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individually, and on behalf of all others
7 similarly situated

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9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

10 **CENTRAL DISTRICT - SPRING STREET COURTHOUSE**

11 ALBERT LIZARRAGA, individually, and on
behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 DIGBY SOUTHWEST, INC. an Arizona
Corporation; and DOES 1 through 100,
15 inclusive,

16 Defendants.
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Case No.: 19STCV27901

*Assigned for all purposes to the Honorable
Stuart M. Rice, Dept. 1*

CLASS ACTION

**FIRST AMENDED CLASS AND PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wage
5. Failure to Pay All Wages Due to
Discharged or Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Provide Accurate Itemized
Statements
8. Failure to Indemnify Employees for
Necessary Expenditures Incurred in
Discharge of Duties
9. Unlawful Deductions from Wages
10. Breach of Contract
11. Breach of Covenant of Good Faith and
Fair Dealing
12. Unfair and Unlawful Business Practices
13. Penalties under the Labor Code Private
Attorneys General Act ("PAGA"), as
representative action

DEMAND FOR JURY TRIAL

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1 and expenses.

2 5. PLAINTIFF brings this action on behalf of himself and the following similarly
3 situated class of individuals (“CLASS MEMBERS”): all current and former drivers, including
4 but not limited to those misclassified as independent contractors or owner-operators, who
5 performed work for DEFENDANTS in the State of California at any time within the period
6 beginning four (4) years prior to the filing of this action and ending at the time this action
7 settles or proceeds to final judgment (the “CLASS PERIOD”). PLAINTIFF reserves the right
8 to name additional class representatives.

9 **DEFENDANTS**

10 6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
11 DIGBY SOUTHWEST, INC. is, and at all times relevant hereto was, an Arizona corporation
12 organized and existing under the laws of the State of Arizona. PLAINTIFF is further informed
13 and believes, and thereon alleges, that DEFENDANT DIGBY SOUTHWEST, INC. conducts
14 business in the State of California, but is not registered with the California Secretary of State to
15 conduct business in the State of California. Specifically, DEFENDANT DIGBY SOUTHWEST,
16 INC. conducts business in and engages in illegal payroll practices or policies in the State of
17 California, including the County of Los Angeles.

18 7. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
19 PLAINTIFF at this time, and PLAINTIFF therefore sues such DEFENDANTS under fictitious
20 names. PLAINTIFF is informed and believes, and thereon alleges, that each DEFENDANT
21 designated as a DOE is highly responsible in some manner for the events and happenings referred
22 to herein, and legally caused the injuries and damages alleged in this Complaint. PLAINTIFF
23 will seek leave of the court to amend this Complaint to allege their true names and capacities
24 when ascertained. The DEFENDANTS, and each of them, were alter egos of each other and/or
25 engaged in an integrated enterprise with each other. Additionally, all of the DEFENDANTS were
26 joint employers of PLAINTIFF.

27 8. There exists, and at all times herein mentioned existed, a unity of interest and
28 ownership between the named DEFENDANTS, including DOES, such that any corporate

1 individuality and separateness between the named defendants has ceased, and that the named
2 Defendants are alter egos in that the named DEFENDANTS effectively operate as a single
3 enterprise, or are mere instrumentalities of one another.

4 9. At all material times herein, each DEFENDANT was the agent, servant, co-
5 conspirator and/or employer of each of the remaining defendants, acted within the purpose, scope,
6 and course of said agency, service, conspiracy and/or employment and with the express and/or
7 implied knowledge, permission, and consent of the remaining Defendants, and ratified and
8 approved the acts of the other DEFENDANTS. However, each of these allegations are deemed
9 alternative theories whenever not doing so would result in a contradiction with the other
10 allegations.

11 10. Whenever reference is made in this Complaint to any act, deed, or conduct of
12 Defendants, the allegation means that DEFENDANTS engaged in the act, deed, or conduct by or
13 through one or more of its officers, directors, agents, employees, or representatives who was
14 actively engaged in the management, direction, control, or transaction of DEFENDANTS'
15 ordinary business and affairs.

16 11. As to the conduct alleged herein, each act was authorized, ratified or directed by
17 DEFENDANTS' officers, directors, or managing agents.

18 12. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
19 by DEFENDANTS under contracts and employment agreements that were partly written, partly
20 oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS,
21 and each of them, acted pursuant to, and in furtherance of, their policies and practices of not
22 paying PLAINTIFF and CLASS MEMBERS all wages earned and due, through methods and
23 schemes which include, but are not limited to, failing to pay overtime premiums; failing to
24 provide rest and meal periods; failing to properly maintain records; failing to provide accurate
25 itemized statements for each pay period; failing to properly compensate PLAINTIFF and CLASS
26 MEMBERS for necessary expenditures; failing to properly compensate PLAINTIFF and CLASS
27 MEMBERS for all miles driven; and requiring, permitting or suffering the employees to work off
28 the clock, in violation of the California Labor Code and the applicable Welfare Commission

1 (“IWC”) Orders.

2 13. PLAINTIFF is informed and believes, and thereon alleges, that each and every of
3 the acts and omissions alleged herein were performed by, and/or attributable to, all
4 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
5 of each of the other DEFENDANTS, and that said acts and failures to act were within the course
6 and scope of said agency, employment and/or direction and control.

7 14. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
8 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
9 provision regulating minimum wages or hours and days of work in any order of the Industrial
10 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

11 15. As a direct and proximate result of the unlawful actions of DEFENDANTS,
12 PLAINTIFF has suffered, and continues to suffer, from loss of earnings in amounts as yet
13 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

14 **JURISDICTION AND VENUE**

15 16. The Superior Court of the State of California has jurisdiction in this matter because
16 PLAINTIFF worked in the State California, and DEFENDANTS regularly conduct business in
17 California. Further, no federal question is at issue because the claims are based solely on
18 California law.

19 17. Venue is proper in this judicial district and the County of Los Angeles, California
20 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS
21 in the County of Los Angeles, DEFENDANTS regularly transact business in the County of
22 Angeles, and DEFENDANTS’ illegal payroll policies and practices, which are the subject of this
23 action were applied, at least in part, to PLAINTIFF, and other persons similarly situated in the
24 County of Los Angeles.

25 **CLASS ACTION ALLEGATIONS**

26 18. This action is appropriately suited for a Class Action because:

27 a. The potential class is a significant number. Joinder of all current and
28 former employees individually would be impractical.

1 b. This action involves common questions of law and fact to the potential
2 class because the action focuses on the DEFENDANTS' systematic course of illegal payroll
3 practices and policies, which was applied to all hourly employees in violation of the California
4 Labor Code, IWC Wage Orders, and the California Business and Professions Code which
5 prohibits unfair business practices arising from such violations.

6 c. The claims of the PLAINTIFF are typical of the class because
7 DEFENDANTS subjected their drivers to the identical violations of the California Labor Code
8 and California Business and Professions Code while systematically subjecting drivers to the same
9 breaches of their agreements and covenants.

10 d. PLAINTIFF is able to fairly and adequately protect the interests of all
11 members of the class because it is in his best interests to prosecute the claims alleged herein to
12 obtain full compensation due to them for all services rendered and hours worked.

13 **CLASS ACTION**

14 **FIRST CAUSE OF ACTION**

15 **Failure to Provide Required Meal Periods**

16 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

17 **(Against All DEFENDANTS)**

18 19. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
19 allegations in the foregoing paragraphs.

20 20. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
21 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
22 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than
23 the 30-minute meal period, or to work through them, and have failed to otherwise provide the
24 required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor Code
25 § 226.7, 512 and IWC Order No. 9-2001, § 11.

26 21. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
27 Order No. 9-2001, § 11 by failing to compensate PLAINTIFF and CLASS MEMBERS who were
28 not provided with a meal period, in accordance with the applicable wage order, one additional

1 hour of compensation at each employee's regular rate of pay for each workday that a meal period
2 was not provided.

3 22. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
4 1197, and IWC Wage Order No. 9-2001 by failing to compensate PLAINTIFF and CLASS
5 MEMBERS for all hours worked during their meal periods.

6 23. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
7 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
8 earned and due, interest, penalties, expenses, and costs of suit.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Required Rest Periods**

11 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

12 **(Against All DEFENDANTS)**

13 24. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
14 allegations in the foregoing paragraphs.

15 25. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
16 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
17 failed to provide rest periods to PLAINTIFF and CLASS MEMBERS as required under
18 California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 12.

19 26. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
20 Order No. 9-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not
21 provided with a rest period, in accordance with the applicable wage order, one additional hour of
22 compensation at each employee's regular rate of pay for each workday that a rest period was not
23 provided.

24 27. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
25 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
26 earned and due, interest, penalties, expenses, and costs of suit.

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1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

4 **(Against All DEFENDANTS)**

5 28. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in the foregoing paragraphs.

7 29. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
8 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for
9 all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all
10 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
11 first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
12 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
13 on the seventh consecutive day of work in any workweek.

14 30. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
15 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
16 Order No. 9-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
17 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the
18 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
19 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
20 California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, § 3; requiring, permitting
21 or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or
22 suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks; illegally
23 and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked; failing to
24 properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide accurate
25 itemized wage statements to PLAINTIFF for each pay period; and other methods to be
26 discovered.

27 31. In violation of California law, DEFENDANTS have knowingly and willfully
28 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all

1 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS
2 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
3 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
4 DEFENDANTS to fully perform their obligations under state law, all to their respective damages
5 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

6 32. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
7 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code
8 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
9 Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the
10 unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys'
11 fees, expenses, and costs of suit.

12 **FOURTH CAUSE OF ACTION**

13 **Failure to Pay Minimum Wages**

14 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

15 **(Against All DEFENDANTS)**

16 33. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
17 allegations in the foregoing paragraphs.

18 34. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-
19 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
20 worked in a payroll period is unlawful.

21 35. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
22 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
23 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
24 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
25 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
26 worked; failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to
27 provide accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay
28 period; and other methods to be discovered.

1 36. DEFENDANTS' conduct described herein violates California Labor Code §§
2 1194, 1197, and IWC Wage Order No. 9-2001, § 4. As a proximate result of the aforementioned
3 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
4 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1994.2,
5 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders,
6 PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to
7 them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

8 **FIFTH CAUSE OF ACTION**

9 **Failure to Pay All Wages Due to Discharged or Quitting Employees**

10 **[Cal. Labor Code §§ 201, 202, 203]**

11 **(Against All DEFENDANTS)**

12 37. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
13 allegations in the foregoing paragraphs.

14 38. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
15 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
16 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
17 and unpaid at the time of discharge are due and payable immediately.

18 39. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
19 required to pay all accrued wages due to an employee no later than 72 hours after the employee
20 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
21 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

22 40. California Labor Code § 203 provides that if an employer willfully fails to pay, in
23 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
24 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
25 compensation to the employee at the same rate for up to 30 workdays.

26 41. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
27 wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with
28 California Labor Code §§ 201 and 202.

42. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

43. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code §§ 1194 and 2699

SIXTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]

(Against All DEFENDANTS)

44. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

45. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 9-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

46. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 **[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]**

4 **(Against All DEFENDANTS)**

5 47. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in the foregoing paragraphs.

7 48. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
8 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in
9 writing showing each employee's gross wages earned, total hours worked, all deductions made,
10 net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
11 CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the
12 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
13 § 226 and IWC Wage Order No. 9-2001, § 7.

14 49. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
15 to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage
16 statements in accordance with California Labor Code § 226(a).

17 50. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
19 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and
20 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to
21 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of
22 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
23 California Labor Code § 226(e), as well as other available remedies.

24 **EIGHTH CAUSE OF ACTION**

25 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

26 **[Cal. Labor Code § 2802]**

27 **(Against All DEFENDANTS)**

28 51. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the

1 allegations in the foregoing paragraphs.

2 52. California Labor Code § 2802(a) requires an employer to indemnify an employee
3 for all necessary expenditures or losses incurred by the employee in direct consequence of the
4 discharge of his or her duties, or of his or her obedience to the directions of the employer.

5 53. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
6 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
7 in direct consequence of the discharge of their duties while working under the direction of
8 DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other
9 employment-related expenses, in violation of California Labor Code § 2802.

10 54. As a proximate result of DEFENDANTS' unlawful actions and omissions,
11 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
12 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
13 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are
14 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
15 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other
16 available remedies.

17 **NINTH CAUSE OF ACTION**

18 **UNLAWFUL WAGE DEDUCTIONS**

19 **[Cal. Labor Code §§ 221, 223, 400-410; IWC Wage Order No. 9-2001, § 8]**

20 **(Against All DEFENDANTS)**

21 55. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
22 allegations in the foregoing paragraphs.

23 56. California Labor Code § 221 provides, "It shall be unlawful for any employer to
24 collect or receive from an employee any part of wages theretofore paid by said employer to said
25 employee."

26 57. California Labor Code § 222.5 provides: "No person shall withhold or deduct from
27 the compensation of any employee, or require any prospective employee or applicant for
28 employment to pay, any fee for, or cost of, any pre-employment medical or physical examination

1 taken as a condition of employment, nor shall any person withhold or deduct from the
2 compensation of any employee, or require any employee to pay any fee for, or costs of, medical
3 or physical examinations required by any law or regulation of federal, state or local governments
4 or agencies thereof.”

5 58. California Labor Code § 223 provides: “Where any statute or contract requires an
6 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
7 while purporting to pay the wage designated by statute or by contract.”

8 59. California Labor Code §§ 400-410 provide the limited circumstances under which
9 an employer can exact a cash bond from its employees and are designed to protect employees
10 from taking or misappropriating employee funds held by the employer in trust.

11 60. IWC Wage Order No. 9-2001, § 8 provides that the only circumstance under
12 which an employer can make a deduction from an employee's wage due to cash shortage,
13 breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss
14 was the result of the employee's gross negligence or dishonest or willful act.

15 61. These and related statutes reflect California’s fundamental and substantial public
16 policy protecting employee wages. Specifically, these and related statutes are designed to
17 prohibit and prevent employers from using deductions or other similar practices to drive down the
18 wage scale, indirectly paying employees less than the stated wage, subjecting employees to
19 unanticipated or unpredicted reductions in their wages, making employees the insurers of their
20 employer's business losses, or otherwise passing the ordinary business losses of the employer
21 onto the employee.

22 62. During the CLASS PERIOD, DEFENDANTS routinely made unlawful deductions
23 from the compensation paid to the PLAINTIFF and CLASS MEMBERS for ordinary business
24 expenses and losses without a showing that the expenses and/or losses were due to the
25 PLAINTIFF’s and CLASS MEMBERS’ dishonest or willful act, or to the gross negligence of the
26 PLAINTIFF and CLASS MEMBERS in violation of California Labor Code §§ 221, 222.5, 223,
27 400-410 and IWC Wage Order No. 9-2001, § 8.

28 63. As a proximate result of DEFENDANTS’ unlawful actions and omissions,

1 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
2 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
3 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including
4 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
5 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
6 provided in California Labor Code § 226(e), as well as other available remedies.

7 **TENTH CAUSE OF ACTION**

8 **Breach of Contract**

9 **(Against All DEFENDANTS)**

10 64. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
11 allegations in the foregoing paragraphs.

12 65. PLAINTIFF and CLASS MEMBERS performed work for DEFENDANTS under
13 agreements that were partly written, partly oral, and partly implied, including but not limited to
14 the promises by DEFENDANTS to pay PLAINTIFF and CLASS MEMBERS for each mile
15 driven in the completion of their duties.

16 66. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
17 intentionally and substantially misconstrued the PLAINTIFF and CLASS MEMBERS miles
18 driven under payment schemes that included, but was not limited to, paying only for the miles
19 between the departure and destination locations' zip codes on a map, irrespective of the necessary
20 routes driven or location within those zip codes, leading to substantial underpayment.

21 67. No agreement or contract provision authorized the aforementioned underpayment
22 and PLAINTIFF and CLASS MEMBERS performed all, or substantially all, of the obligations
23 imposed on them under their agreements and contracts.

24 68. Therefore, DEFENDANTS breached the terms of their agreements with
25 PLAINTIFF and CLASS MEMBERS.

26 69. PLAINTIFF and CLASS MEMBERS have sustained damages as a result of
27 DEFENDANTS' breach.

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1 **ELEVENTH CAUSE OF ACTION**

2 **Breach of Covenant of Good Faith and Fair Dealing**

3 **(Against All DEFENDANTS)**

4 70. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
5 allegations in the foregoing paragraphs.

6 71. PLAINTIFF and CLASS MEMBERS performed work for DEFENDANTS under
7 agreements that were partly written, partly oral, and partly implied, including but not limited to
8 the promises by DEFENDANTS to pay PLAINTIFF and CLASS MEMBERS for each mile
9 driven in the completion of their duties.

10 72. Under California law, in every contract or agreement there is an implied promise
11 of good faith and fair dealing in performance of the contract, requiring that each party will not
12 unfairly interfere with the right of any other party to receive the benefits of the contract.

13 73. Subterfuge and evasion violate the obligation of good faith in performance even
14 when an actor believes their conduct to be justified. Bad faith may be overt or may consist of
15 inaction, and fair dealing may require more than honesty. Examples of bad faith are: evasion of
16 the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify
17 terms, and interference with or failure to cooperate in the other party's performance.

18 74. DEFENDANTS have breached the covenant of good faith and fair dealing in the
19 contract through their policies and practices alleged herein. Specifically, DEFENDANTS
20 misconstrued the PLAINTIFF and CLASS MEMBERS miles driven under payment schemes that
21 included, but was not limited to, paying only for the miles between the departure and destination
22 locations' zip codes on a map, irrespective of the necessary routes driven or location within those
23 zip codes, leading to substantial underpayment.

24 75. No agreement or contract provision authorized the aforementioned underpayment
25 and PLAINTIFF and CLASS MEMBERS performed all, or substantially all, of the obligations
26 imposed on them under their agreements and contracts.

27 76. PLAINTIFF and CLASS MEMBERS have sustained damages as a result of
28 DEFENDANTS' breach.

1 **TWELFTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

3 **[Cal. Bus. & Prof. Code §§ 17200 *et. seq.*]**

4 **(Against All DEFENDANTS)**

5 77. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in the foregoing paragraphs.

7 78. Each and every one of DEFENDANTS' acts and omissions in violation of the
8 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
9 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
10 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure and
11 refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum
12 wages, DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting
13 employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements and
14 to maintain required records, DEFENDANTS' practice of making unlawful deductions from
15 employees' wages, and DEFENDANTS' failure and refusal to indemnify PLAINTIFF and
16 CLASS MEMBERS for necessary expenditures and/or losses incurring in discharging their duties
17 constitutes unfair and unlawful business practices under California Business and Professions
18 Code § 17200 *et seq.*

19 79. DEFENDANTS' violations of California wage and hour laws constitute a business
20 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over
21 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and
22 CLASS MEMBERS.

23 80. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
24 rest periods, and other benefits as required by the California Labor Code, the California Code of
25 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
26 record, report, and pay the correct sums of assessment to the state authorities under the California
27 Labor Code and other applicable regulations.

28 81. As a result of DEFENDANTS' unfair and unlawful business practices,

1 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
2 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be
3 made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS
4 MEMBERS.

5 82. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and
6 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not
7 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and
8 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
9 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
10 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the
11 jurisdiction of this Court.

12 **REPRESENTATIVE ACTION**

13 **THIRTEENTH CAUSE OF ACTION**

14 **Representative Action for Civil Penalties**

15 **[Cal. Labor Code §§ 2698- 2699.5]**

16 **(Against All DEFENDANTS)**

17 83. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
18 allegations in the foregoing paragraphs, with exception to the allegations concerning class action
19 designation, paragraph 18 (a-d).

20 84. PLAINTIFF is an "aggrieved employee" within the meaning of California Labor
21 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
22 current and former employees of DEFENDANTS pursuant to the procedures specified in
23 California Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed
24 by DEFENDANTS and the alleged violations of the California Labor Code were committed
25 against PLAINTIFF and CLASS MEMBERS.

26 85. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
27 Labor Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS will seek to recover civil
28 penalties, including but not limited to penalties under California Labor Code §§ 2699, 226.3,

226.7, 558, 1174.5, 1197.1, and IWC Wage Order No. 9-2001, §§ 11 and 12, from DEFENDANTS in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802. PLAINTIFF and CLASS MEMBERS will also be entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

86. These penalties are in addition to any other relief available under the Labor Code.

87. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on October 4, 2022, by online filing to the California Labor and Workforce Development Agency ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. As more than sixty-five (65) days have passed and the LWDA has not provided notice to PLAINTIFF that it intends to investigate the alleged violations, PLAINTIFF has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA against DEFENDANTS on behalf of the State of California, himself and other aggrieved employees of DEFENDANTS.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other persons similarly situated, by their attorneys, respectfully prays for relief against DEFENDANTS and DOES 1 through 100, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFF, including the value of the unlawfully converted tips, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 9-2001;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunction enjoining DEFENDANTS from

violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful and unfair business practices complained of herein;

6. For actual and/or statutory damages and/or penalties pursuant to California Labor Code § 226(e);
7. For waiting time penalties pursuant to California Labor Code § 203;
8. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by California Labor Code §§ 226(e) and 2699;
9. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287, 3288, and 3336, and/or any other applicable provision providing for pre-judgment interest;
10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194, 2699 and 2802, California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;
11. For declaratory relief;
12. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Causes of Action as a class action;
13. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's counsel as class counsel;
14. For all PAGA civil penalties and other recoveries according to proof including, but not limited to, the amount of any all civil penalties or other amounts authorized by California Labor Code §§ 226, 226.3, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 9-2001, §§ 11 and 12 or other applicable IWC Wage Orders or any other applicable civil penalty provisions authorized under California laws; and
15. For such other and further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: April 19, 2023

Respectfully submitted,

THE KICK LAW FIRM, APC

By:



Taras Kick

Greg Taylor

Attorneys for Plaintiff Albert Lizarraga,
individually, and on behalf of all others
similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, over the age of
3 eighteen years, and not a party to the within action. My business address is 815 Moraga Drive,
4 Los Angeles, CA 90049. On the below date of execution, I served the within document:

5 **FIRST AMENDED CLASS AND PAGA**
6 **REPRESENTATIVE ACTION**
7 **COMPLAINT**

8 By Electronic Service Pursuant to Court Order: I caused such envelope to be delivered by e-mail
9 (Case Anywhere) to:

10 Richard Rahm
11 richard.rahm@us.dlapiper.com
12 DLA Piper LLP (US)
13 555 Mission Street Suite 2400
14 San Francisco, CA 94105
15 T: (415) 836-2524
16 F: (415) 659-7324

Attorneys for Defendant
DIGBY SOUTHWEST, INC.

17 I declare under penalty of perjury that the above is true and correct.

18 Executed on April 19, 2023.

19 /s/ Alina Muresan
20 Alina Muresan
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