

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
John A. Young (SBN: 299809)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: (562) 590-5550
Facsimile No.: (562) 590-8400

Attorneys for Plaintiff CALOR MA DA NESCHT as a designated Private Attorney General,
pursuant to the Private Attorney General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

CALOR MA DA NESCHT, as a
designated Private Attorney General

Plaintiff,

v.

GAP GLOBAL, INC.; ARGUS TRUCK
AND TRAILER REPAIR, INC.; A&M
CARRIERS, INC.; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **23CV409956**

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Failure to Pay Minimum Wage;
2. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures;
6. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment; and
7. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Willful Misclassification.

1 Plaintiff CALOR MA DA NESCHT (“Plaintiff”) complains and alleges as follows:

2 **INTRODUCTION**

3 1. This is an action brought on behalf of state of California as a Private Attorney
4 General pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code
5 §2698 et seq. as a result of one or more of the violations of the California Labor Code alleged
6 herein by Defendant GAP GLOBAL, INC.; ARGUS TRUCK AND TRAILER REPAIR, INC.;
7 and A&M CARRIERS, INC. (“Defendants”). The term “RELEVANT TIME PERIOD” or
8 “TIME PERIOD” is defined as one (1) year and sixty-five (65) days prior to the filing of the
9 complaint. Plaintiff as a Private Attorney General, reserves the right to amend this complaint to
10 reflect a different “Time Period” as further discovery is conducted.

11 2. Plaintiff, on behalf of the State of California as a Private Attorney General seeks
12 relief against Defendants for their: (1) failure to pay all wages due, including regular and overtime
13 wages; (2) failure to provide accurate itemized wage statements; (3) failure to reimburse for
14 necessary business expenses; (4) failure to provide meal periods or compensation in lieu thereof,
15 (5) failure to provide rest periods or compensation in lieu thereof; (6) failure to pay wages due
16 upon termination of employment; and (7) willful misclassification of employees as independent
17 contractors.

18 3. At all relevant times herein, Defendants have consistently maintained and enforced
19 the following unlawful policies and practices against its workforce by:

- 20 (a) Willfully refusing to pay all hours worked, including both minimum and overtime
21 wages;
- 22 (b) Willfully refusing to furnish accurate itemized wage statements upon payment of
23 wages;
- 24 (c) Willfully refusing to reimburse necessary business expenses;
- 25 (d) Willfully refusing to provide timely uninterrupted meal and rest periods or
26 adequate compensation in lieu thereof;
- 27 (e) Willfully misclassifying employees as independent contractors; and
- 28 (f) Willfully refusing to pay all wages due upon separation of employment;

1 11. Plaintiff is informed and believes, and based thereon alleges, that A&M
2 CARRIER, INC., is an Illinois Corporation doing business in California and employed and/or
3 supervised Plaintiff during his employment. Plaintiff is informed and believes, and based thereon
4 alleges, that A&M CARRIER, INC. is conducting business in good standing in the State of
5 California.

6 12. California law deems Defendants to be joint employers of Plaintiff and similarly
7 situated employees. Defendants GAP GLOBAL, INC. and A&M CARRIER, INC. are deemed
8 an employer because it exerted control over “the means and manner of [Plaintiff’s] performance”
9 daily work duties. See *McCoy v. Pacific Maritime Assn.*, 216.Cal.App.4th 283, 302 (2013).
10 Specifically, Plaintiff and Aggrieved Employees were obligated to enter into independent
11 contractor agreements with Defendant GAP GLOBAL, INC. and A&M CARRIER, INC., obtain
12 loads from Defendant GAP GLOBAL, INC. and A&M CARRIER, INC.’s facilities, their loads
13 were organized to meet Defendant GAP GLOBAL, INC. and A&M CARRIER, INC.’s customers
14 needs, subjected to and required to abide by Defendant GAP GLOBAL, INC. and A&M
15 CARRIER, INC. and Defendant Argus’ policies and rules in effect, Defendants directed Plaintiff
16 and Aggrieved Employees where to pick up and deliver loads. Defendants are deemed an
17 employer because Defendants hired, placed and paid Plaintiff and Aggrieved Employees.

18 13. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
19 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
20 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
21 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
22 capacities of the DOE Defendants when ascertained.

23 14. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all
24 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
25 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
27 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
28 joint employers and conspire with one another to increase profits by engaging in the conduct

described in this complaint.

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

13. Plaintiff brings this case as Private Attorney General pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code section 2698 et seq. seeking penalties, as provided by the Private Attorney General Act, Labor Code section 2698 et seq. (“PAGA”).

14. Prior to filing this complaint, on November 11, 2022, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA is attached hereto as Exhibit A.

15. More than sixty-five (65) days have passed since Plaintiff submitted his November 11, 2022, notice to the LWDA and Defendants of the specific alleged Labor Code violations, and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendants’ intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action as a Private Attorney General with regard to his November 11, 2022, PAGA notice.

16. On January 17, 2023, Plaintiff amended his PAGA notice to include Defendant A&M CARRIER, INC. A true and correct copy of Plaintiff’s amended letter sent to the LWDA is attached hereto as Exhibit B.

FACTUAL ALLEGATIONS

1 17. This lawsuit arises out of an ongoing wrongful scheme by Defendants
2 misclassifying employees as independent contractors and deny its employees the benefits due
3 under California's wage and hour laws for work performed in California. Defendants wrongfully
4 refused to compensate its employees for minimum wages, overtime compensation, provide timely
5 uninterrupted meal and rest periods, provide accurate wage statements, reimbursement and pay
6 wages owed at the end of the employment, as required under California law.

7 18. Pursuant to the California Supreme Court's unanimous decision in *Dynamex*
8 *Operations West, Inc. v. Superior Court* (2018), 4 Cal. 5th 903, in order for an employer's
9 designation of a worker as an independent contractor rather than an employee subject to the wage
10 and hour protections of the Labor Code and applicable Wage Order, to be legally upheld, the
11 employer must meet the three-prong "ABC" test set forth in *Dynamex*.

12 19. Specifically, the employer must meet all three prongs, which consist of showing:
13 (a) the worker is free from the control and direction of the hiring entity in connection with the
14 performance of the work, both under the contract for the performance of the work and in fact; (b)
15 the worker performs work that is outside the usual course of the hiring entity's business and (c)
16 the worker is customarily engaged in an independently established trade, occupation, or business
17 of the same nature as the work performed. (*Dynamex* at 956-7, 964).

18 20. Throughout the Relevant Time Period, Defendants misclassified hourly non-
19 exempt positions throughout California. Defendants in compensated said positions at an hourly
20 rate less than twice that of the state minimum wage and such positions remained under the direct
21 control and supervision of Defendants. Accordingly, these positions remain misclassified as
22 independent contractors. As such, Defendants failed to pay minimum wage, overtime, and
23 otherwise pay all wages due to these non-exempt employees as required by law.

24 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
25 policies and practices described herein are common within the State of California.

26 22. Defendants are in the business of providing transportation and logistical services;
27 Plaintiff and Aggrieved Employees worked as truck drivers, an integral and necessary function
28 of any business providing transportation services to customers.

1 26. Defendants exercised a degree of control over Plaintiff and Aggrieved Employees,
2 including but not limited to scheduling of deliveries and pick-ups, the number of deliveries and
3 pick-ups per day, and the manner and extent in which Plaintiff and Aggrieved Employees
4 presented themselves to customers and the public as employees of Defendants, including but not
5 limited to the wearing of Defendants' uniforms and decals on vehicles containing Defendants'
6 name and or logos.

7 27. Most significantly, the work performed by Plaintiff and Aggrieved Employees was
8 wholly within the usual course of Defendants' business.

9 28. Accordingly, Defendants' designation of Plaintiff and Aggrieved Employees
10 substantially and unequivocally cannot meet the criteria set forth as the ABC test in *Dynamex*,
11 such that Plaintiff and Aggrieved Employees should have been afforded all the wage and hour
12 protections set forth in the Labor Code and Wage Order 9-2001.

13 29. Plaintiff and Aggrieved Employees regularly and frequently drove trucks
14 substantially beyond 8 hour per day and thus performed non-exempt work in excess of the
15 maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or
16 statutes, and therefore entitled the Plaintiff and Aggrieved Employees members to minimum wage
17 as set forth by the applicable Wage Orders, regulations and/or statutes, which Defendants failed
18 to pay because they illegally treated Plaintiff and Aggrieved Employees as independent
19 contractors no subject to above wage and hour laws.

20 30. Defendants also failed to provide Plaintiff and Aggrieved Employees with timely
21 meal and rest periods. As Defendants deemed Plaintiff and Aggrieved Employees as independent
22 contractors, Defendants failed to implement policies and practices which mandated employees be
23 given meal and rest periods as set forth under Labor Code §§ 226.7, 512 and 8 CCR §11090 (11)
24 and (12). Consequently, Plaintiff and Aggrieved Employees regularly and frequently experienced
25 missed, delayed or interrupted meal and rest periods. Consistent with designating Plaintiff and
26 Aggrieved Employees as independent contractors, Defendants exacerbated the meal and rest
27 period violations described above by failing to pay to Plaintiff and Aggrieved Employees the
28

legally mandated premium compensation pursuant to Labor Code §226.7 and 8 CCR §11090 (11) and (12).

31. Plaintiff and Aggrieved Employees who ended their employment during the Relevant Time Period but were not paid the above due compensation for all hours worked, timely upon the termination of their employment as required by *Labor Code* §§ 201-203 and are entitled to penalties as due to violations of *Labor Code* § 203.

FIRST CAUSE OF ACTION

VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE

(Plaintiff As a Private Attorney General Against All Defendants)

13. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

14. Plaintiff seek relief against Defendants for the failure to pay all wages due in violation of the Labor Code and applicable IWC wage orders.

15. Plaintiff, seeks relief against Defendants for the failure to pay all wages due in violation of Labor Code section 1194 and applicable IWC wage orders.

16. Labor Code, section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their minimum wage or overtime compensation, including interest, reasonable attorney's fees and costs of suit.

17. Pursuant to IWC Wage Order 9, section 2(k), "hours worked" includes the time during which an employee is subject to the control of the employer and includes all time the employee is suffered or permitted to work, whether or not required to do so.

18. DefendantS willfully violated the Labor Code and applicable IWC wage orders by improperly misclassifying Plaintiff and Aggrieved Employees, sought to exclude them protections afforded by the Labor Code, including but not limited to, compensating Plaintiff and Aggrieved Employees for all the time they were subjected to Defendants' control and or were suffered or permitted to work.

19. During the Relevant Time Period, Plaintiff and Aggrieved Employees engaged in

1 several non-driving tasks during their shifts. Specifically, Defendants required Plaintiff and Class
2 Members to perform the following tasks off-the-clock and or exerted control over them without
3 compensation: attend safety and other meetings off-the-clock, complete driver logs, completing
4 maintenance reports, reporting incidents to Defendants, submitting accident reports, repair
5 vehicle, amongst various other tasks.

6 20. Accordingly, Plaintiff and Aggrieved Employees were paid on the basis of
7 completed trips and or miles traveled. Defendants did not separately compensate Plaintiff and
8 Aggrieved Employees on an hourly basis for their time spent performing other non-driving tasks
9 in violation of Labor Code section 1194. As such, Plaintiff and Aggrieved Employees were not
10 paid minimum wage for their time spent performing other non-driving tasks.

11 21. Since the LWDA has not indicated that it will be investigating more than sixty-
12 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
13 to remedy the allegations set forth above, Plaintiff, as a Private Attorney General, will seek any
14 and all penalties otherwise capable of being collected by the Labor Commission, the LWDA
15 and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the
16 following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
17 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

18 22. Plaintiff is informed and believes that Defendants have violated, and continues to
19 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
20 minimum wages.

21 23. Plaintiff, as a Private Attorney General, will and does seek to recover any and all
22 penalties for each and every violation shown to exist or to have occurred during the Relevant
23 Time Period, in an amount according to proof, as to those penalties that are otherwise only
24 available to public agency enforcement actions.

25 24. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees
26 and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
27 interest.

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**VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR
COMPENSATION IN LIEU THEREOF**

25. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

26. Labor Code sections 226.7 and 512 and IWC Wage Order 9-2001, sect. 11 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes.

27. Labor Code section 226.7 provides that if an employer fails to provide an employee with a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendants failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

28. At all times relevant hereto, Plaintiff and other non-exempt hourly employees have worked shifts more than five (5) hours in a workday.

29. Plaintiff and other non-exempt hourly employees did not voluntarily or willfully waive meal periods.

30. Pursuant to Labor Code section 226.7, Plaintiff and other non-exempt hourly employees are entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed meal break, in an amount to be proven at trial.

31. Plaintiff, as a Private Attorney General, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions.

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32. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

THIRD CAUSE OF ACTION

**VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF**

(Plaintiff As a Private Attorney General Against All Defendants)

33. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

34. Labor Code section 226.7 and IWC Wage Order 9-2001, section 12 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or major fraction thereof.

35. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided. Plaintiff and other employees consistently worked over four (4) hours while driving for Defendants with no rest breaks, due to Defendants' uniform policies and practices.

36. As described above, Defendants failed to reasonably make available rest breaks to Plaintiff and other non-exempt hourly employees throughout the Relevant Time Period.

37. Plaintiff, as a Private Attorney General, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions.

38. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

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1 accordance with the PAGA.

2 43. Additionally, Plaintiff is entitled to attorneys' fees and costs pursuant to Labor
3 Code section 2699, subdivision (g)(1), and prejudgment interest.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE**

6 **NECESSARY BUSINESS EXPENDITURES**

7 **(Plaintiff As a Private Attorney General Against All Defendants)**

8 44. Plaintiff realleges and incorporates by reference the allegations in the preceding
9 paragraphs.

10 45. Labor Code section 2802 states that "An employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties...."

13 46. Defendants failed to reimburse its employees for necessary expenditures as a direct
14 consequence of the discharge of their duties.

15 47. Defendants knowingly, willingly, and intentionally attempted to offset the cost of
16 doing business on its employees in violation of the California labor code.

17 48. Defendants have a corporate practice and policy of requiring its employees to
18 shoulder the burden of Defendants' cost of doing business by failing to reimburse its employees
19 for necessary business expenditures, specifically requiring employees to utilize their personnel
20 cell phones in direct consequence of the discharge of their duties to Defendants, in addition to
21 paying for licenses, maintenance supplies, and insurance.

22 49. Plaintiff acting as a Private Attorney General pursuant to the Private Attorney
23 General Act (2004), and more specifically, Labor Code section 2698, will and does seek to
24 recover any and all penalties for each and every violation shown to exist or to have occurred
25 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
26 otherwise only available to public agency enforcement actions. Funds recovered will be
27 distributed in accordance with the PAGA.

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1 50. Accordingly, Plaintiff entitled to attorneys' fees and costs pursuant to Labor Code
2 section 2699, subdivision (g)(1), and prejudgment interest.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

5 **TERMINATION OF EMPLOYMENT**

6 **(Plaintiff As a Private Attorney General Against All Defendants)**

7 51. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
8 complaint as if fully set forth herein.

9 52. Employees who ended their employment with Defendants during the Relevant
10 Time Period, were entitled to be promptly paid all wages owed, including both minimum wage
11 and lawful overtime compensation and other premiums, as required by Labor Code sections 201
12 and 203.

13 53. Defendants refused and/or failed to promptly compensate its employees for wages
14 owed as a result of Defendants' failure to properly pay meal and rest break premiums, and
15 minimum wages owed for work performed for Defendants.

16 54. Plaintiff, as a Private Attorney General pursuant to the Private Attorney General
17 Act (2004, and more specifically, Labor Code §2698 et seq, will seek any and all penalties
18 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
19 each of the following, as set forth in Labor Code section 2699.5, which provides that section
20 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203,
21 226, 226.7, 510, 512, 1174, 1194, and 2802.

22 55. Plaintiff, as a personal representative of the general public, will and does seek to
23 recover any and all penalties for each and every violation shown to exist or to have occurred
24 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
25 otherwise only available to public agency enforcement actions. Funds recovered will be
26 distributed in accordance with the PAGA.

27 56. Additionally, Plaintiff as a Private Attorney General is entitled to attorneys' fees
28 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

(Plaintiff As a Private Attorney General Against All Defendants)

61. Additionally, Plaintiff as a Private Attorney General is entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1. For civil penalties for each violation as provided by law, including, but not limited to, those civil penalties provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.

EXHIBIT A



John Young, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
jyoung@mahoney-law.net

VIA ELECTRONIC FILLING

LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator

VIA CERTIFIED MAIL# 7021 0950 0000 9825 4598

GAP Global Inc.
PO Box 51348
Casper WY 82605

VIA CERTIFIED MAIL# 7021 0950 0000 9825 4604

Argus Truck and Trailer Repair, Inc.
ATTN: Juan Rangel
4234 Amelia Ave.
Lyons, IL 60534

Re: Calor Ma Da Nescht v GAP Global Inc. and Argus Truck and Trailer Repair, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency, GAP Global, Inc. and Argus Truck and Trailer Repair, Inc.

From: Calor Ma Da Nescht, on behalf of himself and similarly aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

I. FACTUAL STATEMENT

Please note that the firm, Mahoney Law Group, APC, represents the interests of Calor Ma Da Nescht ("Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

GAP Global, Inc. and Argus Truck and Trailer Repair, Inc. hereinafter jointly referred to as "Employers". Employee alleges Employers violated various sections of the Labor Code, including, but not limited, to sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, and 1197, and 2802, by failing to provide Employee and all other aggrieved employees all wages for all hours worked, failing to pay Employee and all other aggrieved employees minimum wage, failure to pay overtime wages, failure to authorize and permit rest

periods or premium wages in lieu thereof, failure to provide meal periods or premium wages in lieu thereof, failure to reimburse Employee and other aggrieved employees for work-related expenses, and failure to provide accurate itemized wage statements, based on Employers' misclassification of Employee and all other aggrieved employees as independent contractors.

Employers willfully misclassified Employee and all other aggrieved employees as independent contractors. Specifically, Employers maintained the right to exercise control over Employee and all other aggrieved employees, including the manner and means in which work was performed. For example, Employers required Employee and all other aggrieved employees to report to load/unload shipments at specified times, Employers assigned routes, and Employers would reprimand employees if they received complaints regarding an employee. Further, Employee and other aggrieved employees performed work that was/is quintessential to Employers' usual course of business. Employers' willful misclassification of Employee and all aggrieved employees is in violation of Labor Code section 226.8.

Employers failed to pay Employee and other aggrieved employees for all hours worked at the legally mandated wage rates. Employers failed to pay Employee and other aggrieved employees all legally mandated wages, including regular and overtime wages, for all work performed, in violation of California law. Specifically, Employers paid Employee and other aggrieved employees per mile and or per delivery made. Employee and other aggrieved employees were not paid for non-productive time such as pre and post trip inspections, maintaining tractors and trailers, drug testing, amongst other responsibilities. As such, Employee and other aggrieved employees were not compensated the legally mandated wage rate for the time worked during these periods. Employer's conduct is in violation of Labor Code sections 294, 510, and 1194, and is actionable under PAGA.

Employers also failed to provide Employee and other aggrieved employees with timely uninterrupted meal and rest periods. Employers had a practice of prioritizing work responsibilities and having Employee and other aggrieved employees complete their routes and deliveries rather than provide Employee and other aggrieved employees their legally mandated meal or rest break. As a result of Employers' policy and practices, Employee and his co-workers did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Employer's conduct is in violation of Labor Code sections 226.7 and 512, and is also actionable under PAGA.

Further, Employers failed to reimburse Employee and other aggrieved employees for their work-related expenses in violation of Labor Code section 2802. Employer ordered Employee and other aggrieved employees to use their personal cell phones and communication with Employers, in addition to other out-of-pocket expenses such as insurance, licenses, and maintenance supplies. Employers' failure to reimburse Employee and other aggrieved employees for work-related expenses is a direct violation of Labor Code section 2802 and is also actionable under PAGA.

As a result of Employers' failure to pay all wages owed as described herein, Employers further failed to keep accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing the actual hours worked and

premium wages earned per pay period. Employers' conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice and procedure of failing to pay all wages earned to former employees.

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employers. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response. Please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,



John A. Young, Esq.

MAHONEY LAW GROUP, APC

EXHIBIT B



John Young, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
jyoung@mahoney-law.net

VIA ELECTRONIC FILLING

LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator

VIA CERTIFIED MAIL# 7021 0950 0000 9825 4611

GAP Global Inc.
PO Box 51348
Casper WY 82605

VIA CERTIFIED MAIL# 7021 0950 0000 9825 4628

Argus Truck and Trailer Repair, Inc.
ATTN: Juan Rangel
4234 Amelia Ave.
Lyons, IL 60534

VIA CERTIFIED MAIL# 7022 2410 0000 2418 5019

A&M Carrier, Inc.
1875 Rohlwing Rd., Unit B
Rolling Meadows, IL 60534

Re: Calor Ma Da Nescht v GAP Global Inc., A&M Carriers, Inc., and Argus Truck and Trailer Repair, Inc.

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency, GAP Global, Inc. A&M Carriers, Inc., and Argus Truck and Trailer Repair, Inc.

From: Calor Ma Da Nescht, on behalf of himself and similarly aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

I. FACTUAL STATEMENT

Please note that the firm, Mahoney Law Group, APC, represents the interests of Calor Ma Da Nescht ("Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

GAP Global, Inc., A&M Carriers, Inc., and Argus Truck and Trailer Repair, Inc. hereinafter jointly referred to as “Employers”. Employee alleges Employers violated various sections of the Labor Code, including, but not limited, to sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, and 1197, and 2802, by failing to provide Employee and all other aggrieved employees all wages for all hours worked, failing to pay Employee and all other aggrieved employees minimum wage, failure to pay overtime wages, failure to authorize and permit rest periods or premium wages in lieu thereof, failure to provide meal periods or premium wages in lieu thereof, failure to reimburse Employee and other aggrieved employees for work-related expenses, and failure to provide accurate itemized wage statements, based on Employers’ misclassification of Employee and all other aggrieved employees as independent contractors.

Employers willfully misclassified Employee and all other aggrieved employees as independent contractors. Specifically, Employers maintained the right to exercise control over Employee and all other aggrieved employees, including the manner and means in which work was performed. For example, Employers required Employee and all other aggrieved employees to report to load/unload shipments at specified times, Employers assigned routes, and Employers would reprimand employees if they received complaints regarding an employee. Further, Employee and other aggrieved employees performed work that was/is quintessential to Employers’ usual course of business. Employers’ willful misclassification of Employee and all aggrieved employees is in violation of Labor Code section 226.8.

Employers failed to pay Employee and other aggrieved employees for all hours worked at the legally mandated wage rates. Employers failed to pay Employee and other aggrieved employees all legally mandated wages, including regular and overtime wages, for all work performed, in violation of California law. Specifically, Employers paid Employee and other aggrieved employees per mile and or per delivery made. Employee and other aggrieved employees were not paid for non-productive time such as pre and post trip inspections, maintaining tractors and trailers, drug testing, amongst other responsibilities. As such, Employee and other aggrieved employees were not compensated the legally mandated wage rate for the time worked during these periods. Employer’s conduct is in violation of Labor Code sections 294, 510, and 1194, and is actionable under PAGA.

Employers also failed to provide Employee and other aggrieved employees with timely uninterrupted meal and rest periods. Employers had a practice of prioritizing work responsibilities and having Employee and other aggrieved employees complete their routes and deliveries rather than provide Employee and other aggrieved employees their legally mandated meal or rest break. As a result of Employers’ policy and practices, Employee and his co-workers did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Employer’s conduct is in violation of Labor Code sections 226.7 and 512, and is also actionable under PAGA.

Further, Employers failed to reimburse Employee and other aggrieved employees for their work-related expenses in violation of Labor Code section 2802. Employer ordered Employee and other aggrieved employees to use their personal cell phones and communication with Employers, in addition to other out-of-pocket expenses such as insurance, licenses, and maintenance supplies. Employers' failure to reimburse Employee and other aggrieved employees for work-related expenses is a direct violation of Labor Code section 2802 and is also actionable under PAGA.

As a result of Employers' failure to pay all wages owed as described herein, Employers further failed to keep accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing the actual hours worked and premium wages earned per pay period. Employers' conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice and procedure of failing to pay all wages earned to former employees.

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employers. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response. Please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,



John A. Young, Esq.

MAHONEY LAW GROUP, APC