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As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

SHAWN VASQUEZ, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Plaintiff,

v.

SUPER T TRANSPORT, INC., an Idaho
corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: CVRI2300957

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Recovery of Unpaid Wages and Liquidated Damages**
- 2. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 3. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 4. Failure to Furnish Accurate Itemized Wage Statements**
- 5. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 6. Failure to Reimburse Business Expenses**
- 7. Failure to Keep Accurate Records**
- 8. Violation of Labor Code Section 226.2**
- 9. Unlawful Deductions**
- 10. Sick Leave Violations**
- 11. Failure to Provide Supplemental Paid Sick Leave**
- 12. Failure to Pay Vested Vacation/Paid Time Off**
- 13. Violation of Labor Code Section 976**
- 14. Unlawful Agreements/Unlawful Background Checks/Unlawful Criminal**

History Inquiries in Violation of Labor Code Sections 432.5, and 432.7, 1024.5, and Civil Code Section 1786, et seq.

15. Violation of Labor Code Section 216
16. Violation of Labor Code Section 223
17. Violation of Labor Code Section 2810.5
18. Standard Conditions of Labor Violations
19. Unfair Competition *and*
20. Violation of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

Plaintiff, SHAWN VASQUEZ (“PLAINTIFF”), an individual on behalf of himself and all other similarly situated Class Members (as defined below), and Aggrieved Employees (defined below) hereby files this Second Amended Complaint against Defendants SUPER T TRANSPORT, INC., an Idaho corporation; and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

JURISDICTION AND VENUE

1. This court possesses original subject matter jurisdiction over this matter. Venue is proper in the County of Riverside pursuant to California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code violations against some of its employees).

THE PARTIES

2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS

PLAINTIFF’S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1 in the State of California as a non-exempt employee from in or around June 2022 through in or
2 around January 2023.

3 3. PLAINTIFF worked for DEFENDANTS as a driver, company driver and/or similar
4 title(s). PLAINTIFF completed routes for DEFENDANTS in various cities throughout California,
5 including but not limited to, Irvine, La Verne, La Mirada, Carson, Van Nuys, Vernon, Oxnard, and
6 Riverside, California.

7 4. DEFENDANTS are an Idaho corporation that, at all relevant times, were authorized
8 to do business within the State of California and are doing business in the State of California.

9 5. DEFENDANTS own, operate, or otherwise manage a transportation business
10 specializing in the provision of refrigerated truck transportation services. DEFENDANTS own,
11 operate and/or manage multiple locations and/or facilities and/or serve customers/clients located
12 throughout the United States, including but not limited to, in various cities throughout California,
13 including but not limited to, in Irvine, La Verne, La Mirada, Carson, Van Nuys, Vernon, Oxnard,
14 and Riverside, California.¹

15 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
16 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
17 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
18 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
19 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
20 become known.

21 7. PLAINTIFF is further informed and believes that, at all relevant times, each
22 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
23 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
24 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
25 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
26 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
27 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant

28

¹ See <https://www.linkedin.com/company/super-t-transport3inc/>. Last visited on February 22, 2023.

1 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
2 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
3 controlled, aided and abetted the conduct of all other Defendants.

4 **JOINT LIABILITY**

5 8. Under California law, the definition of the terms “to employ” are broadly construed
6 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
7 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
8 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
9 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
10 was to reach situations in which multiple entities control different aspects of the employment
11 relationship. Supervision of the work, in the specific sense of exercising control over how services
12 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
13 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
14 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
15 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
16 California, applying a less stringent standard to what constitutes sufficient control by a business
17 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
18 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
19 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
20 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
21 employment,” *Id.* at 875 [emphasis added].

22 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
23 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
24 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
25 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
26 hours and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees;
27 (2) suffered or permitted PLAINTIFF and Class Members and Aggrieved Employees to work for
28 them; and (3) engaged PLAINTIFF and Class Members and Aggrieved Employees to work for them.

1 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
2 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
3 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
4 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
5 Employees to these same policies and practices regardless of the location(s) where they worked.
6 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
7 and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common
8 management, who have control over the day-to-day operations and employment matters, including
9 the power to hire and fire, set schedules, issue employee policies, and determine rates of
10 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
11 procedures for all California employees, including issuing the same employee handbooks and other
12 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
13 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

14 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
15 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
16 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
17 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
18 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
19 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
20 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

21 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
22 uniform set of policies, practices and/or procedures concerning, inter alia, hourly pay, time-keeping
23 practices, reimbursement of business expenses and other working conditions that were distributed
24 to, and/or applied to PLAINTIFF and the Class Members and Aggrieved Employees, and further
25 that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the Class
26 Members and Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented
27 to PLAINTIFF and the Class Members and Aggrieved Employees that each was an "at-will"
28 employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate

1 PLAINTIFF's and Class Members and Aggrieved Employees' employment with or without cause.
2 Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF and
3 Class Members and Aggrieved Employees in writing the details of their compensation, and the
4 manner in which they were to take meal and rest periods, any procedures required by
5 DEFENDANTS collectively for recordation of hours worked and the policies applicable to
6 PLAINTIFF and Class Members and Aggrieved Employees by which DEFENDANTS collectively
7 would evaluate the compensation of PLAINTIFF and Class Members and Aggrieved Employees.

8 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
9 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
10 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
11 the Class Members and Aggrieved Employees' employment, including the instrumentality that
12 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

13 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
14 control over, applied the same policies and practices, and engaged in the same acts and omissions
15 with regard to the other Class Members and Aggrieved Employees.

16 **CLASS ALLEGATIONS**

17 15. PLAINTIFF brings this action on behalf of himself, and all others similarly situated
18 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
19 represent are defined as follows and referred to as the "Class" or "Class Members":

20 All current and former non-exempt employees that worked either
21 directly or via a staffing agency for any of the DEFENDANTS at any
22 location in California at any time within the four years prior to the
23 filing of the initial Complaint ("Class Period").

24 a. Numerosity. While the exact number of Class Members is unknown to
25 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
26 all members is impractical under the circumstances of this case. PLAINTIFF is
27 informed and believes the Class consists of at least 100 individuals.

28 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment

1 because common questions of law and fact predominate over individual issues.
2 Common questions include, but are not limited to, the following: (1) whether
3 DEFENDANTS understated hours worked and failed to pay all amounts due to
4 PLAINTIFF and the Class Members for wages earned, including minimum and
5 straight time wages, under California law; (2) whether DEFENDANTS
6 provided PLAINTIFF and Class Members with accurate, itemized wage
7 statements in compliance with California law, displaying, including but not
8 limited to, the total hours worked during the pay period; (3) whether
9 DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due
10 upon separation of employment; (4) whether DEFENDANTS failed to
11 reimburse PLAINTIFF and the Class Members for all business expenses; (5)
12 whether DEFENDANTS failed to keep accurate employment records; (6)
13 whether DEFENDANTS violated Labor Code Section 226.2; (7) whether
14 DEFENDANTS made unlawful deductions from PLAINTIFF's and the Class
15 Members' earned wages; (8) whether DEFENDANTS violated California's sick
16 leave laws; (9) whether DEFENDANTS failed to provide PLAINTIFF and the
17 Class Members with supplemental paid sick leave; (10) whether
18 DEFENDANTS failed to pay vested vacation or paid time off to PLAINTIFF
19 and the Class Members; (11) whether DEFENDANTS violated Labor Code
20 Section 976 as to PLAINTIFF and the Class Members; (12) whether
21 DEFENDANTS required PLAINTIFF and the Class Members to sign unlawful
22 agreements as a condition of obtaining and/or maintaining employment; (13)
23 whether DEFENDANTS required PLAINTIFF and the Class Members to
24 respond to impermissible criminal history questions, in violation of Labor Code
25 section 432.7; (14) whether DEFENDANTS refused to pay wages due and
26 payable and/or the denied the validity of any claim to wages due, in violation of
27 Labor Code Section 216; (15) whether DEFENDANTS wrongfully withheld
28 wages from PLAINTIFF and the Class Members, in violation of Labor Code

1 Section 223; and (16) whether DEFENDANTS violated California Business
2 and Professions Code sections 17200, *et seq.*

3 c. Ascertainable Class. The proposed Class is ascertainable as members can be
4 identified and located using information in DEFENDANTS' business, payroll
5 and personnel records.

6 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
7 PLAINTIFF suffered a similar injury as members of the Class as a result of
8 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
9 and pay all owed wages, failure to provide accurate wage statements, failure to
10 reimburse business expenses, failure to timely pay all wages due upon
11 separation of employment, failure to keep accurate employment records,
12 violations of Labor Code Section 226.2, unlawful deductions from
13 PLAINTIFF's and the Class Members' earned wages, violation of California's
14 sick leave laws; failure to provide PLAINTIFF and the Class Members with
15 supplemental paid sick leave; failure to pay vested vacation or paid time off to
16 PLAINTIFF and the Class Members, violations of Labor Code Section 976 as
17 to PLAINTIFF and the Class Members, requiring PLAINTIFF and the Class
18 Members to sign unlawful agreements as a condition of obtaining and/or
19 maintaining employment; requiring PLAINTIFF and the Class Members to
20 answer impermissible criminal history questions, in violation of Labor Code
21 section 432.7; refusing to pay wages due and payable and/or the denying the
22 validity of any claim to wages due, in violation of Labor Code Section 216; and
23 wrongfully withholding wages from PLAINTIFF and the Class Members, in
24 violation of Labor Code Section 223;

25 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
26 Class Members. PLAINTIFF has no interests adverse to the interests of the other
27 Class Members. Counsel who represent PLAINTIFF are competent and
28 experienced in litigating similar class action cases and are California lawyers in

1 good standing. Counsel for PLAINTIFF have the experience and resources to
2 vigorously prosecute this case.

3 f. Superiority. A class action is superior to other available means for the fair and
4 efficient adjudication of this controversy since individual joinder of all members
5 of the class is impractical. Class action treatment will permit a large number of
6 similarly situated persons to prosecute their common claims in a single forum
7 simultaneously, efficiently, and without the unnecessary duplication of effort
8 and expense that numerous individual actions would engender. Furthermore, as
9 the damages suffered by each individual member of the Class may be relatively
10 small, the expenses and burden of individual litigation would make it difficult
11 or impossible for individual members of the Class to redress the wrongs done to
12 them, while an important public interest will be served by addressing the matter
13 as a class action. The cost to the court system of adjudication of such
14 individualized litigation would be substantial. Individualized litigation would
15 also present the potential for inconsistent or contradictory judgments. Finally,
16 the alternative of filing a claim with the California Labor Commissioner is not
17 superior, given the lack of discovery in such proceedings, the fact that there are
18 fewer available remedies, and the losing party has the right to a trial de novo in
19 the Superior Court.

20 **FACTUAL AND LEGAL ALLEGATIONS**

21 16. During the relevant period, PLAINTIFF, and each of the Class Members and
22 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
23 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
24 Employees, and suffered and/or permitted them to work.

25 17. PLAINTIFF worked for DEFENDANTS from in or around June 2022 through in or
26 around January 2023, as a driver, company driver and/or similar title(s). PLAINTIFF completed
27 routes for DEFENDANTS in various cities throughout California, including but not limited to,
28 Irvine, La Verne, La Mirada, Carson, Van Nuys, Vernon, Oxnard, and Riverside, California.
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1 DEFENDANTS compensated PLAINTIFF on a strictly per mile basis irrespective of the number of
2 hours worked daily or weekly. As such, PLAINTIFF was denied owed minimum wages and straight
3 time wages for each day he worked for DEFENDANTS, from in or around June 2022 through
4 approximately January 2023.

5 18. At all relevant times, PLAINTIFF was a non-exempt employee that was
6 compensated on a piece-rate basis (e.g., per mile/load/delivery/trip). Based on information and
7 belief, other Class Members and Aggrieved Employees were also compensated on a piece-rate basis
8 and/or on an hourly basis for time counted by DEFENDANTS as hours worked.

9 19. **Unpaid Minimum and Straight Time Wages.** DEFENDANTS failed to
10 compensate PLAINTIFF and Class Members and Aggrieved Employees for all hours worked,
11 resulting in the underpayment of minimum and straight time wages. DEFENDANTS failed to
12 compensate PLAINTIFF and Class Members and Aggrieved Employees for all hours worked by
13 virtue of, DEFENDANTS' piece-rate compensation scheme, unlawful deductions, time rounding
14 policies and practices for shift start and end times and/or meal periods and/or auto-deduction policies
15 and practices for on-duty, interrupted and/or worked through meal periods, payment according to
16 scheduled hours rather than actual hours worked and/or other off-the-clock work practices and
17 policies explained below.

18 20. Based on information and belief, DEFENDANTS implemented a policy and/or
19 practice of rounding meal period start and end times and/or automatically deducting at least thirty
20 minutes per shift for meal periods cut short, interrupted and or worked through, and/or requiring
21 Class Members and Aggrieved Employees to work through unpaid meal periods, despite having
22 actual and/or constructive knowledge that Class Members and Aggrieved Employees were subject
23 to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with
24 lawful meal periods, depriving Class Members and Aggrieved Employees of all wages owed. For
25 example, at times, Class Members and Aggrieved Employees were required to remain inside and/or
26 in immediate physical proximity to their assigned vehicles during unpaid meal periods and therefore
27 remained under DEFENDANTS' control during unpaid meal periods. Based on information and
28 belief, Class Members and Aggrieved Employees were at times required to work through part and/or

1 all of their unpaid meal periods (including first and/or second meal periods) due to the need to
2 respond to work-related communications and/or complete other work tasks. For instance,
3 PLAINTIFF's meal periods were at times cut short, interrupted and/or worked through completely
4 due to the need to remain inside/in immediate physical proximity to his vehicle and/or monitor his
5 vehicle during the loading and/or unloading processes and/or complete other work tasks, resulting
6 in the underpayment of minimum and straight time wages owed to PLAINTIFF. Based on
7 information and belief, due to the pressure to complete assigned worked duties, Class Members and
8 Aggrieved Employees were unable to take uninterrupted off-duty meal periods and would often be
9 forced to remain inside their trucks during purportedly off duty meal periods and/or eat their meals
10 and/or take purported meal periods while driving between delivery locations/job sites and/or while
11 completing other work tasks.

12 21. Based on information and belief, at times, at times, DEFENDANTS instituted a
13 piece-rate-based compensation scheme that resulted in pay periods during which Class Members
14 and Aggrieved Employees were denied the minimum wage for all hours worked. For example, on
15 information and belief, at times, DEFENDANTS paid Class Members and Aggrieved Employees
16 on a strictly piece-rate basis (e.g., per load/per delivery/per mile/per trip/per day), at least during
17 some pay periods, during the relevant time period. However, based on information and belief,
18 DEFENDANTS failed to separately compensate Class Members and Aggrieved Employees for all
19 non-piece rate related activities/all non-productive time, including but not limited to, all rest breaks
20 and/or pre-trip and post-trip inspections, waiting time, fueling, cleaning, setting up, time spent
21 completing paperwork, loading, unloading, waiting between jobs and tasks, and/or performing work
22 duties that otherwise fall outside of the piece-rate pay criteria, resulting in a failure to pay Class
23 Members and Aggrieved Employees for all hours worked. For example, PLAINTIFF was not
24 compensated for daily pre-trip and post-trip inspections. These inspections took at least
25 approximately forty minutes to complete each day. This work time was not compensated, resulting
26 in the substantial underpayment of minimum wages and straight time wages owed to PLAINTIFF.
27 Based on information and belief, other Class Members and Aggrieved Employees were also not
28 compensated for all non-productive time and/or time spent performing work outside of their
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 scheduled shift times, including but not limited to, all rest breaks and/or pre-trip and post-trip
2 inspections, waiting time, fueling, cleaning, setting up, time spent completing paperwork, loading,
3 unloading, and/or waiting between jobs and tasks.

4 22. For example, PLAINTIFF and other Class Members and Aggrieved Employees were
5 not compensated for all waiting time, time spent waiting between jobs and/or tasks and/or for the
6 many times that they were required to wait for loads. For instance, PLAINTIFF was not
7 compensated at all for the time he was required to spend under DEFENDANTS' control waiting for
8 loads and/or his next delivery assignment. At times, PLAINTIFF was required to wait as long as at
9 least eight (8) hours between loads, jobs and/or tasks. DEFENDANTS did not compensate
10 PLAINTIFF at all for this waiting time, resulting in the substantial underpayment of minimum
11 wages and straight time wages owed to PLAINTIFF. Based on information and belief,
12 DEFENDANTS had/have a policy and practice of failing to compensate Class Members and
13 Aggrieved Employees for waiting/standby time between jobs/assignments and/or at their various
14 pick-up/delivery locations, resulting in the substantial underpayment of wages owed to Class
15 Members and Aggrieved Employees.

16 23. DEFENDANTS failed to compensate Class Members and Aggrieved Employees for
17 additional work time, including but not limited to, time spent clearing out their work vehicles,
18 completing vehicle cleanings and/or vehicle maintenance as required by DEFENDANTS. For
19 example, DEFENDANTS required PLAINTIFF to take his assigned truck to be washed at least one
20 (1) to two (2) times per month. Each cleaning/ truck washing took at least approximately one (1) to
21 two (2) hours to complete. DEFENDANTS did not compensate PLAINTIFF for this work time.
22 Also, from time to time, PLAINTIFF was required to take his assigned truck in for maintenance,
23 including but not limited to, to have the tires replaced and/or rotated. PLAINTIFF was not
24 compensated for this work time either. DEFENDANTS did not compensate PLAINTIFF for all time
25 spent under DEFENDANTS' control, including but not limited to, all time spent getting his work
26 vehicle cleaned and all time spent getting maintenance work done on his vehicle and/or completing
27 other work tasks.

28 24. DEFENDANTS' failure to separately compensate Class Members and Aggrieved
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Employees for their rest periods and/or other non-productive time and/or failure to compensate them
2 at the correct rates for all non-productive time including rest periods resulted in the failure to pay
3 Class Members and Aggrieved Employees for all hours worked and violations of California wage
4 and hour laws, including but not limited to, Labor Code sections 226.2 and/or 1197. Based on
5 information and belief, DEFENDANTS further failed to include this information on these
6 employees' wage statements required by Labor Code section 226.2.

7 25. Additionally, DEFENDANTS failed to pay Class Members and Aggrieved
8 Employees for time they were required to spend completing orientation, policy questionnaires,
9 and/or time spent completing the training and/or the onboarding process including but not limited
10 to reviewing various documents and policies provided by DEFEDANTS and/or time spent
11 completing DEFENDANTS-mandated trainings and/or certifications. Based on information and
12 belief, this work time was completed off-the-clock and was not compensated. For example, based
13 on information and belief, DEFENDANTS required Class Members and Aggrieved Employees to
14 review and sign various types of policies and documents, including but not limited to, safety
15 guidelines/safety awareness certifications, employee time-keeping policies, among other
16 documents, but they were not paid for all time spent reviewing and/or completing certification as
17 directed by DEFENDANTS.

18 26. Moreover, by charging PLAINTIFF and other Class Members and Aggrieved
19 Employees with fees for services required to perform their assigned job duties and/or making
20 deductions for costs and/or fees for including but not limited to, tolls/use of toll roads on the job,
21 from Class Members and Aggrieved Employees' paychecks, DEFENDANTS deprived PLAINTIFF
22 and other Class Members and Aggrieved Employees of allowed minimum wages for all hours
23 worked. For example, at times DEFENDANTS deducted fees and/or costs from PLAINTIFF's
24 paycheck, thereby depriving him of all owed minimum wages and straight time wages.

25 27. Based on further information and belief, DEFENDANTS implemented a time-
26 rounding system that as applied systematically deprived Class Members and Aggrieved Employees
27 of compensable time because the time-rounding system implemented by DEFENDANTS would
28 almost always, if not always, result in understating actual compensable work time and the

1 underpayment of minimum wages and straight time wages owed to Class Members and Aggrieved
2 Employees.

3 28. DEFENDANTS' failure to pay for all time worked by virtue of its piece-rate
4 compensation scheme, unlawful deductions, time rounding policies and practices for shift start and
5 end times and/or meal periods and/or auto-deduction policies and practices for on-duty, interrupted
6 and/or worked through meal periods, payment according to scheduled hours rather than actual hours
7 worked and/or other off-the-clock work practices and policies described herein, resulted in the
8 underpayment of minimum wages and/or straight time wages owed to PLAINTIFF and Class
9 Members and Aggrieved Employees.

10 29. Based on information and belief, DEFENDANTS had actual and/or constructive
11 knowledge that its piece-rate compensation scheme, unlawful deductions, time rounding policies
12 and practices for shift start and end times and/or meal periods and/or auto-deduction policies and
13 practices for on-duty, interrupted and/or worked through meal periods, payment according to
14 scheduled hours rather than actual hours worked and/or other off-the-clock work policies and
15 practices resulted in the underpayment of minimum and straight time wages owed to PLAINTIFF
16 and other Class Members and Aggrieved Employees, in violation of, including but not limited to,
17 California's minimum wage laws.

18 30. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
19 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
20 statements that complied with Labor Code section 226.

21 31. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
22 Aggrieved Employees that failed to indicate the earned gross and net wages earned during the pay
23 period, the correct applicable rates of pay for all hours worked, and the total hours worked by
24 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of its piece-rate
25 compensation scheme, unlawful deductions, rounded time entries, automatic deduction for meal
26 periods/failure to relieve Class Members and Aggrieved Employees of all duties and employer
27 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
28 hours worked, and/or other off-the-clock work policies and practices) which results in a violation of
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Labor Code section 226(a).

2 32. Based on information and belief, wage statements issued by DEFENDANTS failed
3 to list all applicable hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

5 33. Additionally, DEFENDANTS failed to issue accurate wage statements by not
6 documenting the total hours of compensable rest and/or recovery periods and/or for other non-
7 productive time, the rates of compensation for these hours, and the gross wages paid for these hours,
8 in violation of, including but not limited to California Labor Code section 226(a) and/or 226.2.

9 34. Based on further information and belief, wage statements issued by DEFENDANTS
10 fail to list the number of piece-rate units earned and/or any applicable piece rate for those Class
11 Members and Aggrieved Employees compensated on a piece-rate basis, in violation of Labor Code
12 section 226(a)(3).

13 35. Moreover, based on information and belief, DEFENDANTS issued wage statements
14 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
15 section 226(a), by among other things, failing to list the correct name and/or address of the legal
16 entity that is the DEFENDANTS. For example, based on information and belief, DEFENDANTS
17 issued wage statements to PLAINTIFF and other Class Members and Aggrieved Employees that
18 identify the employer as Super T Transport and/or Super T Transport, Inc. and/or do not identify the
19 name of any employer. However, based on information and belief, DEFENDANTS' transportation
20 business, at times, during the relevant period, operated and/or operates under the name(s) Berger
21 Logistik and/or Red Bull. Based on information and belief, wage statements issued by
22 DEFENDANTS to PLAINTIFF and Class Members and Aggrieved Employees were inaccurate due
23 to failure to list the correct name and/or address of the legal name and entity that is the employer.

24 36. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
25 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
26 required information. As such, DEFENDANTS violated Labor Code section 226.

27 37. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Employees all wages that were due and owing upon termination or resignation. Based on
2 information and belief, DEFENDANTS untimely provide final wages to Class Members and
3 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

4 38. Upon separation of employment, Class Members and Aggrieved Employees' final
5 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
6 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
7 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
8 limited to, all owed minimum wages, straight time wages, per diem pay, vacation pay, and all owed
9 sick leave and/or paid time off wages at the properly accrued rates.

10 39. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
11 upon discharge of employment. For example, based on information and belief, at times, Class
12 Members and Aggrieved Employees experienced breaks in their employment caused by
13 DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work
14 for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work
15 or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS
16 failed to timely pay all owed wages at the end of such periods of employment, in violation of
17 including but not limited to Labor Code section 201-202.

18 40. These violations subject DEFENDANTS to civil penalties under Labor Code section
19 203, 210, and/or 256.

20 41. **Unreimbursed Business Expenses.** Based on information and belief,
21 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
22 business expenses as a direct consequence of the performance of their job duties without providing
23 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
24 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
25 and maintain work tools that are supposed to be the responsibility of the employer.

26 42. Based on information and belief, DEFENDANTS shifted the costs of doing business
27 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
28 including but not limited to, uniforms and/or protective/safety equipment, and/or the use of Class

1 Members and Aggrieved Employees' personal mobile phone and data usage for work-related
2 purposes, including but not limited to, to receive and respond to work related messages and/or phone
3 calls. For example, PLAINTIFF was required to use his personal phone for navigation purposes
4 during his shifts but was not reimbursed by DEFENDANTS for the expenses he incurred from this
5 business use of his personal cell phone.

6 43. Based on information and belief, Class Members and Aggrieved Employees were
7 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
8 of purchasing and/or maintaining work uniforms and/or protective/safety equipment.

9 44. Based on information and belief, Class Members and Aggrieved Employees were
10 improperly required to pay for additional business expenses that are supposed to be the
11 responsibility of DEFENDANTS, including but not limited to, hand tools/equipment and/or cost of
12 gas, costs of repairs, toll road fees and/or fines and/or other work-related fees/fines, incurred as a
13 direct consequence of the discharge of their assigned job duties without receiving any and/or full
14 reimbursement from DEFENDANTS for these expenses.

15 45. On information and belief, at times, Class Members and Aggrieved Employees were
16 required to use their personal vehicles for DEFENDANTS' business purposes, including but not
17 limited to, for driving between and/or around DEFENDANTS' job sites/locations and/or for other
18 work purposes without receiving any and/or full reimbursement from DEFENDANTS for the
19 business use of their personal vehicles.

20 46. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
21 full reimbursement for all reasonable expenses associated with carrying out their duties required
22 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
23 expenses in violation of Labor Code section 2802.

24 47. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
25 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
26 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
27 employer to include on the wage statements for these employees the total hours of compensable rest
28 and recovery period, the total hours for other non-productive time, the rates of compensation for

1 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
2 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
3 higher of: (i) an average hourly rate determined by dividing the total compensation for the
4 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
5 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
6 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
7 employees compensated on a commission basis.

8 48. Based on information and belief, DEFENDANTS failed to compensate Class
9 Members and Class Members and Aggrieved Employees who were paid solely on a piece rate (e.g.,
10 per signup/per service completed) and/or commission basis separately for the rest periods and
11 nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information
12 and belief, DEFENDANTS further failed to include this information on Class Members and Class
13 Members and Aggrieved Employees' wage statements. As such, DEFENDANTS failed to comply
14 with Labor Code section 226.2.

15 49. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
16 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
17 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
18 from Class Members and Aggrieved Employees paychecks during the relevant period including
19 without limitation, deducting business costs and/or deducting wages for purported overpayments
20 from previous pay periods and/or unlawfully deducting wages for negligently damaged property
21 and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced
22 by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code
23 Sections 221-222.

24 50. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
25 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
26 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
27 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
28 required by law, including but not limited to the following records: total daily hours worked,

1 applicable rates of pay, time records showing when PLAINTIFF and other Class Members and
2 Aggrieved Employees began and ended each work period, time records of meal periods, and
3 accurate itemized wage statements.

4 51. DEFENDANTS have failed and continue to fail to keep accurate and complete
5 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
6 period deductions, failure to relieve PLAINTIFF and Class Members and Aggrieved Employees of
7 all duties and employer control during unpaid meal periods, failure to record the true start and end
8 times of meal periods, shift start times and shift end times, and other off-the-clock work policies
9 and practices described herein.

10 52. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
11 to provide proper paid sick leave to PLAINTIFF and other Class Members and Aggrieved
12 Employees. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated
13 the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other Class Members
14 and Aggrieved Employees by failing to base the accrued sick leave hours on the correct number of
15 hours worked (as a result of the rounding/automatic deduction policies and practices for meal
16 periods and/or shift start and end times/other required off-the-clock work including but not limited
17 to unpaid meal periods) and by failing to incorporate multiple rates of pay and/or all non-
18 discretionary remuneration, including but not limited to, non-discretionary bonuses, shift
19 differential pay, and/or other non-discretionary compensation into the sick leave pay rate
20 calculation.

21 53. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
22 and Class Members and Aggrieved Employees on notice of their paid sick leave rights – or thereby
23 putting their entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information
24 and belief, DEFENDANTS failed to provide notice of the correct sick leave amount balance
25 available to PLAINTIFF and other Class Members and Aggrieved Employees on their wage
26 statements or other written statement. Moreover, based on information and belief, DEFENDANTS
27 failed to maintain accurate records of used sick leave and the balance of paid sick leave.

28 54. Based on information and belief, throughout the relevant time period,
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
2 all Class Members and Aggrieved Employees, thus affecting their intelligent exercise of their paid
3 sick leave. But for this failure, PLAINTIFF and all Class Members and Aggrieved Employees would
4 have used their paid sick leave at least prior to their respective separations, for as on several
5 occasions thereafter, he or she would have been entitled to use the banked sick leave and earn
6 appropriate compensation.

7 55. Upon information and belief, DEFENDANTS failed and continue to fail to comply
8 with Labor Code section 246, by failing to provide PLAINTIFF and all Class Members and
9 Aggrieved Employees with a Labor Code section 226 wage statement, or separate writing containing
10 the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
11 leave, at the time it pays wages.

12 56. As such, DEFENDANTS have violated California's paid sick leave laws and
13 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
14 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
15 unlawful practices and policies violate Labor Code sections 245-248.5.

16 57. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
17 that all employers with 26 or more employees are required to provide up to 80 hours for covered
18 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
19 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
20 violated Labor Code § 248.2 by not providing Class Members and Aggrieved Employees with
21 required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief,
22 DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code
23 section 248.6.

24 58. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
25 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow Class
26 Members and Aggrieved Employees to use their earned vacation/paid time off during their
27 employment and/or failing to pay all vested, accrued paid time off (including but not limited to, all
28 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,

1 including but not limited to, shift differentials) to Class Members and Aggrieved Employees upon
2 separation of employment, in violation of California law, including but not limited to, Labor Code
3 section 227.3.

4 **59. Violation of Labor Code Section 976.** Labor Code section 976 provides that “No
5 person shall publish or cause to be published any advertisement, solicitation or communication in
6 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
7 employee or independent contractor, which advertisement, solicitation or communication (a) is
8 willfully designed to mislead any person as to compensation or commissions which may be earned;
9 or (b) falsely represents the compensation or commissions which may be earned.”

10 **60.** Based on information and belief, DEFENDANTS have a policy and/or practice of
11 offering prospective employees, including Class Members and Aggrieved Employees, a higher
12 compensation and commission that is misleading as it falsely represents the compensation or
13 commission that will be earned during employment, as the actual compensation or commission
14 earned is lower than that which is offered to induce employment or continued employment. Such a
15 practice or policy is in violation of Labor Code section 976.

16 **61. Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.**
17 Based on information and belief, DEFENDANTS required Class Members and Aggrieved
18 Employees to agree in writing to unlawful conditions of employment including but not limited to
19 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
20 in violation of Labor Code section 432.5.

21 **62.** Based on information and belief, DEFENDANTS ordered unlawful financial credit
22 checks on Class Members and Aggrieved Employees, in violation of Labor Code section 1024.5,
23 and required Class Members and Aggrieved Employees to provide ongoing written consent to the
24 unlawful credit checks as a condition of employment, in violation of California and Federal law,
25 which results in a further violation of Labor Code section 432.5.

26 **63.** Based on information and belief, DEFENDANTS also required Class Members and
27 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
28 checks as a condition of obtaining and/or holding employment in violation of the Investigative

1 Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair
2 Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
3 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
4 FCRA when conducting background screenings for applicants, including but not limited to Class
5 Members and Aggrieved Employees that were subject to a background check as a condition of
6 employment during the application phase.

7 64. Based on information and belief, DEFENDANTS required Class Members and
8 Aggrieved Employees to agree in writing to a background check which failed to abide by the
9 requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*,
10 including but not limited to by failing to provide a clear and conspicuous disclosure and/or failing
11 to provide any disclosure at all, failing to provide disclosures free of extraneous information, failing
12 to provide a lawful purpose for the background check, failing to provide a summary of rights under
13 the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy
14 of the report, failing to disclose the name, address, and telephone number of the third party preparing
15 the report, and failing to properly obtain authorization or consent to such a background check, and
16 thus was an unlawful background check.

17 65. By requiring Class Members and Aggrieved Employees to agree in writing to
18 unlawful criminal and/or financial checks not in conformance with the applicable laws,
19 DEFENDANTS violated Labor Code section 432.5.

20 66. Based on further information and belief, DEFENDANTS also required Class
21 Members and Aggrieved Employees to agree in writing to provide ongoing consent to
22 DEFENDANTS to conduct background checks throughout the duration of employment, in violation
23 of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor
24 Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a
25 condition of employment.

26 67. Based on further information and belief, DEFENDANTS knew that requiring Class
27 Members and Aggrieved Employees to agree to unlawful criminal and/or financial background
28 checks as a condition of obtaining and/or holding employment was unlawful.

1 68. By requiring Class Members and Aggrieved Employees to agree in writing to
2 unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section
3 432.5.

4 Unlawful Inquires into Criminal History

5 69. Labor Code section 432.7 prohibits an employer from asking applicants about past
6 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
7 information and belief, DEFENDANTS asked Class Members and Aggrieved Employees about
8 arrests not resulting in convictions on its employment application, in violation of California law.

9 70. Upon information and belief, DEFENDANTS, in violation of California law,
10 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
11 (“FEHA”), asked Class Members and Aggrieved Employees about convictions prior to extending
12 an offer of employment and/or otherwise impermissibly inquired into criminal history on its
13 employment application in violation of California law, and in violation of Labor code section 432.5.

14 71. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
15 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
16 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
17 Class Members and Aggrieved Employees of all earned minimum and overtime compensation for
18 all hours worked which resulted in the payment of less than statutorily required wages.
19 DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited
20 to, minimum and overtime wages, to which they were entitled to under California law. Thus,
21 DEFENDANTS paid PLAINTIFF and other Class Members and Aggrieved Employees lower
22 wages than those they were entitled to while purporting that PLAINTIFF and other Class Members
23 and Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Class Members
24 and Aggrieved Employees are entitled to recover penalties, attorney’s fees, costs, and interest
25 thereon, pursuant to Labor Code § 2699(f)-(g).

26 72. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
27 employer’s refusal to pay wages due and payable and/or the denial of the validity of any claim to
28 wages due. DEFENDANTS violated and continue to violate this section by failing to pay

1 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked at the proper wage
2 rate and by failing to pay an additional hour of pay for each meal/rest period not provided or that
3 was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137,
4 1154-1155. These violations subject DEFENDANTS to civil penalties under Labor Code section
5 225.5. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each
6 pay period during which the statute provisions were violated.²

7 73. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
8 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
9 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
10 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
11 commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
12 record keeping provisions, business expenses, minimum/overtime wages and other violations
13 described herein result in separate violations of sections 1198 and 1199, which subject
14 DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

15 74. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
16 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
17 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

18 **FIRST CAUSE OF ACTION**

19 **Recovery of Unpaid Wages and Liquidated Damages** 20 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

21 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 76. It is fundamental that an employer must pay its employees for all time worked.
23 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
24 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
25 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
26 Code sections 1194 and 1197, and the Industrial Wage Commission ("IWC") Wage Orders, an

27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
2 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
3 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
4 section 224 only permits deductions from wages when the employer is required or empowered to
5 do so by state or federal law or when the deduction is expressly authorized in writing by the
6 employee for specified purposes that do not have the effect of reducing the agreed upon wage.

7 77. DEFENDANTS violated the above-described laws by failing to compensate
8 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
9 DEFENDANTS' piece-rate compensation scheme, time rounding, automatic deduction for meal
10 periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or
11 otherwise off-the-clock work, and/or payment according to scheduled hours worked rather than
12 actual hours worked (described above), which resulted in the failure to account for all hours worked
13 and thus the denial of all owed straight time wages.

14 78. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
15 Class Members for all hours worked.

16 79. Moreover, as explained above, DEFENDANTS' failure to separately compensate
17 Class Members for their rest periods and/or other non-productive time and/or failure to compensate
18 them at the correct rates for all non-productive time including rest periods resulted in the failure to
19 pay Class Members for all hours worked and violations of California wage and hour laws, including
20 but not limited to, Labor Code sections 226.2 and 1197.

21 80. Moreover, as explained above, DEFENDANTS had and continue to have a policy
22 and practice of unlawfully deducting wages from PLAINTIFF's and Class Members' paychecks,
23 such as, but not limited to, unlawful deductions for fees for services required to perform their
24 assigned job duties and/or costs and/or fees for including but not limited to, tolls/use of toll roads
25 on the job, resulting in violations of California wage and hour laws, including but not limited to,
26 Labor Code sections 224 and 1197.

27 81. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its piece-rate compensation scheme, unlawful deductions, time rounding policies

1 and practices for shift start and end times and/or meal periods and/or auto-deduction policies and
2 practices for on-duty, interrupted and/or worked through meal periods, payment according to
3 scheduled hours rather than actual hours worked and/or other off-the-clock work practices and
4 policies resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class
5 Members.

6 82. Moreover, Labor Code section 204 requires that all earned wages must be paid to
7 employees twice during each calendar month. DEFENDANTS violated this section by, including
8 but not limited to, failing to pay PLAINTIFF and other Class Members an additional hour of pay
9 for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate
10 employees for all hours worked, and by failing to pay proper premium wage rates for all hours
11 worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210.

12 83. Based on information and belief, DEFENDANTS failed and continue to fail to pay
13 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
14 in a week.

15 84. Based on information and belief, DEFENDANTS failed and continue to fail to pay
16 twice Aggrieved Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per
17 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
18 work week, in violation of California's overtime laws.

19 85. Based on information and belief, DEFENDANTS failed to incorporate all non-
20 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple
21 base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the
22 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
23 to PLAINTIFF and other Class Members, in violation of Labor Code section 510.

24 86. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
25 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
26 attorney's fees and costs, in an amount to be proved at trial.

27
28 **SECOND CAUSE OF ACTION**

Failure to Provide Meal Periods or Compensation in Lieu Thereof

PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

87. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

88. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute meal break free from all duties and employer control for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so.

89. Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7.

90. As explained above, PLAINTIFF and other Class Members were consistently unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all of their meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

91. Based on information and belief, DEFENDANTS had and continue to have a policy of rounding the start and end times of employees' meal periods and/or automatically deducting thirty minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class Members did not receive compliant meal periods.

1 92. Moreover, based on information and belief, Class Members did not receive a timely,
2 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

3 93. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
4 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
5 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
6 violation of California's meal period laws.

7 94. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
8 periods in violation of California law and/or failed to pay the proper meal period premium for failure
9 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
10 differential pay and/or other non-discretionary compensation into the regular rate or compensation
11 for purposes of calculating the owed meal period premium.

12 95. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
13 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
14 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
15 all in an amount to be proved at trial.

16
17 **THIRD CAUSE OF ACTION**
18 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
19 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

20 96. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 97. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
22 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
23 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
24 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
25 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
26 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
27 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
28 The rest period requirement obligates employers to permit and authorize employees to take off-duty
rest periods, meaning employers must relieve employees of all duties and relinquish control over

1 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

2 98. If the employer fails to provide any required rest period, the employer must pay the
3 employee one hour of pay at the employee's regular rate of compensation for each workday the
4 employer did not provide at least one legally required rest period, pursuant to Labor Code section
5 226.7.

6 99. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
7 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
8 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
9 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
10 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
11 skip rest periods completely or otherwise take non-compliant rest periods.

12 100. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
14 control during rest periods. Based on further information and belief, Class Members were pressured
15 to complete their work duties according to a designated schedule such that rest periods were only
16 taken once tasks were completed, and/or as time permitted.

17 101. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
18 second, or third rest periods as required by California law.

19 102. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
20 period premium to PLAINTIFF and other Class Members for each workday in which there was a
21 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
22 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
23 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
24 regular rate of compensation for purposes of determining the owed rest period premium.

25 103. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
26 hour of additional pay at the regular rate of compensation for each workday that a required rest
27 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
28 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 trial.

2 104.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Furnish Accurate Itemized Wage Statements**
5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 105. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 106. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
8 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
9 wage statement accurately stating the following:

10 (1) gross wages earned, (2) total hours worked by the employee,
11 except for any employee whose compensation is solely based on a
12 salary and who is exempt from payment of overtime under
13 subdivision (a) of Section 515 or any applicable order of the Industrial
14 Welfare Commission, (3) the number of piece-rate units earned and
15 any applicable piece rate if the employee is paid on a piece-rate basis,
16 (4) all deductions, provided that all deductions made on written orders
17 of the employee may be aggregated and shown as one item, (5) net
18 wages earned, (6) the inclusive dates of the period for which the
19 employee is paid, (7) the name of the employee and his or her social
20 security number, except that by January 1, 2008, only the last four
21 digits of his or her social security number or an employee
22 identification number other than a social security number may be
23 shown on the itemized statement, (8) the name and address of the
24 legal entity that is the employer, and (9) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours
26 worked at each hourly rate by the employee.

27 107. Due to violations detailed above, including but not limited to, DEFENDANTS'
28 failure to pay straight time wages and minimum wages for all hours worked including non-
productive time when paid on a piece rate basis, and failure to pay all sick leave wages at the proper
rates, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
and net wages earned and the correct applicable rates of pay for all hours worked.

29 108. As explained above, wage statements issued by DEFENDANTS failed to list the
30 "total hours worked" by PLAINTIFF and Class Members (by virtue of its piece-rate compensation
scheme, rounded time entries, automatic deduction for meal periods/failure to relieve Class
Members of all duties and employer control during unpaid meal periods, payment according to
scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies

1 and practices all described in greater detail *supra*), which results in a violation of Labor Code section
2 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury
3 under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308,
4 1337). Additionally, in violation of Labor Code section 226.2, DEFENDANTS failed to issue
5 accurate wage statements in accordance with Labor Code section 226, by issuing wage statements
6 that failed to list the total hours of compensable non-productive time, and the total hours of rest
7 and/or recovery periods, the rate of compensation for the non-productive time and/or rest/recovery
8 periods, and the gross wage earned for the non-productive time and for the rest/recovery periods
9 during the pay period for which the Class Members were paid on a piece rate basis.

10 109. Based on information and belief, wage statements issued by DEFENDANTS failed
11 to list all applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

13 110. Additionally, DEFENDANTS failed to issue accurate wage statements by not
14 documenting the total hours of compensable rest and/or recovery periods and/or for other non-
15 productive time, the rates of compensation for these hours, and the gross wages paid for these hours,
16 in violation of, including but not limited to California Labor Code section 226(a) and/or 226.2.

17 111. Based on further information and belief, wage statements issued by DEFENDANTS
18 fail to list the number of piece-rate units earned and/or any applicable piece rate for those Class
19 Members compensated on a piece-rate basis, in violation of Labor Code section 226(a)(3).

20 112. Separately, and independent from the above allegations, as explained above,
21 DEFENDANTS issued wage statements to PLAINTIFF and Class Members that violate Labor Code
22 section 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the
23 employer.

24 113. DEFENDANTS' failure to accurately list all hours worked on all wage statements
25 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
26 Members over whether they received all wages owed to them.

27 114. As a result, PLAINTIFF and other Class Members have suffered injury as they could
28 not easily determine whether they received all wages owed to them and whether they were paid for

1 all hours worked.

2 115. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
3 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
4 as they could not contact their employer regarding any question(s) they had about wages paid.

5 116. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
6 Class Members with accurate, itemized wage statements.

7 117. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
8 have suffered injury. The absence of accurate information on their wage statements has prevented
9 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
10 mathematical computations to determine the amount of wages owed, and will cause difficulty and
11 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
12 submission of inaccurate information about wages and amounts deducted from wages to state and
13 federal government agencies. As a result, PLAINTIFF and Class Members are required to
14 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
15 and pay records than if DEFENDANT had complied with its legal obligations.

16 118. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
17 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
18 violation occurred and one hundred dollars per employee per violation for each subsequent pay
19 period, not to exceed an aggregate penalty of four thousand dollars per employee.

20 119. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
21 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
22 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
23 provide currently employed Class Members with inaccurate wage statements in violation of
24 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
25 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
26 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
27 with California Labor Code § 226(a).

28 120. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
32
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1 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
2 attorneys' fees, and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Timely Pay All Wages Due Upon Separation of Employment**

5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 121. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

7 122. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
8 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
9 payable immediately."

10 123. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
11 employee not having a written contract for a definite period quits his or her employment, his or her
12 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
13 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
14 to his or her wages at the time of quitting."

15 124. Based in information and belief, DEFENDANTS failed and continue to fail to timely
16 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
17 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
18 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
19 minimum wages, straight time wages, vacation pay, and all owed sick leave and/or paid time off
20 wages at the properly accrued rates.

21 125. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
22 upon discharge of employment. For example, based on information and belief, at times, Class
23 Members experienced breaks in their employment caused by DEFENDANTS whereby Class
24 Members would not be called in for work for longer than a single pay period due to including but
25 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
26 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
27 such periods of employment, in violation of including but not limited to Labor Code section 201-
28 203.

29 126. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
30
31
32
33
34 PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
35 FOR JURY TRIAL

1 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’
2 pay, plus attorney’s fees and costs, in an amount to be proved at trial.

3 **SIXTH CAUSE OF ACTION**

4 **Failure to Reimburse Business Expenses**

5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 127. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 128. California law requires employers to indemnify their employees for all necessary
8 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
9 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
10 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
11 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
12 incurred by the employee enforcing the rights granted by this section.”

13 129. Among other things, under California law, when employees must use their personal
14 cellphones for work-related purposes, the employer must reimburse them for a reasonable
15 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
16 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
17 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
18 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
19 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
20 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

21 130. As described above, PLAINTIFF and the Class Members were improperly required
22 to pay for business expenses that are legally the responsibility of the employer.

23 131. DEFENDANTS’ failure to provide PLAINTIFF and the Class Members with full
24 reimbursement for all reasonable expenses associated with carrying out their duties required that
25 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
26 violation of Labor Code section 2802.

27 132. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class
28 Members have suffered injury in that they were not completely reimbursed as mandated by
California law.

1 133. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
2 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
3 attorneys' fees, and costs of suit.

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Keep Accurate Records**

6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 134. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 135. California Labor Code § 1174 requires employers to keep "accurate and complete"
9 payroll records showing, among other things, the hours worked daily by all non-exempt employees.

10 136. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
11 and complete records as required by law, including but not limited to the following records: total
12 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Class
13 Members began and ended each work period, and accurate itemized wage statements.

14 137. DEFENDANTS' failure to keep "accurate and complete" payroll records for
15 PLAINTIFF and other Class Members violates Labor Code §§ 1174, 1198, 1199, and all applicable
16 Wage Orders, section 7.

17 **EIGHTH CAUSE OF ACTION**

18 **Violation of Labor Code Section 226.2**

19 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

20 138. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 139. Labor Code section 226.2 requires an employer to pay employees compensated on a
22 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
23 piece-rate pay. This statute further requires an employer to include on the wage statements for these
24 employees the total hours of compensable rest and recovery period, the total hours for other non-
25 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
26 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
27 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
28 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
periods and any premium compensation for overtime, by the total hours worked during the
workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case

1 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

2 140. During the relevant period, DEFENDANTS failed to comply with Labor Code
3 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
4 Class Members who were paid on a piece-rate basis (e.g., per load/delivery/trip/mile/day) and or
5 commission basis separately for the rest periods and nonproductive time, and/or failed to pay them
6 for this time at the correct rates. Based on information and belief, DEFENDANTS further failed to
7 include the information on these employees' wage statements required by this statute.

8 **NINTH CAUSE OF ACTION**

9 **Unlawful Deductions**

10 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

11 141. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 142. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
13 an employee any part of wages theretofore paid by said employer to said employee."

14 143. Based on information and belief, DEFENDANTS made unlawful deductions, such
15 as, but not limited to, unlawful deductions for fees for services required to perform their assigned
16 job duties and/or costs and/or fees for including but not limited to, tolls/use of toll roads on the job,
17 from Class Members' paychecks, resulting in violations of California wage and hour laws, including
18 but not limited to, Labor Code sections 224 and 1197.

19 **TENTH CAUSE OF ACTION**

20 **Sick Leave Violations**

21 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

22 144. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 145. DEFENDANTS violated California's paid sick leave laws including, Labor Code
24 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
25 PLAINTIFF and other Class Members or failed to properly accrue paid sick leave due to
26 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
27 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
28 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
compensation into the sick leave pay rate calculation.

146. DEFENDANTS further failed to give PLAINTIFF and other Class Members notice

1 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code
2 section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick
3 leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and Class
4 Members’ intelligent exercise of their paid sick leave.

5 147. But for this failure, PLAINTIFF and other Class Members would have used their
6 paid sick leave at least prior to their respective separations, for as on several occasions thereafter,
7 he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

8 148. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
9 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all Class
10 Members, permitting the presumption that PLAINTIFF and all Class Members were entitled to the
11 maximum number of hours accruable.

12 149. Upon information and belief, DEFENDANTS failed and continue to fail to comply
13 with Labor Code section 246, by failing to provide PLAINTIFF and all Class Members with a Labor
14 Code section 226 wage statement, or separate writing containing the amount of paid sick leave
15 available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

16 150. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

17 151. On information and belief, PLAINTIFF alleges that all of these practices were
18 experienced and continue to be experienced by other Class Members.

19 152. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
20 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
21 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

22 **ELEVENTH CAUSE OF ACTION**

23 **Failure to Provide Supplemental Paid Sick Leave** 24 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

25 153. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 154. Labor Code § 248.2 provides that all employers with 26 or more employees are
27 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
28 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Class

1 Members with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and
2 belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
3 Labor Code section 248.6.

4 **TWELFTH CAUSE OF ACTION**

5 **Failure to Pay Vested Vacation/Paid Time Off**
6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 155. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 156. California Labor Code section 227.3 provides that when an employer policy provides
9 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
10 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
11 employee's final rate in accordance with such contract of employment or employer policy respecting
12 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
13 off upon termination.

14 157. Based on information and belief, DEFENDANTS had and continue to have a
15 uniform policy and practice of failing to allow Class Members to use their earned vacation/paid time
16 off during their employment and failing to pay all vested, accrued paid time off to Class Members
17 upon separation of employment, in violation of California law, including but not limited to, Labor
18 Code section 227.3.

19 **THIRTEENTH CAUSE OF ACTION**

20 **Violation of Labor Code Section 976**
21 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

22 158. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 159. Labor Code section 976 provides that "No person shall publish or cause to be
24 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
25 offering employment as a salesman, broker or agent whether as an employee or independent
26 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
27 any person as to compensation or commissions which may be earned; or (b) falsely represents the
28 compensation or commissions which may be earned."

160. Based on information and belief, DEFENDANTS have a policy and/or practice of
offering prospective employees, including Class Members, a higher compensation and commission

1 that is misleading as it falsely represents the compensation or commission that will be earned during
2 employment, as the actual compensation or commission earned is lower than that which is offered
3 to induce employment or continued employment. Such a practice or policy is in violation of Labor
4 Code section 976.

5 **FOURTEENTH CAUSE OF ACTION**

6 **Unlawful Agreements/Unlawful Background Checks/Unlawful Criminal History Inquiries in**
7 **Violation of Labor Code Sections 432.5, 432.7, 1024.5, and Civil Code Section 1786, et seq.**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 161. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 162. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
11 require any employee or applicant for employment to agree, in writing, to any term or condition
12 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
13 continue to require PLAINTIFF and Class Members to agree in writing to unlawful conditions of
14 employment including but not limited to agree in writing to unlawful conditions of employment
15 including but not limited to unlawful non-compete and/or non-solicitation agreements, unlawful
16 release agreements and/or non-disclosure agreements and/or unlawful criminal and/or financial
17 checks.

18 163. The California Labor Code places certain procedural and substantive limits on an
19 employers’ ability to conduct employee background checks and on how employers can use the
20 information they obtain through those background checks. Labor Code section 1024.5 states that
21 employers, except for financial institutions, may order a credit check only if the individual works
22 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
23 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
24 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
25 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
26 background check, including but not limited to identifying an appropriate reason for the background
27 check, a separate consent form with required disclosures and certain formatting requirements,
28 additional forms such as a summary of rights, a way by which to request a copy of the report, as
well as proper notice of adverse actions taken, among other statutory requirements.

1 164. Based on information and belief, DEFENDANTS ordered unlawful financial credit
2 checks on Class Members, in violation of Labor Code section 1024.5, and required them to provide
3 ongoing written consent to the unlawful credit checks as a condition of employment, in violation of
4 California and Federal law, which results in a violation of Labor Code section 432.5.

5 165. Based on information and belief, DEFENDANTS required Class Members to submit
6 and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining
7 and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

8 166. Based on further information and belief, DEFENDANTS required Class Members to
9 agree in writing to provide DEFENDANTS with ongoing consent to conduct background checks
10 throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other
11 applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants
12 and employees to agree to an unlawful provision as a condition of employment.

13 167. Based on further information and belief, DEFENDANTS knew that requiring Class
14 Members to agree to unlawful criminal and/or financial background checks as a condition of
15 obtaining and/or holding employment was unlawful.

16 168. By requiring that Class Members sign off on the illegal background and/or financial
17 checks, DEFENDANTS violated Labor Code section 432.5.

18 Unlawful Inquires into Criminal History

19 169. Labor Code section 432.7 prohibits an employer from asking applicants about past
20 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
21 information and belief, DEFENDANTS asked Class Members about arrests not resulting in
22 convictions on its employment application, in violation of California law.

23 170. Upon information and belief, DEFENDANTS, in violation of California law,
24 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
25 (“FEHA”), asked Class Members about convictions prior to extending an offer of employment
26 and/or otherwise impermissibly inquired into criminal history on its employment application in
27 violation of California law.

28 171. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
PLAINTIFF’S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Code section 432.7. By asking about convictions at the application phase or prior to extending an
2 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
3 Labor Code section 432.5 by unlawfully requiring Class Members to agree in writing to disclose
4 arrests and/or convictions as a condition of employment.

5 **FIFTEENTH CAUSE OF ACTION**

6 **Violation of Labor Code Section 216**

7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

8 172. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 173. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
10 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
11 and continue to violate this section by failing to pay PLAINTIFF and Class Members for all hours
12 worked at the proper wage rate. These violations subject DEFENDANTS to civil penalties under
13 Labor Code section 225.5.

14 **SIXTEENTH CAUSE OF ACTION**

15 **Violation of Labor Code Section 223**

16 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

17 174. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

18 175. California Labor Code section 223 makes it unlawful for an employer to secretly pay
19 wages lower than required by statute while purporting to pay legal wages. As described above,
20 DEFENDANTS willfully and systematically denied PLAINTIFF and Class Members of all earned
21 minimum and overtime compensation for all hours worked which resulted in the payment of less
22 than statutorily required wages. DEFENDANTS acted with the intent to deprive them of statutory
23 wages, including, but not limited to, minimum and overtime wages, to which they were entitled to
24 under California law. Thus, DEFENDANTS paid PLAINTIFF and other Class Members lower
25 wages than those they were entitled to while purporting that PLAINTIFF and other Class Members
26 were properly paid.

27 **SEVENTEENTH CAUSE OF ACTION**

28 **Violation of Labor Code Section 2810.5**

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

176. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

177. (a) (1) At the time of hiring, an employer shall provide to each employee a written

1 notice, in the language the employer normally uses to communicate employment-related
2 information to the employee, containing the following information:

3 178. (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day,
4 week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

5 179. (B) Allowances, if any, claimed as part of the minimum wage, including meal or
6 lodging allowances.

7 180. (C) The regular payday designated by the employer in accordance with the
8 requirements of this code.

9 181. (D) The name of the employer, including any “doing business as” names used by the
10 employer.

11 182. (E) The physical address of the employer’s main office or principal place of business,
12 and a mailing address, if different.

13 183. (F) The telephone number of the employer.

14 184. (G) The name, address, and telephone number of the employer’s workers’
15 compensation insurance carrier.

16 185. (H) That an employee: may accrue and use sick leave; has a right to request and use
17 accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use
18 of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

19 186. (I) The existence of a federal or state emergency or disaster declaration applicable to
20 the county or counties where the employee is to be employed, and that was issued within 30 days
21 before the employee’s first day of employment, that may affect their health and safety during their
22 employment.

23 187. (J) Any other information the Labor Commissioner deems material and necessary.

24 188.

25 DEFENDANTS violated Labor Code Section 2810.5 by failing to give PLAINTIFF and other
26 Class Members notice of their paid sick leave rights. In addition, DEFENDANTS failed to
27 maintain accurate records of used sick leave and the balance of paid sick leave left to the
28 employees, which affected PLAINTIFF and Class Members’ intelligent exercise of their paid sick
leave. **EIGHTEENTH CAUSE OF ACTION**

Standard Conditions of Labor Violations

1 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

2 189. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
3 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
4 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
5 sections 1174, 1197, and 1198, or order or ruling of the commission.

6 190. Therefore, DEFENDANTS' violations with respect to including but not limited to,
7 record keeping provisions, business expenses, minimum wages and other violations described
8 herein result in separate violations of sections 1198 and 1199.

9 **NINETEENTH CAUSE OF ACTION**

10 **Unfair Competition**

11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 191. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 192. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
14 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
15 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
16 failure to pay minimum and straight time wages by virtue of its illegal policies and practices;
17 DEFENDANTS' failure to furnish complete and accurate itemized wage statements;
18 DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all
19 wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave
20 (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to,
21 DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay
22 calculation and failure to base the accrued sick leave on the correct number of hours worked as a
23 result of DEFENDANTS' piece-rate compensation scheme/time-rounding/auto deduction policies
24 and practices, payment according to scheduled hours worked and/or other off-the-clock work
25 policies and practices); failure to keep accurate employment records, violations of Labor Code
26 Section 226.2, unlawful deductions from PLAINTIFF's and the Class Members' earned wages,
27 violation of California's sick leave laws; failure to provide PLAINTIFF and the Class Members
28 with supplemental paid sick leave; failure to pay vested vacation or paid time off to PLAINTIFF
and the Class Members, violations of Labor Code Section 976 as to PLAINTIFF and the Class

1 Members, requiring PLAINTIFF and the Class Members to sign unlawful agreements as a condition
2 of obtaining and/or maintaining employment; asking impermissible criminal history questions, in
3 violation of Labor Code section 432.7; refusing to pay wages due and payable and/or the denying
4 the validity of any claim to wages due, in violation of Labor Code Section 216; and wrongfully
5 withholding wages from PLAINTIFF and the Class Members, in violation of Labor Code Section
6 223

7 193. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
8 California Labor Code, DEFENDANTS have gained a competitive advantage over other
9 comparable companies doing business in the State of California that properly accrue and pay sick
10 time benefits, to provide complete and accurate itemized wage statements, to reimburse employees
11 for all business expenses, to pay all owed wages and during employment and due upon separation
12 of employment of their employees.

13 194. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
14 and Class Members have suffered injury in fact and lost money or property, as described in more
15 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
16 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
17 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
18 unlawful and unfair business practices.

19 195. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
20 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
21 engaging in each of the unlawful practices and policies set forth herein.

22 196. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
23 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
24 by law.

25 **TWENTIETH CAUSE OF ACTION**

26 **Violation of the Private Attorneys General Act of 2004**

27 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

28 197. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

1 198. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
2 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF,
3 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
4 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

5 All current and former non-exempt employees that worked either directly or via a staffing
6 agency for any of the DEFENDANTS at any location in California at any time from one year plus
7 65 days from the filing of the initial Complaint through the present ("PAGA Period").

8 199. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
9 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
10 limitations period and suffered one or more of the Labor Code violations set forth herein.
11 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
12 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
13 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
14 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
15 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
16 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
17 for all known violations committed by the employer - regardless of whether Plaintiff experienced
18 all violations personally. *Id.* at 760-761.

19
20 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

21 200. On February 24, 2023, PLAINTIFF, through counsel, gave written notice by online
22 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
23 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
24 in this Complaint ("PAGA Notice").

25 201. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
26 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
27 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.

28 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
2 has duly accrued.

3 202. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
4 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
5 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

6 203. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
7 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
8 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 245-248.5, 432, 432.5, 432.7,
9 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable
10 Wage Orders.

11 204. As set forth above, DEFENDANTS have committed numerous violations of the
12 California Labor Code due to including but not limited to their failure to pay all owed minimum
13 wages, failure to provide accurate wage statements, failure to reimburse business expenses, and
14 failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties are
15 in addition to any other relief available under the Labor Code.

16 205. Additionally, DEFENDANTS have violated the following Labor Code sections and
17 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

18
19 **Failure to Provide Meal and Rest Breaks and/or Compensation Therefore**

20
21 206. At all relevant times, PLAINTIFF and Aggrieved Employees did not receive legally
22 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
23 As explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or
24 otherwise subject to DEFENDANTS' control due to the nature and constraints of Aggrieved
25 Employees' job duties, understaffing, and/or commentary from supervisors pressuring PLAINTIFF
26 and Aggrieved Employees to skip rest periods completely or otherwise take non-compliant rest
27 periods.

28 207. At all relevant times, PLAINTIFF and other Aggrieved Employees were consistently
PLAINTIFF'S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
2 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
3 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
4 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
5 periods completely.

6 208. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful rest and
7 meal periods, as described above, in violation of California law and/or failed to pay the proper meal
8 and rest period premiums for failure to incorporate all non-discretionary remuneration including but
9 not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the
10 regular rate or compensation for purposes of calculating the owed meal period premium .

11
12 **Failure to Keep Accurate Records**

13 209. California Labor Code § 1174 requires employers to keep “accurate and complete”
14 payroll records showing, among other things, the hours worked daily by all non-exempt employees.

15 210. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
16 and complete records as required by law, including but not limited to the following records: total
17 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
18 Aggrieved Employees began and ended each work period, and accurate itemized wage statements.

19 211. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
20 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
21 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
22 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
23 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
24 period during which the referenced statutes and Wage Order provisions were violated.³

25
26
27 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
28 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
PLAINTIFF’S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 **Semimonthly Payment Violations**

2
3 212. Labor Code section 204 requires that all earned wages must be paid to employees
4 twice during each calendar month. DEFENDANTS violated this section by, including but not
5 limited to, failing to pay PLAINTIFF and other Aggrieved Employees an additional hour of pay for
6 meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees
7 for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These
8 violations subject DEFENDANTS to civil penalties under Labor Code section 210.

9 **Violation of Labor Code Section 226.2**

10
11 213. Labor Code section 226.2 requires an employer to pay employees compensated on a
12 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
13 piece-rate pay. This statute further requires an employer to include on the wage statements for these
14 employees the total hours of compensable rest and recovery period, the total hours for other non-
15 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
16 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
17 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
18 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
19 periods and any premium compensation for overtime, by the total hours worked during the
20 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
21 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

22 214. During the relevant period, DEFENDANTS failed to comply with Labor Code
23 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
24 Aggrieved Employees who were paid on a piece-rate basis (e.g., per load/delivery/trip/mile/day)
25 and or commission basis separately for the rest periods and nonproductive time, and/or failed to pay
26 them for this time at the correct rates. Based on information and belief, DEFENDANTS further

27 _____
28 to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 failed to include the information on these employees' wage statements required by this statute.

2
3 **Statutory Wage Violations**

4 215. California Labor Code section 223 makes it unlawful for an employer to secretly pay
5 wages lower than required by statute while purporting to pay legal wages. As described above,
6 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
7 earned minimum and overtime compensation for all hours worked which resulted in the payment of
8 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
9 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
10 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
11 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
12 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
13 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
14 Labor Code § 2699(f)-(g).

15
16 **Refusal to Make Payment**

17 216. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
18 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
19 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
20 hours worked at the proper wage rate. These violations subject DEFENDANTS to civil penalties
21 under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each
22 Aggrieved Employee, for each pay period during which the statute provisions were violated.⁴

23
24 **Standard Conditions of Labor Violations**

25 217. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
26

27 ⁴ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
2 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
3 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS’
4 violations with respect to record keeping provisions, business expenses, minimum/overtime wages
5 and other violations described herein result in separate violations of sections 1198 and 1199, which
6 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

7 **Unlawful Deductions**

8
9 218. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
10 an employee any part of wages theretofore paid by said employer to said employee.” Based on
11 information and belief, DEFENDANTS made unlawful deductions, such as, but not limited to,
12 unlawful deductions for fees for services required to perform their assigned job duties and/or costs
13 and/or fees for including but not limited to, tolls/use of toll roads on the job, from Aggrieved
14 Employees’ paychecks, resulting in violations of California wage and hour laws, including but not
15 limited to, Labor Code sections 224 and 1197.

16 219. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
17 each pay period during which the statute provisions were violated. See Lab. Code §225.5
18 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
19 provided in this article, every person who unlawfully withholds wages due any employee in
20 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
21 to pay each employee”).

22 **Sick Leave Violations**

23
24 220. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
25 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
26 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
27 DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to
28

1 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

4 221. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
5 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
6 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
7 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
8 Aggrieved Employees’ intelligent exercise of their paid sick leave.

9 222. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
10 their paid sick leave at least prior to their respective separations, for as on several occasions
11 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
12 compensation.

13 223. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
14 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
15 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
16 were entitled to the maximum number of hours accruable.

17 224. Upon information and belief, DEFENDANTS failed and continue to fail to comply
18 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
19 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
20 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
21 wages.

22 225. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

23 226. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

25 227. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
26 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
27 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

1 **Failure To Provide Supplemental Paid Sick Leave**

2
3 228. Labor Code § 248.2 provides that all employers with 26 or more employees are
4 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
5 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
6 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
7 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
8 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
9 Labor Code section 248.6.

10 **Failure to Pay Vested Vacation/Paid Time Off**

11 229. California Labor Code section 227.3 provides that when an employer policy provides
12 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
13 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
14 employee's final rate in accordance with such contract of employment or employer policy respecting
15 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
16 off upon termination.

17 230. Based on information and belief, DEFENDANTS had and continue to have a
18 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
19 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
20 to Aggrieved Employees upon separation of employment, in violation of California law, including
21 but not limited to, Labor Code section 227.3.

22 **Violation of Labor Code section 976**

23 231. Labor Code section 976 provides that "No person shall publish or cause to be
24 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
25 offering employment as a salesman, broker or agent whether as an employee or independent
26 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
27 any person as to compensation or commissions which may be earned; or (b) falsely represents the
28 compensation or commissions which may be earned."

1 232. Based on information and belief, DEFENDANTS have a policy and/or practice of
2 offering prospective employees, including Aggrieved Employees, a higher compensation and
3 commission that is misleading as it falsely represents the compensation or commission that will be
4 earned during employment, as the actual compensation or commission earned is lower than that
5 which is offered to induce employment or continued employment. Such a practice or policy is in
6 violation of Labor Code section 976.

7 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

8
9 233. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
10 require any employee or applicant for employment to agree, in writing, to any term or condition
11 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
12 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
13 conditions of employment including but not limited to agree in writing to unlawful conditions of
14 employment including but not limited to unlawful non-compete and/or non-solicitation agreements,
15 unlawful release agreements and/or non-disclosure agreements and/or unlawful criminal and/or
16 financial checks.

17 234. The California Labor Code places certain procedural and substantive limits on an
18 employers’ ability to conduct employee background checks and on how employers can use the
19 information they obtain through those background checks. Labor Code section 1024.5 states that
20 employers, except for financial institutions, may order a credit check only if the individual works
21 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
22 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
23 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
24 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
25 background check, including but not limited to identifying an appropriate reason for the background
26 check, a separate consent form with required disclosures and certain formatting requirements,
27 additional forms such as a summary of rights, a way by which to request a copy of the report, as
28 well as proper notice of adverse actions taken, among other statutory requirements.

1 235. Based on information and belief, DEFENDANTS ordered unlawful financial credit
2 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
3 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
4 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

5 236. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
7 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

8 237. Based on further information and belief, DEFENDANTS required Aggrieved
9 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
10 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
11 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
12 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

13 238. Based on further information and belief, DEFENDANTS knew that requiring
14 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
15 condition of obtaining and/or holding employment was unlawful.

16 239. By requiring that Aggrieved Employees sign off on the illegal background and/or
17 financial checks, DEFENDANTS violated Labor Code section 432.5.

18 240. *Unlawful Inquiries into Criminal History:* Labor Code section 432.7 prohibits an
19 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
20 then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved
21 Employees about arrests not resulting in convictions on its employment application, in violation of
22 California law.

23 241. Upon information and belief, DEFENDANTS, in violation of California law,
24 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
25 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
26 employment and/or otherwise impermissibly inquired into criminal history on its employment
27 application in violation of California law.

28 242. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
PLAINTIFF’S SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Code section 432.7. By asking about convictions at the application phase or prior to extending an
2 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
3 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
4 disclose arrests and/or convictions as a condition of employment.

5 243. Under the provisions of PAGA and the above mentioned Labor Code sections,
6 including but not limited to Labor Code sections 201-203, 204, 210, 216, 221-223, 225.5, 226,
7 226.2, 226.7, 245-248.6, 256, 432, 432.5, 432.7, 558, 558.1, 976, 1024.5, 1174, 1174.5, 1194, 1197,
8 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
9 all interpretations of these laws by California Courts and administrative bodies, as well as any other
10 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 11
- 12 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
 - 13 relevant California Labor Code provisions listed herein only if permitted by the
 - 14 PAGA statute, pursuant to Labor Code section 2699(a); and
 - 15 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
 - 16 violations without a civil penalty recoverable under the PAGA, all in the default
 - 17 amounts provided by Labor Code section 2699(f).
 - 18 c. The proper measure of penalties under PAGA is the number of violations,
 - 19 whether those violations were committed as against PLAINTIFF or any
 - 20 Aggrieved Employee, whether a party to this action or not.

21 244. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
22 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
25 Class Members and Aggrieved Employees as follows:

- 26 1. For an order that the action be certified as a class action;
- 27 2. For an order that PLAINTIFF be appointed as class representative;
- 28 3. For an order that counsel for PLAINTIFF be appointed as class counsel;

4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties according to proof, including PAGA penalties (75% payable to the LWDA and 25% payable to Aggrieved Employees); and
13. For such other and further relief that the Court deems just and proper.

Dated: February 25, 2025

CROSNER LEGAL, PC

By: _____


Zachary M. Crosner
Brandon Brouillette
Attorneys for Plaintiff
SHAWN VASQUEZ

DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: February 25, 2025

CROSNER LEGAL, PC

By: _____



Zachary M. Crosner
Brandon Brouillette
Attorneys for Plaintiff
SHAWN VASQUEZ