

Assigned for all purposes to: Pomona Courthouse South, Judicial Officer: Peter Hernandez

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Attorney for Plaintiff,

BENJAMIN MONCAYO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES – EAST DISTRICT – POMONA COURTHOUSE SOUTH**

BENJAMIN MONCAYO, an individual, on
behalf of himself, other current and former
aggrieved employees, and the State of
California, as a private attorneys general,

Plaintiff,

vs.

CARPE CARMA LLC d/b/a PAMONA
VALLEY TOWING, a California limited
liability company; MARC ALLEN WEISS, an
individual; EDWARD CARPINELLI, an
individual; and DOES 1 through 25, Inclusive,

Defendants.

Case No.: **23PSCV00270**

COMPLAINT FOR ALL DAMAGES FOR:

1. Violations of *Cal. Labor Code* §§ 1194 & 1194.2
2. Violations of *Cal. Labor Code* § 510
3. Violations of *Cal. Labor Code* § 226.7
4. Violations of *Cal. Labor Code* §§ 512 & 226.7
5. Violations of *Cal. Labor Code* § 226.2
6. Violations of *Cal. Labor Code* §§ 204 & 210
7. Violations of *Cal. Labor Code* § 226
8. Violations of *Cal. Labor Code* §§ 201; 203 & 208
9. Violations of *Cal. Bus. & Prof. Code* § 17200
10. Violations of *Cal. Labor Code* § 2698, *et seq.*

**COMPLAINT FOR PENALTIES AND
INJUNCTIVE RELIEF FOR:**

11. Violations of *Cal. Labor Code* § 226(c)
12. Violations of *Cal. Labor Code* § 1198.5

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1 Plaintiff BENJAMIN MONCAYO, as an individual and on behalf of (1) himself as an
2 aggrieved employee, (2) other current and former aggrieved employees, and (3) the State of
3 California as a private attorneys general, under the Labor Code Private Attorneys General Act of
4 2004, Section 2698, *et seq.*, hereby complains, alleges and states as follows:

5 **PARTIES**

6 1. At all times relevant herein, Defendant CARPE CARMA LLC d/b/a PAMONA VALLEY
7 TOWING was and is a California Limited Liability Company doing business as PAMONA
8 VALLEY TOWING (“DEFENDANT CARPE”) in the State of California, throughout the
9 County of Los Angeles.

10 2. Defendant MARC ALLEN WEISS (“DEFENDANT WEISS”) is/was a/the manager and/or
11 member for DEFENDANT CARPE, acting within a supervisory and/or managerial role, in the
12 State of California, County of Los Angeles.

13 3. DEFENDANT WEISS was and is a “managing and/or supervisory agent” of DEFENDANT
14 CARPE, as the term was defined by the California Supreme Court in *White v. Ultramar, Inc.*
15 (1999) 21 Cal.4th 563 and Section 3294 of the Code Civil Procedure.

16 4. Defendant EDWARD CARPINELLI (“DEFENDANT CARPINELLI”) is/was a/the manager
17 and/or member for DEFENDANT CARPE, acting within a supervisory and/or managerial role,
18 in State of California, County of Los Angeles.

19 5. DEFENDANT CARPINELLI was and is a “managing and/or supervisory agent” of
20 DEFENDANT CARPE, as the term was defined by the California Supreme Court in *White v.*
21 *Ultramar, Inc.* (1999) 21 Cal.4th 563 and Section 3294 of the Code Civil Procedure.

22 6. DEFENDANT WEISS, DEFENDANT CARPINELLI, and DOES 1 through 25 are hereinafter
23 collectively referred to as “INDIVIDUAL DEFENDANTS.”

24 7. DEFENDANT CARPE, INDIVIDUAL DEFENDANTS, and DOES 1 through 25 are hereinafter
25 collectively referred to as “DEFENDANTS.”

26 8. At all times relevant herein, Plaintiff BENJAMIN MONCAYO (“PLAINTIFF”) was employed
27 by and worked for DEFENDANTS, and each of them, in the State of California, throughout the
28 County of Los Angeles.

1 9. Hereinafter, any and all of DEFENDANTS' current and former non-exempt California
2 employees, including PLAINTIFF, are collectively referred to as "AGGRIEVED
3 EMPLOYEES."

4 10. The true names and capacities, whether individual, corporate, associate, or otherwise, of
5 Defendants named herein as DOES 1 through 25, Inclusive, and each of them, are unknown to
6 PLAINTIFF, who therefore brings this action against said DOE Defendants.

7 11. PLAINTIFF is informed and believes and based thereupon alleges that at all relevant times
8 herein mentioned each of the DEFENDANTS and DOES 1 through 25, inclusive, were the
9 agents, servants and/or employees, partner, predecessor-in-interest, successor-in-interest,
10 beneficiary, executor, fictitious business name, trustee, subsidiary, related/affiliated entity,
11 assignee, assignor, legal representative, general administrator, member, co-conspirator, and/or
12 joint venturer or occupied other relationships with each of the other named DEFENDANTS and
13 at all times herein mentioned acted within the course and scope of said agency and/or
14 employment and/or other relationship and each other DEFENDANTS have ratified, consented
15 to, had actual and/or constructive knowledge of, was bound by, approved or, and/or failed to
16 prevent the acts of their agents, employees, predecessor-in-interest, successor-in-interest,
17 trustees, trustors, and/or representatives, and that each actively, passively, acquiesced,
18 participated in, allowed, aided and abetted, assisted, acted, or failed to act, with one another in
19 the commission of the wrongdoing alleged in this Complaint.

20 21 **JURISDICTION AND VENUE**

22 12. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
23 stated herein.

24 13. The above-captioned Court has jurisdiction over the subject matter of this action and has
25 personal jurisdiction over DEFENDANTS, which/who: (1) conduct(s) business in the State of
26 California; (2) hire(s) and maintain(s) employees in the State of California; and (3) avails
27 itself/themselves of the protection of the laws of the State of California.

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1 14. Venue in the above-captioned Court is proper because DEFENDANTS committed the acts
2 complained of herein throughout the County of Los Angeles.

3 **FACTUAL ALLEGATIONS**

4 15. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
5 stated herein.

6 16. DEFENDANTS' website (<https://www.pvtow.com/#2>) describes itself/themselves this way:

7 "Pomona Valley Towing Inc. is a family-owned and operated company in the city of Pomona
8 since 1964. With over 50 years experience in the towing industry, we serve the residents,
9 businesses and a wide variety of commercial accounts in Los Angeles, San Bernardino, Orange
10 and Riverside counties. In addition, we provide towing services for the cities of Pomona and
11 Claremont, SANBAG FSP program, and the Cal Poly Police Dept. We have proudly been in
12 business since 1964."

13 17. It further states: "We specialize in light, medium and heavy duty towing and equipment
14 transport service and maintain a fleet of 15 fully insured and State inspected trucks to provide for
15 all of your towing, recovery and equipment moving needs."

16 18. It also states: "Our equipment is modern, GPS-equipped, diversified and well-maintained. It
17 consists of the following: Light Duty Flatbeds & Wheel Lifts, Medium Duty Flatbeds &
18 Wreckers, Heavy Duty Wreckers [and] 2 Landoll-Lowbed Tractor & Trailers."

19 19. Finally, DEFENDANTS' website states in part: "We have built our reputation by providing
20 safe, prompt, and courteous service with 'ROUND THE CLOCK' 24 hours a day/seven days a
21 week, state of the art dispatching. This reliable service has allowed us to have over 90% of our
22 commercial business from core customers that we have been doing business with for decades."

23 20. PLAINTIFF was hired by DEFENDANTS in or around 2004 as a non-exempt tow truck driver
24 and general laborer.

25 21. DEFENDANTS terminated PLAINTIFF's employment in or around late-August 2022.

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1 22. During the entirety of PLAINTIFF's employment with DEFENDANTS, every other week,
2 PLAINTIFF worked on-the-clock Mondays through Fridays, 8:00 a.m. to 5:00 p.m. and was on-
3 call (and forced to work off-the-clock) Mondays and Thursdays from 5:00 p.m. through the
4 following workdays at 7:00 a.m.

5 23. The other weeks, PLAINTIFF worked on-the-clock Mondays through Thursdays, 8:00 a.m. to
6 5:00 p.m. and was on-call (and forced to work off-the-clock) Tuesdays and Wednesdays from
7 5:00 p.m. through the following workdays at 7:00 a.m., as well as, from Fridays at 5:00 p.m.
8 until the following Mondays at 7:00 a.m.

9 24. During PLAINTIFF's weekday, non on-call shifts, DEFENDANTS only made meal periods
10 available to PLAINTIFF after 1:00 p.m., thus, DEFENDANTS never made compliant meal
11 periods available to PLAINTIFF during the weekdays.

12 25. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANTS would
13 only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business
14 purposes. Despite this, DEFENDANTS would nevertheless reduce his daily working hours by
15 thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week.

16 26. When DEFENDANTS failed to make lawful meal periods available to PLAINTIFF,
17 DEFENDANTS never paid PLAINTIFF one hour of pay at his regular rate of pay.

18 27. Similarly, during PLAINTIFF's weekday, non on-call shifts, DEFENDANTS never made all
19 lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job
20 without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANTS
21 failed to make lawful rest periods available to PLAINTIFF, DEFENDANTS never paid
22 PLAINTIFF one hour of pay at his regular rate of pay.

23 28. DEFENDANTS also failed to pay PLAINTIFF significant amounts of regular wages, non-
24 productive wages, rest and recovery wages, as well as, time and one-half and double overtime
25 wages when he was on-call during weekdays, and every other weekend.

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1 29. When PLAINTIFF was on-call, DEFENDANTS instructed him not to clock-in or out, *i.e.*, not to
2 use the timekeeping system at all. DEFENDANTS further instructed PLAINTIFF to have
3 immediate access to the tow truck during all times he was on-call, but that he could not use the
4 tow truck for personal reasons, *e.g.*, PLAINTIFF could not take DEFENDANTS' truck to a
5 restaurant to share a meal with friends/family.

6 30. As a result of the preceding, PLAINTIFF became a prisoner of his own home, tethered to the
7 tow truck and subject to the control of DEFENDANTS during all hours that he was on-call.
8 Despite this, DEFENDANTS did not pay PLAINTIFF a penny for any of his non-productive on-
9 call hours, instead it only paid him the commission/piece rate pay he earned from the various tow
10 and tow-related jobs assigned to him during his on-call hours. DEFENDANTS identify
11 PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements.

12 31. DEFENDANTS' failure to pay PLAINTIFF for any and all the non-productive hours he was
13 subject to DEFENDANTS' control resulted in DEFENDANTS failing to pay PLAINTIFF the
14 following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery
15 wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANTS also
16 failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include
17 all necessary wages when calculating PLAINTIFF's regular rate of pay.

18 32. PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
19 EMPLOYEES were/are subjected to all the herein-described unpaid/underpaid minimum,
20 rest/recovery and/or overtime wages. PLAINTIFF is further informed and believes and thereon
21 alleges that all other AGGRIEVED EMPLOYEES were/are also subjected to DEFENDANTS'
22 unlawful meal and rest period policies described herein, including never being paid meal and rest
23 period penalties.

24 33. As a result of DEFENDANTS' herein-described unlawful company-wide policies, PLAINTIFF
25 and all other AGGRIEVED EMPLOYEES were/are not paid all wages they earn twice during
26 each calendar month, and DEFENDANTS willfully failed to pay PLAINTIFF, and pay all other
27 AGGRIEVED EMPLOYEES that resign/ed or were/are terminated, all wages owing at the end
28 of their employment.

1 34. Additionally, as a result of DEFENDANTS' herein-described unlawful company-wide policies,
2 DEFENDANTS knowingly and intentionally failed/fail to furnish PLAINTIFF and all other
3 AGGRIEVED EMPLOYEES itemized wage statements showing their accurate (1) number of
4 hours worked, including non-productive hours, (2) hours of compensable rest and recovery
5 periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal
6 period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned.
7 DEFENDANTS' knowing and intentional failure caused PLAINTIFF injury because
8 PLAINTIFF could not promptly and easily determine from the wage statements alone his gross
9 wages and/or net wages

10 35. All the herein-described *California Labor Code* violations and violations of California law,
11 were/are violated, or were/are caused to be violated by the owners and operators of
12 DEFENDANT CARPE, Marc Allen Weiss and Edward Carpinelli, *i.e.*, INDIVIDUAL
13 DEFENDANTS. Specifically, INDIVIDUAL DEFENDANTS institute/d and implement/ed all
14 wage and hour policies under which PLAINTIFF and all other AGGRIEVED EMPLOYEES
15 are/were employed and paid.

16 36. PLAINTIFF is informed and believes and thereon alleges that any and all other current and
17 former non-exempt California employees of DEFENDANTS, including non-exempt employees
18 other than those in PLAINTIFF's specific department, or specific location, *i.e.*, AGGRIEVED
19 EMPLOYEES, were/are also subjected to all of DEFENDANTS' *California Labor Code*
20 violations set forth herein. During all relevant pay periods, PLAINTIFF and all other
21 AGGRIEVED EMPLOYEES were/are paid weekly, thus, had/have weekly pay periods, and the
22 herein-described violations took/take place during each and every pay period worked by
23 PLAINTIFF and all other AGGRIEVED EMPLOYEES from at least one year back from the
24 date of this notice up to and including the present day.

25 37. On October 4, 2022, PLAINTIFF sent a written request by USPS first-class certified mail to all
26 for DEFENDANTS to produce, or give PLAINTIFF access to, PLAINTIFF's personnel file,
27 timekeeping records and itemized wage statements pursuant to *California Labor Code* sections
28 226, 247.5 and 1198.5.

1 38. The USPS never sent PLAINTIFF the return receipt attached to the October 4, 2022 records
2 request envelope, and as of the date of this pleading, the USPS's website reflects that
3 PLAINTIFF's requests are "In transit;" thus, presumably never delivered to DEFENDANTS.

4 39. Accordingly, on November 4, 2022, PLAINTIFF sent the same records requests by USPS first-
5 class certified mail to a law firm representing DEFENDANTS in this matter; thus, notifying
6 DEFENDANTS by way of their retained legal counsel of the specific records requested by
7 PLAINTIFF pursuant to *California Labor Code* sections 226, 247.5 and 1198.5.

8 40. The USPS sent PLAINTIFF the return receipt for the November 4, 2022 certified mailing of
9 these records requests, evidencing DEFENDANTS' legal counsel, thus, DEFENDANTS
10 having received the records requests.

11 41. However, as of the date of this complaint, DEFENDANTS have failed to provide PLAINTIFF
12 with, or access to, one, any or all of the records requested by PLAINTIFF.

13 **EXHAUSTION OF PROCEDURAL REQUIREMENTS**

14 42. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
15 stated herein.

16 43. On October 4, 2022, PLAINTIFF sent written notice by USPS first-class certified mail to all
17 DEFENDANTS notifying them of the specific violations set forth therein and herein, and the
18 facts and theories supporting the violations. (A true and correct copy of the October 4, 2022
19 PAGA notice is attached hereto as Exhibit 1 and is incorporated herein.)

20 44. On October 4, 2022, PLAINTIFF uploaded the same written notice electronically to
21 California's Labor and Workforce Development Agency ("LWDA").

22 45. The USPS never sent PLAINTIFF the return receipt attached to the October 4, 2022 notice's
23 envelope, and as of the date of this pleading, the USPS's website reflects that PLAINTIFF's
24 notice is "In transit;" thus, presumably never delivered to DEFENDANTS.

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1 46. Accordingly, on November 4, 2022, PLAINTIFF sent the same written notice by USPS first-
2 class certified mail to a law firm representing DEFENDANTS in this matter; thus, notifying
3 DEFENDANTS by way of their retained legal counsel of the specific violations set forth
4 therein and herein, and the facts and theories supporting the violations. (A true and correct
5 copy of the November 4, 2022 PAGA notice is attached hereto as Exhibit 2 and is incorporated
6 herein.) The USPS sent PLAINTIFF the return receipt for the November 4, 2022 certified
7 mailing, evidencing DEFENDANTS' legal counsel, thus, DEFENDANTS having received the
8 correspondence.

9 47. The LWDA provided no notice of investigation to PLAINTIFF within the statutorily required
10 period of time following October 4, 2022. As of the date of this complaint, the LWDA has
11 provided no notice of investigation to PLAINTIFF.

12 48. Thus, PLAINTIFF can commence this civil action pursuant to *California Labor Code* section
13 2699.

14 **TOLLING OF STATUTES OF LIMITATIONS**

15 49. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
16 stated herein.

17 50. Any application statute of limitation for *California Labor Code* and *California Business and*
18 *Professions Code*, are equitably tolled by virtue of PLAINTIFF's PAGA Notice.

19 51. The doctrine of equitable tolling is well-recognized in California. In *Elkins v. Derby*, the
20 Supreme Court of California stated, "Defendants' interest in being properly apprised of claims
21 against them in order that they may gather and preserve evidence is fully satisfied when
22 prospective tort intervenors file compensation claims Thus, as the Defendants were already
23 in litigation regarding the same sets of facts and circumstances, and no prejudice can be shown
24 towards the Defendants, the doctrine of equitable tolling should be recognized...." *Elkins v.*
25 *Derby*, (1974) 12 Cal.3d 410, 417.

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1 52. On November 4, 2022, PLAINTIFF sent written notice by USPS first-class certified mail to a
2 law firm representing DEFENDANTS in this matter; thus, notifying DEFENDANTS by way
3 of their retained legal counsel of the specific violations set forth therein and herein, and the
4 facts and theories supporting the violations. (See Exh. 2.) PLAINTIFF electronically uploaded
5 the same with the LWDA.

6 53. The serving and filing of PLAINTIFF's written notice to DEFENDANTS to gather any and all
7 relevant information relating to DEFENDANTS' alleged liability for violations of the
8 *California Labor Code* pertaining to PLAINTIFF's wages and hours and conditions of
9 employment. See *McDonald v. Antelope Valley Community College District*, (2008) 45 Cal. 4th
10 88, 102; *Hopkins v. Kedzierski*, (2014) 255 Cal.App4th 736,750-751; *Structural Steel*
11 *Fabricators, Inc. v. City of Orange*, (1995) 40 Cal. App.4th 459.

12 54. DEFENDANTS are not prejudiced from the filing of this Complaint because it/they had
13 sufficient time to investigate the facts giving rise to this Complaint based upon PLAINTIFF
14 serving DEFENDANTS with the written PAGA notice.

15 **FIRST CAUSE OF ACTION**

16 **Violations of *Cal. Labor Code* §§ 1194 & 1194.2**

17 **(Against All Defendants)**

18 55. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
19 herein.

20 56. At all times relevant herein, *California Labor Code* sections 1194 and 1194.2, as well as, all
21 IWC Wage Orders, are and were in full force and effect and were binding on DEFENDANTS.

22 57. "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
23 legal minimum wage or the legal overtime compensation applicable to the employee is entitled
24 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
25 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."
26 *Cal. Labor Code* § 1194(a).

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1 58. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
2 *Code* sections 1194, 1194.2 and the applicable IWC Wage Order (*i.e.*, IWC Wage Order No. 9-
3 2001, Regulating Wages, Hours and Working Conditions in the Transportation Industry).

4 59. PLAINTIFF was victim of DEFENDANTS' said violations in at least one pay period during
5 PLAINTIFF's employment with DEFENDANTS.

6 60. And PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
7 EMPLOYEES were also victim of DEFENDANTS' violations of *California Labor Code*
8 sections 1194, 1194.2 and the applicable IWC Wage Order.

9 61. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
10 violated, any provision regulating minimum wages or hours and days of work in any order of
11 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
12 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal. Lab.*
13 *Code* § 558.1(a).

14 62. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
15 violated *California Labor Code* sections 1194 and IWC Wage Orders, and/or the preceding
16 were caused to be violated by INDIVIDUAL DEFENDANTS, who were acting as the
17 manager(s) and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

18 63. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
19 liable for the damages stemming from the violations of *California Labor Code* section 1194 and
20 IWC Wage Orders.

21 64. As a proximate result of DEFENDANTS' failure to pay PLAINTIFF the minimum wages,
22 pursuant to the provisions of *California Labor Code* § 1194 and IWC Wage Orders,
23 PLAINTIFF has suffered and will continue to suffer economic damages in an amount to be
24 proven at trial.

25 65. Under *California Labor Code* Section 1194.2(a): "In any action under Section 98, 1193.6, 1194,
26 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
27 fixed by an order of the commission or by statute, an employee shall be entitled to recover
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

1 66.“[A]ny employee receiving less than the legal minimum wage or the legal overtime
2 compensation applicable to the employee is entitled to recover in a civil action the unpaid
3 balance of the full amount of this minimum wage or overtime compensation, including interest
4 thereon, reasonable attorney’s fees, and costs of suit.” *California Labor Code* § 1194.

5 67. As a proximate result of DEFENDANTS’ failure to pay PLAINTIFF’s minimum wages and
6 rest and recovery wages, PLAINTIFF has been forced to hire attorney(s) to prosecute his claims
7 herein, and have incurred and will continue to incur attorney’s fees and costs in connection
8 therewith.

9 68. PLAINTIFF prays that the Court award PLAINTIFF the unpaid balance of the full amount of
10 PLAINTIFF’s minimum wages, prejudgment interest on these unpaid wages, all civil penalties,
11 statutory penalties, monetary damages, reasonable attorney’s/s’ fees, costs, liquidated damages,
12 and any other relief available to PLAINTIFF under the *California Labor Code* and any further
13 relief that the Court deems proper as a result of DEFENDANTS’ violations.

14 **SECOND CAUSE OF ACTION**

15 **Failure to Pay Overtime Wages in Violation of *Cal. Labor Code* § 510**

16 **(Against All Defendants)**

17 69. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
18 herein.

19 70. At all times relevant herein, *California Labor Code* section 510 and all IWC Wage Orders are
20 and were in full force and effect and were binding on DEFENDANTS.

21 71. Under *California Labor Code* § 510(a), “Eight hours of labor constitutes a day’s work. Any
22 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
23 workweek and the first eight hours worked on the seventh day of work in any one workweek
24 shall be compensated at the rate of no less than one and one-half times the regular rate of pay
25 for an employee.”

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1 72. Section 3 of the applicable IWC Wage Order states in part: “. . . employees shall not be
2 employed more than eight (8) hours in any workday or more than 40 hours in any workweek
3 unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay
4 for all hours worked over 40 hours in the workweek.”

5 73. Section 3 further states: “Eight (8) hours of labor constitutes a day's work. Employment beyond
6 eight (8) hours in any workday or more than six (6) days in any workweek is permissible
7 provided the employee is compensated for such overtime at not less than: (a) One and one-half
8 (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours
9 up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked
10 on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's
11 regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for
12 all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a
13 workweek. (c) The overtime rate of compensation required to be paid to a nonexempt full-time
14 salaried employee shall be computed by using the employee's regular hourly salary as one
15 fortieth (1/40) of the employee's weekly salary.”

16 74. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
17 *Code* section 510 and the applicable IWC Wage Order.

18 75. PLAINTIFF was victim of DEFENDANTS' said violations in at least one pay period during
19 Plaintiff's employment with DEFENDANTS.

20 76. PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
21 EMPLOYEES were also victim of DEFENDANTS' violations of *California Labor Code*
22 section 510 and the applicable IWC Wage Order.

23 77. “Any employer or other person acting on behalf of an employer, who violates, or causes to be
24 violated, any provision regulating minimum wages or hours and days of work in any order of
25 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
26 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal. Lab.*
27 *Code* § 558.1(a).

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1 78. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
2 violated *California Labor Code* section 510 and IWC Wage Orders, and/or the preceding were
3 caused to be violated by INDIVIDUAL DEFENDANTS, who were acting as the manager(s)
4 and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

5 79. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
6 liable for the damages stemming from the violations of *California Labor Code* section 510 and
7 the applicable IWC Wage Order.

8 80. As a proximate result of DEFENDANTS' failure to pay PLAINTIFF his proper overtime
9 wages, pursuant to the provisions of *California Labor Code* § 510, PLAINTIFF is entitled to
10 recover from DEFENDANTS an amount equal to the wages unlawfully unpaid and interest
11 thereon.

12 81. "[A]ny employee receiving less than the legal minimum wage or the legal overtime
13 compensation applicable to the employee is entitled to recover in a civil action the unpaid
14 balance of the full amount of this minimum wage or overtime compensation, including interest
15 thereon, reasonable attorney's fees, and costs of suit." *California Labor Code* § 1194.

16 82. As a proximate result of DEFENDANTS' failure to pay PLAINTIFF's lawful overtime wages,
17 PLAINTIFF has been forced to hire attorney(s) to prosecute his claims herein, and have
18 incurred and will continue to incur attorney's fees and costs in connection therewith.

19 83. PLAINTIFF prays that the Court award PLAINTIFF the unpaid balance of the full amount of
20 PLAINTIFF's overtime wage compensation, prejudgment interest on these unpaid wages, all
21 civil penalties, statutory penalties, monetary damages, reasonable attorney's/s' fees, costs, and
22 any other relief available to PLAINTIFF under the *California Labor Code* and any further relief
23 that the Court deems proper as a result of DEFENDANTS' violations.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Make Rest Periods Available in Violation of *Cal. Labor Code* § 226.7**

26 **(Against All Defendants)**

27 84. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
28 herein.

1 85. At all times relevant herein, *California Labor Code* sections 226.7, as well as, all IWC Wage
2 Orders, are and were in full force and effect and were binding on DEFENDANTS.

3 86. Employees are entitled to a net rest period of at least ten (10) minutes per each consecutive four
4 (4) hour work period or major fraction thereof, after the first three and one-half (3½) hours
5 worked in a workday. *Cal. Lab. Code* § 226.7.

6 87. *California Labor Code* § 226.7 requires an employer to pay an additional hour of compensation
7 for each workday where an employee fails to receive a rest period for each consecutive four (4)
8 hour shift worked. *Id.* at (c).

9 88. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
10 *Code* section 226.7 and the applicable IWC Wage Order.

11 89. PLAINTIFF was victim of DEFENDANTS' said violations in at least one pay period during
12 PLAINTIFF's employment with DEFENDANTS.

13 90. And PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
14 EMPLOYEES were also victim of DEFENDANTS' violations of *California Labor Code*
15 section 226.7 and the applicable IWC Wage Order.

16 91. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
17 violated, any provision regulating minimum wages or hours and days of work in any order of
18 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
19 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal. Lab.*
20 *Code* § 558.1(a).

21 92. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
22 violated *California Labor Code* section 226.7 and the applicable IWC Wage Orders, and/or the
23 preceding were caused to be violated by INDIVIDUAL DEFENDANTS, who were acting as
24 the manager(s) and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

25 93. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
26 liable for the damages stemming from the violations of *California Labor Code* section 226.7
27 and the applicable IWC Wage Order.

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1 94. PLAINTIFF prays that the Court award PLAINTIFF the unpaid balance of the full amount of
2 PLAINTIFF'S rest period wages, prejudgment interest on these unpaid wages, all civil
3 penalties, statutory penalties, monetary damages, and any other relief available to PLAINTIFF
4 under the *California Labor Code* and any further relief that the Court deems proper as a result
5 of DEFENDANTS' violations.

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Make Meal Periods Available in Violation of *Cal. Labor Code* §§ 512 & 226.7**

8 **(Against All Defendants)**

9 95. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
10 herein.

11 96. At all times relevant herein, *California Labor Code* section 512, 226.7 as well as, all IWC
12 Wage Orders, are and were in full force and effect and were binding on DEFENDANTS.

13 97. Under *California Labor Code* Section 512(a): "An employer may not employ an employee for a
14 work period of more than five hours per day without providing the employee with a meal period
15 of not less than 30 minutes, except that if the total work period per day of the employee is no
16 more than six hours, the meal period may be waived by mutual consent of both the employer
17 and employee.

18 98. Also under *California Labor Code* Section 512(a): "An employer may not employ an employee
19 for a work period of more than 10 hours per day without providing the employee with a second
20 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
21 hours, the second meal period may be waived by mutual consent of the employer and the
22 employee only if the first meal period was not waived."

23 99. Section 11 of the IWC Wage Orders states in part: "No employer shall employ any person for a
24 work period of more than five (5) hours without a meal period of not less than 30 minutes,
25 except that when a work period of not more than six (6) hours will complete the day's work the
26 meal period may be waived by mutual consent of the employer and employee."

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1 100. Additionally, Section 11 of the IWC Wage Orders states in part: “If an employer fails to
2 provide an employee a meal period in accordance with the applicable provisions of this Order,
3 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
4 compensation for each work day that the meal period is not provided.”

5 101. “If an employer fails to provide an employee a meal or rest or recovery period in accordance
6 with a state law, including, but not limited to, an applicable statute or applicable regulation,
7 standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
8 Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the
9 employee one additional hour of pay at the employee's regular rate of compensation for each
10 workday that the meal or rest or recovery period is not provided.” *Cal. Lab. Code* § 226.7.

11 102. As set forth herein, PLAINTIFF was victim of DEFENDANTS’ violations of *California*
12 *Labor Code* sections 512, 226.7 and the applicable IWC Wage Order.

13 103. PLAINTIFF was victim of DEFENDANTS’ said violations in at least one pay period during
14 PLAINTIFF’s employment with DEFENDANTS.

15 104. And PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
16 EMPLOYEES were also victim of DEFENDANTS’ violations of *California Labor Code*
17 sections 512, 226.7 and the applicable IWC Wage Order.

18 105. “Any employer or other person acting on behalf of an employer, who violates, or causes to be
19 violated, any provision regulating minimum wages or hours and days of work in any order of
20 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
21 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal. Lab.*
22 *Code* § 558.1(a).

23 106. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
24 violated *California Labor Code* sections 512, 226.7 and the applicable IWC Wage Order, and/or
25 the preceding were caused to be violated by INDIVIDUAL DEFENDANTS, who were acting
26 as the manager(s) and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

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1 107. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
2 liable for the damages stemming from the violations of *California Labor Code* sections 512,
3 226.7 and the applicable IWC Wage Order.

4 108. PLAINTIFF prays that the Court award PLAINTIFF the unpaid balance of the full amount of
5 PLAINTIFF's meal period wages, prejudgment interest on these unpaid wages, all civil
6 penalties, statutory penalties, monetary damages, and any other relief available to PLAINTIFF
7 under the *California Labor Code* and any further relief that the Court deems proper as a result
8 of DEFENDANTS' violations.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Pay Lawful Rest and Recovery/Nonproductive Time Wages and Furnish Accurate**
11 **Wage Statements in Violation of *Cal. Labor Code* § 226.2**
12 **(Against All Defendants)**

13 109. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 110. At all times relevant herein, *California Labor Code* section 226.2 and all IWC Wage Orders,
16 are and were in full force and effect and were binding on DEFENDANTS.

17 111. "For employees compensated on a piece-rate basis during a pay period, the following shall
18 apply for that period: (1) employees shall be compensated for rest and recovery periods and
19 other non-productive time separate from any piece rate compensation." *Cal. Lab. Code* § 226.2
20 (a)(1).

21 112. "The itemized statement required by subdivision (a) of Section 226 shall, in addition to the
22 other items specified in that subdivision, separately state the following, to which the provisions
23 of Section 226 shall also be applicable: (A) The total hours of compensable rest and recovery
24 periods, the rate of compensation, and the gross wages paid for those periods during the pay
25 period. (B) Except for employers paying compensation for other nonproductive time in
26 accordance with paragraph (7), the total hours of other nonproductive time, as determined under
27 paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay
28 period." *Id.* at (a)(2)(A)-(B).

1 113. “Employees shall be compensated for rest and recovery periods at a regular hourly rate that is
2 no less than the higher of: (i) An average hourly rate determined by dividing the total
3 compensation for the workweek, exclusive of compensation for rest and recovery periods and
4 any premium compensation for overtime, by the total hours worked during the workweek,
5 exclusive of rest and recovery periods. (ii) The applicable minimum wage.” *Id.* at (a)(3)(A)(i)-
6 (ii).

7 114. “Employees shall be compensated for other nonproductive time at an hourly rate that is no less
8 than the applicable minimum wage.” *Id.* at (a)(4).

9 115. “The amount of other nonproductive time may be determined either through actual records or
10 the employer's reasonable estimates, whether for a group of employees or for a particular
11 employee, of other nonproductive time worked during the pay period.” *Id.* at (a)(5).

12 116. As set forth herein, PLAINTIFF was victim of DEFENDANTS’ violations of *California Labor*
13 *Code* section 226.2 and the applicable IWC Wage Order.

14 117. PLAINTIFF was victim of DEFENDANTS’ said violations in at least one pay period during
15 PLAINTIFF’s employment with DEFENDANTS.

16 118. And PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
17 EMPLOYEES were also victim of DEFENDANTS’ violations of *California Labor Code*
18 section 226.2 and the applicable IWC Wage Order.

19 119. “Any employer or other person acting on behalf of an employer, who violates, or causes to be
20 violated, any provision regulating minimum wages or hours and days of work in any order of
21 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
22 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal. Lab.*
23 *Code* § 558.1(a).

24 120. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
25 violated *California Labor Code* section 226.2 and the applicable IWC Wage Order, and/or the
26 preceding were caused to be violated by INDIVIDUAL DEFENDANTS, who were acting as
27 the manager(s) and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

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1 121. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
2 liable for the damages stemming from the violations of *California Labor Code* section 226.2
3 and the applicable IWC Wage Order.

4 122. “In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or
5 pension fund contributions, the court shall award reasonable attorney’s fees and costs to the
6 prevailing party if any party to the action requests attorney’s fees and costs upon the initiation
7 of the action.” *California Labor Code* § 218.5.

8 123. PLAINTIFF prays that the Court award PLAINTIFF the unpaid balance of the full amount of
9 PLAINTIFF’s nonproductive time wages, rest and recovery wages, prejudgment interest on
10 these unpaid wages, all civil penalties, statutory penalties, monetary damages, reasonable
11 attorney’s/s’ fees, costs, and any other relief available to PLAINTIFF under the *California*
12 *Labor Code* and any further relief that the Court deems proper as a result of DEFENDANTS’
13 violations.

14 **SIXTH CAUSE OF ACTION**

15 **Failure to Pay All Wages Earned Twice During a Calendar Month in Violation of *Cal. Labor***
16 ***Code* §§ 204 & 210**

17 **(Against All Defendants)**

18 124. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
19 herein.

20 125. At all times relevant herein, *California Labor Code* sections 204 and 210, as well as, all IWC
21 Wage Orders, are and were in full force and effect and were binding on DEFENDANTS.

22 126. “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by
23 any person in any employment are due and payable twice during each calendar month, on days
24 designated in advance by the employer as the regular paydays.” *California Labor Code*
25 Section 204.

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1 127. "In addition to, and entirely independent and apart from, any other penalty provided in this
2 article, every person who fails to pay the wages of each employee as provided in Sections
3 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as
4 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
5 employee. (2) For each subsequent violation, or any willful or intentional violation, two
6 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
7 unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory
8 penalty pursuant to Section 98" *California Labor Code* Section 210.

9 128. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California*
10 *Labor Code* section 204, thus, entitling him to the statutory penalties set forth in Section 210.

11 129. PLAINTIFF was victim of DEFENDANTS' said violations in at least one pay period during
12 PLAINTIFF's employment with DEFENDANTS.

13 130. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
14 violated, any provision regulating minimum wages or hours and days of work in any order of
15 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
16 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
17 *Lab. Code* § 558.1(a).

18 131. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
19 violated all herein identified *California Labor Code* sections, resulting in violations of
20 *California Labor Code* section 204, and/or the preceding were caused to be violated by
21 INDIVIDUAL DEFENDANTS, who were acting as the manager(s) and/or member(s) and as
22 managing agent(s) for DEFENDANT CARPE.

23 132. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
24 liable for the damages stemming from all herein identified violations of *California Labor Code*
25 sections, thus, they can be held liable for the penalties and twenty-five percent (25%) of unpaid
26 wages pursuant to Section 210.

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1 133. PLAINTIFF prays that the Court award PLAINTIFF all statutory penalties available under
2 *California Labor Code* section 210 and any other applicable section of the *California Labor*
3 *Code*, plus twenty-five percent (25%) of the wages unlawfully withheld by DEFENDANTS
4 and any further relief that the Court deems proper as a result of DEFENDANTS' violations.

5 **SEVENTH CAUSE OF ACTION**

6 **Failure to Furnish Accurate Wage Statements in Violation of *Cal. Labor Code* § 226**

7 **(Against All Defendants)**

8 134. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
9 herein.

10 135. At all times relevant herein, *California Labor Code* section 226 and all IWC Wage Orders, are
11 and were in full force and effect and were binding on DEFENDANTS.

12 136. DEFENDANTS, and each of them, were obligated under *California Labor Code* section 226
13 and the applicable IWC Wage Order, to keep an accurate record of the hours of labor worked by
14 PLAINTIFF and all other AGGRIEVED EMPLOYEES and to prepare and furnish PLAINTIFF
15 and all other AGGRIEVED EMPLOYEES with each payment of wages an itemized statement
16 accurately showing nine specific categories of information: "(1) gross wages earned, (2) total
17 hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable
18 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
19 deductions made on written orders of the employee may be aggregated and shown as one item,
20 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
21 the name of the employee and only the last four digits of his or her social security number or an
22 employee identification number other than a social security number, (8) the name and address
23 of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during
24 the pay period and the corresponding number of hours worked at each hourly rate by the
25 employee" *Cal. Lab. Code* § 226(a).

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1 137. "An employee suffering injury as a result of a knowing and intentional failure by an
2 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages
3 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
4 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
5 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
6 reasonable attorney's fees." *Id.* at (e)(1).

7 138. DEFENDANTS' conduct was willful, and its failure to include this information on wage
8 statements caused PLAINTIFF damage, and resulted in PLAINTIFF's inability to determine
9 whether he was paid accurately.

10 139. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California*
11 *Labor Code* section 226.

12 140. PLAINTIFF was victim of DEFENDANTS' said violations in at least one pay period during
13 PLAINTIFF's employment with DEFENDANTS.

14 141. PLAINTIFF is informed and believes and, on that basis, alleges that DEFENDANTS
15 furnished wage statements containing the same deficiencies set forth herein to all other
16 AGGRIEVED EMPLOYEES.

17 142. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
18 violated, any provision regulating minimum wages or hours and days of work in any order of
19 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
20 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal. Lab.*
21 *Code* § 558.1(a).

22 143. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
23 violated *California Labor Code* section 226 and IWC Wage Orders, and/or the preceding were
24 caused to be violated by INDIVIDUAL DEFENDANTS, who were acting as the manager(s)
25 and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

26 144. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
27 liable for the damages stemming from the violations of *California Labor Code* section 226 and
28 the applicable IWC Wage Orders.

1 145. PLAINTIFF prays that the Court award PLAINTIFF all statutory penalties available under
2 *California Labor Code* section 226 and any other applicable section of the *California Labor*
3 *Code*, as well as, an award of costs and reasonable attorney's/s' fees and any further relief that
4 the Court deems proper as a result of DEFENDANTS' violations.

5 **EIGHTH CAUSE OF ACTION**

6 ***Cal. Labor Code § 203 Statutory Penalties Based on Violations of Cal. Labor Code §§ 201 & 208***
7 **(Against All Defendants)**

8 146. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
9 herein.

10 147. At all times relevant herein, *California Labor Code* sections 201, 203 and 208, as well as, all
11 IWC Wage Orders, are and were in full force and effect and were binding on DEFENDANTS.

12 148. "If an employer discharges an employee, the wages earned and unpaid at the time of discharge
13 are due and payable immediately." *Cal. Lab. Code* § 201(a).

14 149. "Every employee who is discharged shall be paid at the place of discharge, and every
15 employee who quits shall be paid at the office or agency of the employer in the county where
16 the employee has been performing labor. All payments shall be made in the manner provided
17 by law." *Id.* at 208.

18 150. "If an employer willfully fails to pay, without abatement or reduction, in accordance with
19 Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is
20 discharged or who quits, the wages of the employee shall continue as a penalty from the due
21 date thereof at the same rate until paid or until an action therefor is commenced; but the wages
22 shall not continue for more than 30 days." *Id.* at 203(a).

23 151. "Suit may be filed for these penalties at any time before the expiration of the statute of
24 limitations on an action for the wages from which the penalties arise." *Id.* at (b).

25 152. "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or
26 pension fund contributions, the court shall award reasonable attorney's fees and costs to the
27 prevailing party if any party to the action requests attorney's fees and costs upon the initiation
28 of the action." *Id.* at 218.5.

1 153. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California*
2 *Labor Code* sections 201, 203 and 208.

3 154. And PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
4 EMPLOYEES who were discharged or resigned were victim of DEFENDANTS' violations of
5 *California Labor Code* sections 201, 202, 203 and 208.

6 155. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
7 violated, any provision regulating minimum wages or hours and days of work in any order of
8 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
9 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal. Lab.*
10 *Code* § 558.1(a).

11 156. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANTS
12 violated *California Labor Code* sections 201, 202, 203 and 208, and/or the preceding were
13 caused to be violated by INDIVIDUAL DEFENDANTS, who were acting as the manager(s)
14 and/or member(s) and as managing agent(s) for DEFENDANT CARPE.

15 157. Accordingly, DEFENDANT CARPE, as well as, INDIVIDUAL DEFENDANTS can be held
16 liable for the damages stemming from the violations of *California Labor Code* sections 201,
17 202, 203 and 208.

18 158. PLAINTIFF prays that the Court award PLAINTIFF all statutory penalties available under
19 *California Labor Code* section 203 and any other applicable section of the *California Labor*
20 *Code*, as well as, an award of costs and reasonable attorney's/s' fees and any further relief that
21 the Court deems proper as a result of DEFENDANTS' violations.

22 **NINTH CAUSE OF ACTION**

23 **Violations of *Cal. Bus. & Prof. Code* § 17200**

24 **(Against All Non-Individual Defendants)**

25 159. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
26 herein.

27 160. At all times relevant herein, *California Business and Professions Code* § 17200 *et seq.* is and
28 was in full force and effect and was binding on DEFENDANT CARPE.

1 161. The Unfair Competition Law (“UCL”), which is codified under *California Business and*
2 *Professions Code* § 17200 *et seq.* prohibits acts of “unfair competition,” including any
3 unlawful, unfair, fraudulent *or* deceptive business act *or* practice as well as “unfair, deceptive,
4 untrue or misleading advertising.”

5 162. By virtue of the direct injuries that PLAINTIFF sustained from DEFENDANT CARPE’s
6 wrongful conduct, PLAINTIFF has standing to sue in order to obtain the remedies that are
7 available to PLAINTIFF under the UCL.

8 163. The UCL authorizes injunctive relief to prevent unlawful, unfair, or fraudulent business acts
9 for practices, and both restitution and disgorgement of money or property wrongfully obtained
10 by means of such unfair competition. *Bus. & Prof. Code* § 17203.

11 164. An action may be brought under the UCL by any person, corporation or association, or by any
12 person action for the interests of itself, its members, or the general public. *Bus. & Prof. Code* §
13 17204.

14 165. A Plaintiff may bring § 17200 claim even when the underlying statutory violation does not
15 provide the Plaintiff with a private right of action. *See Manser v. Serra Foothills Public Utility*
16 *Dist.* (E.D. Cal. 2008) 2008 WL 5114619, at * 7; *Kasky v. Nike, Inc.* (2002) 27 Cal. App. 4th
17 832, 839.

18 **Unfair Conduct**

19 166. As set forth herein, DEFENDANT CARPE engaged in a pattern of unfair and unlawful
20 business practices with respect to PLAINTIFF’s employment at DEFENDANT CARPE in
21 violation of *Bus. & Prof. Code* § 17200.

22 167. DEFENDANT CARPE violated the “unfair prong” of *Cal. Bus. & Prof. Code* § 17200 by
23 engaging in the following, wrongful, improper, and unfair conduct:

- 24 a. DEFENDANT CARPE unfairly failed to pay PLAINTIFF minimum wages due;
25 b. DEFENDANT CARPE unfairly failed to pay PLAINTIFF overtime wages due;
26 c. DEFENDANT CARPE unfairly denied PLAINTIFF rest periods, and failed to pay
27 PLAINTIFF the additional hour at his regular rate for denying the rest periods;

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1 d.DEFENDANT CARPE unfairly denied PLAINTIFF meal periods, and failed to pay
2 PLAINTIFF the additional hour at his regular rate for denying the meal periods; and

3 e.DEFENDANT CARPE unfairly failed to pay PLAINTIFF non-productive time wages, and
4 rest and recovery wages due.

5 168. DEFENDANT CARPE's conduct also violated the "unfair" prong of the UCL because the
6 utility of DEFENDANT CARPE's actions and/or omissions was significantly outweighed by
7 the gravity of the harm that it imposed on employees.

8 169. Further, the public is led to believe that DEFENDANT CARPE provides a fair, safe, and
9 legally sufficient work environment for their employees and comply with California laws
10 governing Labor and Employment issues, despite the fact that both of these impressions are
11 untrue. DEFENDANT CARPE's pattern of wrongful, improper, and unlawful business
12 practices is injurious to DEFENDANT CARPE's employees and consumers alike.

13 **Unlawful Conduct**

14 170. "Unlawful" conduct under *Bus. & Prof. Code* § 17200 is any practices forbidden by law,
15 whether civil or criminal, federal or state, or municipal, statutory, regulatory, or court made.
16 *See Farmers Ins. Exchange v. Super. Ct.*, 2 Cal.4th 377, 383 (1992).

17 171. By proscribing 'any unlawful' business practice, § 17200 'borrows' violations of other laws
18 and treats them as unlawful practices that the UCL makes independently actionable. *See*
19 *Blanks v. Shaw*, 171 Cal. App. 4th 336, 363-64 (2009); *Schnall v. Hertz Corp.*, 78 Cal. App.
20 4th 1144, 1153 (2000).

21 172. DEFENDANT CARPE violated the "unlawful" prong of *Cal. Bus. & Prof. Code* § 17200 as
22 follows:

23 a. Violations of *Cal. Labor Code* § 1194;

24 b. Violations of *Cal. Labor Code* § 510;

25 c. Violations of *Cal. Labor Code* § 226.7;

26 d. Violations of *Cal. Labor Code* §§ 512 & 226.7; and

27 e. Violations of *Cal. Labor Code* § 226.2.

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1 173. The violation of these laws serves as unlawful predicate acts which have resulted in injury in
2 fact and loss of money and property to PLAINTIFF for purposes of *Business and Professions*
3 *Code* §§17200 *et seq.*

4 174. PLAINTIFF is entitled to restitutionary damages which constitutes or results from all unpaid
5 minimum, rest and recovery, and overtime wages, the additional hours of pay at PLAINTIFF's
6 regular rate of pay for DEFENDANT CARPE's failure to provide meal and rest periods, plus
7 prejudgment interest thereon and any further relief that the Court deems proper as a result of
8 DEFENDANT CARPE's violations.

9 **TENTH CAUSE OF ACTION**

10 **Civil Penalties Pursuant to *Cal. Lab. Code* § 2698, *et seq.***

11 **(Against All Defendants)**

12 175. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
13 herein.

14 176. At all times relevant herein, *California Labor Code* § 2698, *et seq.* is and was in full force and
15 effect and were binding on DEFENDANTS.

16 177. "Notwithstanding any other provision of law, any provision of this code that provides for a
17 civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
18 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation
19 of this code, may, as an alternative, be recovered through a civil action brought by an
20 aggrieved employee on behalf of himself or herself and other current or former employees
21 pursuant to the procedures specified in Section 2699.3." *Cal. Lab. Code* § 2699(a).

22 178. "For all provisions of this code except those for which a civil penalty is specifically
23 provided, there is established a civil penalty for a violation of these provisions, as follows: . . .
24 If, at the time of the alleged violation, the person employs one or more employees, the civil
25 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for
26 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
27 period for each subsequent violation." *Id.* at (f)(2).

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1 179. “Any employee who prevails in any action shall be entitled to an award of reasonable
2 attorney’s fees and costs, including any filing fee paid pursuant to subparagraph (B) of
3 paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of
4 Section 2699.3.” *Id.* at (g)(1).

5 180. “Nothing in this part shall operate to limit an employee’s right to pursue or recover other
6 remedies available under state or federal law, either separately or concurrently with an action
7 taken under this part.”

8 181. On October 4, 2022, PLAINTIFF sent written notice by USPS first-class certified mail to all
9 DEFENDANTS notifying them of the specific violations set forth therein and herein, and the
10 facts and theories supporting the violations. (*See* Exh. 1.)

11 182. On October 4, 2022, PLAINTIFF uploaded the same written notice electronically to the
12 LWDA.

13 183. The USPS never sent PLAINTIFF the return receipt attached to the October 4, 2022 notice’s
14 envelope, and as of the date of this pleading, the USPS’s website reflects that PLAINTIFF’s
15 notice is “In transit;” thus, presumably never delivered to DEFENDANTS.

16 184. Accordingly, on November 4, 2022, PLAINTIFF sent the same written notice by USPS first-
17 class certified mail to a law firm representing DEFENDANTS in this matter; thus, notifying
18 DEFENDANTS by way of their retained legal counsel of the specific violations set forth
19 therein and herein, and the facts and theories supporting the violations. (*See* Exh. 2.) The
20 USPS sent PLAINTIFF the return receipt for the November 4, 2022 certified mailing.

21 185. The LWDA provided no notice of investigation to PLAINTIFF within the statutorily required
22 period of time following October 4, 2022. As of the date of this complaint, the LWDA has
23 provided no notice of investigation to PLAINTIFF.

24 186. Thus, PLAINTIFF can commence this civil action. *Cal. Lab. Code* § 2699.3(a)(2)(B).

25 **DEFENDANT CARPE’S CIVIL PENALTIES**

26 187. At all times relevant herein, *California Labor Code* sections 1197 and 1182.12 are and were in
27 full force and effect and were binding on DEFENDANT CARPE.

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1 188. “The minimum wage for employees fixed by the commission or by any applicable state or
2 local law, is the minimum wage to be paid to employees, and the payment of a lower wage
3 than the minimum so fixed is unlawful. This section does not change the applicability of local
4 minimum wage laws to any entity. *Cal. Lab. Code* § 1197.

5 189. “For any employer who employs 26 or more employees, the minimum wage shall be as
6 follows: . . . (C) From January 1, 2019, to December 31, 2019, inclusive,-twelve dollars (\$12)
7 per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,-thirteen dollars (\$13)
8 per hour. (E) From January 1, 2021, to December 31, 2021, inclusive,-fourteen dollars (\$14)
9 per hour. (F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars (\$15)
10 per hour.” *Id.* at 1182.12(B)(1)(C)-(F).

11 190. And “For any employer who employs 25 or fewer employees, the minimum wage shall be as
12 follows: . . . (B) From January 1, 2019, to December 31, 2019, inclusive,-eleven dollars (\$11)
13 per hour. (C) From January 1, 2020, to December 31, 2020, inclusive,-twelve dollars (\$12) per
14 hour.(D) From January 1, 2021, to December 31, 2021, inclusive,-thirteen dollars (\$13) per
15 hour.(E) From January 1, 2022, to December 31, 2022, inclusive,-fourteen dollars (\$14) per
16 hour.(F) From January 1, 2023, and until adjusted by subdivision (c)-fifteen dollars (\$15) per
17 hour.” *Id.* at 1182.12(B)(2)(B)-(F).

18 191. As set forth herein, DEFENDANT CARPE failed to pay PLAINTIFF and all other
19 AGGRIEVED EMPLOYEES all minimum wages owing; thus, each pay period, and in at least
20 one pay period, PLAINTIFF and all other AGGRIEVED EMPLOYEES were not paid
21 California’s prevailing minimum for all hours worked in violation of *California Labor Code*
22 sections 1197 and 1182.12.

23 192. At all times relevant herein, *California Labor Code* section 1197.1 is and was in full force and
24 effect and was binding on DEFENDANT CARPE.

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1 193. Under *California Labor Code* Section 1197.1(a): “Any employer or other person acting either
2 individually or as an officer, agent, or employee of another person, who pays or causes to be
3 paid to any employee a wage less than the minimum fixed by an applicable state or local law,
4 or by an order of the commission shall be subject to a civil penalty, restitution of wages,
5 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
6 Section 203”

7 194. Under *California Labor Code* Section 1197.1(a)(1): “For any initial violation that is
8 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
9 period for which the employee is underpaid. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
11 applicable penalties imposed pursuant to Section 203.

12 195. At all times relevant herein, *California Labor Code* section 1198, as well as, all IWC Wage
13 Orders, are and were in full force and effect and was binding on DEFENDANT CARPE.

14 196. *California Labor Code* section 1198 provides that “The maximum hours of work and the
15 standard conditions of labor fixed by the commission shall be the maximum hours of work and
16 the standard conditions of labor for employees. The employment of any employee for longer
17 hours than those fixed by the order or under conditions of labor prohibited by the order is
18 unlawful.”

19 197. As set forth herein, DEFENDANT CARPE employed PLAINTIFF and all other AGGRIEVED
20 EMPLOYEES for longer hours than those fixed by the order and/or under conditions of labor
21 prohibited by the applicable IWC Wage Order. Accordingly, DEFENDANT CARPE’s actions
22 were unlawful and in violation of *California Labor Code* section 1198.

23 198. At all times relevant herein, *California Labor Code* section 226.3 is and was in full force and
24 effect and was binding on DEFENDANT CARPE.

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1 199. “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
2 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
3 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
4 citation, for which the employer fails to provide the employee a wage deduction statement or
5 fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided
6 for in this section are in addition to any other penalty provided by law.” *Cal. Lab. Code* §
7 226.3.

8 200. As set forth herein, DEFENDANT CARPE violated *California Labor Code* section 226 by
9 failing to furnish accurate itemized wage statements to PLAINTIFF and all other
10 AGGRIEVED EMPLOYEES in all pay periods, and in at least one pay period. Thus,
11 PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and
12 the State of California all penalties owed by DEFENDANT CARPE pursuant to *California*
13 *Labor Code* section 226.3.

14 201. At all times relevant herein, *California Labor Code* sections 1174 and 1174.5 are and were in
15 full force and effect and was binding on DEFENDANT CARPE.

16 202. Under *California Labor Code* Section 1174(d): “Every person employing labor in this state
17 shall: . . . Keep, at a central location in the state or at the plants or establishments at which
18 employees are employed, payroll records showing the hours worked daily by and the wages
19 paid to”

20 203. Under *California Labor Code* Section 1174.5: “Any person employing labor who willfully
21 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
22 complete records required by subdivision (d) of Section 1174, or to allow any member of the
23 commission or employees of the division to inspect records pursuant to subdivision (b) of
24 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

25 204. As set forth herein, DEFENDANT CARPE failed to keep records showing all hours worked
26 and all wages paid to PLAINTIFF and all other AGGRIEVED EMPLOYEES.

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1 205. Accordingly, DEFENDANT CARPE violated *California Labor Code* section 1174 and
2 PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and
3 the State of California all penalties owed by DEFENDANT CARPE pursuant to *California*
4 *Labor Code* section 1174.5.

5 206. At all times relevant herein, *California Labor Code* section 202 is and was in full force and
6 effect and were binding on DEFENDANT CARPE.

7 207. Under *California Labor Code* Section 202(a): "If an employee not having a written contract for
8 a definite period quits his or her employment, his or her wages shall become due and payable
9 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
10 his or her intention to quit, in which case the employee is entitled to his or her wages at the
11 time of quitting. Notwithstanding any other provision of law, an employee who quits without
12 providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests
13 and designates a mailing address. The date of the mailing shall constitute the date of payment
14 for purposes of the requirement to provide payment within 72 hours of the notice of quitting."

15 208. As set forth herein, DEFENDANT CARPE willfully failed to pay PLAINTIFF and all other
16 AGGRIEVED EMPLOYEES all wages earned, thus, DEFENDANT CARPE also failed to pay
17 any other AGGRIEVED EMPLOYEES who resigned or was discharge all wages owing within
18 72 hours, or at the time and place of their discharge.

19 209. Accordingly, DEFENDANT CARPE violated *California Labor Code* sections 201, 202, 203
20 and 208 and PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED
21 EMPLOYEES and the State of California all penalties owed by DEFENDANT CARPE
22 pursuant to the PAGA.

23 210. Beginning January 1, 2016 *California Labor Code* section 558, as well as, all IWC Wage
24 Orders, are and were in full force and effect and was binding on DEFENDANT CARPE.

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1 211. “Any employer or other person acting on behalf of an employer who violates, or causes to be
2 violated, a section of this chapter or any provision regulating hours and days of work in any
3 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: For
4 any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
5 which the employee was underpaid in addition to an amount sufficient to recover underpaid
6 wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to an amount
8 sufficient to recover underpaid wages.” *Cal. Lab. Code* § 558(a)(1)-(2).

9 212. “The civil penalties provided for in this section are in addition to any other civil . . . penalty
10 provided by law.” *Id.* at (d).

11 213. As set forth herein, in all pay periods, and in at least one pay period, DEFENDANT CARPE
12 caused violations of *Labor Code* sections 1194, 510, 512, 226.7, 226, 2802 and 203, as well as,
13 the applicable sections of the IWC Wage Orders. PLAINTIFF and all other AGGRIEVED
14 EMPLOYEES were victims of these violations in all pay periods and in at least one pay period.
15 PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and
16 the State of California all penalties owed by DEFENDANT CARPE pursuant to *California*
17 *Labor Code* section 558.

18 214. As detailed herein, PLAINTIFF and all other AGGRIEVED EMPLOYEES were victims of
19 DEFENDANTS CARPE’s violations of the applicable IWC Wage Order and *California Labor*
20 *Code* sections 1194; 1194.2; 510; 512; 226.7; 226.2; 226; 1174; 201; 202; 203; and 208.

21 215. Based on the just-listed *California Labor Code* violations, DEFENDANT CARPE also
22 violated *California Labor Codes* sections 1197; 1182.12; and 1198.

23 216. Based on all DEFENDANTS CARPE’s herein-detailed *California Labor Code* violations,
24 PLAINTIFF, all other AGGRIEVED EMPLOYEES and the State of California are entitled to
25 civil penalties pursuant to *California Labor Code* sections 1197.1; 558; 226.3; 1174.5; and
26 2699(f)(2).

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1 **INDIVIDUAL DEFENDANTS' CIVIL PENALTIES**

2 217. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
3 herein.

4 218. Beginning January 1, 2016 *California Labor Code* section 558.1 is and was in full force and
5 effect and was binding on INDIVIDUAL DEFENDANTS.

6 219. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
7 violated, any provision regulating minimum wages or hours and days of work in any order of
8 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
9 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
10 *Lab. Code* § 558.1(a). "Nothing in this section shall be construed to limit the definition of
11 employer under existing law." *Id.* at (c).

12 220. As detailed herein, INDIVIDUAL DEFENDANTS violate/d, and/or cause/d to be violated the
13 provision regulating minimum wages or hours and days of work in the applicable IWC Wage
14 Order and *California Labor Code* sections 203, 226, 226.7 and 1194. PLAINTIFF and all
15 other AGGRIEVED EMPLOYEES were victim of the just-listed violations in all pay periods
16 and in at least one pay period.

17 221. PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and
18 the State of California all civil penalties owed by INDIVIDUAL DEFENDANTS pursuant to
19 their violations of the applicable IWC Wage order and *California Labor Code* sections 203,
20 226, 226.7 and 1194.

21 222. At all times relevant herein, *California Labor Code* section 1197.1 is and was in full force and
22 effect and was binding on INDIVIDUAL DEFENDANTS.

23 223. Under *California Labor Code* Section 1197.1(a): "Any employer or other person acting either
24 individually or as an officer, agent, or employee of another person, who pays or causes to be
25 paid to any employee a wage less than the minimum fixed by an applicable state or local law,
26 or by an order of the commission shall be subject to a civil penalty, restitution of wages,
27 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
28 Section 203"

1 224. Under *California Labor Code* Section 1197.1(a)(1): “For any initial violation that is
2 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
5 applicable penalties imposed pursuant to Section 203.

6 225. As detailed herein, INDIVIDUAL DEFENDANTS pay/paid PLAINTIFF and all other
7 AGGRIEVED EMPLOYEES, and/or cause/d PLAINTIFF and all other AGGRIEVED
8 EMPLOYEES be pay/paid wages less than the minimum fixed by an applicable state or local
9 law in violation of *California Labor Code* section 1194 and the applicable IWC Wage Order.

10 226. PLAINTIFF and all other AGGRIEVED EMPLOYEES were victim of the just-listed
11 violations in all pay periods and in at least one pay period.

12 227. PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and
13 the State of California all civil penalties owed by INDIVIDUAL DEFENDANTS pursuant to
14 their violations of the applicable IWC Wage order and *California Labor Code* section 1194.

15 228. Beginning January 1, 2016 *California Labor Code* section 558, as well as, all IWC Wage
16 Orders, are and were in full force and effect and was binding on INDIVIDUAL
17 DEFENDANTS.

18 229. “Any employer or other person acting on behalf of an employer who violates, or causes to be
19 violated, a section of this chapter or any provision regulating hours and days of work in any
20 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: For
21 any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
22 which the employee was underpaid in addition to an amount sufficient to recover underpaid
23 wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages.” *Cal. Lab. Code* § 558(a)(1)-(2).

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230. As detailed herein, INDIVIDUAL DEFENDANTS violate/d, and/or cause/d to be violated the provision regulating hours and days of work in the applicable IWC Wage Order and *California Labor Code* sections 510 and 512. PLAINTIFF and all other AGGRIEVED EMPLOYEES were victim of the just-listed violations in all pay periods and in at least one pay period.

231. PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and the State of California all penalties owed by INDIVIDUAL DEFENDANTS pursuant to their violations of the applicable IWC Wage order and *California Labor Code* sections 510 and 512.

232. As detailed herein, PLAINTIFF and all other AGGRIEVED EMPLOYEES were victims of INDIVIDUAL DEFENDANTS violating/causing to be violated various provisions of the applicable IWC Wage Order and *California Labor Code* sections 203, 226, 226.7, 1194, 510 and 512.

233. Based on the just-listed *California Labor Code* violations, INDIVIDUAL DEFENDANTS also violated *California Labor Codes* sections 1197; 1182.12; and 1198.

234. Based on INDIVIDUAL DEFENDANTS violating/causing to be violated various provisions of the applicable IWC Wage Order and *California Labor Code* violations herein-detailed, PLAINTIFF, all other AGGRIEVED EMPLOYEES and the State of California are entitled to civil penalties pursuant to *California Labor Code* sections 1197.1; 558; 226.3; 1174.5; and 2699(f)(2).

235. PLAINTIFF prays that the Court award all civil penalties for PLAINTIFF, all other AGGRIEVED EMPLOYEES and the State of California, as well as, reasonable attorney's/s' fees and costs incurred in this action, and any filing fee paid in this action and any further relief that the Court deems proper as a result of DEFENDANT CARPE's violations.

236. PLAINTIFF prays that the Court award all civil penalties for PLAINTIFF, all other AGGRIEVED EMPLOYEES and the State of California, as well as, reasonable attorney's/s' fees and costs incurred in this action, and any filing fee paid in this action and any further relief that the Court deems proper as a result of INDIVIDUAL DEFENDANTS' violations.

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ELEVENTH CAUSE OF ACTION

Penalties and Injunctive Relief for Violation of *Cal. Labor Code* § 226(c)

(Against All Defendants)

237. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

238. At all times relevant herein, *California Labor Code* section 226 is and was in full force and effect and was binding on DEFENDANTS.

239. “An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer.” *Cal. Lab. Code* § 226(b).

240. “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” *Cal. Lab. Code* § 226(c).

241. “A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” *Cal. Lab. Code* § 226(f).

242. “An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.” *Cal. Lab. Code* § 226(h).

243. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal. Lab. Code* § 558.1(a). “Nothing in this section shall be construed to limit the definition of employer under existing law.” *Id.* at (c).

1 244.As detailed herein, INDIVIDUAL DEFENDANTS violate/d, and/or cause/d to be violated
2 *California Labor Code* section 226, thus, INDIVIDUAL DEFENDANTS and DEFENDANT
3 CARPE can be held liable for this violation.

4 245.As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
5 *Code* section 226(c).

6 246.PLAINTIFF prays that the Court award PLAINTIFF all penalties from DEFENDANTS and
7 injunctive relief to ensure compliance with this section, and an award of costs and reasonable
8 attorney's/s' fees and any further relief that the Court deems proper as a result of
9 DEFENDANTS' violations.

10 **TWELFTH CAUSE OF ACTION**

11 **Penalties and Injunctive Relief for Violation of *Cal. Labor Code* § 1198.5**

12 **(Against All Non-Individual Defendants)**

13 247.PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 248.At all times relevant herein, *California Labor Code* section 1198.5 is and was in full force and
16 effect and was binding on DEFENDANTS.

17 249.*California Labor Code* section 1198.5, subdivision (b) mandates than an employer who
18 receives a written or oral request from an employee or former employee to inspect records
19 pursuant to that section "shall" comply with the request within 30 days. *Cal. Lab. Code* §
20 1198.5(b).

21 250. "If an employer fails to permit a current or former employee, or his or her representative, to
22 inspect or copy personnel records within the times specified in this section, or times agreed to
23 by mutual agreement as provided in this section, the current or former employee or the Labor
24 Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the
25 employer." *Id.* at (k).

26 251."A current or former employee may also bring an action for injunctive relief to obtain
27 compliance with this section, and may recover costs and reasonable attorney's fees in such an
28 action." *Id.* at (l).

1 252. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
2 *Code* section 1198.5.

3 253. Accordingly, DEFENDANTS can be held liable for the damages stemming from the violations
4 of *California Labor Code* section 1198.5.

5 254. PLAINTIFF prays that the Court award PLAINTIFF all penalties from DEFENDANTS and
6 injunctive relief to ensure compliance with this section, and an award of costs and reasonable
7 attorney's/s' fees and any further relief that the Court deems proper as a result of
8 DEFENDANTS' violations.

9 **PRAYERS FOR RELIEF**

10 WHEREFORE, Plaintiff BENJAMIN MONCAYO prays for judgment for Plaintiff
11 BENJAMIN MONCAYO as an individual and as an aggrieved employee, and on behalf of all
12 AGGRIEVED EMPLOYEES and the State of California against Defendant CARPE CARMA LLC
13 d/b/a PAMONA VALLEY TOWING, Defendant MARC ALLEN WEISS, Defendant EDWARD
14 CARPINELLI, and Defendant DOES 1 through 25 (collectively "DEFENDANTS"), in an amount
15 according to proof, but not less than \$5,000,000.00 based on DEFENDANTS' herein-detailed
16 violations as follows:

- 17 1. All actual, consequential and incidental financial losses, unpaid wages, and restitution,
18 together with prejudgment interest;
- 19 2. Additional compensatory and/or general damages;
- 20 3. All statutory and civil penalties and relief allowed under IWC Wage Order No. 9-2001, and
21 the *California Labor Code*;
- 22 4. Reasonable attorneys' fees, costs, and filing fees paid;
- 23 5. Post-judgment interest according to all applicable provisions of law;
- 24 6. Any and all other costs and fees incurred and recoverable as a result of the above-captioned
25 action; and

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1 7. Any additional, further relief as the Court deems proper as a result of DEFENDANTS'
2 herein-detailed violations.

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4 Dated: January 30, 2023

TWOMEY LAW, P.C.

5
6 BY: _____


J.B. Twomey
Attorney for Plaintiff,
BENJAMIN MONCAYO

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9
10 **DEMAND FOR JURY TRIAL**

11 BENJAMIN MONCAYO hereby demands a trial by jury for all causes of action set forth
12 herein that are entitled to a trial by jury.

13
14 Dated: January 30, 2023

TWOMEY LAW, P.C.

15
16 BY: _____

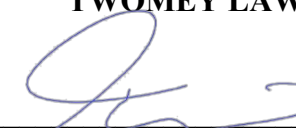

J.B. Twomey
Attorney for Plaintiff,
BENJAMIN MONCAYO

EXHIBIT 1

J.B. Twomey Law

10866 Wilshire Boulevard, Floor 4 • Los Angeles, California 90024

Email: jb@jbtwomeylaw.com

Phone: 310.980.6357

Facsimile: 818.937.6897

October 4, 2022

SENT VIA FIRST CLASS CERTIFIED MAIL TO:

Carpe Carma LLC D/B/A Pomona Valley Towing
1731 E. Mission Blvd.
Pomona, California 91766

Re: ***California Labor Code Private Attorneys General Act of 2004 Notice***
Benjamin Moncayo v. Carpe Carma LLC D/B/A Pomona Valley Towing; Marc
Allen Weiss; Edward Carpinelli
LWDA Case No.: Unassigned
Court Case No.: Unassigned

To Whom it May Concern/Cameron L. Weiss:

This Notice is made and served pursuant to the *California Labor Code Private Attorneys General Act of 2004*, codified in *California Labor Code 2698, et seq.* (hereinafter referred to as “PAGA”). Benjamin Moncayo (hereinafter referred to as “PLAINTIFF”), on behalf of himself, the State of California, and on behalf of any and all other current and former non-exempt employees of Carpe Carma LLC D/B/A Pomona Valley Towing; Marc Allen Weiss; Edward Carpinelli; and DOES 1 through 25 (hereinafter collectively referred to as “DEFENDANT”) is informed and believes and thereon alleges, DEFENDANT has and is violating, and/or owes civil penalties pursuant to the following *California Labor Code* sections: 1197; 1182.12; 1194; 1194.2; 1197.1; 510; 204.3; 512; 226.7; 226.2; 204; 210; 1198; 1199; 558; 226; 226.3; 1174; 1174.5; 201; 202; 203; 208; 558.1; and 2699(f)(2).

DEFENDANT’s website (<https://www.pvtow.com/#2>) describes itself this way:

Pomona Valley Towing Inc. is a family-owned and operated company in the city of Pomona since 1964. With over 50 years experience in the towing industry, we serve the residents, businesses and a wide variety of commercial accounts in Los Angeles, San Bernardino, Orange and Riverside counties. In addition, we provide towing services for the cities of Pomona and Claremont, SANBAG FSP program, and the Cal Poly Police Dept. We have proudly been in business since 1964.

We specialize in light, medium and heavy duty towing and equipment transport service and maintain a fleet of 15 fully insured and State inspected trucks to provide for all of your towing, recovery and equipment moving needs.

Our equipment is modern, GPS-equipped, diversified and well-maintained. It consists of the following: Light Duty Flatbeds & Wheel Lifts, Medium Duty Flatbeds & Wreckers, Heavy Duty Wreckers [and] 2 Landoll-Lowbed Tractor & Trailers.

We have built our reputation by providing safe, prompt, and courteous service with 'ROUND THE CLOCK' 24 hours a day/seven days a week, state of the art dispatching. This reliable service has allowed us to have over 90% of our commercial business from core customers that we have been doing business with for decades.

PLAINTIFF implores the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") and DEFENDANT alike to investigate every aspect of the herein detailed violations, and any others that may exist, as they pertain to PLAINTIFF and any and all of DEFENDANT's current and former non-exempt California employees. Hereinafter, any and all of DEFENDANT's current and former non-exempt California employees, including PLAINTIFF, are collectively referred to as "AGGRIEVED EMPLOYEES." And PLAINTIFF, as well as, any and all AGGRIEVED EMPLOYEES were, and are being subjected to, *inter alia*, DEFENDANT's herein-described violations.

PLAINTIFF is informed and believes and based thereupon alleges that at all relevant times herein mentioned each DEFENDANT and Does 1 through 25, inclusive, were the agents, servants and/or employees, partner, predecessor-in-interest, successor-in-interest, beneficiary, executor, fictitious business name, trustee, subsidiary, related/affiliated entity, assignee, assignor, legal representative, general administrator, member, co-conspirator, co-employer, integrated enterprise and/or joint venturer or occupied other relationships with each of the other named DEFENDANT and at all times herein mentioned acted within the course and scope of said agency and/or employment and/or other relationship and each other DEFENDANT has ratified, consented to, had actual and/or constructive knowledge of, was bound by, approved or, and/or failed to prevent the acts of its agents, employees, predecessor-in-interest, successor-in-interest, trustees, trustors, and/or representatives, and that each actively, passively, acquiesced, participated in, allowed, aided and abetted, assisted, acted, or failed to act, with one another in the commission of the wrongdoing alleged in this notice.

FACTS

PLAINTIFF was hired by DEFENDANT in or around 2004 as a non-exempt tow truck driver and general laborer. PLAINTIFF's employment ended in or around late-August 2022.

During the entirety of PLAINTIFF's employment with DEFENDANT, every other week, PLAINTIFF worked on-the-clock Mondays through Fridays, 8:00 a.m. to 5:00 p.m. and was on-call (and forced to work off-the-clock) Mondays and Thursdays from 5:00 p.m. through the following workdays at 7:00 a.m.

The other weeks, PLAINTIFF worked on-the-clock Mondays through Thursdays, 8:00 a.m. to 5:00 p.m. and was on-call (and forced to work off-the-clock) Tuesdays and Wednesdays

from 5:00 p.m. through the following workdays at 7:00 a.m., as well as, from Fridays at 5:00 p.m. until the following Mondays at 7:00 a.m.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. Also during PLAINTIFF's weekday, non on-call shifts, DEFENDANT never made all lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANT failed to make lawful rest periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. DEFENDANT also failed to pay PLAINTIFF significant amounts of regular wages, non-productive wages, rest and recovery wages, as well as, time and one-half and double overtime wages when he was on-call every other weekend.

When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay.

PLAINTIFF is informed and believes and thereon alleges that all AGGRIEVED EMPLOYEES were/are subjected to all the herein-described unpaid/underpaid minimum, rest/recovery and/or overtime wages. PLAINTIFF is further informed and believes and thereon alleges that all AGGRIEVED EMPLOYEES were/are also subjected to DEFENDANT's unlawful meal and rest period policies described herein, including never being paid meal and rest period penalties.

As a result of DEFENDANT's herein-described unlawful company-wide policies, PLAINTIFF and all AGGRIEVED EMPLOYEES were/are not paid all wages they earn twice during each calendar month, and DEFENDANT willfully failed to pay PLAINTIFF, and pay all AGGRIEVED EMPLOYEES that resign/ed or were/are terminated, all wages owing at the end of their employment.

Additionally, as a result of DEFENDANT's herein-described unlawful company-wide policies, DEFENDANT failed/fails to issue PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements showing their accurate (1) number of hours worked, including non-productive hours, (2) hours of compensable rest and recovery periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned.

All the herein-described *California Labor Code* violations and violations of California law, were/are violated, or were/are caused to be violated by the owners and operators of Carpe Carma LLC D/B/A Pomona Valley Towing, Marc Allen Weiss and Edward Carpinelli. Specifically, Marc Allen Weiss and Edward Carpinelli institute all wage and hour policies under which the AGGRIEVED EMPLOYEES are employed and paid.

PLAINTIFF is informed and believes and thereon alleges that any and all other current and former non-exempt California employees of DEFENDANT, including non-exempt employees other than those in PLAINTIFF's specific department, or specific location, *i.e.*, AGGRIEVED EMPLOYEES, were/are also subjected to all of DEFENDANT's *California Labor Code* violations set forth herein. During all relevant pay periods, PLAINTIFF and all AGGRIEVED EMPLOYEES were/are paid weekly, thus, had/have weekly pay periods, and the herein-described violations took/take place during each and every pay period worked by PLAINTIFF and all AGGRIEVED EMPLOYEES from at least one year back from the date of this notice up to and including the present day.

PLAINTIFF on behalf of PLAINTIFF and on behalf of the State of California and any and all AGGRIEVED EMPLOYEES seeks *California Labor Code* section 2699, *et seq.* penalties and any and all other civil penalties available to PLAINTIFF, AGGRIEVED EMPLOYEES and the State of California as a result of DEFENDANT's various violations of the *California Labor Code* and IWC Wage Order set forth herein.

DEFENDANT'S VIOLATIONS

I. DEFENDANT's Violations of California Labor Code Sections 1197, 1182.12, 1194, and 1194.2, Thus, Liability for Penalties Pursuant to Section 1197.1.

a. California Labor Code Sections 1197, 1182.12, 1194, 1194.2 and 1197.1.

Under *California Labor Code* Section 1197:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

Cal. Labor Code § 1197.

Under *California Labor Code* Section 1182.12:

Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

Cal. Labor Code § 1182.12.

Under *California Labor Code* Section 1194(a):

Notwithstanding any agreement to work for a lesser wage, 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.

Cal. Labor Code § 1194(a).

Under *California Labor Code* Section 1194.2(a):

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.

Cal. Labor Code § 1194.2(a).

Under *California Labor Code* Section 1197.1(a):

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203

Cal. Labor Code § 1197.1(a).

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Id. at (a)(1)-(2).

b. Facts and Theories Supporting DEFENDANT's Violation of *California Labor Code* Sections 1197, 1182.12, 1194, and 1194.2, Thus, Liability for Penalties Pursuant to Section 1197.1.

When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not paid California's prevailing minimum wage. To date, DEFENDANT, in violation of *California Labor Code* Sections 1197, 1182.12, 1194, 1194.2, and 1197.1 has not paid PLAINTIFF the prevailing minimum wage for all hours he worked, the liquidated damages pursuant to Section 1194.2, or civil penalties owing. PLAINTIFF is informed and believes and thereon alleges that to date, and during all relevant pay periods, DEFENDANT, in violation of *California Labor Code* Sections 1197, 1194, 1194.2, and 1197.1, has failed to all AGGRIEVED EMPLOYEES the prevailing minimum wage for all hours they worked, the liquidated damages pursuant to Section 1194.2, or civil penalties owing. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 1197, 1194, 1199, 1197.1, and provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1182.12 and 1194.2.

II. DEFENDANT's Violations of *California Labor Code* Sections 510 and 204.3, Thus, Liability for Penalties Pursuant to Section 1197.1.

a. *California Labor Code* Sections 510 and 204.3.

Under *California Labor Code* Section 510(a):

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

An employee may receive, in lieu of overtime compensation, compensating time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. If an hour of employment would otherwise be compensable at a rate of more than one and one-half times the employee's regular rate of compensation, then the employee may receive compensating time off commensurate with the higher rate."

California Labor Code Section 204.3.

Under *California Labor Code* Section 1197.1(a):

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203

Cal. Labor Code § 1197.1(a).

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Id. at (a)(1)-(2).

b. Facts and Theories Supporting DEFENDANT's Violations of *California Labor Code* Sections 510 and 204.3.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid

overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also worked hours in excess of eight (8) in any one day, and forty (40) in any one week and that, DEFENDANT, in violation of *California Labor Code* Section 510 and 204.3, failed to pay them at least one and one-half times their regular rate of pay for that overtime or provide them time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. To date, and during all relevant pay periods, DEFENDANT, in violation of *California Labor Code* Section 510, has not paid PLAINTIFF for the overtime hours he worked. PLAINTIFF is informed and believes and thereon alleges that to date, DEFENDANT, in violation of *California Labor Code* Section 510 and 204.3, has not paid any and all AGGRIEVED EMPLOYEES for the overtime hours they worked, nor gave them time off as required by law. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 510, and subdivision (c) applies to 204.3.

III. DEFENDANT's Violations of California Labor Code Sections 512 and 226.7.

a. California Labor Code Section 512.

Under *California Labor Code* Section 512(a):

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under *California Labor Code* Section 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

b. Facts and Theories Supporting DEFENDANT's Violation of *California Labor Code* Sections 512 and 226.7.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided meal periods and also not paid an hour at their regular rate of pay when they were not provided a meal period. To date, DEFENDANT, in violation of *California Labor Code* sections 512 and 226.7(c), has not paid PLAINTIFF one additional hour of pay at his regular rate of compensation for each workday that his meal period was not provided. PLAINTIFF is informed and believes and thereon alleges that to date, DEFENDANT, in violation of *California Labor Code* section 512 and 226.7(c), has not paid any and all AGGRIEVED EMPLOYEES one additional hour of pay at their regular rate of compensation for each workday that their meal period was not provided. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 512.

IV. DEFENDANT's Violations of *California Labor Code* Section 226.7.

a. *California Labor Code* Section 226.7.

Under *California Labor Code* Section 226.7(b):

An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

Pursuant to the *California Labor Code* and Wage Order 4-2001, employees are entitled to a rest period of not less than ten (10) minutes for each consecutive four (4) hour shift worked or major fraction thereof. Under *California Labor Code* Section 226.7(c), “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

b. Facts and Theories Supporting DEFENDANT’s Violation of *California Labor Code* Section 226.7.

During PLAINTIFF’s weekday, non on-call shifts, DEFENDANT never made all lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANT failed to make lawful rest periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided rest periods and also not paid an hour at their regular rate of pay when they were not provided a rest period. To date, DEFENDANT, in violation of *California Labor Code* Section 226.7(c), has not paid PLAINTIFF one additional hour of pay at his regular rate of compensation for each workday that both or either of his meal or rest periods were not provided. PLAINTIFF is informed and believes and thereon alleges that to date, DEFENDANT, in violation of *California Labor Code* Section 226.7(c), has not paid any and all AGGRIEVED EMPLOYEES one additional hour of pay at their regular rate of compensation for each workday that both or either of their meal or rest periods were not provided. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 226.7.

V. **DEFENDANT’s Violations of *California Labor Code* Section 226.2.**

a. *California Labor Code* Section 226.2.

Under *California Labor Code* Section 226.2:

Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other

nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

California Labor Code Section 226.2.

b. Facts and Theories Supporting DEFENDANT's Violation of *California Labor Code* Section 226.2.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. As a result of DEFENDANT's herein-described unlawful company-wide policies, DEFENDANT failed/fails to issue PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements showing their accurate (1) number of hours worked, including non-productive hours, (2) hours of compensable rest and recovery periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned. All the herein-described *California Labor Code* violations and violations of California law, were/are violated, or were/are caused to be violated by the owners and operators of Carpe Carma LLC D/B/A Pomona Valley Towing, Marc Allen Weiss and Edward Carpinelli. Specifically, Marc Allen Weiss and Edward Carpinelli institute all wage and hour policies under which the AGGRIEVED EMPLOYEES are employed and paid. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided accurate itemized payroll statements. Thus, for all relevant pay periods, DEFENDANT was in violation of *California Labor Code* Section 226.2 for failing to provide PLAINTIFF and any and all AGGRIEVED EMPLOYEES itemized statements. Thus, DEFENDANT is subject to the civil penalty found in Section 226.3 in addition to any other penalty provided by law. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to 226.2 and 226.3.

VI. DEFENDANT's Violations of California Labor Code Section 204, Thus, Liability for Penalties Pursuant to Section 210.

a. California Labor Code Sections 204 and 210.

“All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” *California Labor Code* Section 204.

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

California Labor Code § 210.

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 204, Thus, Liability for Penalties Pursuant to Section 210.

As set forth herein, in violation of Section 204, DEFENDANT during all relevant pay periods, failed to pay all wages earned by PLAINTIFF pursuant to *California Labor Code* sections 1197, 1182.12, 1194, 510, 512, 226.7 and 226.2 twice during each calendar month. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT also failed to pay any and all AGGRIEVED EMPLOYEES all wages earned twice during each calendar month. And, thus, DEFENDANT owes civil penalties pursuant to Section 210. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 204 and provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 210.

VII. DEFENDANT's Violations of California Labor Code Section 1198.

a. California Labor Code Section 1198.

California Labor Code section 1198 provides that “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 1198.

As set forth herein, during all relevant pay periods, DEFENDANT continuously violated the standard and conditions of labor fixed by the commission, including but not limited to its violations of *California Labor Code* sections 1197, 1182.12, 1194, 1194.2, 1197.1, 510, 512,

226.7, 226.2 and the applicable IWC Wage Order. These violations were against PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT was and is in violation of *California Labor Code* Section 1198 for continuously violating the standard conditions of labor fixed by the commission. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1198.

VIII. DEFENDANT's Violations of California Labor Code Section 1199.

a. California Labor Code Section 1199.

Under *California Labor Code* Section 1199:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Cal. Labor Code § 1199.

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 1199.

As set forth herein, during all relevant pay periods, DEFENDANT continuously required or caused PLAINTIFF to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission, including but not limited to its violations of *California Labor Code* sections 1197, 1182.12, 1194, 1194.2, 1197.1, 510, 512, 226.7, 226.2 and the applicable IWC Wage Order. These violations were against PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT was and is in violation of *California Labor Code* Section 1199 for continuously violating the standard conditions of labor fixed by the commission. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1199.

IX. DEFENDANT's Violations of California Labor Code Section 558.

a. California Labor Code Section 558.

Under *California Labor Code* Section 558:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. 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.”

Cal. Lab. Code § 558(a)(1)-(2).

b. Facts and Theories Supporting DEFENDANT’s Violation of *California Labor Code* Section 558.

As set forth herein, during all relevant pay periods, DEFENDANT continuously violated sections of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission. These violations, as set forth herein, were against PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT was and is in violation of *California Labor Code* Section 558 for continuously violating provisions regulating hours and days of work in IWC Wage Orders and owes PLAINTIFF and any and all AGGRIEVED EMPLOYEES civil penalties pursuant to Section 558. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.

X. **DEFENDANT’s Violations of *California Labor Code* Section 226, Thus, Liability for Penalties Pursuant to Section 226.3.**

a. *California Labor Code* Section 226 and 226.3.

Under *California Labor Code* Section 226(a):

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employees wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social

security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, copy includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

Cal. Lab. Code § 226(a).

Any 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 citation 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 records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Cal. Lab. Code § 226.3.

b. Facts and Theories Supporting DEFENDANT’s Violations of *California Labor Code* Section 226, Thus, Liability for Penalties Pursuant to Section 226.3.

During PLAINTIFF’s weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. Also during PLAINTIFF’s weekday, non on-call shifts, DEFENDANT never made all lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANT failed to make lawful rest periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. DEFENDANT also failed to pay PLAINTIFF significant amounts of regular wages, non-productive wages, rest and recovery wages, as well as, time and one-half and double overtime wages when he was on-call every other weekend. When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system

at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. As a result of DEFENDANT's herein-described unlawful company-wide policies, DEFENDANT failed/fails to issue PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements showing their accurate (1) number of hours worked, including non-productive hours, (2) hours of compensable rest and recovery periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided accurate itemized payroll statements, or itemized wage statements at all. Thus, for all relevant pay periods, DEFENDANT was in violation of *California Labor Code* Section 226 for failing to provide PLAINTIFF and any and all AGGRIEVED EMPLOYEES itemized statements, or accurate itemized statements. Thus, DEFENDANT is subject to the civil penalty found in Section 226.3 in addition to any other penalty provided by law. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to paragraphs (1) through (5), inclusive, (7) and (9) of subdivision (a) of *California Labor Code* Section 226 and subdivision (c) applies to 226.3.

XI. DEFENDANT's Violations of *California Labor Code* Section 1174, Thus, Liability for Penalties Pursuant to Section 1174.5.

a. *California Labor Code* Sections 1174 and 1174.5.

Under *California Labor Code* Section 1174(d): "Every person employing labor in this state shall: . . . Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to"

Under *California Labor Code* Section 1174.5:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant

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

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 1174, Thus, Liability for Penalties Pursuant to Section 1174.5.

As set forth herein DEFENDANT never kept payroll records showing all the hours worked daily by PLAINTIFF and the wages paid to him. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT during all relevant pay periods, also failed to keep records showing all hours worked daily by and all wages owing any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT violated *California Labor Code* Section 1174 for failing to keep PLAINTIFF's and any and all AGGRIEVED EMPLOYEES of DEFENDANT payroll records showing the hours worked daily by them and the wages paid to them. Thus, DEFENDANT owes the civil penalties provided for in Section 1174.5. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1174 and subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1174.5.

XI. DEFENDANT's Violations of California Labor Code Sections 201, 202, 203 and 208.

a. California Labor Code Sections 201, 202, 203 and 208.

Under *California Labor Code* Section 201(a): "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Under *California Labor Code* Section 202(a):

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Cal. Lab. Code § 202(a).

Under *California Labor Code* Section 203(a):

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Pursuant to *California Labor Code* Section 208: “Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.” *Cal. Lab. Code* § 208.

b. Facts and Theories Supporting DEFENDANT’s Violation of *California Labor Code* Sections 201, 202, 203 and 208.

At the time PLAINTIFF’s termination on or around April 20, 2018, DEFENDANT willfully failed to pay PLAINTIFF at the place of discharge all the herein-described wages owed to him. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all other discharged employees, or employees whom resigned from DEFENDANT were also not immediately paid at the place of discharge all wages owed to them by DEFENDANT; thus, DEFENDANT violated *California Labor Code* sections 201, 202, 203 and 208. Specifically, DEFENDANT owed any and all other discharged, or resigned employees of DEFENDANT overtime premium wages, minimum wages and the additional hours of pay at their regular rate of compensation for each workday that their rest and meal periods were not provided to them. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 201, 202, 203 and 208.

XII. DEFENDANT’s Violations of *California Labor Code* Section 558.1.

a. *California Labor Code* Section 558.1.

Under *California Labor Code* Section 558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Cal. Lab. Code § 558.1.

b. Facts and Theories Supporting DEFENDANT’s Violation of *California Labor Code* Section 558.1.

PLAINTIFF is informed and believes and thereon alleges that all the herein-described *California Labor Code* violations and violations of California law, were/are violated, or were/are caused to be violated by the owners and operators of Carpe Carma LLC D/B/A Pomona Valley

Towing, Marc Allen Weiss and Edward Carpinelli. Specifically, Marc Allen Weiss and Edward Carpinelli institute all wage and hour policies under which the AGGRIEVED EMPLOYEES are employed and paid. PLAINTIFF is further informed and believes and thereon alleges that all the herein-described violations also apply, or applied, to any and all AGGRIEVED EMPLOYEES during all relevant pay periods. Thus, DEFENDANT is liable to PLAINTIFF and any and all AGGRIEVED EMPLOYEES for violations of *California Labor Code* section 558.1. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.1.

XI. DEFENDANT's Violation of California Labor Code Section 2698, et seq.

a. California Labor Code Section 2698, et seq.

Under *California Labor Code* Section 2699(a):

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Section 2699 further states in part: "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." *Cal. Lab. Code* § 2699(f)(2).

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 2698, et seq.

PLAINTIFF on behalf of PLAINTIFF and on behalf of the State of California and any and all AGGRIEVED EMPLOYEES seeks the above-cited 2699, *et seq.* penalties and any and all other civil penalties available to PLAINTIFF, AGGRIEVED EMPLOYEES and the State of California as a result of DEFENDANT's various violations of the *California Labor Code* and IWC Wage Order set forth herein.

Very truly yours,
J.B. TWOMEY LAW



J.B. TWOMEY

cc: **SENT VIA FIRST CLASS CERTIFIED MAIL:**
Carpe Carma LLC D/B/A Pomona Valley Towing
Attn: Cameron L. Weiss, Agent for Service of Process
1524 Granville Avenue, Suite 107

Los Angeles, California 90025

SUBMITTED ELECTRONICALLY TO:

State of California, Dept. of Industrial Relations

Labor and Workforce Development Agency

<https://dir.tfaforms.net/308>

EXHIBIT 2

J.B. Twomey Law

10866 Wilshire Boulevard, Floor 4 • Los Angeles, California 90024

Email: jb@jbtwomeylaw.com

Phone: 310.980.6357

Facsimile: 818.937.6897

November 4, 2022

SENT VIA FIRST CLASS CERTIFIED MAIL TO:

GORDON REES SCULLY MANSUKHANI

Brandon A. Takahashi, Esq.
633 West Fifth Street, 53rd Floor
Los Angeles, California 90071

Re: ***California Labor Code Private Attorneys General Act of 2004 Notice***
Benjamin Moncayo v. Carpe Carma LLC D/B/A Pomona Valley Towing; Marc Allen Weiss; Edward Carpinelli
LWDA Case No.: LWDA-CM-911810-22
Court Case No.: Unassigned

Dear Brandon:

This Notice is made and served pursuant to the *California Labor Code Private Attorneys General Act of 2004*, codified in *California Labor Code 2698, et seq.* (hereinafter referred to as “PAGA”) and is being mailed to you via certified mail as counsel for Carpe Carma LLC D/B/A Pomona Valley Towing; Marc Allen Weiss; and Edward Carpinelli. This PAGA Notice was previously mailed via certified mail to your clients on October 4, 2022 at the following addresses: 1731 E. Mission Blvd., Pomona, California 91766 and 1524 Granville Avenue, Suite 107, Los Angeles, California 90025. This PAGA Notice was also electronically uploaded to the Labor and Workforce Development Agency (hereinafter referred to as “LWDA”) on October 4, 2022 at <https://dir.tfaforms.net/308>.

Benjamin Moncayo (hereinafter referred to as “PLAINTIFF”), on behalf of himself, the State of California, and on behalf of any and all other current and former non-exempt employees of Carpe Carma LLC D/B/A Pomona Valley Towing; Marc Allen Weiss; Edward Carpinelli; and DOES 1 through 25 (hereinafter collectively referred to as “DEFENDANT”) is informed and believes and thereon alleges, DEFENDANT has and is violating, and/or owes civil penalties pursuant to the following *California Labor Code* sections: 1197; 1182.12; 1194; 1194.2; 1197.1; 510; 204.3; 512; 226.7; 226.2; 204; 210; 1198; 1199; 558; 226; 226.3; 1174; 1174.5; 201; 202; 203; 208; 558.1; and 2699(f)(2).

DEFENDANT’s website (<https://www.pvtow.com/#2>) describes itself this way:

Pomona Valley Towing Inc. is a family-owned and operated company in the city of Pomona since 1964. With over 50 years experience in the towing industry, we serve the residents, businesses and a wide variety of commercial accounts in Los Angeles, San

Bernardino, Orange and Riverside counties. In addition, we provide towing services for the cities of Pomona and Claremont, SANBAG FSP program, and the Cal Poly Police Dept. We have proudly been in business since 1964.

We specialize in light, medium and heavy duty towing and equipment transport service and maintain a fleet of 15 fully insured and State inspected trucks to provide for all of your towing, recovery and equipment moving needs.

Our equipment is modern, GPS-equipped, diversified and well-maintained. It consists of the following: Light Duty Flatbeds & Wheel Lifts, Medium Duty Flatbeds & Wreckers, Heavy Duty Wreckers [and] 2 Landoll-Lowbed Tractor & Trailers.

We have built our reputation by providing safe, prompt, and courteous service with 'ROUND THE CLOCK' 24 hours a day/seven days a week, state of the art dispatching. This reliable service has allowed us to have over 90% of our commercial business from core customers that we have been doing business with for decades.

PLAINTIFF implores the LWDA and DEFENDANT alike to investigate every aspect of the herein detailed violations, and any others that may exist, as they pertain to PLAINTIFF and any and all of DEFENDANT's current and former non-exempt California employees. Hereinafter, any and all of DEFENDANT's current and former non-exempt California employees, including PLAINTIFF, are collectively referred to as "AGGRIEVED EMPLOYEES." And PLAINTIFF, as well as, any and all AGGRIEVED EMPLOYEES were, and are being subjected to, *inter alia*, DEFENDANT's herein-described violations.

PLAINTIFF is informed and believes and based thereupon alleges that at all relevant times herein mentioned each DEFENDANT and Does 1 through 25, inclusive, were the agents, servants and/or employees, partner, predecessor-in-interest, successor-in-interest, beneficiary, executor, fictitious business name, trustee, subsidiary, related/affiliated entity, assignee, assignor, legal representative, general administrator, member, co-conspirator, co-employer, integrated enterprise and/or joint venturer or occupied other relationships with each of the other named DEFENDANT and at all times herein mentioned acted within the course and scope of said agency and/or employment and/or other relationship and each other DEFENDANT has ratified, consented to, had actual and/or constructive knowledge of, was bound by, approved or, and/or failed to prevent the acts of its agents, employees, predecessor-in-interest, successor-in-interest, trustees, trustors, and/or representatives, and that each actively, passively, acquiesced, participated in, allowed, aided and abetted, assisted, acted, or failed to act, with one another in the commission of the wrongdoing alleged in this notice.

FACTS

PLAINTIFF was hired by DEFENDANT in or around 2004 as a non-exempt tow truck driver and general laborer. PLAINTIFF's employment ended in or around late-August 2022.

During the entirety of PLAINTIFF's employment with DEFENDANT, every other week, PLAINTIFF worked on-the-clock Mondays through Fridays, 8:00 a.m. to 5:00 p.m. and was on-call (and forced to work off-the-clock) Mondays and Thursdays from 5:00 p.m. through the following workdays at 7:00 a.m.

The other weeks, PLAINTIFF worked on-the-clock Mondays through Thursdays, 8:00 a.m. to 5:00 p.m. and was on-call (and forced to work off-the-clock) Tuesdays and Wednesdays from 5:00 p.m. through the following workdays at 7:00 a.m., as well as, from Fridays at 5:00 p.m. until the following Mondays at 7:00 a.m.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. Also during PLAINTIFF's weekday, non on-call shifts, DEFENDANT never made all lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANT failed to make lawful rest periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. DEFENDANT also failed to pay PLAINTIFF significant amounts of regular wages, non-productive wages, rest and recovery wages, as well as, time and one-half and double overtime wages when he was on-call every other weekend.

When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay.

PLAINTIFF is informed and believes and thereon alleges that all AGGRIEVED EMPLOYEES were/are subjected to all the herein-described unpaid/underpaid minimum, rest/recovery and/or overtime wages. PLAINTIFF is further informed and believes and thereon alleges that all AGGRIEVED EMPLOYEES were/are also subjected to DEFENDANT's unlawful meal and rest period policies described herein, including never being paid meal and rest period penalties.

As a result of DEFENDANT's herein-described unlawful company-wide policies, PLAINTIFF and all AGGRIEVED EMPLOYEES were/are not paid all wages they earn twice during each calendar month, and DEFENDANT willfully failed to pay PLAINTIFF, and pay all AGGRIEVED EMPLOYEES that resign/ed or were/are terminated, all wages owing at the end of their employment.

Additionally, as a result of DEFENDANT's herein-described unlawful company-wide policies, DEFENDANT failed/fails to issue PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements showing their accurate (1) number of hours worked, including non-productive hours, (2) hours of compensable rest and recovery periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned.

All the herein-described *California Labor Code* violations and violations of California law, were/are violated, or were/are caused to be violated by the owners and operators of Carpe Carma LLC D/B/A Pomona Valley Towing, Marc Allen Weiss and Edward Carpinelli. Specifically, Marc Allen Weiss and Edward Carpinelli institute all wage and hour policies under which the AGGRIEVED EMPLOYEES are employed and paid.

PLAINTIFF is informed and believes and thereon alleges that any and all other current and former non-exempt California employees of DEFENDANT, including non-exempt employees other than those in PLAINTIFF's specific department, or specific location, *i.e.*, AGGRIEVED EMPLOYEES, were/are also subjected to all of DEFENDANT's *California Labor Code* violations set forth herein. During all relevant pay periods, PLAINTIFF and all AGGRIEVED EMPLOYEES were/are paid weekly, thus, had/have weekly pay periods, and the herein-described violations took/take place during each and every pay period worked by PLAINTIFF and all AGGRIEVED EMPLOYEES from at least one year back from the date of this notice up to and including the present day.

PLAINTIFF on behalf of PLAINTIFF and on behalf of the State of California and any and all AGGRIEVED EMPLOYEES seeks *California Labor Code* section 2699, *et seq.* penalties and any and all other civil penalties available to PLAINTIFF, AGGRIEVED EMPLOYEES and the State of California as a result of DEFENDANT's various violations of the *California Labor Code* and IWC Wage Order set forth herein.

DEFENDANT'S VIOLATIONS

I. DEFENDANT's Violations of California Labor Code Sections 1197, 1182.12, 1194, and 1194.2, Thus, Liability for Penalties Pursuant to Section 1197.1.

a. California Labor Code Sections 1197, 1182.12, 1194, 1194.2 and 1197.1.

Under *California Labor Code* Section 1197:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

This section does not change the applicability of local minimum wage laws to any entity.

Cal. Labor Code § 1197.

Under *California Labor Code* Section 1182.12:

Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

Cal. Labor Code § 1182.12.

Under *California Labor Code* Section 1194(a):

Notwithstanding any agreement to work for a lesser wage, 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.

Cal. Labor Code § 1194(a).

Under *California Labor Code* Section 1194.2(a):

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.

Cal. Labor Code § 1194.2(a).

Under *California Labor Code* Section 1197.1(a):

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203

Cal. Labor Code § 1197.1(a).

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Id. at (a)(1)-(2).

b. Facts and Theories Supporting DEFENDANT's Violation of *California Labor Code* Sections 1197, 1182.12, 1194, and 1194.2, Thus, Liability for Penalties Pursuant to Section 1197.1.

When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not paid California's prevailing minimum wage. To date, DEFENDANT, in violation of *California Labor Code* Sections 1197, 1182.12, 1194, 1194.2, and 1197.1 has not paid PLAINTIFF the prevailing minimum wage for all hours he worked, the liquidated damages pursuant to Section 1194.2, or civil penalties owing. PLAINTIFF is informed and believes and thereon alleges that to date, and during all relevant pay periods, DEFENDANT, in violation of *California Labor Code* Sections 1197, 1194, 1194.2, and 1197.1, has failed to all AGGRIEVED EMPLOYEES the prevailing minimum wage for all hours they worked, the liquidated damages pursuant to Section 1194.2, or civil penalties owing. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 1197, 1194, 1199, 1197.1, and provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1182.12 and 1194.2.

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II. DEFENDANT's Violations of California Labor Code Sections 510 and 204.3, Thus, Liability for Penalties Pursuant to Section 1197.1.

a. California Labor Code Sections 510 and 204.3.

Under *California Labor Code* Section 510(a):

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

An employee may receive, in lieu of overtime compensation, compensating time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. If an hour of employment would otherwise be compensable at a rate of more than one and one-half times the employee's regular rate of compensation, then the employee may receive compensating time off commensurate with the higher rate."

California Labor Code Section 204.3.

Under *California Labor Code* Section 1197.1(a):

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203

Cal. Labor Code § 1197.1(a).

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Id. at (a)(1)-(2).

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b. Facts and Theories Supporting DEFENDANT's Violations of *California Labor Code* Sections 510 and 204.3.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also worked hours in excess of eight (8) in any one day, and forty (40) in any one week and that, DEFENDANT, in violation of *California Labor Code* Section 510 and 204.3, failed to pay them at least one and one-half times their regular rate of pay for that overtime or provide them time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. To date, and during all relevant pay periods, DEFENDANT, in violation of *California Labor Code* Section 510, has not paid PLAINTIFF for the overtime hours he worked. PLAINTIFF is informed and believes and thereon alleges that to date, DEFENDANT, in violation of *California Labor Code* Section 510 and 204.3, has not paid any and all AGGRIEVED EMPLOYEES for the overtime hours they worked, nor gave them time off as required by law. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 510, and subdivision (c) applies to 204.3.

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III. DEFENDANT's Violations of California Labor Code Sections 512 and 226.7.

a. California Labor Code Section 512.

Under *California Labor Code* Section 512(a):

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under *California Labor Code* Section 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Sections 512 and 226.7.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided meal periods and also not paid an hour at their regular rate of pay when they were not provided a meal period. To date, DEFENDANT, in violation of *California Labor Code* sections 512 and 226.7(c), has not paid PLAINTIFF one additional hour of pay at his regular rate of compensation for each workday that his meal period was not provided. PLAINTIFF is informed and believes and thereon alleges that to date, DEFENDANT, in violation of *California Labor Code* section 512 and 226.7(c), has not paid any and all AGGRIEVED EMPLOYEES one additional hour of pay at their regular rate of compensation for each workday that their meal period was not provided. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as

applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 512.

IV. DEFENDANT's Violations of California Labor Code Section 226.7.

a. California Labor Code Section 226.7.

Under *California Labor Code* Section 226.7(b):

An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

Pursuant to the *California Labor Code* and Wage Order 4-2001, employees are entitled to a rest period of not less than ten (10) minutes for each consecutive four (4) hour shift worked or major fraction thereof. Under *California Labor Code* Section 226.7(c), “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 226.7.

During PLAINTIFF’s weekday, non on-call shifts, DEFENDANT never made all lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANT failed to make lawful rest periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided rest periods and also not paid an hour at their regular rate of pay when they were not provided a rest period. To date, DEFENDANT, in violation of *California Labor Code* Section 226.7(c), has not paid PLAINTIFF one additional hour of pay at his regular rate of compensation for each workday that both or either of his meal or rest periods were not provided. PLAINTIFF is informed and believes and thereon alleges that to date, DEFENDANT, in violation of *California Labor Code* Section 226.7(c), has not paid any and all AGGRIEVED EMPLOYEES one additional hour of pay at their regular rate of compensation for each workday that both or either of their meal or rest periods were not provided. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 226.7.

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V. DEFENDANT's Violations of California Labor Code Section 226.2.

a. California Labor Code Section 226.2.

Under *California Labor Code* Section 226.2:

Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

California Labor Code Section 226.2.

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 226.2.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. As a result of DEFENDANT's herein-described unlawful company-wide policies, DEFENDANT failed/fails to issue PLAINTIFF and all AGGRIEVED

EMPLOYEES itemized wage statements showing their accurate (1) number of hours worked, including non-productive hours, (2) hours of compensable rest and recovery periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned. All the herein-described *California Labor Code* violations and violations of California law, were/are violated, or were/are caused to be violated by the owners and operators of Carpe Carma LLC D/B/A Pomona Valley Towing, Marc Allen Weiss and Edward Carpinelli. Specifically, Marc Allen Weiss and Edward Carpinelli institute all wage and hour policies under which the AGGRIEVED EMPLOYEES are employed and paid. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided accurate itemized payroll statements. Thus, for all relevant pay periods, DEFENDANT was in violation of *California Labor Code* Section 226.2 for failing to provide PLAINTIFF and any and all AGGRIEVED EMPLOYEES itemized statements. Thus, DEFENDANT is subject to the civil penalty found in Section 226.3 in addition to any other penalty provided by law. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to 226.2 and 226.3.

VI. DEFENDANT's Violations of California Labor Code Section 204, Thus, Liability for Penalties Pursuant to Section 210.

a. California Labor Code Sections 204 and 210.

“All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” *California Labor Code* Section 204.

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

California Labor Code § 210.

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 204, Thus, Liability for Penalties Pursuant to Section 210.

As set forth herein, in violation of Section 204, DEFENDANT during all relevant pay periods, failed to pay all wages earned by PLAINTIFF pursuant to *California Labor Code* sections 1197, 1182.12, 1194, 510, 512, 226.7 and 226.2 twice during each calendar month. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT also failed to pay any and all AGGRIEVED EMPLOYEES all wages earned twice during each calendar month. And, thus, DEFENDANT owes civil penalties pursuant to Section 210. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies

to *California Labor Code* Section 204 and provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 210.

VII. DEFENDANT's Violations of California Labor Code Section 1198.

a. California Labor Code Section 1198.

California Labor Code section 1198 provides that “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 1198.

As set forth herein, during all relevant pay periods, DEFENDANT continuously violated the standard and conditions of labor fixed by the commission, including but not limited to its violations of *California Labor Code* sections 1197, 1182.12, 1194, 1194.2, 1197.1, 510, 512, 226.7, 226.2 and the applicable IWC Wage Order. These violations were against PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT was and is in violation of *California Labor Code* Section 1198 for continuously violating the standard conditions of labor fixed by the commission. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1198.

VIII. DEFENDANT's Violations of California Labor Code Section 1199.

a. California Labor Code Section 1199.

Under *California Labor Code* Section 1199:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Cal. Labor Code § 1199.

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b. Facts and Theories Supporting DEFENDANT's Violation of *California Labor Code* Section 1199.

As set forth herein, during all relevant pay periods, DEFENDANT continuously required or caused PLAINTIFF to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission, including but not limited to its violations of *California Labor Code* sections 1197, 1182.12, 1194, 1194.2, 1197.1, 510, 512, 226.7, 226.2 and the applicable IWC Wage Order. These violations were against PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT was and is in violation of *California Labor Code* Section 1199 for continuously violating the standard conditions of labor fixed by the commission. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1199.

IX. DEFENDANT's Violations of *California Labor Code* Section 558.

a. *California Labor Code* Section 558.

Under *California Labor Code* Section 558:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. 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.”

Cal. Lab. Code § 558(a)(1)-(2).

b. Facts and Theories Supporting DEFENDANT's Violation of *California Labor Code* Section 558.

As set forth herein, during all relevant pay periods, DEFENDANT continuously violated sections of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission. These violations, as set forth herein, were against PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT was and is in violation of *California Labor Code* Section 558 for continuously violating provisions regulating hours and days of work in IWC Wage Orders and owes PLAINTIFF and any and all AGGRIEVED EMPLOYEES civil penalties pursuant to Section 558. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.

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X. DEFENDANT's Violations of California Labor Code Section 226, Thus, Liability for Penalties Pursuant to Section 226.3.

a. California Labor Code Section 226 and 226.3.

Under *California Labor Code* Section 226(a):

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employees wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, copy includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

Cal. Lab. Code § 226(a).

Any 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 citation 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 records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

b. Facts and Theories Supporting DEFENDANT's Violations of California Labor Code Section 226, Thus, Liability for Penalties Pursuant to Section 226.3.

During PLAINTIFF's weekday, non on-call shifts, DEFENDANT only made meal periods available to PLAINTIFF after 1:00 p.m., thus, DVT never made compliant meal periods available to PLAINTIFF during the weekdays. Moreover, during at least three (3) weekday meal periods per workweek, DEFENDANT would only provide PLAINTIFF fifteen (15) minutes for a meal break by interrupting him for business purposes. Despite this fact, DEFENDANT would nevertheless reduce his daily working hours by thirty (30) minutes, resulting in .75 hour of unpaid overtime wages per week. When DEFENDANT failed to make lawful meal periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. Also during PLAINTIFF's weekday, non on-call shifts, DEFENDANT never made all lawful rest periods available to PLAINTIFF; specifically, PLAINTIFF bounced from job to job without receiving all of his full, uninterrupted 10 minute rest periods. When DEFENDANT failed to make lawful rest periods available to PLAINTIFF, DEFENDANT never paid PLAINTIFF one hour of pay at his regular rate of pay. DEFENDANT also failed to pay PLAINTIFF significant amounts of regular wages, non-productive wages, rest and recovery wages, as well as, time and one-half and double overtime wages when he was on-call every other weekend. When PLAINTIFF was on-call, DEFENDANT instructed him not to clock-in or out, *i.e.*, not to use the timekeeping system at all. DEFENDANT further instructed PLAINTIFF to have immediate access to the tow truck at all times he was on-call, but that he could not use the tow truck for personal reasons/business, *e.g.*, PLAINTIFF could not take it to a restaurant to share a meal with friends/family; could not take it to the mall if he needed to do shopping, etc. As a result, PLAINTIFF became a prisoner of his own home, tethered to the tow truck and subject to the control of DEFENDANT during all hours that he was on-call. Despite this, DEFENDANT did not pay PLAINTIFF a penny for any of his non-productive on-call hours, instead it only paid him the commission/piece rate pay he earned from the various tow and tow-related jobs assigned to him during his on-call hours. DEFENDANT identifies PLAINTIFF's commission/piece rate pay as a "BONUS" on his wage statements. DEFENDANT's failure to pay PLAINTIFF for any and all the non-productive hours he was subject to DEFENDANT's control resulted in DEFENDANT failing to pay PLAINTIFF the following for all hours worked: (1) California's prevailing minimum wage, (2) all rest/recovery wages earned and owing, and (3) all overtime wages earned and owing. DEFENDANT also failed to pay PLAINTIFF his lawful rest/recovery and overtime wage rates by failing to include all necessary wages when calculating PLAINTIFF's regular rate of pay. As a result of DEFENDANT's herein-described unlawful company-wide policies, DEFENDANT failed/fails to issue PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements showing their accurate (1) number of hours worked, including non-productive hours, (2) hours of compensable rest and recovery periods, (3) pay rates, (4) minimum wages, (5) rest/recovery wages, (6) overtime wages, (7) meal period wages, (8) rest period wages, (9) gross wages earned, or (10) net wages earned. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all AGGRIEVED EMPLOYEES also were not provided accurate itemized payroll statements, or itemized wage statements at all. Thus, for all relevant pay periods, DEFENDANT was in violation of *California Labor Code* Section 226 for failing to provide PLAINTIFF and any and all AGGRIEVED EMPLOYEES itemized statements, or accurate itemized statements. Thus, DEFENDANT is subject to the civil penalty found in Section 226.3 in addition to any other penalty provided by law. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED

EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to paragraphs (1) through (5), inclusive, (7) and (9) of subdivision (a) of *California Labor Code* Section 226 and subdivision (c) applies to 226.3.

XI. DEFENDANT's Violations of California Labor Code Section 1174, Thus, Liability for Penalties Pursuant to Section 1174.5.

a. California Labor Code Sections 1174 and 1174.5.

Under *California Labor Code* Section 1174(d): “Every person employing labor in this state shall: . . . Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to”

Under *California Labor Code* Section 1174.5:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 1174, Thus, Liability for Penalties Pursuant to Section 1174.5.

As set forth herein DEFENDANT never kept payroll records showing all the hours worked daily by PLAINTIFF and the wages paid to him. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT during all relevant pay periods, also failed to keep records showing all hours worked daily by and all wages owing any and all AGGRIEVED EMPLOYEES. Thus, DEFENDANT violated *California Labor Code* Section 1174 for failing to keep PLAINTIFF's and any and all AGGRIEVED EMPLOYEES of DEFENDANT payroll records showing the hours worked daily by them and the wages paid to them. Thus, DEFENDANT owes the civil penalties provided for in Section 1174.5. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1174 and subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1174.5.

XI. DEFENDANT's Violations of California Labor Code Sections 201, 202, 203 and 208.

a. California Labor Code Sections 201, 202, 203 and 208.

Under *California Labor Code* Section 201(a): “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Under *California Labor Code* Section 202(a):

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Cal. Lab. Code § 202(a).

Under *California Labor Code* Section 203(a):

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Pursuant to *California Labor Code* Section 208: “Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.” *Cal. Lab. Code § 208.*

b. Facts and Theories Supporting DEFENDANT’s Violation of *California Labor Code* Sections 201, 202, 203 and 208.

At the time PLAINTIFF’s termination on or around April 20, 2018, DEFENDANT willfully failed to pay PLAINTIFF at the place of discharge all the herein-described wages owed to him. PLAINTIFF is informed and believes and thereon alleges that during all relevant pay periods, any and all other discharged employees, or employees whom resigned from DEFENDANT were also not immediately paid at the place of discharge all wages owed to them by DEFENDANT; thus, DEFENDANT violated *California Labor Code* sections 201, 202, 203 and 208. Specifically, DEFENDANT owed any and all other discharged, or resigned employees of DEFENDANT overtime premium wages, minimum wages and the additional hours of pay at their regular rate of compensation for each workday that their rest and meal periods were not provided to them. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate these violations as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 201, 202, 203 and 208.

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XII. DEFENDANT's Violations of California Labor Code Section 558.1.

a. California Labor Code Section 558.1.

Under *California Labor Code* Section 558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Cal. Lab. Code § 558.1.

b. Facts and Theories Supporting DEFENDANT's Violation of California Labor Code Section 558.1.

PLAINTIFF is informed and believes and thereon alleges that all the herein-described *California Labor Code* violations and violations of California law, were/are violated, or were/are caused to be violated by the owners and operators of Carpe Carma LLC D/B/A Pomona Valley Towing, Marc Allen Weiss and Edward Carpinelli. Specifically, Marc Allen Weiss and Edward Carpinelli institute all wage and hour policies under which the AGGRIEVED EMPLOYEES are employed and paid. PLAINTIFF is further informed and believes and thereon alleges that all the herein-described violations also apply, or applied, to any and all AGGRIEVED EMPLOYEES during all relevant pay periods. Thus, DEFENDANT is liable to PLAINTIFF and any and all AGGRIEVED EMPLOYEES for violations of *California Labor Code* section 558.1. To be clear, the Labor and Workforce Development Agency and DEFENDANT should investigate this violation as applying to all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.1.

XI. DEFENDANT's Violation of California Labor Code Section 2698, et seq.

a. California Labor Code Section 2698, et seq.

Under *California Labor Code* Section 2699(a):

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Section 2699 further states in part: “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.” *Cal. Lab. Code* § 2699(f)(2).

b. Facts and Theories Supporting DEFENDANT’s Violation of *California Labor Code* Section 2698, *et seq.*

PLAINTIFF on behalf of PLAINTIFF and on behalf of the State of California and any and all AGGRIEVED EMPLOYEES seeks the above-cited 2699, *et seq.* penalties and any and all other civil penalties available to PLAINTIFF, AGGRIEVED EMPLOYEES and the State of California as a result of DEFENDANT’s various violations of the *California Labor Code* and IWC Wage Order set forth herein.

Very truly yours,
J.B. TWOMEY LAW



J.B. TWOMEY