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MAYEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LEONEL CARBALLO MAYEN, an
individual, on behalf of himself and all
other aggrieved employees,

Plaintiff,

vs.

ELSA LOGISTICS LLC, a California
limited liability company; MAHAN
KARIMIAN, an individual; and DOES 1
through 10 inclusive,

Defendants.

Case No. **22STCV40437**

COMPLAINT FOR:

- 1. Failure to Pay All Wages;**
- 2. Meal Period Violations;**
- 3. Rest Period Violations;**
- 4. Failure to Reimburse Business Expenses;**
- 5. Wage Statement Violations;**
- 6. Waiting Time Penalties;**
- 7. Unfair Business Practices;**
- 8. PAGA Civil Penalties (Labor Code § 2698
et seq.).**

1 Plaintiff LEONEL CARBALLO MAYEN ("Plaintiff"), as an individual and as a
2 representative under the Private Attorneys General Act ("PAGA"), hereby brings this Complaint
3 against Defendants ELSA LOGISTICS LLC ("ELSA"), a California limited liability company;
4 MAHAN KARIMIAN, an individual ("KARIMIAN"); and DOES 1-10 inclusive (collectively,
5 "Defendants"), and hereby alleges with knowledge with respect to his own acts and on
6 information and belief as to other matters as follows:

7 **NATURE OF ACTION**

8 1. Plaintiff brings individual claims to recover unpaid wages, liquidated and statutory
9 damages, treble damages, restitution, interest, reasonable attorneys' fees, costs and other sums
10 that Defendants owe to him under the California Labor Code ("Labor Code"), the Industrial
11 Welfare Commission ("IWC") Wage Orders and the California Business and Professions Code
12 ("Business and Professions Code").

13 2. Plaintiff further brings a claim under the Private Attorneys General Act of 2004,
14 codified as Labor Code § 2698 *et seq.*, to recover civil penalties, reasonable attorneys' fees, costs,
15 wages and other recoverable sums in his representative capacity as an "aggrieved employee" on
16 behalf of all other current and former aggrieved employees of Defendants ELSA and
17 KARIMIAN.

18 **JURISDICTION AND VENUE**

19 3. This Court has jurisdiction over all causes of action asserted in this Complaint
20 pursuant to the California Constitution, Article VI, Section 10.

21 4. This Court has general personal jurisdiction over ELSA because it is a California
22 limited liability company. This Court has general personal jurisdiction over KARIMIAN because
23 he resides in California.

24 5. Pursuant to California Code of Civil Procedure §§ 395 and 395.5, venue is proper
25 in this judicial district because all Defendants reside and maintain their principal place of business
26 in Los Angeles County, and/or the acts and omissions alleged in this Complaint occurred in this
27 County.

6. Any purported arbitration agreement between Plaintiff and the other Aggrieved Employees, on the one hand, and Defendants, on the other hand (which expressly provides the Federal Arbitration Act [“FAA”] and federal common law applicable to arbitration governs the interpretation and enforcement of the arbitration agreement), is expressly exempt from the FAA because Plaintiff was employed to work for Defendants as a last mile delivery driver transporting goods shipped from across the United States and abroad for Amazon and therefore was at all times relevant to this Complaint part of a “class of workers engaged in foreign or interstate commerce.” 9 U.S.C. § 1; *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 909 (2020) (last mile delivery drivers transporting packages for Amazon fall within transportation exemption to FAA).

PARTIES

7. Plaintiff LEONEL CARBALLO MAYEN is an individual residing in Los Angeles County, California. Plaintiff was employed to work for Defendants as a last mile delivery driver responsible for transporting goods shipped from across the United States and abroad for Amazon.

8. Plaintiff is an “aggrieved employee” within the meaning of the PAGA since he suffered one or more of the violations alleged in this Complaint. Plaintiff brings a claim for civil penalties and other recoverable sums under the PAGA as a representative aggrieved employee on behalf of all current and former employees of Defendants during the PAGA Period. The PAGA Period is defined as commencing from one year prior to Plaintiff’s notice of Labor Code violations to the Labor Workforce and Development Agency (“LWDA”) and certified mailing of said notice to Defendants ELSA and KARIMIAN until resolution of this action.

9. Defendants employed Plaintiff as a non-exempt hourly employee during the PAGA Period and Plaintiff's employment with Defendants ended within one (1) year of the filing of this action.

10. The “Aggrieved Employees” for purposes of the representative claim for PAGA penalties include all current and former non-exempt employees of Defendants during the PAGA Period.

11. Defendant ELSA is a California limited liability company doing business throughout the state of California with its principal place of business located in Los Angeles

1 County, California. ELSA is, and at all relevant times was, an employer subject to California state
2 wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and
3 policies of ELSA that are complained of by way of this Complaint were implemented during the
4 PAGA Period.

5 12. Defendant KARIMIAN is a member and manager of ELSA and operates the
6 ELSA. KARIMIAN is, and at all relevant times was, an employer subject to California state wage
7 and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies
8 of KARIMIAN that are complained of by way of this Complaint were implemented during the
9 four years preceding the filing of this Complaint and during the PAGA Period in violation of
10 Labor Code Sections 203, 226, 2267, 1194, and 2802 and is therefore directly liable under Labor
11 Code Sections 558 and 558.1.

12 13. Defendants continue to employ non-exempt employees within California.

13 14. Plaintiff is informed, believes and on that basis alleges, that at all relevant times
14 mentioned in this Complaint, Defendants were and are employers and/or joint employers of
15 Plaintiff and the other Aggrieved Employees as defined in and subject to the Labor Code and
16 IWC Wage Orders.

17 15. Defendant Does 1 through 10, are sued under fictitious names pursuant to Code of
18 Civil Procedure Section 474. Plaintiff will seek leave of court to amend this Complaint in the
19 event such names and identities are ascertained. Plaintiff is informed and believes, and on that
20 basis alleges, that each of the fictitiously named defendants is and/or was responsible in some
21 manner for, gave consent to, ratified, and/or authorized the conduct alleged herein, thereby
22 causing damage to Plaintiff and the other Aggrieved Employees. At all relevant times mentioned
23 in this Complaint, all defendants acted as agents of all other defendants in committing the acts
24 alleged in this Complaint.

25 16. On information and belief, Plaintiff alleges that each defendant directly or
26 indirectly, through agents or other persons or entities, employed and/or exercised control over the
27 wages, hours and working conditions of Plaintiff and the other Aggrieved Employees. Plaintiff
28 further alleges that each defendant acted in all respects pertinent to this action as the agent of the

1 other defendants, carried out in a joint scheme, plan or policy, such that that the acts of each
2 defendant are legally attributable to all other defendants. Plaintiff is informed and believes, and
3 on that basis alleges, that Defendants ELSA and KARIMIAN are alter egos of each other and in
4 all respects acted as the employers and/or joint employers of Plaintiff and the other Aggrieved
5 Employees.

6 17. At all relevant times herein, Defendants were agents of each other and acting
7 within the course and scope of their agency.

8 **FACTUAL ALLEGATIONS**

9 18. Defendants employed Plaintiff as a non-exempt employee.

10 19. Plaintiff began working for Defendants in approximately September 2022 as a
11 non-exempt hourly employee at Defendants' location in Los Angeles County, California.
12 Defendants employed Plaintiff and the other Aggrieved Employees as last mile delivery drivers
13 transporting goods shipped from across the United States and abroad for Amazon. Defendants
14 were obligated to pay Plaintiff \$17.00 per hour for training.

15 20. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
17 knowledgeable about California wage and hour law, employment and personnel practices, and the
18 requirements under California law.

19 21. Plaintiff is informed and believe, and thereon allege, that at all times mentioned
20 herein, Defendants knew or should have known that they had a duty to compensate Plaintiff and
21 the other Aggrieved Employees, and that Defendants had the financial ability to pay such
22 compensation but willfully, knowingly and intentionally failed to do so, all in order to increase
23 Defendants' profits.

24 22. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
25 pattern of wage and hour violations under the Labor Code and IWC Wage Orders.

26 23. Defendants committed the violations set forth in this Complaint against all
27 Aggrieved Employees, continuing through the present date. Defendants maintained non-
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1 compliant employment policies and practices which were applied to Plaintiff and all other
2 Aggrieved Employees.

3 **Unpaid Overtime and Minimum Wages**

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other Aggrieved Employees were entitled to receive at least
6 minimum wages, wages at their regular rate of pay, overtime wages, and double time wages, and
7 that they were not receiving minimum, regular, overtime, and double time wages for all work that
8 was required to be performed.

9 25. Plaintiff is informed and believes, and thereon alleges, Plaintiff and/or other
10 Aggrieved Employees regularly worked in excess of eight (8), 10, and/or 12 hours per workday
11 and/or 40 hours per workweek. In violation of the Labor Code, Defendants failed to pay the
12 minimum, regular, overtime, and double time rate of pay to Plaintiff and/or other Aggrieved
13 Employees for all hours worked. Defendants required Plaintiff and the other Aggrieved
14 Employees to complete work-related tasks off the clock. For example, Defendants refused to
15 compensate Plaintiff at all for training hours. In addition, Defendants rounded Plaintiff and/or the
16 other Aggrieved Employees' hours worked, thereby depriving them of wages for all hours
17 worked at the legally mandated rates. Furthermore, Defendants failed to compensate Plaintiff
18 and/or other Aggrieved Employees at the legally mandated overtime rates because Defendants did
19 not include Plaintiff and/or other Aggrieved Employees' nondiscretionary bonuses in their
20 calculation of "regular rate" for overtime purposes. Finally, Defendants did not compensate
21 Plaintiff and/or the other Aggrieved Employees for all hours worked because Plaintiff and/or the
22 other Aggrieved Employees were regularly on-duty during their meal and/or rest periods.

23 26. As a result of Defendants' failure to properly compensate Plaintiff and the other
24 Aggrieved Employees, they were underpaid wages owed (including overtime and/or double time)
25 and, in certain pay periods, compensated at a rate less than the lawful minimum wage for all
26 hours worked.

27 **Meal Period Violations**

28 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and the other Aggrieved Employees were entitled to receive a
2 timely, off-duty, uninterrupted 30-minute meal period for every five hours of work, or payment of
3 one additional hour of pay at their regular rate of pay when they did not receive a compliant meal
4 period.

5 28. In violation of the Labor Code and IWC Wage Orders, due to understaffing and
6 Defendants' fast-paced environment, Plaintiff and/or the other Aggrieved Employees were often
7 required to take their meal periods late or work through their meal periods. In addition,
8 Defendants failed to authorize and permit and/or make available to Plaintiff and/or the other
9 Aggrieved Employees second meal periods when they worked more than 10 hours. Further,
10 Defendants rounded meal periods that were provided to Plaintiff and/or other Aggrieved
11 Employees.

12 29. Defendants also failed to pay Plaintiff and/or the other Aggrieved Employees one
13 additional hour of pay at their regular rate of pay when Plaintiff and/or the other Aggrieved
14 Employees did not receive a compliant meal period. Plaintiff is informed and believes, and
15 thereon alleges, that Defendants maintained no mechanism for the payment of meal period
16 premiums in the event a lawful meal period was not provided.

17 **Rest Period Violations**

18 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Aggrieved Employees were entitled to receive a 10-minute,
20 off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or
21 payment of one additional hour of pay at their regular rate of pay when they were not permitted to
22 take a compliant rest period. Defendants failed to implement a compliant rest break policy and/or
23 practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. For example, rest
24 breaks were not authorized, permitted, or otherwise made available to Plaintiff and/or the other
25 Aggrieved Employees due to understaffing and Defendants' fast-paced environment which
26 required other Aggrieved Employees to deliver hundreds of packages per day for Defendants'
27 benefit.

28 31. Despite these violations, Defendants failed to pay Plaintiff and/or the other

1 Aggrieved Employees one additional hour of pay at their regular rate of pay when they did not
2 receive a compliant rest break. Plaintiff is informed and believes, and thereon alleges, that
3 Defendants maintained no mechanism for the payment of premiums in the event a lawful rest
4 period was not provided.

5 **Unreimbursed Business Expenses:**

6 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and the other Aggrieved Employees were entitled to
8 reimbursement for their necessary work-related business expenses.

9 33. In violation of the Labor Code and IWC Wage Orders, Plaintiff and/or the other
10 Aggrieved Employees were required to use their personal cell phones, without reimbursement, to
11 carry out their job duties, including for GPS Navigation, scanning packages, conducting
12 administrative requirements such as clocking in/out, and communicating with supervisors and
13 other team members. In addition, Plaintiff and/or the other Aggrieved Employees were also
14 required to clean, wash, and iron their uniforms, which were the Defendants' property, without
15 any reimbursement for the costs of cleaning, washing, and ironing.

16 **Waiting Time Penalties**

17 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and the other Aggrieved Employees who separated from their
19 employment with Defendants during the statutory period were entitled to timely payment of all
20 wages due. In violation of the Labor Code, Plaintiff and the other Aggrieved Employees did not
21 receive payment of all wages owed upon separation within the permissible time period due to,
22 *inter alia*, Defendants' failure to pay all wages, meal and rest period premiums, and reimburse
23 expenses. Specifically, Defendants failed to, and expressly refused to, pay all wages owed to
24 Plaintiff for training within 72 hours of his resignation.

25 **Wage Statement Violations**

26 35. Plaintiff is informed and believes, and thereon alleges that Defendants knew or
27 should have known that Plaintiff and the other Aggrieved Employees were entitled to receive
28 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,

1 Plaintiff and the other Aggrieved Employees were not furnished with complete and accurate wage
2 statements that show all of the information required by Labor Code Section 226, including, but
3 not limited to, the gross and net wages earned, the total hours worked, all applicable hourly rates
4 in effect during the pay period, the corresponding number of hours worked at each hourly rate,
5 and the entity name(s).

6 **Failure to Keep Accurate Records**

7 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Defendants were required to keep accurate records of the hours worked
9 by Plaintiff and the other Aggrieved Employees. In violation of the Labor Code, Defendants
10 failed to maintain accurate records of hours worked by Plaintiff and the other Aggrieved
11 Employees due to the unlawful practices described above.

12 37. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
13 described throughout this Complaint were willful.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES**

16 **(Against All Defendants)**

17 38. Plaintiff incorporates by reference the allegations in all paragraphs in this
18 Complaint as though fully set forth herein.

19 39. At all relevant times, Defendants had a duty to comply with Labor Code Sections
20 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and
21 California Code of Regulations.

22 40. Labor Code Section 204 and the IWC Wage Orders require timely payment of all
23 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
24 designated in advance by the Defendants as the regular paydays. All wages earned in excess of
25 the normal work period must be paid no later than the payday for the next regular payroll period.

26 41. Labor Code Section 206 provides that in case of a dispute over wages, the
27 Defendants shall pay, without condition and promptly under the Labor Code all wages conceded
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1 due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance
2 claimed.

3 42. At all times relevant, Labor Code Section 510, and applicable sections of the
4 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
5 Defendants and continued to apply to her employment with Defendants. Labor Code Section 510
6 and applicable provisions of the California Code of Regulations and IWC Wage Orders state that
7 any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must
8 be paid at one and one-half times the employee's regular rate of pay. Any work performed in
9 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
10 rate of pay for an employee.

11 43. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be
12 paid to all employees in California for all hours worked. Local minimum wage ordinances, may
13 provide for higher minimum wage rates that must be paid to employees for all hours worked in
14 those locales where each local ordinance is in effect. Labor Code Section 1197 affirms that it is
15 unlawful to pay less than the state or local minimum wage, whichever is higher, for any hour of
16 work.

17 44. Labor Code Section 1194 provides that any employee receiving less than the legal
18 minimum wage or the legal overtime compensation applicable to the employee is entitled to
19 recover in a civil action the unpaid balance of the full amount of the minimum wage or overtime
20 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

21 45. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an
22 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

23 46. Labor Code Section 1198 prohibits Defendants from employing for longer hours
24 or less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as
25 otherwise set by the Labor Commissioner.

26 47. Plaintiff is informed, believes, and thereon alleges that at all relevant times,
27 Plaintiff regularly worked more than eight (8) hours, 10, and/or 12 hours per workday, more than
28 40 hours per workweek, and/or more than eight (8) hours on the seventh consecutive day of work.

48. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendants failed to pay Plaintiff all wages for hours worked (including minimum, regular, overtime, and double time wages), failed to pay overtime and double time wages at the proper rates of pay, auto-deducted and rounded meal periods, unlawfully deducted wages, and required off-the-clock work without compensation, among other things.

49. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has sustained and continues to sustain damages, including loss of earnings including minimum, regular, overtime, and double time compensation due, in an amount to be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

50. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct described herein, have committed an “intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within the meaning of California Penal Code Section 487m. Specifically, Defendants have intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff under the law. Plaintiff is thus entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to California Penal Code Section 496(c).

51. WHEREFORE, Plaintiff requests relief as described herein and below.

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(Against All Defendants)

52. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint as though fully set forth herein.

53. Labor Code § 512(a) prohibits employers from employing any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) uninterrupted minutes. Further, employers may not employ an employee for a work period of more than ten

1 (10) hours per day without providing the employee with a second meal period of not less than
2 thirty (30) minutes.

3 54. At all relevant times, Plaintiff regularly worked more than five (5) hours and 10
4 hours per workday without being provided an uninterrupted, off-duty 30-minute meal period
5 since Plaintiff's meal periods were late, interrupted, short, and/or on-duty.

6 55. During the relevant time period, Defendants failed to pay Plaintiff meal period
7 premiums for noncompliant meal periods pursuant to Labor Code Section 226.7(b) and the
8 applicable IWC Wage Order.

9 56. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow
10 Plaintiff to take meal breaks pursuant to Labor Code § 512(a). As a result, Defendants are liable
11 to Plaintiff for premium compensation of one hour of pay at the employee's regular rate for each
12 workday that the meal period was not provided pursuant to Labor Code § 226.7, in an amount to
13 be established at trial.

14 57. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
15 conduct described herein, have committed an "intentional theft of wages in an amount greater
16 than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred
17 fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-
18 month period" within the meaning of California Penal Code Section 487m. Specifically,
19 Defendants have intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor
20 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
21 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
22 due to Plaintiff under the law. Plaintiff is informed, believes, and thereon alleges that meal period
23 premiums are wages, gratuities, benefits, or other compensation within the meaning of California
24 Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages
25 and costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

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1 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
2 due to Plaintiff under the law. Plaintiff is informed, believes, and thereon alleges that rest period
3 premiums are wages, gratuities, benefits, or other compensation within the meaning of California
4 Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages
5 and costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 **(Against All Defendants)**

9 64. Plaintiff hereby re-alleges and incorporates by reference the allegations in all
10 paragraphs in this Complaint as though fully set forth herein.

11 65. At all relevant times, Defendants had a duty to comply with Labor Code Sections
12 2800 and 2802. Defendants failed to comply with these indemnification and reimbursement
13 requirements with respect to Plaintiff.

14 66. Labor Code Section 2800 requires employers to indemnify employees for losses
15 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff
16 failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses,
17 Defendants were obligated to nevertheless indemnify Plaintiff due to their own negligence.

18 67. Labor Code Section 2802(a) requires that employers indemnify and reimburse
19 employees for all business expenses, which are defined as all necessary expenditures or losses
20 incurred by the employee in direct consequence of the discharge of the employee's duties or
21 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
22 Section 2802(b) authorizes employees to recover in a court action interest which shall accrue
23 from the date on which the employee incurred the necessary expenditure or loss. Labor Code
24 Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
25 Code Section 2802, to also recover attorneys' fees and costs.

26 68. During the relevant time period, Defendants required Plaintiff to incur out-of-
27 pocket expenses without reimbursement, such as, using his personal cell phone, without
28 reimbursement, to carry out their job duties, and communicating with supervisors and other team

1 members.

2 69. As a result of Defendants' failure to indemnify and reimburse Plaintiff for all
3 business and work-related costs, expenditures, losses and expenses in accordance with Labor
4 Code Sections 2800 and 2802, Plaintiff is entitled to recover the full unreimbursed balance of
5 reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along
6 with attorneys' fees and costs in amounts that will be established at trial.

7 **FIFTH CAUSE OF ACTION**

8 **WAGE STATEMENT VIOLATIONS**

9 **(Against All Defendants)**

10 70. Plaintiff incorporates by reference the allegations in all paragraphs in this
11 Complaint as though fully set forth herein.

12 71. Labor Code § 226(a) requires employers, at the time of each payment of wages, to
13 furnish each employee with an accurate statement itemizing, among other things: (1) gross wages
14 earned; (2) the total hours worked by the employee; (3) all deductions; (4) net wages earned; (5)
15 the inclusive dates of the period for which the employee is paid; (6) the name of the employee
16 and his or her social security number (last four digits); (7) the name and address of the legal entity
17 that is the employer; and (8) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee. Labor Code § 1174
19 further requires that such payroll records be kept in a central location.

20 72. Labor Code § 226(e) further provides that if an employer knowingly and
21 intentionally fails to provide a statement itemizing, among other things, the total hours worked by
22 the employee, then the employee is entitled to recover the greater of all actual damages or fifty
23 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent
24 violation, up to four thousand dollars (\$4,000).

25 73. As alleged herein, Defendants failed to pay all wages, reimbursements, and
26 premiums. Thus, Defendants have knowingly and intentionally failed to comply with the Labor
27 Code on each and every wage statement that should have been provided to Plaintiff by failing to
28 provide itemized wage statements to Plaintiff that accurately reported, among other things, the

gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

74. By failing to keep accurate records and provide such records to Plaintiff as required by Labor Code §§ 226(a) and 1174, Defendants have injured Plaintiff and made it difficult to calculate the unpaid wages earned and due to Plaintiff. Moreover, Defendants' failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175.

75. Because of Defendants' willful failure to provide Plaintiff with accurate records as required by Labor Code § 226(a), Plaintiff is entitled to damages pursuant to Labor Code § 226(e) in an amount to be established at trial.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

76. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint as though fully set forth herein.

77. Labor Code § 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge as required pursuant to Labor Code § 201, the employer is liable to the employee for penalties.

78. At the time of Plaintiff's termination of employment, Plaintiff had unpaid wages, reimbursements, and premium pay for missed meal and rest periods outstanding.

79. Defendants have willfully, unfairly, fraudulently, or unlawfully failed to pay Plaintiff compensation owed upon termination of employment pursuant to Labor Code § 201. Plaintiff's employment with Defendants terminated but Defendants failed to pay her any of the unpaid wages, reimbursements, and premiums due and owing to her at the time of her termination. As a result, Defendants are liable to Plaintiff for waiting time penalties pursuant to Labor Code § 203 in an amount to be determined at trial, according to proof.

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SEVENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Against All Defendants)

80. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint as though fully set forth herein.

81. The Unfair Competition Law as codified in California Business and Professions Code §17200, *et seq.* (“UCL”) defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice.

82. A business act or practice is “illegal” under the UCL if it violates any statute, regulation, or ordinance

83. A business practice is “unfair” under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

84. A business act or practice is “fraudulent” under the UCL if it is “likely to deceive” members of the general public.

85. Plaintiff is informed and believes that Defendants’ unlawful failure to timely pay wages, meal and rest periods or compensation, provide accurate itemized wage statements, reimburse expenses, among other things, constitute violations of the UCL.

86. Defendants’ failure to pay Plaintiff in a lawful manner as set forth above and below is fraudulent and deceptive and constitutes an ongoing and continuous unfair business practice within the meaning of the UCL. Members of the public have been deceived in the past, and will be in the future continue to be deceived, by these continuous unfair business practices.

87. The illegal conduct alleged in this Complaint is continuing, and there is no indication that Defendants will not continue such activity in the future. Plaintiff alleges that if Defendants are not enjoined from their illegal conduct, they will continue to fail to provide rest periods and meal breaks or provide appropriate compensation in-lieu thereof.

88. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by the UCL. Thus, on behalf of himself and the general

1 public, Plaintiff seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned
2 profits as a result of Defendants' alleged acts or omissions described in this Complaint.
3 Furthermore, Plaintiff requests attorneys' fees and costs pursuant to Code of Civil Procedure §
4 1021.5.

5 89. Plaintiff is informed and believes, and thereon allege, that unless restrained and
6 ordered to pay restitution and disgorge profits derived from said unfair and unlawful business
7 practices, Defendants will continue to engage in the alleged acts and/or omissions described in
8 this Complaint.

9 **EIGHTH CAUSE OF ACTION**

10 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

11 **(Against All Defendants)**

12 90. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
13 though fully set forth herein.

14 91. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
15 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
16 commissions, boards, agencies or employees for violation of the code may, as an alternative, can
17 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
18 herself and other current or former employees pursuant to the procedures specified in Labor Code
19 Section 2699.3.

20 92. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under
21 PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged
22 to have been violated, and after receiving notice from the LWDA of its intention not to
23 investigate or after 65 days have passed without notice from the LWDA.

24 93. On October 10, 2022, Plaintiff gave written notice of the specified provisions
25 alleged to have been violated, including the facts and theories to support the alleged violations, as
26 required by Labor Code Section 2699.3. This written notice was provided via certified mail to
27 Defendants ELSA and KARIMIAN and to the LWDA by electronically filing the notice via the
28 Department of Industrial Relations' website. More than 65 days have passed since Plaintiff

1 submitted his PAGA notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff
2 has exhausted the procedural requirements under Labor Code Section 2699.3 as to Defendants
3 ELSA and KARIMIAN and is therefore able to pursue a claim for penalties on behalf of himself
4 and all other Aggrieved Employees under PAGA.

5 94. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code Section 2699(f) imposes upon Defendants ELSA and
7 KARIMIAN a penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay
8 period for the initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee
9 per pay period for each subsequent pay period in which Defendants ELSA and KARIMIAN
10 violated these provisions of the Labor Code.

11 95. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
12 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
13 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2,
14 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222,
15 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section
16 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231,
17 subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and
18 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513,
19 551, 552, 601, 602, 603, 604, 750, 7 51.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973,
20 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section
21 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections
22 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308,
23 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
24 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1,
25 1700.25, 17 00.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776,
26 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,
27 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
28 6399.7, 6400, 6401, 6401.7, 6402, and 6403.

1 96. Labor Code Section 558(a) provides “[a]ny employer or other person acting on
2 behalf of an employer 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 Welfare Commission,
4 or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the
5 Labor Code], shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
8 employee for each pay period for which the employee was underpaid.”

9 97. Labor Code Section 1197.1 provides “[a]ny employer or other person acting either
10 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
11 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
12 order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
13 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
14 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
15 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
16 pay period for which the employee is underpaid regardless of whether the initial violation is
17 intentionally committed.”

18 98. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a)
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
21 for each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
23 The civil penalties provided for in this section are in addition to any other penalty provided by
24 law.”

25 99. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
26 maintain accurate and complete payroll records showing the hours worked daily by and the wages
27 paid to employees.
28

1 100. Defendants ELSA and KARIMIAN's conduct with respect to Plaintiff and the
2 other Aggrieved Employees violates numerous Labor Code Sections including, but not limited to,
3 the following:

- 4 a. Violation of Labor Code Sections 201-204, 206, 210, 510, 558, 1194, 1197,
5 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
6 regular, and overtime wages) owed to Plaintiff and/or the other Aggrieved
7 Employees during employment and upon separation of employment as herein
8 alleged;
- 9 b. Violation of Labor Code Sections 226.7 and 512 for failure to provide meal
10 periods to Plaintiff and/or the other Aggrieved Employees and failure to pay
11 premium wages for missed meal periods as herein alleged;
- 12 c. Violation of Labor Code Sections 226.7 for failure to permit rest breaks to Plaintiff
13 and/or the other Aggrieved Employees and failure to pay premium wages for
14 missed rest periods as herein alleged;
- 15 d. Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate
16 itemized wage statements to Plaintiff and the other Aggrieved Employees as herein
17 alleged;
- 18 e. Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate
19 records regarding the employment of Plaintiff and the other Aggrieved Employees
20 as herein alleged; and
- 21 f. Violation of Labor Code Sections 2800 and 2802 for failure to reimburse business
22 expenses to Plaintiff and/or the other Aggrieved Employees as herein alleged.

23 101. As set forth above, Defendants ELSA and KARIMIAN have violated numerous
24 provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
25 Accordingly, Plaintiff also seeks the civil penalties set forth in Labor Code Sections 558 and
26 1197.1 for himself, the underpaid employees, and the State of California.

102. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violators and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other Aggrieved Employees.

103. Pursuant to Labor Code Sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections cited above.

104. Plaintiff is also entitled to attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

1. For compensatory damages and general damages according to proof with interest thereon;

2. For economic and/or special damages, and/or liquidated damages according to proof with interest thereon;

3. For other damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;

4. For prejudgment interest on all sums recovered pursuant to other compensatory damages at the legal rate from the date of injury or pursuant to California Code of Civil Procedure Sections 3287 and 3289, and Labor Code Section 218.6;

5. For all damages and penalties available for violations of the Labor Code;

6. For waiting time penalties pursuant to Labor Code Section 203;

7. For liquidated damages pursuant to Labor Code Section 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For treble damages pursuant to Penal Code Section 496(c);

10. For injunctive relief, disgorgement, and restitution of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code Sections 17200 *et seq.*;

1 11. For attorneys' fees pursuant to Labor Code Sections 226, 1194, 2802, Code of
2 Civil Procedure Section 1021.5, Penal Code Section 496(c), and any other applicable provisions
3 of law;

4 12. For costs of suit incurred; and

5 13. For any other and further relief as the Court deems just and proper.

6 WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for
7 judgment against Defendants, jointly and severally, as follows:

8 14. For civil penalties against Defendants on behalf of all Aggrieved Employees
9 pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;

10 15. For reasonable attorneys' fees and costs of suit to the extent permitted by law,
11 including pursuant to Labor Code Sections 2699(g), 2802(c) and California Code of Civil
12 Procedure Section 1021.5; and

13 16. For such other relief as the Court deems just and proper.

14
15 Dated: December 27, 2022

ALAMI LAW GROUP

16
17 By 

David Alami
Attorneys for Plaintiff LEONEL CARBALLO
MAYEN

18
19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury on all issues so triable.

22
23 Dated: December 27, 2022

ALAMI LAW GROUP

24
25 By 

David Alami
Attorneys for Plaintiff LEONEL CARBALLO
MAYEN