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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org		
ATTACHMENT NAME: Answer: First Amended Complaint		
CASE NAME: Mark Suarez vs. Monzon & Son Enterprises, Inc. et al.		CASE NUMBER: CIVSB2227058
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARK SUAREZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MONZON & SON ENTERPRISES, INC., a
California Corporation; MONZON & SON
EQUIPMENT TRANSPORT INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2225078
*[Assigned to Hon, Judge David Cohn, Dept
S26, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (3) Failure to Reimburse Bus. Expenses;
- (4) Failure to Pay Vested Vacation;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (10) Failure to Reimburse Bus. Expenses;
- (11) Failure to Pay Vested Vacation;
- (12) Failure to Timely Pay Wages (§ 204);
- (13) Failure to Timely Pay Final Wages;
- (14) Failure to Provide Accurate Itemized Wage Statements;

JURY TRIAL DEMANDED

1 Plaintiff Mark Suarez (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employers, Defendant Monzon & Son
5 Enterprises, Inc., Monzon & Son Equipment Transport Inc., and DOES 1 through 20, inclusive,
6 (collectively, the “Defendants”) on behalf of himself and all other current and former California
7 resident truck drivers who were employed by Defendants and who drove in California within the
8 last four years (the “Represented Employees”), for Defendants’ violations of the California
9 Labor Code stemming from Defendants’ failure to pay all wages owed, including minimum and
10 regular wages, failure to reimburse business expenses, failure to pay vested vacation, failure to
11 timely pay wages, and failure to provide accurate itemized wage statements, among other claims.

12 2. Plaintiff was employed by Defendants from approximately 2020 through October
13 2022 as a truck driver.

14 3. Plaintiff alleges on information and belief that the Represented Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiff was subjected during his employment.

17 4. At all relevant times, Plaintiff and the Represented Employees were not provided
18 proper minimum and regular wages owed due to Defendants’ policy which only paid a piece-rate
19 and/or percentage of the load basis. Due to this policy, Plaintiff and the Represented Employees
20 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
21 duty, time including tasks, such as but not limited to, pre-trip and post-trip inspections, detention
22 time, completing paperwork, refueling or repair, and downtime between runs. Also, the piece-
23 rate / percent-of-the-load pay often resulted in a payment of wages at less than the required
24 California minimum wages for all hours worked.

25 5. Furthermore, Plaintiff and the Represented Employees were not provided proper
26 minimum and regular wages due to Defendants’ failure to accurately record and compensate for
27 all hours worked. For example, Plaintiff and the Represented Employees were often required to
28 clock out for meal periods and/or rest breaks yet were under Defendants’ control and required to

1 perform duties for Defendants while off the clock. As a result of this policy and practice,
2 Plaintiff and the Represented Employees were required to perform off-the-clock work that
3 Defendants either knew or should have known they were performing.

4 6. Also, Defendants required Plaintiff and the Represented Employees to incur
5 substantial business-related expenses and costs without reimbursement. For example,
6 Defendants required Plaintiff and the Represented Employees to use personal cell phones to
7 carry out their duties for Defendants without reimbursement.

8 7. Also, at all relevant times, Defendants utilized a policy and practice through
9 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
10 “vacation hours”). California law, specifically Labor Code § 227.3, requires Defendants to pay
11 all accrued and unused vacation hours upon separation of employment at the final rate of pay.
12 However, Defendants’ policy and practice violated Labor Code § 227.3, as detailed below.

13 8. Plaintiff also alleges that he and the Represented Employees were not paid all
14 wages due and owing upon separation of employment within the time required by Labor Code §§
15 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
16 wages due and owing to Plaintiff and the Represented Employees at the time their employment
17 ended with Defendants, including, but not limited to minimum wages, regular wages, and
18 vacation and sick wages, among others.

19 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
20 statements that fully complied with the requirements of Labor Code § 226(a).

21 10. Plaintiff alleges that Defendants’ violations of the wage and hour components of
22 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
23 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
24 competitors.

25 11. At all material times, Defendants and DOES 1 through 10 were and/or are
26 Represented Employees’ employers or persons acting on behalf of Represented Employees’
27 employer, within the meaning of California Labor Code § 558, who violated or caused to be
28 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating

1 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
2 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
3 California law.

4 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
5 monetary relief against Defendants and each of them, on behalf of himself and the Represented
6 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
7 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
8 221, 223, 226, 226.2, 226.3, 227.3, 246, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802,
9 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
10 additional representatives throughout the State of California.

11 **II. JURISDICTION**

12 13. This Court has jurisdiction over the claims for relief of Plaintiff and the
13 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

14 **III. VENUE**

15 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
16 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
17 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
18 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
19 Employees in San Bernardino County.

20 **IV. PARTIES**

21 **Plaintiff**

22 15. Plaintiff and Class Representative Mark Suarez was employed by Defendants
23 from 2020 through 2022 and performed work for Defendants in San Bernardino County.

24 **Defendants**

25 16. Plaintiff is informed and believes and thereon alleges that Defendant Monzon &
26 Son Enterprises, Inc., is a California corporation authorized to and doing business in San
27 Bernardino County, California, and is and/or was the legal employer of Plaintiff and the
28 Represented Employees during the applicable statutory periods.

1 17. Plaintiff is informed and believes and thereon alleges that Defendant Monzon &
2 Son Equipment Transport Inc. is a California corporation authorized to and doing business in
3 San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the
4 Represented Employees during the applicable statutory periods.

5 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
6 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
7 inclusive, but on information and belief alleges that those Defendants are legally responsible for
8 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
9 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
10 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
11 Defendants when ascertained.

12 19. Plaintiff is informed and believes and thereon alleges that he worked under the
13 joint direction and control of Defendants and that Defendants, and each of them, acted in all
14 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
15 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
16 attributable to the other Defendants. On information and belief, a unity of interest and ownership
17 between each Defendant exists such that all Defendants acted as a single employer of Plaintiff
18 and other similarly situated employees.

19 20. Plaintiff is informed and believes and thereon alleges that, in conducting
20 themselves in the manner described herein, Defendants, and each of them, were acting in active
21 concert with one another such that the acts of each were and are fully attributable to the others in
22 all material respects. Plaintiff is further informed and believes that at all relevant times
23 Defendants and each of them are now, and at all material times herein mentioned were, the
24 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
25 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
26 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
27 their remaining co-Defendants.

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1 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
2 Defendants, and each of them, are an integrated enterprise and should be treated as a single
3 employer because these entities share an interrelation of operations, with common human
4 resources and personnel policies and shared common offices and facilities. Additionally,
5 Defendants also have a shared website, common management, a centralized control of labor
6 operations, and common ownership or financial control.

7 22. Plaintiff is further informed and believes that at all relevant times, Defendants
8 have been inadequately capitalized to conduct business, have failed to follow appropriate
9 corporate formalities, and have simply been a shell and instrumentality through which
10 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
11 the corporate veil should be pierced and any liability attached, Defendants should be imposed
12 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
13 separate existence of these corporate entities would permit abuse of the corporate privilege,
14 thereby sanctioning fraud and promoting injustice.

15 **V. CLASS ACTION ALLEGATIONS**

16 23. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 24. Plaintiff brings this action on behalf of himself and all others similarly situated as
19 a class action, pursuant to Code of Civil Procedure § 382.

20 25. The relevant time period for this class action is defined as the time period
21 beginning four years prior to the filing of this action until class certification (the “Relevant Time
22 Period”).

23 26. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
24 represent is defined as follows:

25 **California Class**

26 All current and former California resident truck drivers
27 who were employed by Defendants and who drove in
28 California at any time during the Relevant Time Period.

1 27. Plaintiff reserves the right to amend or modify the class description with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 28. Plaintiff, as Class Representative, is a member of the class that he seeks to
4 represent.

5 29. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
8 records.

9 30. **Numerosity:** The potential members of the Class as defined are so numerous that
10 a joinder of all Represented Employees is impracticable. Although the exact number is currently
11 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
12 personnel records.

13 31. **Commonality:** There are questions of law and fact common to the class which
14 predominate over any questions affecting only individual members of the class, including
15 without limitation:

16 i. Whether Defendants violated the Labor Code and IWC Wage Order by
17 failing to pay proper minimum and regular wages to Plaintiff and the Represented Employees for
18 all hours worked;

19 ii. Whether Defendants violated Labor Code and IWC Wage Order by paying
20 the Represented Employees on a piece-rate/per-load basis yet not providing separate hourly
21 compensation for rest periods and other nonproductive time;

22 iii. Whether Defendants violated the Labor Code and applicable IWC Wage
23 Order by failing to reimburse Plaintiff and the Represented Employees for business expenses
24 incurred discharging their duties or in obedience to the directions of their employer;

25 iv. Whether Defendants violated the California Labor Code by failing to
26 compensate Plaintiff and the Represented Employees for all accrued but unused vacation hours
27 upon separation of employment;

28 ///

1 v. Whether Defendants violated the California Labor Code by failing to
2 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
3 Represented Employees, whether such separation was voluntary or involuntary;

4 vi. Whether Defendants violated the California Labor Code by failing to
5 provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

6 vii. Whether Defendants violated California Business & Professions Code §§
7 17200 *et seq.* due to the: failure to pay all wages owed, failure to reimburse business expenses,
8 and failure to timely pay final wages; and

9 viii. Whether Plaintiff and Represented Employees are entitled to equitable
10 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

11 32. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
12 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
13 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
14 wages owed, failure to pay vested vacation, failure to reimburse business expenses, failure to
15 timely pay final wages, and failure to provide accurate itemized wage statements.

16 33. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
17 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
18 conflict with those of the Class. Class Representative's counsel are competent and experienced in
19 litigating large employment class actions and other complex litigation matters, including cases
20 like this case.

21 34. **Superiority of Class Action.** Class certification is appropriate because a class
22 action is superior to other available means for the fair and efficient adjudication of this
23 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
24 law and fact common to the Class predominate over any questions affecting only individual
25 members of the Class. Each Represented Employee has been damaged and is entitled to
26 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
27 treatment will allow those similarly situated persons to litigate their claims in the manner that is
28 most efficient and economical for the parties and the judicial system.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 35. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
5 as if fully alleged herein.

6 36. Plaintiff and the Represented Employees were not exempt from the requirement
7 to be paid at least the applicable California minimum wage throughout the statutory period for
8 each hour worked.

9 37. Plaintiff and the Represented Employees were not provided proper minimum and
10 regular wages owed due to Defendants' policy which only paid a piece-rate and/or percentage of
11 the load basis. Due to this policy, Plaintiff and the Represented Employees did not receive
12 separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time
13 including tasks, such as but not limited to, pre-trip and post-trip inspections, detention time,
14 completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate /
15 percent-of-the-load pay often resulted in a payment of wages at less than the required California
16 minimum wages for all hours worked.

17 38. Furthermore, Plaintiff and the Represented Employees were not provided proper
18 minimum and regular wages due to Defendants' failure to accurately record and compensate for
19 all hours worked. For example, Plaintiff and the Represented Employees were often required to
20 clock out for meal periods and/or rest breaks yet were under Defendants' control and required to
21 perform duties for Defendants while off the clock. As a result of this policy and practice,
22 Plaintiff and the Represented Employees were required to perform off-the-clock work that
23 Defendants either knew or should have known they were performing.

24 39. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to the
25 Represented Employees at less than the required California minimum wages for all hours
26 worked. Due to traffic and other conditions, Defendants' per-mile pay often illegally resulted in
27 a rate of pay under the applicable minimum wage.

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1 40. Consequently, Defendants violated California Labor Code laws and minimum
2 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
3 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

4 41. Plaintiff is informed and believes and thereon alleges that Defendants
5 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

7 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
8 Represented Employees were entitled to be paid wages throughout the statutory period for each
9 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
10 accordance thereto.

11 43. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's
12 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the
13 Represented Employees' employer, within the meaning of California Labor Code § 558, who
14 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
15 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

16 44. During employment of Plaintiff and the Represented Employees, Defendants
17 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

18 45. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
19 Employees have been damaged in amounts to be proven at trial.

20 46. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
21 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
22 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
23 at trial.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY FOR NONPRODUCTIVE TIME**

26 (Labor Code § 226.2)

27 47. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

48. Plaintiff and the Represented Employees are and/or were employees of Defendants who were paid on a piece-rate basis.

49. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no less than the applicable minimum wage. Labor Code § 226.2(a)(4).

50. At all relevant times herein, Defendants failed to compensate the Represented Employees, including Plaintiff, for all nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Represented Employees.

51. As a result of Defendants' violations of Labor Code § 226.2, Plaintiff and the Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount of unpaid payments for nonproductive time, including interest thereon, reasonable attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

52. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

53. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

54. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses incurred while discharging their duties or in obedience to directions of their employer.

55. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Represented Employees to incur substantial business-related expenses and costs without reimbursement. For example, Defendants required Plaintiff and the Represented Employees to use personal cell phones to carry out their duties for Defendants

1 without reimbursement.

2 56. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
3 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
4 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

5 57. At all relevant times herein, Defendants failed to reimburse the Represented
6 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
7 thereby receiving an economic benefit.

8 58. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
9 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
10 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
11 compel Defendants to fully perform their obligations under the law, all in an amount to be
12 proved at time of trial.

13 59. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
14 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
15 civil actions, and said interest will accrue from the date on which the employee incurred the
16 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
17 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
18 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

19 60. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
20 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
21 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
22 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
23 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
24 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
25 fees will be in an amount to be proved at the time of trial.

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FOURTH CAUSE OF ACTION
FAILURE TO PAY VESTED VACATION

(Labor Code § 227.3)

61. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

62. Plaintiff and the Represented Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing the payment of vested vacation time and/or paid time off upon separation of employment.

63. Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay.

64. At all relevant times, Defendants utilized a policy and practice through which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3.

65. For instance, Defendants failed to pay all accrued and unused vacation hours to the Represented Employees upon separation of employment. And, for vacation hours that Defendants *did* pay, those were only calculated and paid based on the base rate of pay for the Represented Employees. But Labor Code § 227.3 requires that vested vacation be cashed out at the final rate of pay. And, since the final rate of pay for Plaintiff and the Represented Employees was often higher than the base rate (due to other nondiscretionary compensation), Defendants failed to correctly calculate and pay all vested vacation wages due and owing.

66. As a result, Plaintiff and the Represented Employees did not receive compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

67. At all relevant times herein, Defendants failed to pay the Represented Employees, including Plaintiff, all vested but unused vacation time and/or paid time off upon separation from employment, thereby receiving an economic benefit.

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68. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly refused to perform their obligations to compensate the Represented Employees for all vested but unused vacation time and/or paid time off upon separation from employment.

69. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the Represented Employees seek to recover the unpaid vacation hours, as well as penalties, interest, attorneys' fees, and costs as permitted under California law

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

70. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

71. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

72. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

73. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

74. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

75. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Represented Employees were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

76. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented Employees upon separation of employment, including, but not limited to, minimum and regular wages, and vacation wages.

1 77. Furthermore, Defendants failed to pay all wages due and owing to the
2 Represented Employees because of the failure to pay all required sick pay wages. Labor Code §
3 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same
4 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
5 whether or not the employee actually works overtime in that workweek.” Additionally, Labor
6 Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s
7 total wages, not including overtime premium pay, by the employee’s total hours worked in the
8 full pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid
9 sick pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
10 unpaid sick pay and violations of Labor Code §§ 201 – 203.

11 78. Plaintiff alleges that, at all times material to this action, Defendants had a planned
12 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
13 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
14 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
15 Employees the above-described waiting time penalty, all in an amount to be shown according to
16 proof at trial and within the jurisdiction of this Court.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 (Labor Code § 226)

20 79. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 80. Plaintiff and the Represented Employees are and/or were employees of
23 Defendants who did not receive proper protections and benefits of the laws governing the
24 provision of accurate itemized wage statements.

25 81. Labor Code § 226(a) requires an employer to provide its employees with itemized
26 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
27 inclusive dates of the pay period, the employee’s name and the last four digits of his or her
28 Social Security number (or employee identification number), the name and address of the legal

entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. Defendants violates Labor Code § 226(a) every pay period with respect to Plaintiff and the Represented Employees because the wage statements that Defendants issued to Plaintiff and the Represented Employees failed to accurately state gross wages earned, total hours worked, all deductions, net wages earned, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, and all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

83. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (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 [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

84. At all relevant times, Defendants failed to provide a wage statement to Plaintiff and the Represented Employees that complied with the requirements of Labor Code § 226.2(a)(2) because the wage statements did not include any information regarding compensable rest and recovery periods, nonproductive time, or the rates of pay and compensation for the same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect to Plaintiff and the Represented Employees.

85. Defendants’ failure to provide the required writing deprived Plaintiff and the Represented Employees of the ability to know, understand, and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the Represented Employees had no way to dispute the resulting miscalculation of wages, all of which resulted in an unjustified economic enrichment to said Defendants. As a direct result,

1 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses
2 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
3 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
4 all to their respective damages in amounts according to proof at trial.

5 86. As a result of Defendants' knowing and intentional failure to comply with Labor
6 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
7 prevented from knowing, understanding and disputing the wage payments paid to them.
8 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
9 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
10 Represented Employees being denied all necessary deductions, payments, and withholdings
11 owed by the employer, including, but not limited to, the failure to make all necessary
12 contributions for unemployment benefits, social security benefits, proper payment of taxes and
13 withholdings, and other mandated state and federal benefits.

14 87. Plaintiff has also been injured as a result of having to bring this action to attempt
15 to obtain correct wage information following Defendants' refusal to comply with many of the
16 mandates of California's Labor Code and related laws and regulations.

17 88. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
18 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
19 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
20 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by
21 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
22 penalty is all in an amount to be shown according to proof at trial.

23 **SEVENTH CAUSE OF ACTION**

24 **UNFAIR AND UNLAWFUL COMPETITION**

25 (Business and Professions Code § 17200 *et seq.*)

26 89. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

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1 90. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
3 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
4 due to the unfair and unlawful business practices of Defendants as alleged herein.

5 91. Defendants, and each of them, are “persons” as defined under Business &
6 Professions Code § 17021.

7 92. As alleged herein, Defendants engaged in conduct that violated California’s wage
8 and hour laws, including failure to pay minimum and regular wages, failure to pay vested
9 vacation, failure to reimburse business expenses, and failure to timely pay final wages, all in
10 order to decrease their costs and increase their profits.

11 93. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
12 Employees wages and monies and other financial obligations to which they were entitled.

13 94. As a result of Defendants’ failure to comply with the Labor Code and IWC
14 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
15 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
16 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*
17 Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to
18 lower its payroll costs as alleged herein, constitute unlawful and unfair business practices
19 because it was done in a systematic manner over a period of time to the detriment of the Plaintiff
20 and all others similarly-situated.

21 95. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
23 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
24 of Civil Procedure § 1021.5.

25 96. A violation of California Business & Professions Code § 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as
27 violations of, among other things, the California Labor Code and IWC Wage Orders, are
28 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code §§ 17200, et seq.

3 97. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
4 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
6 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
7 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
8 harm unless Defendants, and each of them, are restrained from continuing to engage in said
9 unfair, unlawful and/or fraudulent business practices.

10 98. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
11 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
12 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
13 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
14 Represented Employees are not obligated to establish individual knowledge of the unfair
15 practices of Defendants in order to recover restitution.

16 99. Plaintiff, individually, and on behalf of the Represented Employees, is further
17 entitled to and do seek a declaration that the above described business practices are unfair,
18 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
19 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
20 the future.

21 100. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
22 Represented Employees are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code §§ 2698 – 2699.5)**

2 101. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
5 action filed on behalf of himself and all other similarly situated current and former aggrieved
6 employees in California against whom one or more of the alleged violations was committed
7 (hereinafter the “Aggrieved Employees”).

8 102. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
9 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
10 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
11 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
12 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

13 103. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
14 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
15 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
16 the facts and theories to support the alleged violations. More than sixty-five (65) days have
17 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
18 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
19 satisfied the administrative prerequisites to suit under the PAGA.

20 **EIGHTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

22 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

23 104. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 105. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
26 be paid at least the applicable California minimum wage throughout the statutory period for each
27 hour worked.

28 ///

1 106. Plaintiff and the Aggrieved Employees were not provided proper minimum and
2 regular wages owed due to Defendants' policy which only paid a piece-rate and/or percentage of
3 the load basis. Due to this policy, Plaintiff and the Aggrieved Employees did not receive
4 separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time
5 including tasks, such as but not limited to, pre-trip and post-trip inspections, detention time,
6 completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate /
7 percent-of-the-load pay often resulted in a payment of wages at less than the required California
8 minimum wages for all hours worked.

9 107. Furthermore, Plaintiff and the Aggrieved Employees were not provided proper
10 minimum and regular wages due to Defendants' failure to accurately record and compensate for
11 all hours worked. For example, Plaintiff and the Aggrieved Employees were often required to
12 clock out for meal periods and/or rest breaks yet were under Defendants' control and required to
13 perform duties for Defendants while off the clock. As a result of this policy and practice,
14 Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that
15 Defendants either knew or should have known they were performing.

16 108. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to the
17 Aggrieved Employees at less than the required California minimum wages for all hours worked.
18 Due to traffic and other conditions, Defendants' per-mile pay often illegally resulted in a rate of
19 pay under the applicable minimum wage.

20 109. Consequently, Defendants violated California Labor Code laws and minimum
21 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
22 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

23 110. Plaintiff is informed and believes and thereon alleges that Defendants
24 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
25 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

26 111. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

PAGA ASSESSMENT FOR FAILURE TO PAY FOR NONPRODUCTIVE TIME

112. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

113. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who were paid on a piece-rate basis.

114. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no less than the applicable minimum wage. Labor Code § 226.2(a)(4).

115. At all relevant times herein, Defendants failed to compensate the Aggrieved Employees, including Plaintiff, for all nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Aggrieved Employees.

116. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

117. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

118. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

119. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses incurred while discharging their duties or in obedience to directions of their employer.

1 120. At all relevant times, as a condition of employment, Defendants required Plaintiff
2 and the Aggrieved Employees to incur substantial business-related expenses and costs without
3 reimbursement. For example, Defendants required Plaintiff and the Aggrieved Employees to use
4 personal cell phones to carry out their duties for Defendants without reimbursement.

5 121. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
6 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
7 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

8 122. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

11 **ELEVENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

13 (Labor Code § 227.3)

14 123. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 124. Plaintiff and the Aggrieved Employees were employees of Defendants who did
17 not receive proper protections and benefits of the laws governing the payment of vested vacation
18 time and/or paid time off upon separation of employment.

19 125. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
20 vacation, paid time off, or compensated time off policy must, upon an employee's separation
21 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
22 final rate of pay.

23 126. At all relevant times, Defendants utilized a policy and practice through which
24 Plaintiff and the Aggrieved Employees accrued vacation and/or PTO hours (collectively,
25 "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3.

26 127. For instance, Defendants failed to pay all accrued and unused vacation hours to
27 the Aggrieved Employees upon separation of employment. And, for vacation hours that
28 Defendants *did* pay, those were only calculated and paid based on the base rate of pay for the

1 Aggrieved Employees. But Labor Code § 227.3 requires that vested vacation be cashed out at
2 the final rate of pay. And, since the final rate of pay for Plaintiff and the Aggrieved Employees
3 was often higher than the base rate (due to other nondiscretionary compensation), Defendants
4 failed to correctly calculate and pay all vested vacation wages due and owing.

5 128. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
6 for all accrued but unused vacation hours as required by Labor Code § 227.3.

7 129. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

10 **TWELFTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

12 (Labor Code § 204)

13 130. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

15 131. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
16 who did not receive proper protections and benefits of the laws regarding the timing of payment
17 of wages each period.

18 132. Labor Code § 204(a) states that all wages earned by a person are due and payable
19 twice during each calendar month, and further states that wages earned during the first through
20 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
21 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
22 the following month.

23 133. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
24 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
25 the wages are paid not more than seven calendar days following the close of the payroll period."

26 134. At all relevant times herein, Defendants did not provide Plaintiff and the
27 Aggrieved Employees with all wages due and owing each period within the time required by
28 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved

1 Employees with all wages due and owing each pay period, including, but not limited to,
2 minimum wages and wages for unpaid nonproductive time within the time specified by Labor
3 Code § 204.

4 135. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **THIRTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

9 (Labor Code §§ 201 – 203)

10 136. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 137. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing the timing and
14 payment of final wages.

15 138. Labor Code § 201 requires that the employer immediately pay any wages, without
16 abatement or reduction, to any employee who is discharged.

17 139. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
18 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
19 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

20 140. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
21 penalty from the due date thereof at the same rate until paid or until an action therefore is
22 commenced, but the wages shall not continue for more than thirty (30) days.

23 141. At all relevant times, Defendants employed a policy and practice whereby
24 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
25 of employment within the time required by Labor Code §§ 201 and 202.

26 142. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
27 wages due and owing to Plaintiff and the Represented Employees upon separation of
28 employment, including, but not limited to, minimum and regular wages, compensation for

1 nonproductive time, and sick pay at the proper rate under Labor Code § 246.

2 143. Plaintiff alleges that, at all times material to this action, Defendants had a planned
3 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
4 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

5 144. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

8 **FOURTEENTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

11 (Labor Code § 226)

12 145. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 146. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing the provision of
16 accurate itemized wage statements.

17 147. Labor Code § 226(a) requires an employer to provide its employees with itemized
18 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
19 inclusive dates of the pay period, the employee's name and the last four digits of his or her
20 Social Security number (or employee identification number), the name and address of the legal
21 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee.

23 148. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
24 and the Aggrieved Employees because the wage statements that Defendants issued to Plaintiff
25 and the Aggrieved Employees failed to accurately state gross wages earned, total hours worked,
26 all deductions, net wages earned, the name and address of the legal entity that is the employer,
27 the inclusive dates of the pay period, and all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours at each hourly rate by the employee.

1 149. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a
2 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
3 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
4 specified in that subdivision, separately state the following, to which the provisions of Section
5 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
6 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
7 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
8 wages paid for that time during the pay period.”

9 150. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
10 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)
11 because the wage statements did not include any information regarding compensable rest and
12 recovery periods, nonproductive time, or the rates of pay and compensation for the same. As
13 such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect to Plaintiff
14 and the Represented Employees.

15 151. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
17 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

18 **VII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
20 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
21 follows:

- 22 1. As to the Eighth through Fourteenth Causes of Action, the assessment of all
23 remedies and/or penalties available under the PAGA;
- 24 2. For reasonable attorneys’ fees and costs as permitted under PAGA;
- 25 3. That the First through Seventh Causes of Action be certified as a class action;
- 26 4. That Plaintiff be appointed as Class Representative;
- 27 5. That counsel for Plaintiff be appointed Class Counsel;

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1 6. For all applicable statutory penalties recoverable under the First through Sixth
2 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
3 Orders of the Industrial Welfare Commission;

4 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
5 law, including those pursuant to the Labor Code;

6 8. For injunctive relief and/or restitution as provided by the Labor Code and
7 Business and Professions Code § 17200, *et seq.*;

8 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
9 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 227.3, 246, 256, 558, 1194, and
10 2802, among other sections inadvertently omitted;

11 10. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
13 thereon;

14 11. For pre- and post-judgment interest; and

15 12. For such other relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
18 demand a jury trial as to the First through Seventh Causes of Action pled herein.

19 Dated: March 13, 2023

20 LAUBY, MANKIN & LAUBY LLP

21 BY:

22 
23 Brian J. Mankin, Esq.
24 Peter J. Carlson, Esq.
25 Attorneys for Plaintiff
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