay period in the applicable
18 statute of limitations in which the Aggrieved Employee was not paid for all hours worked for
19 each pay period, plus reasonable attorneys' fees and costs.

20 31. The Private Attorneys General Act of 2004 ("PAGA") provides that:

21 ... an aggrieved employee may recover the civil penalty described in subdivision
22 (I) in a civil action pursuant to the procedures specified in Section 2699.3 filed on
23 behalf of himself or herself and other current or former employees against whom
24 one or more of the alleged violations was committed. Any employee who prevails
25 in any action shall be entitled to an award of reasonable attorney's fees and costs.
Nothing in this part shall operate to limit an employee's right to pursue or recover
other remedies available under state or federal law, either separately or
concurrently with an action taken under this part.

26 California Labor Code § 2699(g)(1).

27 32. Plaintiff is an "aggrieved employee" under the PAGA, as he was employed by
28 Defendants during the applicable statutory period and suffered one or more of the California

1 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
2 herself and all other current and former aggrieved non-exempt employees, as defined above,
3 the civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs.

4 33. Plaintiff, by virtue of the Notice correspondence dated **September 15, 2022**,
5 attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a representative of the
6 general public to enforce California's labor laws, including without limitation, the penalty
7 provisions identified in California Labor Code § 2699.5. Because the LWDA took no steps
8 within the applicable time period required to intervene, and because Defendants took no
9 corrective actions to remedy the allegations set forth above, Plaintiff, as a representative of the
10 people of the State of California, will seek, and hereby does seek, any and all civil penalties
11 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
12 Standards Enforcement ("DLSE").

13 34. Any civil penalties recovered herein will be distributed in accordance with the
14 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
15 and the LWDA, where applicable. See Labor Code § 2699(i).

16 35. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
17 arise from the policies, practices and business acts of Defendants to the extent provided by law
18 as a Representative Action, including reasonable attorneys' fees and costs, and underpayment
19 of wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA
20 statute. Labor Code § 558 provides in pertinent part:

21 (a) Any employer or other person acting on behalf of an employer
22 who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial
24 Welfare Commission shall be subject to a civil penalty as follows: (1) For
25 any initial violation, fifty dollars (\$50) for each underpaid employee for
26 each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (2) For each subsequent
28 violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages. (3) Wages recovered
pursuant to this section shall be paid to the affected employee....

(c) The civil penalties provided for in this section are in addition to
any other civil or criminal penalty provided by law.

1 36. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff
2 and other aggrieved non-exempt employees proper regular pay and minimum wages for regular
3 hours worked and/or overtime premium pay for overtime hours worked during the applicable
4 statutory period.

5 37. Section 4 of IWC Wage Order No. 9 provides in pertinent part: “(A) Every
6 employer shall pay to each employee wages not less than the following: (1) Any employer who
7 employs 26 or more employees shall pay to each employee wages not less than the following:
8 (a) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1,
9 2017; (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018; (c)
10 Twelve dollars (\$12.00) per hour for all hours worked, effective January 1, 2019;.... (B) Every
11 employer shall pay to each employee, on the established payday for the period involved, not
12 less than the applicable minimum wage for all hours worked in the payroll period, whether the
13 remuneration is measured by time, piece, commission, or otherwise.”

14 38. Section 2(K) of IWC Wage Order No. 9 defines “Hours worked” as “the time
15 during which an employee is subject to the control of an employer, and includes all the time the
16 employee is suffered or permitted to work, whether or not required to do so.”

17 39. In California, employees must be paid at least the then applicable state minimum
18 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
19 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
20 timely pay its employees for all hours worked. Defendants failed to do so.

21 40. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
22 states: “The minimum wage for employees fixed by the commission is the minimum wage to
23 be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

24 41. The minimum wage provisions of California Labor Code are enforceable by
25 private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any
26 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage
27 or the legal overtime compensation applicable to the employee is entitled to recover in a civil
28 action the unpaid balance of the full amount of this minimum wage or overtime compensation,

1 including interest thereon, reasonable attorney's fees and costs of suit."

2 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
3 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
4 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
5 Orders, entitle non-exempt employees to an amount equal to or greater than the minimum wage
6 for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this
7 rate may be used as a credit against a minimum wage obligation.

8 43. In committing these violations of the California Labor Code, Defendants
9 inaccurately recorded, or calculated the correct time worked and consequently underpaid the
10 actual time worked by Plaintiff and other Aggrieved Employees. Defendants acted in an illegal
11 attempt to avoid the payment of all earned wages, and other benefits in violation of the
12 California Labor Code, the Industrial Welfare Commission requirements and other applicable
13 laws and regulations. As a result of these violations, Defendant also failed to timely pay all
14 wages earned in accordance with California Labor Code § 1194.

15 44. California Labor Code § 1194.2 also provides for the following remedies: "In any
16 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
17 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

19 45. In addition to restitution for all unpaid wages, pursuant to California Labor Code
20 § 1197.1, Plaintiff and Aggrieved Employees are entitled to recover a penalty of \$100.00 for the
21 initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent
22 failure to pay each employee minimum wages.

23 46. Pursuant to California Labor Code § 1194.2, Plaintiff and Aggrieved Employees
24 are further entitled to recover liquidated damages in an amount equal to wages unlawfully
25 unpaid and interest thereon.

26 47. Labor Code § 1198 also requires that: "The maximum hours of work and the
27 standard conditions of labor fixed by the commission shall be the maximum hours of work and
28 the standard conditions of labor for employees. The employment of any employee for longer

1 hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
3 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
4 of the provisions for which a representative PAGA action may be commenced under Labor Code
5 § 2699.3.

6 48. Additionally, Labor Code § 1199 provides that: “Every employer or other person
7 acting either individually or as an officer, agent, or employee of another person is guilty of a
8 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)..., who
9 does any of the following: (a) Requires or causes any employee to work for longer hours than
10 those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or
11 causes to be paid to any employee a wage less than the minimum fixed by an order of the
12 commission....”

13 49. Similarly, Section 20 of IWC Wage Order No. 9 addresses further penalties as
14 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
15 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
16 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
17 underpaid employee for each pay period during which the employee was underpaid in addition
18 to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
19 for each underpaid employee for each pay period during which the employee was underpaid in
20 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee
21 shall receive payment of all wages recovered.”

22 50. Defendants have the ability to pay minimum wages for all time worked and have
23 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
24 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

25 51. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
26 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
27 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
28 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

1 employee per pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.”

3 52. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
4 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
5 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
6 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
7 Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§]
8 204,... 221, ...510, 512,... 1194, 1197, 1197.1 and 1198...1199”, and these provisions of the
9 Code allow for recovery of civil penalties pursuant to the PAGA in this action.

10 53. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
11 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
12 employees applicable minimum wages and contractually agreed upon wages for all hours they
13 were required to work and remain under Defendants’ control.

14 54. As a direct and proximate result of the Defendants’ unlawful acts, as alleged in
15 detail herein, Plaintiff and other aggrieved non-exempt employees have been deprived, and
16 continue to be deprived, of minimum wages and all wages owed for all hours they worked.

17 55. As such, Defendants are liable for PAGA penalties resulting from their failure to
18 provide Plaintiff and the other Aggrieved Employees minimum wages and all wages owed for
19 all hours worked. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
20 representative action, all civil and statutory penalties authorized for violations of California
21 Labor Code §§ 510, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections 2(K), 4, and 20 of the
22 applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and
23 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
24 2699.5, and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

25 56. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3.
26 For the purposes of this cause of action, recovery of civil penalties will include the recovery of
27 underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and
28 subject to Court approval.

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SECOND CAUSE OF ACTION
CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES AND
OVERTIME UNDER LABOR CODE § 510
(Against All Defendants)

57. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

58. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Division of Labor Standards and Enforcement.

59. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work and under-reporting actual hours worked as addressed above.

60. Similar to Labor Code § 510, Section 3(A) of IWC Wage Order No. 9 also provides: “(A) Daily Overtime-General Provisions (1) The following overtime provisions are applicable to employees 18 years of age or over... Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in any workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible

1 provided the employee is compensated for such overtime at not less than: (a) One and one-half
2 (11/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours
3 up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked
4 on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's
5 regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours
6 worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a
7 workweek..."

8 61. Defendants had a consistent policy of violating these provisions by not paying
9 Employees wages for all hours worked, including requiring off the clock work as addressed and
10 under-reporting actual hours worked.

11 62. Defendants, and each of them, have required Plaintiff and the Aggrieved
12 Employees to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff
13 and the Aggrieved Employees all earned and owed straight time and overtime and double time
14 wages and other benefits, in violation of the California Labor Code, the California Code of
15 Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
16 Standards and Enforcement. Defendants have also violated these provisions by requiring
17 Plaintiff and other similarly situated non-exempt employees to work through meal periods when
18 they were required to be clocked out or to otherwise work off the clock to complete their daily
19 job duties or to attend. Therefore, Employees were not properly compensated, nor were they
20 paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours
21 in a given week. Based on information and belief, Defendants did not make available to
22 Employees a reasonable protocol for correcting time records when Employees worked overtime
23 hours or to fix incorrect time entries to the Employee's detriment. Defendants have also violated
24 these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work
25 through meal periods when they were required to be clocked out or to otherwise work off the
26 clock to complete their daily job duties.

27 63. Defendants' failure to pay Plaintiff and the Aggrieved Employees the unpaid
28 balance of regular wages owed and overtime compensation, as required by California law,

violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

64. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil penalties and remedies for each Aggrieved Employee for each pay period in the applicable statute of limitations in which the Aggrieved Employee was not paid at the correct overtime rate for all hours worked for each pay period, plus reasonable attorneys' fees and costs.

65. The Private Attorneys General Act of 2004 ("PAGA") provides that:

... an aggrieved employee may recover the civil penalty described in subdivision (I) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

California Labor Code § 2699(g)(1).

66. Plaintiff is an "aggrieved employee" under the PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the California Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former aggrieved non-exempt employees, as defined above, the civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs.

67. Plaintiff, by virtue of the Notice correspondence dated **September 15, 2022**, attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, including without limitation, the penalty provisions identified in California Labor Code § 2699.5. Because the LWDA took no steps within the applicable time period required to intervene, and because Defendants took no corrective actions to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek, and hereby does seek, any and all civil penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE").

68. Any civil penalties recovered herein will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California

1 and the LWDA, where applicable. See Labor Code § 2699(i).

2 69. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
3 arise from the policies, practices and business acts of Defendants to the extent provided by law
4 as a Representative Action, including reasonable attorneys' fees and costs, and underpayment
5 of wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA
6 statute. Labor Code § 558 provides in pertinent part:

7 (a) Any employer or other person acting on behalf of an employer
8 who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial
10 Welfare Commission shall be subject to a civil penalty as follows: (1) For
11 any initial violation, fifty dollars (\$50) for each underpaid employee for
12 each pay period for which the employee was underpaid in addition to an
13 amount sufficient to recover underpaid wages. (2) For each subsequent
14 violation, one hundred dollars (\$100) for each underpaid employee for
15 each pay period for which the employee was underpaid in addition to an
16 amount sufficient to recover underpaid wages. (3) Wages recovered
17 pursuant to this section shall be paid to the affected employee....

18 (c) The civil penalties provided for in this section are in addition to
19 any other civil or criminal penalty provided by law.

20 70. Section 2(K) of IWC Wage Order No. 9 defines "Hours worked" as "the time
21 during which an employee is subject to the control of an employer, and includes all the time the
22 employee is suffered or permitted to work, whether or not required to do so."

23 71. In California, employees must be paid at least the then applicable state minimum
24 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
25 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
26 timely pay its employees for all hours worked. Defendants failed to do so. Defendants' failure
27 to pay compensation in a timely fashion also constituted a violation of California Labor Code §
28 204, which requires that all wages shall be paid semimonthly. During the liability period,
Defendants have failed to pay all wages and overtime compensation earned by Aggrieved
Employees, and each such failure to make a timely payment of compensation to Employees
constitutes a separate violation of California Labor Code § 204.

72. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"

1 states: “The minimum wage for employees fixed by the commission is the minimum wage to
2 be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

3 73. The minimum wage provisions of California Labor Code are enforceable by
4 private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any
5 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage
6 or the legal overtime compensation applicable to the employee is entitled to recover in a civil
7 action the unpaid balance of the full amount of this minimum wage or overtime compensation,
8 including interest thereon, reasonable attorney’s fees and costs of suit.”

9 74. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
10 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
11 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
12 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage
13 for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this
14 rate may be used as a credit against a minimum wage obligation.

15 75. In committing the above addressed violations of the California Labor Code,
16 Defendants inaccurately recorded, or required Plaintiff and the Aggrieved Employees to input
17 times that did not reflect their actual hours worked, or calculated the incorrect time worked and
18 consequently underpaid the actual time worked by Plaintiff and other Aggrieved Employees.
19 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other
20 benefits in violation of the California Labor Code, the Industrial Welfare Commission
21 requirements and other applicable laws and regulations. As a result of these violations,
22 Defendant also failed to timely pay all wages earned in accordance with California Labor Code §
23 1194.

24 76. California Labor Code § 1194.2 also provides for the following remedies: “In any
25 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
26 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
27 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

28 77. In addition to restitution for all unpaid wages, pursuant to California Labor Code

1 § 1197.1, Plaintiff and Aggrieved Employees are entitled to recover a penalty of \$100.00 for the
2 initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent
3 failure to pay each employee minimum wages.

4 78. Pursuant to California Labor Code § 1194.2, Plaintiff and Aggrieved Employees
5 are further entitled to recover liquidated damages in an amount equal to wages unlawfully
6 unpaid and interest thereon.

7 79. Labor Code § 1198 also requires that: “The maximum hours of work and the
8 standard conditions of labor fixed by the commission shall be the maximum hours of work and
9 the standard conditions of labor for employees. The employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is
11 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
12 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
13 of the provisions for which a representative PAGA action may be commenced under Labor Code
14 § 2699.3.

15 80. Additionally, Labor Code § 1199 provides that: “Every employer or other person
16 acting either individually or as an officer, agent, or employee of another person is guilty of a
17 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)..., who
18 does any of the following: (a) Requires or causes any employee to work for longer hours than
19 those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or
20 causes to be paid to any employee a wage less than the minimum fixed by an order of the
21 commission....”

22 81. Similarly, Section 20 of IWC Wage Order No. 9 addresses further penalties as
23 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
24 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
25 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
26 underpaid employee for each pay period during which the employee was underpaid in addition
27 to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
28 for each underpaid employee for each pay period during which the employee was underpaid in

1 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee
2 shall receive payment of all wages recovered.”

3 82. Defendants have the ability to pay overtime wages for all time worked and have
4 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
5 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

6 83. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
7 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
8 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
9 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
10 employee per pay period for the initial violation and two hundred dollars (\$200) for each
11 aggrieved employee per pay period for each subsequent violation.”

12 84. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
13 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
14 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
15 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
16 Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§]
17 204,...510, 512,... 1194, 1197, 1197.1 and 1198...1199” among the provisions of the Code that
18 allow for recovery of civil penalties pursuant to the PAGA.

19 85. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
20 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
21 employees applicable minimum wages and contractually agreed upon wages for all hours they
22 were required to work and remain under Defendants’ control.

23 86. As a direct and proximate result of the Defendants’ unlawful acts, as alleged in
24 detail herein, Plaintiff and other aggrieved non-exempt employees have been deprived, and
25 continue to be deprived, of overtime wages owed for all hours they worked.

26 87. As such, Defendants are liable for PAGA penalties resulting from their failure to
27 timely provide Plaintiff and the other Aggrieved Employees overtime and premium wages for all
28 hours worked. Accordingly, Plaintiff entitled to recover, and hereby seeks through this

representative action, all civil and statutory penalties authorized for violations of California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20 of the applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

88. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and subject to Court approval.

THIRD CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PAGA FOR MEAL-PERIOD LIABILITY

UNDER LABOR CODE §§ 512, 226.7

(Against All Defendants)

89. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

90. Employees regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512, an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

91. Similar to Labor Code § 512, Section 11(A)-(D) of Wage Order No. 9 provides that: "(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked.... (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one

1 (1) hour of pay at the employee's regular rate of compensation for each work day that the meal
2 period is not provided....”

3 92. Defendants failed to provide Employees with meal periods as required under the
4 Labor Code. Employees were often required to work or to otherwise remain under Defendants'
5 control during meal periods, or Defendants provided them after Employees worked beyond the
6 fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work
7 demands and requirements. Furthermore, upon information and belief, on the occasions when
8 Employees worked more than ten (10) hours in a given shift, they did so without receiving a
9 second uninterrupted thirty (30) minute meal period, as required by law.

10 93. Defendants thus failed to provide Plaintiff and the Aggrieved Employees with
11 meal periods as required by the Labor Code, including by not providing them with the
12 opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by
13 requiring them to perform work during breaks.

14 94. Moreover, Defendants failed to compensate Employees for each meal period not
15 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
16 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
17 employee a meal period in accordance with this section, the employer shall pay the employee
18 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
19 meal period is not provided. Defendants failed to compensate Employees for each meal period
20 not provided or inadequately provided, as required under Labor Code § 226.7.

21 95. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff
22 and other aggrieved non-exempt employees lawful off-duty unpaid meal periods, as well as
23 corresponding premium pay for denied meal periods, during the applicable statutory period.

24 96. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from
25 the policies, practices and business acts of Defendants to the extent provided by law as a
26 Representative Action, including reasonable attorneys' fees and costs, and underpayment of
27 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
28 Labor Code § 558 provides in pertinent part:

1 (a) Any employer or other person acting on behalf of an employer
2 who violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the Industrial
4 Welfare Commission shall be subject to a civil penalty as follows: (1) For
5 any initial violation, fifty dollars (\$50) for each underpaid employee for
6 each pay period for which the employee was underpaid in addition to an
7 amount sufficient to recover underpaid wages. (2) For each subsequent
8 violation, one hundred dollars (\$100) for each underpaid employee for
9 each pay period for which the employee was underpaid in addition to an
10 amount sufficient to recover underpaid wages. (3) Wages recovered
11 pursuant to this section shall be paid to the affected employee....

12 (c) The civil penalties provided for in this section are in addition to
13 any other civil or criminal penalty provided by law.

14 97. Section 2(K) of IWC Wage Order No. 9 defines “Hours worked” as “the time
15 during which an employee is subject to the control of an employer, and includes all the time the
16 employee is suffered or permitted to work, whether or not required to do so.”

17 98. Labor Code § 1198 also requires that: “The maximum hours of work and the
18 standard conditions of labor fixed by the commission shall be the maximum hours of work and
19 the standard conditions of labor for employees. The employment of any employee for longer
20 hours than those fixed by the order or under conditions of labor prohibited by the order is
21 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
22 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
23 of the provisions for which a representative PAGA action may be commenced under Labor
24 Code § 2699.3.

25 99. Premium pay for denied lawful meal and rest periods is considered a “wage”
26 rather than a penalty. *See Murphy v. Kennefth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114.

27 100. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
28 arise from the policies, practices, and business acts of Defendants to the extent provided by law
as a Representative Action, including reasonable attorneys’ fees and costs, and underpayment of
wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

101. Upon information and belief, Plaintiff and other aggrieved non-exempt
employees did not enter into legally binding written agreements with Defendants agreeing to

1 “on-duty” meal periods, or waiving “off duty” meal periods. Nor does the nature of their work
2 prevent the Aggrieved Employees from being relieved of all duties during meal periods. To the
3 contrary. Any inability to take uninterrupted off-duty meal periods was, and is, attributable
4 solely to Defendants’ own insufficient staffing models, rather than the general nature of the work
5 performed by Plaintiff and other Aggrieved Employees.

6 102. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
7 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
8 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
9 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
10 employee per pay period for the initial violation and two hundred dollars (\$200) for each
11 aggrieved employee per pay period for each subsequent violation.”

12 103. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
13 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
14 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
15 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
16 Section 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§]
17 226.7, ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of
18 civil penalties pursuant to the PAGA.

19 104. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
20 because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt
21 employees with lawful uninterrupted off-duty meal periods throughout the applicable statutory
22 period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper
23 premium pay at the rate of one hour of pay at their regular pay rates for each work shift they
24 were denied an unpaid, off-duty 30-minute meal period.

25 105. As such, Defendants are liable for PAGA penalties resulting from their failure to
26 provide Plaintiff and other aggrieved non-exempt employees lawful meal periods and the
27 corresponding meal period premium pay. Accordingly, Plaintiff is entitled to recover, and
28 hereby seeks through this Representative Action, all civil and statutory penalties authorized for

1 violations of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 11(A)-(D) of the
2 applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and
3 applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and
4 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

5 106. Aggrieved employees may recover penalties for denied meal periods under the
6 PAGA, as the civil penalty under California Labor Code 558 applies to any provision regulating
7 hours and days of work in any Order, and Plaintiff has fully complied with procedures specified
8 in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will
9 therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3),
10 in an amount according to proof and subject to Court approval.

11 **FOURTH CAUSE OF ACTION**

12 **PENALTIES UNDER THE PAGA FOR REST-BREAK LIABILITY UNDER**

13 **LABOR CODE §§ 226.7, 512**

14 **(Against All Defendants)**

15 107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
16 in full herein.

17 108. Section 12(A)-(B) of IWC Wage Order No. 9 instructs that: "(A) Every
18 employer shall authorize and permit all employees to take rest periods, which insofar as
19 practicable shall be in the middle of each work period. The authorized rest period time shall be
20 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof. However, a rest period need not be authorized for employees
22 whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period
23 time shall be counted as hours worked for which there shall be no deduction from wages. (B) If
24 an employer fails to provide an employee a rest period in accordance with the applicable
25 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
26 employee's regular rate of compensation for each work day that the rest period is not provided."

27 109. Labor Code § 226.7 further instructs that: "(b) An employer shall not require an
28 employee to work during a meal or rest or recovery period mandated pursuant to an applicable

1 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission,... (c)
2 If an employer fails to provide an employee a meal or rest or recovery period in accordance with
3 a state law,... the employer shall pay the employee one additional hour of pay at the employee's
4 regular rate of compensation for each workday that the meal or rest or recovery period is not
5 provided. (d) A rest or recovery period mandated pursuant to a state law,... shall be counted as
6 hours worked, for which there shall be no deduction from wages....”

7 110. Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders thus
8 provide that employers must authorize and permit all employees to take rest periods at the rate of
9 ten (10) minutes net rest time per four (4) work hours.

10 111. Employees consistently worked consecutive four (4) hour shifts and were
11 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
12 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable
13 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes
14 for each consecutive four (4) hour shift, and Defendants failed to provide Employees with timely
15 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees
16 were often required to work or to otherwise remain under Defendants' control during rest
17 periods, and had breaks provided untimely as a result of the above described off the clock work.
18 Defendants, and each of them, have therefore intentionally and improperly denied rest periods to
19 Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 226.7 and 512 and
20 paragraph 12 of the applicable IWC Wage Orders.

21 112. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from
22 the policies, practices and business acts of Defendants to the extent provided by law as a
23 Representative Action, including reasonable attorneys' fees and costs, and underpayment of
24 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
25 Labor Code § 558 provides in pertinent part:

26 (a) Any employer or other person acting on behalf of an employer
27 who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial
Welfare Commission shall be subject to a civil penalty as follows: (1) For
any initial violation, fifty dollars (\$50) for each underpaid employee for

1 each pay period for which the employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages. (2) For each subsequent
3 violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages. (3) Wages recovered
pursuant to this section shall be paid to the affected employee....

5 (c) The civil penalties provided for in this section are in addition to
6 any other civil or criminal penalty provided by law.

7 113. Section 2(G) of IWC Wage Order No. 9 defines “Hours worked” as “the time
8 during which an employee is subject to the control of an employer, and includes all the time the
9 employee is suffered or permitted to work, whether or not required to do so.”

10 114. Labor Code § 1198 also requires that: “The maximum hours of work and the
11 standard conditions of labor fixed by the commission shall be the maximum hours of work and
12 the standard conditions of labor for employees. The employment of any employee for longer
13 hours than those fixed by the order or under conditions of labor prohibited by the order is
14 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
15 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
16 of the provisions for which a representative PAGA action may be commenced under Labor Code
17 § 2699.3.

18 115. Premium pay for denied lawful meal and rest periods is considered a “wage”
19 rather than a penalty. *See Murphy v. Kennefth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114.

20 116. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
21 policies, practices, and business acts of Defendants to the extent provided by law as a
22 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of
23 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

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

aggrieved employee per pay period for each subsequent violation.”

118. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7, ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil penalties pursuant to the PAGA.

119. Defendants’ conduct, as alleged herein, violates the aforementioned regulations because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt employees with lawful uninterrupted off-duty, net ten-minute rest periods throughout the applicable statutory period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were denied one of their lawfully entitled rest periods.

120. As such, Defendants are liable for PAGA penalties resulting from their failure to provide Plaintiff and other aggrieved non-exempt employees lawful rest periods and the corresponding rest period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 12(A)-(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and 2699(f)(2), and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

121. Aggrieved employees may recover penalties for denied rest periods under the PAGA, as the civil penalty under California Labor Code 558 applies to any provision regulating hours and days of work in any Order, and Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and subject to Court approval.

1 **FIFTH CAUSE OF ACTION**

2 **PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
3 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE § 226(a) AND KEEP**
4 **ACCURATE PAYROLL RECORDS UNDER LABOR CODE § 1174**

5 **(Against All Defendants)**

6 122. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
7 in full herein.

8 123. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff
9 and the other Aggrieved Employees accurate itemized wage statements during the applicable
10 statutory period.

11 124. California Labor Code § 226(a) requires an employer to furnish each of his or her
12 employees with an accurate, itemized statement in writing showing the gross and net earnings,
13 total hours worked, and the corresponding number of hours worked at each hourly rate; these
14 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
15 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
16 statements may be given to the employee separately from the payment of wages; in either case
17 the employer must give the employee these statements twice a month or each time wages are
18 paid.

19 125. Similarly, Sections 7(A)-(B) of IWC Wage Order No. 9 provide: “ (A) Every
20 employer shall keep accurate information with respect to each employee including the
21 following: (1) Full name, home address, occupation and social security number. (2) Birth date, if
22 under 18 years, and designation as a minor. (3) Time records showing when the employee
23 begins and ends each work period. Meal periods, split shift intervals and total daily hours
24 worked shall also be recorded. Meal periods during which operations cease and authorized rest
25 periods need not be recorded. (4) Total wages paid each payroll period, including value of board,
26 lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the
27 payroll period and applicable rates of pay. This information shall be made readily available to
28 the employee upon reasonable request. (6) When a piece rate or incentive plan is in operation,

1 piece rates or an explanation of the incentive plan formula shall be provided to employees. An
2 accurate production record shall be maintained by the employer. (B) Every employer shall
3 semimonthly or at the time of each payment of wages furnish each employee, either as a
4 detachable part of the check, draft, or voucher paying the employee's wages, or separately, an
5 itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period
6 for which the employee is paid; (3) the name of the employee or the employee's social security
7 number; and (4) the name of the employer, provided all deductions made on written orders of the
8 employee may be aggregated and shown as one item."

9 126. Sections 7(C) of IWC Wage Order No. 9 further requires that: "All required
10 records shall be in the English language and in ink or other indelible form, properly dated,
11 showing month, day, and year and shall be kept on file by the employer for at least three (3)
12 years at the place of employment or at a central location within the State of California. An
13 employee's records shall be available for inspection by the employee upon reasonable request."

14 127. Labor Code § 226.3 also instructs that: "Any employer who violates subdivision
15 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
16 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
17 employee for each violation in a subsequent citation, for which the employer fails to provide the
18 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
19 Section 226. The civil penalties provided for in this section are in addition to any other penalty
20 provided by law."

21 128. Defendants failed to provide Employees with accurate itemized wage statements
22 in writing, as required by the Labor Code. The wage statements given to Employees failed to
23 accurately account for wages, overtime, and premium pay for deficient meal periods and rest
24 breaks. The wage statements provided to Employees were confusing and required Employees to
25 engage in discovery and refer to outside sources to verify whether their pay was correct and
26 potentially resulting in a miscalculation by the Aggrieved Employees. The wage statements also
27 failed to account for unpaid wages and overtime due to off the clock work. Additionally, the
28 wage statements given to Employees failed to accurately account for premium pay for

1 deficiently provided meal periods and rest breaks, as discussed above. Throughout the liability
2 period, Defendants intentionally failed to furnish to Plaintiff and the Aggrieved Employees,
3 upon each payment of wages, itemized statements accurately showing: (1) gross wages earned,
4 (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
5 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
6 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
7 only the last four digits of his or her social security number or an employee identification
8 number other than a social security number, (8) the name and address of the legal entity that is
9 the employer and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
11 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally
12 failed to provide Plaintiff and the Aggrieved Employees with such timely and accurate wage and
13 hour statements.

14 129. Plaintiff and the Aggrieved Employees suffered injury as a result of Defendants’
15 knowing and intentional failure to provide them with the wage and hour statements as required
16 by law and are presumed to have suffered injury and entitled to penalties under Labor Code §
17 226(e), as the Defendants have failed to provide a wage statement, failed to provide accurate
18 and complete information as required by any one or more of items Labor Code § 226 (a)(1) to
19 (9), inclusive, and the Plaintiff and Aggrieved Employees cannot promptly and easily determine
20 from the wage statement alone one or more of the following: (i) The amount of the gross wages
21 or net wages paid to the employee during the pay period or any of the other information
22 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive,
23 (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to
24 determine the net wages paid to the employee during the pay period, (iii) The name and address
25 of the employer and, (iv) The name of the employee and only the last four digits of his or her
26 social security number or an employee identification number other than a social security
27 number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
28 reasonable person [i.e. an objective standard] would be able to readily ascertain the information

1 without reference to other documents or information.

2 130. Therefore, as a direct and proximate cause of Defendants' violations of Labor
3 Code § 226(a), Employees suffered injuries, including among other things confusion over
4 whether they received all wages owed them and the total numbers of hours they worked in a pay
5 period, the difficulty and expense involved in reconstructing pay records, and forcing them to
6 make mathematical computations to analyze whether the wages paid in fact compensated them
7 correctly for all hours worked. Labor Code § 226(e)(1) further instructs that: "An employee
8 suffering injury as a result of a knowing and intentional failure by an employer to comply with
9 subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for
10 the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee
11 for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
12 thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

13 131. In addition to these statutory penalties under Section 226(e), Plaintiff also seeks
14 civil penalties under the PAGA against Defendants for providing inaccurate wage statements
15 and also for failure to maintain accurate Employee records during the applicable statutory
16 period.

17 132. To this end, Labor Code § 1174 provides that: "Every person employing labor in
18 this state shall:....(c) Keep a record showing the names and addresses of all employees
19 employed and the ages of all minors. (d) Keep, at a central location in the state or at the plants or
20 establishments at which employees are employed, payroll records showing the hours worked
21 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
22 piece rate paid to, employees employed at the respective plants or establishments. These records
23 shall be kept in accordance with rules established for this purpose by the commission, but in any
24 case shall be kept on file for not less than three years..."

25 133. Labor Code § 1174.5 further provides that: "Any person employing labor who
26 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate
27 and complete records required by subdivision (d) of Section 1174, or to allow any member of
28 the commission or employees of the division to inspect records pursuant to subdivision (b) of

1 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

2 134. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
3 policies, practices and business acts of Defendants to the extent provided by law as a
4 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of
5 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

6 135. As alleged in more detail above, Defendants violated the above statutes by failing
7 to maintain accurate payroll records showing the hours worked daily by, and the wages paid to,
8 Plaintiff and other aggrieved non-exempt employees. Defendants’ payroll records pertaining to
9 Plaintiff and other aggrieved non-exempt employees fail to accurately reflect all regular and
10 overtime hours worked, overtime hourly rates, actual gross wages and net wages earned, meal
11 periods, and premium wages owed for denied lawful meal and rest periods.

12 136. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
13 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
14 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
15 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
16 employee per pay period for the initial violation and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation.”

18 137. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
19 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
20 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
21 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
22 Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§]
23 226,... subdivisions (c) and (d) of Section 1174,... 1198,... 1199,...” among the provisions of
24 the Code that allow for recovery of civil penalties pursuant to the PAGA.

25 138. Labor Code § 1198 also requires that: “The maximum hours of work and the
26 standard conditions of labor fixed by the commission shall be the maximum hours of work and
27 the standard conditions of labor for employees. The employment of any employee for longer
28 hours than those fixed by the order or under conditions of labor prohibited by the order is

1 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
2 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
3 of the provisions for which a representative PAGA action may be commenced under Labor Code
4 § 2699.3.

5 139. As such, Defendants are liable for PAGA penalties resulting from their failure to
6 provide accurate itemized wage statements to Plaintiff and the Aggrieved Employees and failure
7 to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§
8 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage
9 Order(s), and Plaintiff seeks all civil and statutory penalties and wages available and applicable
10 under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys’ fees and
11 costs pursuant to Labor Code § 2699(g)(1).

12 140. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3.
13 For the purposes of this cause of action, recovery of civil penalties will therefore also include the
14 recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3).

15 **SIXTH CAUSE OF ACTION**

16 **PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES**

17 **OWED IN VIOLATION OF LABOR CODE §§ 203, 204**

18 **(Against All Defendants)**

19 141. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
20 in full herein.

21 142. Plaintiff and numerous Aggrieved Employees are no longer employed by
22 Defendants; they either quit Defendants’ employ or were fired therefrom. Plaintiff seeks civil
23 penalties against Defendants for their failure to timely pay Plaintiff and the Aggrieved Employee
24 all wages owed during the applicable statutory period. Defendants failed to pay these Employees
25 all wages due and certain at the time of termination or within seventy-two (72) hours of
26 resignation. The wages withheld from these Employees by Defendants remained due and owing
27 for more than thirty (30) days from the date of separation from employment.

28 143. Under Labor Code § 201, “(a) If an employer discharges an employee, the wages

1 earned and unpaid at the time of discharge are due and payable immediately....” Under Labor
2 Code § 202, “(a) If an employee not having a written contract for a definite period quits his or
3 her employment, his or her wages shall become due and payable not later than 72 hours
4 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit,
5 in which case the employee is entitled to his or her wages at the time of quitting.”

6 144. Labor Code § 203 further provides: “(a) If an employer willfully fails to pay,
7 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
8 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
9 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
10 therefor is commenced; but the wages shall not continue for more than 30 days....”

11 145. Under Labor Code § 2926, “[a]n employee who is not employed for a specified
12 term and who is dismissed by his employer is entitled to compensation for services rendered up
13 to the time of such dismissal.” Also, under Labor Code § 2927, “[a]n employee who is not
14 employed for a specified term and who quits the service of his employer is entitled to
15 compensation for services rendered up to the time of such quitting.”

16 146. Labor Code § 204(a) also instructs that: “All wages, ...earned by any person in
17 any employment are due and payable twice during each calendar month, on days designated in
18 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
19 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
20 month during which the labor was performed, and labor performed between the 16th and the last
21 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
22 following month.” Under Labor Code § 204(d), “[t]he requirements of this section shall be
23 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
24 wages are paid not more than seven calendar days following the close of the payroll period.” As
25 detailed above, Defendants maintained a consistently applied policy and practice of not paying
26 all wages earned between the 1st and 15th days of a month between the 16th and 26th day and
27 failed to pay all wages earned between the 16th and the last day of the month between the 1st
28 and 10th day of the following month. Defendants similarly failed to pay all wages earned by not

1 more than seven calendar days following the close of the payroll period.

2 147. Defendants failed to pay Plaintiff and the Aggrieved Employees without
3 abatement, all wages as defined by applicable California law. Among other things, these
4 Employees were not paid all regular and overtime wages, including by Defendants failing to pay
5 for all hours worked or requiring off the clock work and Defendants failed to pay premium
6 wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint.
7 Defendants' failure to pay said wages within the required time was willful within the meaning of
8 Labor Code § 203.

9 148. All wages due and owing to Plaintiff and the Aggrieved Employees, including as
10 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
11 wages required by Labor Code § 1194 and other sections became due and payable to each
12 employee in each pay period that he or she was not provided with a meal period or rest period or
13 paid straight or overtime wages to which he or she was entitled.

14 149. Under Labor Code § 210, "(a) In addition to, and entirely independent and apart
15 from, any other penalty provided in this article, every person who fails to pay the wages of each
16 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall
17 be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100)
18 for each failure to pay each employee. (2) For each subsequent violation, or any willful or
19 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
20 percent of the amount unlawfully withheld."

21 150. Similarly, Section 20 of IWC Wage Order No. 9 addresses further penalties as
22 follows: "(A) In addition to any other civil penalties provided by law, any employer or any other
23 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
24 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
25 underpaid employee for each pay period during which the employee was underpaid in addition
26 to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations —
27 \$100.00 for each underpaid employee for each pay period during which the employee was
28 underpaid in addition to an amount which is sufficient to recover unpaid wages. (3) The affected

employee shall receive payment of all wages recovered.”

151. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the policies, practices and business acts of Defendants to the extent provided by law as a Representative Action, including reasonable attorneys’ fees and costs, and underpayment of wages as permitted by Labor Code § 558, as a separate civil penalty provided by the PAGA statute.

152. Defendants violated the above statutes by failing to promptly pay Plaintiff and other aggrieved non-exempt employees all earned wages due each and every pay period, as well as immediately upon termination and/or within 72 hours upon resignation.

153. During the applicable statutory period, Defendants violated, and continue to violate, California Labor Code § 204 and Section 20 of IWC Wage Order No. 9 by failing to compensate Plaintiff and other aggrieved hourly employee overtime premium wages for overtime hours worked, premium pay for denied off-duty meal and rest periods (wages), and other wages due to Plaintiff and other Aggrieved Employees each pay period, as alleged in more detail herein.

154. Further, Defendants violated, and continue to violate, California Labor Code §§ 201-204, 2926, and 2927 by failing to compensate employees, including Plaintiff and other Aggrieved Employees no longer working for Defendants, for services rendered up to the time of dismissal or quitting.

155. Labor Code § 2699(f)(2) states: “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 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

156. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,

1 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
2 Section 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§]
3 201,... 202, 203, ...204,... 558,...1198,....” among the provisions of the Code that allow for
4 recovery of civil or statutory penalties pursuant to the PAGA.

5 157. Defendants are liable for PAGA penalties resulting from their failure to timely
6 pay all wages owed to Plaintiff and other Aggrieved Employees at the time of their termination
7 of separation from employment, and failure to timely pay all wages owed twice monthly.
8 Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative
9 Action, all civil and statutory penalties authorized for violations under Labor Code §§ 201, 201,
10 203, 204, 1197.5, 1198, 2926, and 2927, and Plaintiff seeks all civil penalties available and
11 applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and
12 Section 20 of the applicable IWC Wage Order(s), and also for attorneys’ fees and costs pursuant
13 to Labor Code § 2699(g)(1).

14 158. Aggrieved Employees may recover penalties for Defendants’ failure to timely
15 pay all wages owed, as the civil penalty under California Labor Code 558 applies to any
16 provision regulating hours and days of work in any Order, and Plaintiff has fully complied with
17 procedures specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery
18 of civil penalties will therefore also include the recovery of underpaid wages pursuant to Labor
19 Code §§ 558(a)(1)-(3), in an amount according to proof and subject to Court approval.

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff prays for the following relief:

22 1. On the First Cause of Action: For recovery of all civil penalties for unpaid
23 minimum and regular wages for all hours worked during the applicable statutory period as
24 permitted by California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections
25 2(K), 4, and 20 of the applicable IWC Wage Order(s), including civil and statutory penalties
26 available and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199,
27 2699(f)(2), and 2699.5, to be distributed in the manner provided by Labor Code § 2699(i), with
28 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an

1 amount according to proof and subject to approval by the Court;

2 2. On the Second Cause of Action: For recovery of all civil penalties for unpaid
3 overtime and premium wages for all hours worked during the applicable statutory period as
4 permitted by Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20
5 of the applicable IWC Wage Order(s), including all civil and statutory penalties available and
6 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
7 2699.5, with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees
8 in an amount according to proof and subject to approval by the Court;

9 3. On the Third Cause of Action: For recovery of all civil penalties for non-compliant
10 meal periods during the applicable statutory period and failure to pay one-hour of premium wages
11 to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and
12 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil and statutory
13 penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections
14 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code §
15 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
16 Employees in an amount according to proof and subject to approval by the Court.

17 4. On the Fourth Cause of Action: For recovery of all civil penalties for non-
18 compliant rest periods during the applicable statutory period and failure to pay one-hour of
19 premium wages to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7,
20 512, 558, and 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil
21 and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including
22 sections 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor
23 Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
24 Employees in an amount according to proof and subject to approval by the Court.

25 5. On the Fifth Cause of Action: For recovery of all civil penalties for inaccurate wage
26 statements Defendants provided to Plaintiff and the Aggrieved Employees and failure to maintain
27 employment records as permitted by Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections
28 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), including all civil and statutory

1 penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and
2 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of
3 recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount
4 according to proof and subject to approval by the Court;

5 6. On the Sixth Cause of Action: For recovery of all civil penalties pursuant to Labor
6 Code § 2699(f)(2) where a statutory civil penalty is not provided, for failing to timely pay all
7 wages owed and to timely pay them to Aggrieved Employees upon termination or separation from
8 employment as permitted under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and 2927,
9 including all civil and statutory penalties, and wages, available and applicable under Labor Code
10 §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage
11 Order(s), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery
12 to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to
13 proof and subject to approval by the Court;

14 7. For reasonable attorneys' fees and costs of suit to the extent permitted under the
15 PAGA and applicable Labor Code sections, including Labor Code § 2699(g)(1), in an amount
16 according to proof and subject to Court approval.

17 8. For pre-judgment and post-judgment interest at the legal rate of 10% in the State of
18 California on readily calculable monies due to the extent provided by California law and
19 authorized under the PAGA, in an amount according to proof;

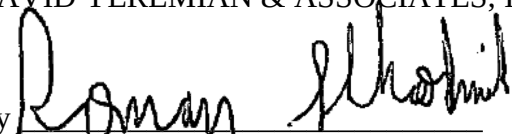
20 9. For the Court to otherwise determine the appropriate remedy to compensate
21 Plaintiff and each Aggrieved Employee as required to promote fairness and justice; and

22 10. For such other and further relief as this Court may deem necessary, proper and/or
23 just.

24 DATED: December 9, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

25
26 By



David Yeremian

Roman Shkodnik

Attorneys for Plaintiff EDUARDO

VELAZQUEZ

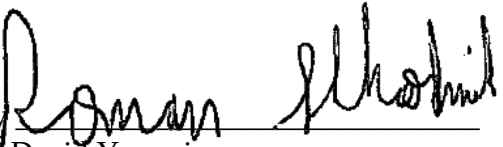
and all similarly aggrieved employees

DEMAND FOR JURY TRIAL

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

DATED: December 9, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian

Roman Shkodnik

Attorneys for Plaintiff EDUARDO
VELAZQUEZ

and all similarly aggrieved employees

EXHIBIT A

THE LAW OFFICES OF

**DAVID YEREMIAN
& ASSOCIATES INC**

2540 FOOTHILL BLVD STE 201
LA CRESCENTA CA 91214

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

September 15, 2022

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>(copy by certified mail to the below listed Defendants)

Carlucci Transport dba Carlucci Transport Inc.

Martin Martin

Agent for Service of Process

26456 Ave 18 1/2

Madera, CA 93638

Certified Mail Tracking Number: 7019 2970 0000 5059 9470

Carlucci Transport dba Carlucci Transport Inc

1487 13th St.

Firebaugh, CA 93622

Certified Mail Tracking Number: 7019 2970 0000 5059 9463

Re: Labor Code § 2699 Penalties

Velazquez v. Carlucci Transport dba Carlucci Transport Inc.

Gentlepersons:

This office represents Plaintiff Eduardo Barajas Velazquez (“Plaintiff”) and other aggrieved employees (collectively “Aggrieved Employees”) for the violation of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 1670.5, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

Plaintiff wishes to bring a representative action on behalf of himself and the State of California against Defendants Carlucci Transport dba Carlucci Transport Inc., a California corporation, and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees. Plaintiff is also informed and believes that there are other aggrieved employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically,

Aggrieved Employees were forced to work “pre-shift” and “post-shift” without compensation by conducting pre-trip inspections, preparing trucks for trips, unloading trucks post-trip, performing other post trip duties such as completing reports. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also failed to pay Aggrieved Employees proper overtime wages. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week including “pre-shift” and “post-shift”. However, Aggrieved Employees were not always paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Plaintiff and Aggrieved Employees were not paid for whatever rest breaks they were provided.

As a result, Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226, and Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation.

Furthermore, Defendants also failed to pay Aggrieved Employees. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis and maintain proper employment records in accordance with California law.

Plaintiff and Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendants failed to

pay Aggrieved Employees the minimum wage for all hours worked. Aggrieved Employees were forced to work “pre-shift” and “post-shift” without compensation by preparing trucks for trips, unloading trucks post-trip, and completing reports. Additionally, Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees. Thus, Aggrieved Employees were required to work hours without wages. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover penalties. Plaintiff and the Aggrieved Employees are entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions.

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week including “pre-shift” and “post-shift” hours. However, Aggrieved Employees were not always paid overtime wages for hours worked in excess of 8 hours a day in violation of Labor Code § 510 and applicable Wage Orders. As discussed above Aggrieved Employees were required to work without compensation by preparing trucks for trips, unloading trucks post-trip, performing other post trip duties such as completing reports.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours and ten (10) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes for the first (5) hours and for the tenth hour as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Specifically, Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees “premium pay,”

i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Aggrieved Employees were not paid for whatever rest breaks they were provided. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for all hours worked as described above, unpaid wages, overtime, premium pay for deficiently provided rest breaks, and unlawfully received or collected wages, discussed above. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation

in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of himself and the other Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Section 1174 requires employers to keep records showing payroll records and the hours worked daily by and the wages paid to employees. Failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, *et seq.*

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Velazquez v. Carlucci Transport dba Carlucci Transport Inc.

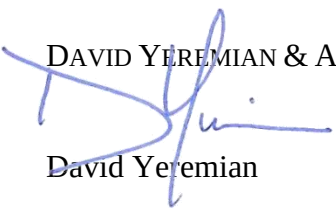
September 15, 2022

Page 6 of 6

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Above listed Defendants by Certified Mail