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individually, on behalf of all others similarly situated, and the general public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

GEORGE VALDEZ, on behalf of
himself and all other similarly situated
individuals, and the general public,

Plaintiff,

vs.

SHAMROCK FOODS COMPANY, an
Arizona Corporation, and DOES 1
through 25,

Defendants.

CASE NO. **CVRI 2301548**

COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiff GEORGE VALDEZ, an individual, hereby files this Complaint against Defendant
2 SHAMROCK FOODS COMPANY, an Arizona Corporation (hereinafter “SFC”) and Does 1 to 25
3 (hereinafter collectively, “Defendants”). Plaintiff is informed and believes and on the basis of that
4 information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This lawsuit challenges Defendant’s employment practices with respect to its Delivery
7 Drivers employed in the State of California, based on Defendants’ policy and practice of denying
8 statutory mandated meal and rest periods, among other Labor Code violations. Plaintiff and other
9 similarly situated aggrieved employees are California-based delivery drivers who operate Defendants’
10 tractor-trailers (hereinafter “Delivery Drivers” or “Aggrieved Employees”). Defendants require
11 Delivery Drivers, including Plaintiff, to perform work tasks during unpaid breaks, fails to provide
12 meal and rest breaks, fails to timely compensate employees for all wages earned, and fails to properly
13 and accurately compensate its Delivery Drivers for all hours worked.

14 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
15 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
16 designated rates for all hours worked.

17 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
18 compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime
19 hours worked.

20 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
21 to provide Plaintiff with adequate off-duty meal periods and meal period compensation in violation of
22 Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 9, section 11.

23 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
24 to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor Code
25 sections 226.7 and 516 and IWC Wage Order No. 9 section 12.

26 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
27 knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show
28 all wages earned, all hours worked, or all applicable rates.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 9, section 7.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due incurred in performing work for the benefit of Defendants.

9. In this case, Plaintiff seeks penalties established by Labor Code section 2699, the Private Attorney Generals Act (PAGA), against Defendants for their unlawful employment practices, from January 19, 2022 and continuing while this action is pending (hereinafter “Relevant Time Period”).

PARTIES

Plaintiff George Valdez

10. Plaintiff George Valdez resides in Ontario, California. Mr. Valdez was employed by Defendants as a truck driver from in or around May 14, 2018 to on or about February 24, 2022. Plaintiff worked as a Local Delivery Driver throughout his employment with Defendants and worked out of SFC's Eastvale Distribution Center or Terminal. Throughout his employment, Plaintiff earned an hourly wage.

Defendant Shamrock Foods Company

11. Plaintiff is informed and believes and based thereon alleges that Defendant SFC is now and/or all times mentioned in this Complaint an Arizona corporation licensed to do business and actually doing business in the State of California.

12. Plaintiff is informed and believes and based thereon alleges that Defendants are now and/or at all times mentioned in this Complaint owners and operators of a business and/or with numerous geographic locations within the State of California, including in Riverside County. Among other things, Defendant provides services for the pick-up, transportation and delivery of refrigerated food and dry products to the appropriate destinations within the state of California.

13. Plaintiff is informed and believes and based thereon alleges that Defendants maintain and operate distribution centers, terminals, and/or warehouse in Eastvale, California and Sacramento, California and elsewhere.

1 ***Defendants Does 1 through 25, Inclusive***

2 14. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint
3 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
4 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
5 10, inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant to
6 California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend his
7 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 25
8 are believed to be business entities who were also co-employers of the Plaintiff and other aggrieved
9 employees.

10 ***All Defendants***

11 15. Plaintiff is informed and believes and based thereon alleges that at all times herein
12 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
13 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
14 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
15 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
16 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
17 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
18 matters referred to herein.

19 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
20 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
21 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
22 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
23 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
24 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
25 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
26 matters referred to herein.

27 17. Plaintiff is informed and believes and based thereon alleges that at all times herein
28 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated

1 aggrieved Delivery Drivers and the general public to be subjected to the unlawful practices, wrongs,
2 complaints, injuries and/or damages alleged in this Complaint.

3 18. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
4 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
5 a joint venture, partnership and common enterprise, and were acting within the course and scope of,
6 and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers
7 of the Plaintiff and the pool of aggrieved employees alleged herein.

8 19. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
9 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
10 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
11 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

12 **JURISDICTION AND VENUE**

13 20. This Court has jurisdiction over this matter, and under Code of Civil Procedure section
14 395, venue is proper in that Plaintiff's injuries were incurred, in part, within Riverside County; the
15 actions giving rise to Plaintiff's Complaint and those of others arose in whole or in part within
16 Riverside County; and Defendants operate in Riverside County.

17 **FACTUAL ALLEGATIONS**

18 ***Background***

19 21. Plaintiff is a former employee for Defendants and worked as Delivery Driver for
20 Defendants out of SFC's facility in Eastvale, California. Throughout the Relevant Time Period,
21 Plaintiff, like other Delivery Drivers, was compensated on an hourly basis. Throughout his
22 employment with Defendants, Plaintiff possessed a valid Class A commercial driver's license. This
23 was a requirement imposed by Defendants in order for Plaintiff - and other similarly situated
24 Aggrieved Employees - to operate the various large commercial trucks and vehicles SFC directed
25 Plaintiff and Aggrieved Employees to drive to perform deliveries for Defendants' customers.

26 22. In addition to maintaining a Class A commercial driver's license, Plaintiff and other
27 Aggrieved Employees were responsible to conduct themselves in accordance with the regulations of
28 the United States Department of Transportation.

1 23. The primary work duties of Plaintiff and those similarly situated Aggrieved Employees
2 include, among others, the pick-up, transportation and delivery of out of state food products to the
3 appropriate, final destinations within the state of California. Delivery Drivers, including Plaintiff, are
4 also responsible for performing daily pre-trip inspections and post-trip inspections, unloading the
5 products from the truck at the customer's job site, and completing driving logs to ensure that the trucks
6 are operating the in a safe manner and that the truck was in safe condition.

7 24. In the approximately four years of Plaintiff's employment, Plaintiff primarily, if almost
8 exclusively, drove within California ranging anywhere within Southern California, as far north to
9 Bakersfield, and occasionally to Fresno or Sacramento. Plaintiff estimates that on average, he covered
10 a 150-mile radius. On approximately two or three separate occasions during his employment with
11 SFC, Plaintiff was also directed and delivered food products to big chain restaurants located in
12 Phoenix, Arizona.

13 25. Mr. Valdez's routes along with the routes of other Delivery Drivers of SFC typically
14 cover a 150 mile radius. As such, Delivery Drivers, including Plaintiff, fall within the scope of two of
15 the short-haul driver exemptions on the Federal Motor Carrier Safety Act's ("FMCSA") regulations
16 for the hours of service of motor carrier operators. The first short-haul driver exemption to the FMCSA
17 hour of services rules is contained within 49 C.F.R. § 395.1(e)(1) and states:

18 Short-haul operations-(1) 150 air-mile radius driver. A driver is exempt from the requirements
19 of §§ 395.8 and 395.11 if:

- 20 (i) The driver operates within a 150 air-mile radius (172.6 statute miles) of the normal
21 work reporting location;
- 22 (ii) The driver, except a driver-salesperson, returns to the work reporting location and is
23 released from work within 14 consecutive hours;
- 24 (iii) (A) A property-carrying commercial motor vehicle driver has at least 10 consecutive
25 hours off-duty separating each 14 hours on-duty; (B) A passenger-carrying commercial
26 motor vehicle driver has at least 8 consecutive hours off-duty separating each 14 hours
27 on-duty; and
- 28 (iv) The motor carrier that employs the driver maintains and retains for a period of 6 months
accurate and true time records showing: (A) The time the driver reports for duty each
day; (B) The total number of hours the driver is on-duty each day; (C) The time the
driver is released from duty each day; and (D) The total time for the preceding 7 days
in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

The second short-haul driver exemption to the FMCSA hour of services rules is contained
within 49 C.F.R. § 395.1(e)(2) and states:

(2) Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license. Except as provided in this paragraph, a driver is exempt from the requirements of §§ 395.3(a)(2), 395.8, and 395.11 and ineligible to use the provisions of § 395.1(e)(1), (g), and (o) if:

- (i) The driver operates a property-carrying commercial motor vehicle for which a commercial driver's license is not required under part 383 of this subchapter;
- (ii) The driver operates within a 150 air-mile radius of the location where the driver reports to and is released from work, i.e., the normal work reporting location;
- (iii) The driver returns to the normal work reporting location at the end of each duty tour;
- (iv) The driver does not drive: (A) After the 14th hour after coming on duty on 5 days of any period of 7 consecutive days; and (B) After the 16th hour after coming on duty on 2 days of any period of 7 consecutive days;

The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing: (A) The time the driver reports for duty each day; (B) The total number of hours the driver is on duty each day; (C) The time the driver is released from duty each day; (D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

26. Accordingly, Plaintiff is informed and believes and based thereon alleges that the FMCSA's federal hours of service regulations simply do not apply to Plaintiff and other similarly situated Delivery Drivers who perform work as "short-haul" drivers in California during the Relevant Time Period.

Defendants' Failure to Pay For All Hours Worked, Including Overtime

27. IWC Wage Order, number 4 defines "hours worked" to mean "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

28. Labor Code section 1182.12 and IWC Wage Order, number 9, section 4 formerly provided that on and after January 1, 2017, the minimum wage shall be not less than ten dollars and fifty cents (\$10.50) per hour.

29. Labor Code section 1182.12 and IWC Wage Order, number 9, section 4 provide that on and after January 1, 2018, the minimum wage for all industries shall be not less than eleven dollars (\$11.00) per hour, and on and after January 1, 2019, the minimum wage for all industries shall be not less than eleven dollars (\$11.00) per hour.

30. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
2 interest thereon, reasonable attorney's fees, and costs of suit."

3 31. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section
4 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
5 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
6 in an amount equal to the wages unlawfully unpaid and interest thereon."

7 32. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
9 minimum so fixed is unlawful."

10 33. Defendants do not pay minimum wages to Plaintiff and other aggrieved Drivers for all
11 hours worked when Plaintiff and other aggrieved Drivers are subject to Defendants' control.

12 34. Plaintiff and other aggrieved Delivery Drivers are not paid for all hours worked.
13 During the Relevant Time Period, Defendants do not compensate Delivery Drivers, including Plaintiff,
14 for (1) post-trip inspections and completing paperwork following deliveries; and (2) do not
15 compensate Delivery Drivers, including Plaintiff, for paperwork and the time spent at Defendants'
16 terminals in California waiting for assignments or for their trucks to be loaded and unloaded.
17 Specifically, that non-driving time spent waiting for the trucks to load the food cargo into the trailers
18 actually counts towards the driver's maximum allowable driving hours. Defendants, in turn, do not
19 record nor compensate Delivery Drivers, including Plaintiff, for the time spent loading and unloading
20 their trailers.

21 35. Hours worked include, but are not limited to, all hours that an employee is permitted
22 or suffered to work including, but not limited to, off-the-clock work that an employer either knew or
23 should have known that an employee was performing.

24 36. As a matter of policy and/or practice, Defendants routinely suffered or permitted their
25 Delivery Drivers to work portions of the day during which they were subject to Defendants' control,
26 but Defendants failed to compensate them by virtue of their unlawful scheme.

27 37. Additionally, Defendants did not maintain adequate records of all wages earned, hours
28 worked, and meal and rest breaks taken.

1 ***Defendants' Failure to Provide Meal & Rest Breaks***

2 38. Plaintiff did not waive his meal periods, by mutual consent with Defendants or
3 otherwise. Plaintiff did not enter into any written agreement with Defendants agreeing to an on-the-
4 job paid meal period. Nevertheless, Defendants implemented a uniform policy and procedure in which
5 Delivery Drivers, including Plaintiff, were not provided required duty-free meal periods.

6 39. Plaintiff and other similarly situated aggrieved employees are California-based drivers
7 who operate Defendants' tractor-trailers. During their employment with Defendants, Defendants failed
8 to make available to Drivers, including Plaintiff, meal and rest periods to which they were entitled by
9 law. Defendants require Plaintiff and other Delivery Drivers in California to continuously drive loads
10 without providing proper off-duty meal breaks. Mr. Valdez and all other Aggrieved Employees in
11 California regularly work more than five (5) hours per day without receiving an adequate off-duty
12 meal period of at least thirty (30) minutes during which they were relieved of all duties. Defendants
13 do not provide Plaintiff and all other Aggrieved Delivery Drivers in California one (1) additional hour
14 of pay for each workday that a proper meal period was not provided. Indeed, most Delivery Drivers
15 do not take their meal period after the conclusion of the fifth hour - if one is taken at all. Defendants
16 also discourage and dissuade Delivery Drivers, including Plaintiff, by overloading their schedules with
17 deliveries. Delivery Drivers, including Plaintiff, are also graded and evaluated on the timeliness of
18 their deliveries. Thus, Delivery Drivers, including Plaintiff, who take meal periods within the first five
19 hours risk being late on deliveries, which could subject to discipline.

20 40. Additionally, SFC requires Plaintiff and other truck drivers to continuously drive loads
21 without authorizing or providing rest breaks. Plaintiff and other Aggrieved Employees regularly
22 worked more than three-and-one-half (3½) hours without being authorized or permitted to take a ten
23 (10) minute rest period. Defendants did not provide Mr. Valdez and other Delivery Drivers one (1)
24 additional hour of pay for each workday that a rest period was not provided. Delivery Drivers,
25 including Plaintiff, report not taking rest periods because they were never told they were authorized
26 to do so. In addition, Delivery Drivers' schedules are overloaded with deliveries to such an extent that
27 taking a rest period may result in missed or late deliveries or failure to complete all assignments before
28 exhausting the maximum allowable driving hours.

1 41. Defendants also fail to make available to drivers who work over ten hours a second
2 meal period even though Delivery Drivers have not entered into agreements with Defendants to waive
3 their second meal period.

4 42. Defendants failed to compensate Plaintiff and Aggrieved Drivers for missed meal and
5 rest periods despite their knowledge that such periods were not made available because Delivery
6 Drivers, including Plaintiff, were forced to work through them. Defendants monitor the movement of
7 the tractor-trailers through the use of devices such as tachometers. Delivery Drivers also complete
8 comprehensive manifests, route sheets, and reports detailing their drive time and pick-up and
9 deliveries. These documents are routinely reviewed by Defendants and would reveal whether meal
10 and rest periods are being made available.

11 43. As a result, throughout the Relevant Time Period, Defendants regularly:

- 12 a. Failed to provide Plaintiff and other aggrieved Drivers with a first meal period of
13 not less than thirty (30) minutes during which they were relieved of all duty
14 before working more than five (5) hours;
- 15 b. Failed to provide Plaintiff and other aggrieved Drivers with a second meal period
16 of not less than thirty (30) minutes during which they are relieved of all duty
17 before working more than ten (10) hours per day; and
- 18 c. Failed to pay Plaintiff and other aggrieved Drivers one hour of pay at their regular
19 rate of compensation for each workday that a meal period was not provided.

20 44. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
21 9, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each
22 four (4) hours of work, during which employees are relieved of all duty.

23 45. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
24 number 9, section 12 required employers to pay one hour of additional pay at the regular rate of
25 compensation for each employee and each workday that a proper rest period is not provided.

26 46. Plaintiff is informed and believes and based thereon alleges that Defendants failed to
27 effectively communicate California rest period requirements to their Delivery Drivers including
28 Plaintiff and other aggrieved Delivery Drivers. Plaintiff is further informed and believes and based

thereon alleges that throughout the Relevant Time Period Defendants failed to schedule rest periods.

47. Throughout the Relevant Time Period, Plaintiff and other similarly situated Delivery Drivers were routinely denied the rest breaks they were entitled to under California law.

48. Specifically, throughout the Relevant Time Period, Defendants regularly:

- a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the other Aggrieved Drivers were relieved of all duty for each four (4) hours of work; and
- b. Failed to pay Plaintiff and other Aggrieved Employees with one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

Defendants' Failure to Provide Accurate, Itemized Wage Statements

49. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 9, section 7 required employers to maintain adequate employment records and provide employees with accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate, and meal breaks taken.

50. Wage statements provided to Delivery Drivers including Plaintiff by Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the Labor Code section 226, IWC Wage Order number 9, section 7, and the UCL.

51. Moreover, Defendants did not maintain adequate records of all wages earned, hours worked and breaks taken.

Exhaustion of Administrative Remedies

52. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated January 19, 2023, Plaintiff, on behalf of himself and the other aggrieved employees, gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

53. More than sixty-five days has expired for purposes of the administrative period contained within Labor Code section 2699.3(a)(2)(A) and the LWDA has not provided Plaintiff with any written notice that it intends to investigate the violations of the California Labor Code alleged

1 herein.

2 **FIRST CAUSE OF ACTION**

3 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

4 **(On Behalf of Plaintiff and Other Aggrieved Employees Against All Defendants)**

5 54. Plaintiff incorporates by reference the allegations set forth above.

6 55. As set forth above, Plaintiff has complied with the procedures for bringing suit
7 specified in California Labor Code Section 2699.3. By letter dated January 19, 2023, Plaintiff, on
8 behalf of himself and the other Aggrieved Employees, gave written notice by certified mail to the
9 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violations. More than sixty-five days
11 have passed and the LWDA has not provided Plaintiff with written notice that it intends to investigate
12 the violations of the California Labor Code alleged herein.

13 56. This action arises out of the allegedly unlawful labor practices of Defendants in
14 California. Through this private attorneys' general action, Plaintiff represents himself and other
15 aggrieved employees of Defendants that were in California, against whom Defendants have allegedly
16 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described
17 herein, Plaintiff now seeks to recover civil penalties, including the value of unpaid wages, attorneys'
18 fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
19 Sections 558 and 2698, *et seq.*

20 57. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
21 under conditions that violate the applicable Wage Order.

22 58. Plaintiff is informed and believes that throughout the Relevant Time Period,
23 Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved
24 employees with respect to wages, hours, and working conditions.

25 **Failure to Pay Minimum Wages and Designated Rates**

26 59. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
27 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees
28 and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section

1 1198 makes it unlawful for an employer to employ an employee under conditions that violate the
2 applicable Wage Order.

3 60. Where any statute or contract requires an employer to maintain the designated wage
4 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while
5 purporting to pay the wage designated by statute or by contract.

6 61. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
7 and the other aggrieved employees to remain under Defendants' control without paying therefore,
8 which resulted in them earning less than the legal minimum wage in the State of California for all
9 hours worked. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
10 and the other aggrieved employees to remain under Defendants' control, while purportedly on a meal
11 and rest break, and without paying therefor, which resulted in them earning less than the legal
12 minimum wage in the State of California for all hours worked.

13 62. Defendants' failure to pay Plaintiff and other aggrieved Drivers minimum wages and
14 designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and other
15 aggrieved employees are entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a),
16 (f), and (g).

17 **Failure to Pay Overtime Compensation**

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

22 64. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
23 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
24 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
25 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
26 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
27 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
28 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice

1 the regular rate of pay of an employee.”

2 65. Throughout the Relevant Time Period, Wage Order No. 9-2001 provided for payment
3 of overtime wages equal to one and one-half (1 1/2) times an employee’s regular rate of pay for all
4 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
5 of overtime wages equal to double the employee’s regular rate of pay for all hours worked in excess
6 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
7 seventh (7th) day of work in any one workweek.

8 66. Plaintiff and the other members of the putative class were unlawfully classified as
9 exempt from the FLSA by the Motor Carrier Act and should have been correctly classified as non-
10 exempt by Defendants and entitled to overtime compensation for all hours worked in excess of the
11 hours and time specified in the Wage Order, statutes and regulations identified herein.

12 67. As a matter of policy and/or practice, Plaintiff and the pool of Aggrieved Employees
13 were frequently required to perform work before and after their scheduled shift as well as during meal
14 and rest breaks. Such work includes but is not limited to working before and after scheduled shifts
15 such as and the requirement to complete mandated paperwork in connection with trips and routes
16 completed by Delivery Drivers, including Plaintiff.

17 68. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
18 and Drivers, and thus failed to pay overtime wages for the actual amount of overtime hours worked.

19 69. Additionally, Defendants improperly calculated the amount of overtime wages owing,
20 and thus failed to pay Plaintiff and Drivers all overtime wages due.

21 **Failure to Provide Meal and Rest Breaks**

22 70. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative
23 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods
24 of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide them with
25 two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of more
26 than ten (10) hours.

27 71. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
28 requiring employees to work during required meal periods and require employers to pay non-exempt

1 employees an additional hour of premium wages on each workday that the employee is not provided
2 with a required meal period.

3 72. At relevant times during the applicable limitations period, Defendants failed to provide
4 Plaintiff with an uninterrupted meal period of at least thirty (30) minutes on each day that he worked
5 five (5) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of
6 duties and schedules that do not permit them to take all legally required meal periods. Plaintiff is
7 informed, believes and thereon alleges that, at relevant times during the applicable limitations period,
8 Defendants maintained a policy or practice of not providing the other aggrieved employees with
9 uninterrupted meal periods of at least thirty (30) minutes for each five (5) hour work period, as
10 required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do
11 not permit them to take all legally required meal periods.

12 73. At relevant times during the applicable limitations period, Defendants failed to provide
13 Plaintiff with two uninterrupted meal periods of at least thirty (30) minutes on each day that he worked
14 ten (10) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of
15 duties and schedules that do not permit Plaintiff to take all legally required meal periods. Additionally,
16 Defendants failed to provide Plaintiff with an uninterrupted meal period of at least thirty (30) minutes
17 within five (5) hours of his first meal period, as a result of duties and schedules that do not permit
18 Plaintiff to take all legally required meal periods.

19 74. Plaintiff is informed and believes and thereon alleges that, at relevant times during the
20 Relevant Time Period, Defendants maintained a policy or practice of not providing the other aggrieved
21 employees with two uninterrupted meal periods of at least thirty (30) minutes on each day that they
22 worked ten (10) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result
23 of duties and schedules that do not permit them to take all legally required meal periods. Additionally,
24 Defendants maintained a policy or practice of not providing the other aggrieved employees with an
25 uninterrupted meal period of at least thirty (30) minutes within five (5) hours of their first meal period,
26 as a result of duties and schedules that do not permit them to take all legally required meal periods.

27 75. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit
28 and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net

1 rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of
2 each work period insofar as is practicable.

3 76. Labor Code Section 226.7 and Section 2 the Wage Order prohibit employers from
4 requiring employees to work during required rest periods and require employers to pay non-exempt
5 employees an additional hour of premium wages on each workday that the employee is not provided
6 with the required rest period.

7 77. At relevant times during the applicable limitations period, Defendants failed to provide
8 Plaintiff with a net rest period of at least ten (10) minutes for each four (4) hour work period, or major
9 portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit
10 Plaintiff to take all legally required rest breaks.

11 78. Plaintiff is informed, believes and thereon alleges that, at relevant times during the
12 applicable limitations period, Defendants maintained a policy or practice of not providing the other
13 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work
14 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules
15 that do not permit them to take all legally required rest breaks.

16 **Failure to Provide and Maintain Compliant Wage Statements**

17 79. Labor Code Section 1174 requires that every person employing labor in this state shall
18 keep (1) a record showing the names and addresses of all employees employed and the ages of all
19 minors; (2) at a central location in the state or at the plants or establishments at which employees are
20 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
21 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
22 respective plants or establishments; (3) such records in accordance with rules established for this
23 purpose by the commission, but in any case, on file for not less than three years. This statute also
24 prevents an employer from prohibiting an employee from maintaining a personal record of hours
25 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
26 keep the records required by Section 1174.

27 80. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved
28 employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate

1 itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly
2 rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly
3 rate by the employee.

4 81. Defendants failed to provide Plaintiff with accurate itemized statements in accordance
5 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
6 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
7 the unlawful labor and payroll practices described herein.

8 82. Plaintiff is informed and believes and thereon alleges that, at all relevant times during
9 the applicable limitations period, Defendants maintained a policy or practice of not providing
10 aggrieved employees with accurate itemized wage statements by providing them with wage statements
11 with inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from
12 wages earned as a result of the unlawful labor and payroll practices described herein.

13 83. Plaintiff is informed and believes and thereon alleges that Defendants' failure to
14 provide him and the aggrieved employees with accurate written wage statements is knowing and
15 intentional.

16 84. Plaintiff is informed and believes and thereon alleges that Defendants have the ability
17 to provide him and the aggrieved employees with accurate wage statements, but intentionally provide
18 wage statements that they know are not accurate.

19 85. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff
20 and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage
21 statements were violated and they were misled about the amount of wages they had actually earned
22 and were owed. In addition, the absence of accurate information on their wage statements prevented
23 immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical
24 computations to determine the amounts of wages owed, has caused difficulty and expense in
25 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
26 information about wages and amounts deducted from wages to state and federal government agencies.

27 86. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
28 behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

2 **Section 558 Penalties**

3 87. The PAGA claims are also brought against Defendants pursuant to provisions of the
4 Labor Code including § 558 which permits liability of persons or employers who violate or cause to
5 be violated Labor Code and IWC regulations. California Labor Code Section 2699.

6 88. The PAGA states:

7 Notwithstanding any other provision of law, any provision of this code that
8 provides for a civil penalty to be assessed and collected by the Labor and Workforce
9 Development Agency or any of its departments, divisions, commissions, boards,
10 agencies, or employees, for a violation of this code, may, as an alternative, be
11 recovered through a civil action brought by an aggrieved employee on behalf of
12 himself or herself and other current or former employees...

13 89. One provision of law enforceable through PAGA is Labor Code § 558, which states
14 the following:

15 (a) Any employer or other person acting on behalf of an employer who violates, or
16 causes to be violated, a section of this chapter or any provision regulating hours and
17 days of work in any order of the Industrial Welfare Commission shall be subject to
18 a civil penalty as follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
20 each pay period for which the employee was underpaid in addition to any amount
21 sufficient to recover underpaid wages.

22 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to
24 an amount sufficient to recover underpaid wages...

25 **Penalties Authorized by PAGA**

26 90. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other
27 aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants'
28 violations of California Labor Code sections 200, 201, 202, 203, 226, 226.7, 510, 512, 1174, 1198,
and 2802, during the applicable limitations period in the following amounts:

29 a. For violations of California Labor Code sections 200, 201, 202, 203, and 226.7, one
30 hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
31 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
32 period for each subsequent violation (penalty amounts established by California
33 Labor Code Section 2699(f)(2));

34 b. For violations of California Labor Code Section 1197, one hundred dollars

1 (\$100.00) for each aggrieved employee per pay period for each initial violation
2 and two hundred dollars and fifty (\$250.00) for each aggrieved employee per pay
3 period for each subsequent violation regardless of whether the initial violation is
4 intentionally committed (penalty amounts established by California Labor Code §
5 1197.1);

6 c. For violations of California Labor Code Sections 221 and 223 one hundred dollars
7 (\$100.00) for each aggrieved employee for each initial violation and two hundred
8 dollars (\$200.00) for each aggrieved employee for each subsequent or willful
9 violation (penalty amounts established by California Labor Code §225.5);

10 d. For violations of California Labor Code Section 1174, five hundred dollars
11 (\$500.00) for each of Defendants' violations in addition to any other penalties or
12 fines permitted by law (penalty amounts established by California Labor Code §
13 1174.5);

14 e. For violations of California Labor Code Section 226, two hundred fifty dollars
15 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
16 employee for each subsequent violation (penalty amounts established by California
17 Labor Code Section 226.3);

18 f. For violations of California Labor Code Section 1174, five hundred dollars (\$500)
19 for each of Defendants' violations in addition to any other penalties or fines permitted
20 by law (penalty amounts established by California Labor Code Section 1174.5);

21 a. For violations of California Labor Code section 512 and, Wage Order 9-2001
22 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each
23 initial violation for pay period for which the employee was underpaid in addition
24 to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00)
25 for each underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recover unpaid wages (penalty
27 amounts established by California Labor Code Section 558).

28 b. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for

1 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an amount sufficient
3 to recover unpaid wages; for each subsequent violation, one hundred dollars
4 (\$100.00) for each underpaid employee for each pay period for which the
5 employee was underpaid in addition to an amount sufficient to recover underpaid
6 wages.

7 91. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and
8 the other Aggrieved Employees, are entitled to an award of reasonable attorneys' fees and costs.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 11 a. Civil penalties;
12 b. Other penalties and fines permitted by law;
13 c. Costs of suit;
14 d. Reasonable attorneys' fees; and
15 e. Such other relief as the Court deems just and proper.

16
17 DATED: March 27, 2023

BOYAMIAN LAW, INC.

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20 By: 

21 Michael H. Boyamian, Esq.
22 Attorneys for Plaintiff GEORGE VALDEZ,
23 individually, on behalf of all others similarly situated,
24 and the general public
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