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8 on behalf of the State of California,
9 and others similarly situated and aggrieved

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 NIKITA LITVINYUK, on behalf of the
State of California, and others similarly
14 situated and aggrieved

15 Plaintiff,

17 v.

18 CAROLINA LOGISTICS INC., a South
Carolina corporation; and DOES 1-100,
19 inclusive,

20 Defendants.
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Case No.: **23STCV17164**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, et seq**

1 Plaintiff, NIKITA LITVINYUK (“PLAINTIFF”), an individual on behalf of the State of
2 California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants CAROLINA LOGISTICS INC., a South Carolina corporation; and DOES 1-
4 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFF on behalf of all Aggrieved
8 Employees and the State of California against DEFENDANTS, pursuant to California’s Private
9 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%
10 payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
11 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

12 **JURISDICTION AND VENUE**

13 2. This court possesses original subject matter jurisdiction over this matter. Venue is
14 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
15 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
16 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
17 PLAINTIFF herein occurred in this this judicial district.

18 **THE PARTIES**

19 3. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
20 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
21 in the State of California as a non-exempt employee from in or around May 5, 2022 through on or
22 around November 28, 2022.

23 4. PLAINTIFF worked for DEFENDANTS as driver and/or similar title(s), with routes
24 completed in various counties including but not limited to counties throughout California.

25 5. DEFENDANTS are a South Carolina corporation that, at all relevant times, were
26 authorized to do business within the State of California and are doing business in the State of
27 California.

28 6. DEFENDANTS own, operate, or otherwise manage a transportation and/or logistics

1 business.¹

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

8 8. PLAINTIFF is further informed and believes that, at all relevant times, each
9 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
14 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
15 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
16 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other Defendants.

18 **JOINT LIABILITY**

19 9. Under California law, the definition of the terms “to employ” are broadly construed
20 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
21 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
22 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
23 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
24 was to reach situations in which multiple entities control different aspects of the employment
25 relationship. Supervision of the work, in the specific sense of exercising control over how services
26 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
27 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a

28 ¹ See <http://carolinalogisticsinc.com> (Last visited on February 15, 2023).

1 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
2 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
3 California, applying a less stringent standard to what constitutes sufficient control by a business
4 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
5 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
6 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
7 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
8 employment,” *Id.* at 875 [emphasis added].

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

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

1 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
2 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
3 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
4 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
5 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
6 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
7 Employees.

8 13. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
9 uniform set of policies, practices and/or procedures concerning, inter alia, hourly pay, time-keeping
10 practices, reimbursement of business expenses and other working conditions that were distributed
11 to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS
12 uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
13 a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved
14 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
15 collectively retained the right to terminate PLAINTIFF's and Aggrieved Employees' employment
16 with or without cause. Upon information and belief, DEFENDANTS further collectively
17 represented to PLAINTIFF and Aggrieved Employees in writing the details of their compensation,
18 the procedures required by DEFENDANTS collectively for recordation of hours worked and the
19 policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
20 collectively would evaluate the wage rates of PLAINTIFF and Aggrieved Employees.

21 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
22 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
23 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
24 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
25 PLAINTIFF seeks relief in this Complaint.

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

1 **PAGA ALLEGATIONS**

2 16. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
3 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
4 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

5 All individuals who currently or formerly worked for
6 DEFENDANTS in California at any time from one year plus 65 days
7 from the filing of the initial Complaint through the present (“PAGA
8 Period”).

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

20 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

21 18. On February 21, 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 19. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
26 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
27 Employees.

28 20. The LWDA did not provide notice of its intention to investigate DEFENDANTS’

1 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
2 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
3 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
4 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
5 has duly accrued.

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

9 **FACTUAL AND LEGAL ALLEGATIONS**

10 22. During the PAGA Period, PLAINTIFF, and each of the Aggrieved Employees, were
11 employed by DEFENDANTS in the State of California. At all relevant times, PLAINTIFF and the
12 Aggrieved Employees were non-exempt employees of DEFENDANTS that DEFENDANTS
13 willfully misclassified as independent contractors to evade California wage and hour laws. At all
14 times referenced herein, DEFENDANTS exercised control over PLAINTIFF and each of the
15 Aggrieved Employees and suffered and/or permitted them to work.

16 23. PLAINTIFF began working for DEFENDANTS in or around May 5, 2022 as a driver
17 and/or similar title(s). DEFENDANTS provide transportation/logistics services. PLAINTIFF
18 completed routes for DEFENDANTS in various cities throughout California. DEFENDANTS
19 compensated PLAINTIFF on a per mile basis irrespective of the number of hours worked daily or
20 weekly. At all relevant times, PLAINTIFF and the Aggrieved Employees were non-exempt
21 employees of DEFENDANTS that DEFENDANTS willfully misclassified as independent
22 contractors to evade California wage and hour laws.

23 24. To qualify as an independent contractor under California law, (a) the worker must be
24 free from the employer's control and direction in the performance of the work, both under the
25 contract for the performance of the work and in fact; (b) the work performed must be outside the
26 usual course of the employer's business; and (c) the worker must not be customarily engaged in an
27 independently established trade, occupation, or business of the same nature as the work he
28 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;

1 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.
2 The worker is presumed to be an employee unless the employer/hiring entity can show that all three
3 conditions are met.

4 25. Despite DEFENDANTS' efforts to evade California wage and hour laws by setting
5 up an alleged contractor scheme, the reality is that PLAINTIFF and the Aggrieved Employees are
6 and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
7 the Aggrieved Employees are/were not free from DEFENDANTS' control and direction in the
8 performance of work, both under the contract for the performance of the work and in fact; (b) the
9 work PLAINTIFF and the Aggrieved Employees perform/performed work is/was entirely within
10 the usual course of DEFENDANTS' business; and (c) PLAINTIFF and the Aggrieved Employees
11 are not/were not customarily engaged in an independently established trade, occupation, or business
12 of the same nature as the work they perform/performed for DEFENDANTS.

13 a. PLAINTIFF and Aggrieved Employees are/were not free from DEFENDANTS'
14 control and direction in the performance of work, both under the contract for the performance of the
15 work and in fact. DEFENDANTS control and direct PLAINTIFF's and other Aggrieved
16 Employees' work. First, DEFENDANTS scheduled pickup and delivery of PLAINTIFF's loads.
17 DEFENDANTS instructed PLAINTIFF on how to deliver loads. DEFENDANTS controlled the
18 assignments PLAINTIFF would receive, the amount PLAINTIFF was paid, and the locations
19 PLAINTIFF worked. For example, DEFENDANTS determined the rate per load, which was
20 negotiated by DEFENDANTS and unchangeable by PLAINTIFF. PLAINTIFF was not free to
21 reject loads. If PLAINTIFF had to alter his route in any way, e.g., due to traffic and/or weather
22 conditions, he was required to notify DEFENDANTS immediately. DEFENDANTS prohibited
23 PLAINTIFF from accepting loads/delivery assignments from competitors. Based on information
24 and belief, DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to affix
25 DEFENDANTS' company name on their vehicles, and/or required PLAINTIFF to represent himself
26 as Carolina Logistics when arriving at his assigned delivery/pickup locations. Based on information
27 and belief, DEFENDANTS supplied PLAINTIFF with a place to park his vehicle and/or the trailers
28 and/or other equipment with which to perform his assigned job duties. Based on information and

1 belief, if PLAINTIFF was late for his scheduled pickups or deliveries PLAINTIFF would be subject
2 to disciplinary action by DEFENDANTS, including but not limited to, a reduction in the number of
3 routes assigned and/or assignment of less desirable routes. DEFENDANTS hired PLAINTIFF
4 without any set end date for his services. PLAINTIFF's term of employment with DEFENDANTS
5 was indefinite, and PLAINTIFF could have been terminated by DEFENDANTS at will (which
6 happened) or quit at any time. DEFENDANTS required that PLAINTIFF report to a Carolina
7 Logistics supervisor, who kept tabs on PLAINTIFF and directed PLAINTIFF's work on an ongoing,
8 day-to-day basis. For example, PLAINTIFF was required to notify DEFENDANTS upon arrival at
9 each shipping facility, once his vehicle was loaded, upon arriving at the receiving facility and upon
10 unloading his vehicle. Additionally, PLAINTIFF was required to report via cell phone to
11 DEFENDANTS multiple times during his shifts to provide status updates and/or update
12 DEFENDANTS on his location and was required to respond immediately to requests for status
13 updates from DEFENDANTS regarding things such as PLAINTIFF's precise location during his
14 shift. PLAINTIFF was also required to provide DEFENDANTS with regular updates on the number
15 and/or status of loads completed, and PLAINTIFF was required to take pictures of the freight/cargo
16 with his cell phone on each pickup or delivery completed during his shift for submission to
17 DEFENDANTS at the end of his shift. DEFENDANTS also required PLAINTIFF to submit
18 photocopies of the delivery receipts to DEFENDANTS each shift worked. As a result,
19 DEFENDANTS controlled and directed PLAINTIFF's and continue to control and direct other
20 Aggrieved Employees' work.

21 b. The work PLAINTIFF and the Aggrieved Employees perform/performed work
22 is/was entirely within the usual course of the DEFENDANTS' business of providing
23 trucking/transportation services. DEFENDANTS are in the business of providing
24 trucking/transportation services, and PLAINTIFF and Aggrieved Employees work/worked in
25 various positions including but not limited to drivers in order to conduct DEFENDANTS' business.
26 The work that PLAINTIFF and the Aggrieved Employees perform/performed is/was therefore not
27 a distinct occupation or an incidental or tangential part of DEFENDANTS' operations, but rather
28 is/was central to DEFENDANTS' business.

1 c. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
2 an independently established trade, occupation, or business of the same nature as the work they
3 perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other
4 Aggrieved Employees to present themselves as workers for Carolina Logistics and/or
5 DEFENDANTS. PLAINTIFF and the Aggrieved Employees do not/did not incur profits or losses;
6 instead, DEFENDANTS manage/managed the business operation, attract/attracted any investors
7 and customers, advertise/advertised to potential customers/clients and secure/secured
8 customers/clients. PLAINTIFF and the Aggrieved Employees do not/have not made any capital
9 investment in any of DEFENDANTS' facilities or advertising or DEFENDANTS' electronic
10 systems. Moreover, as explained above, based on information and belief DEFENDANTS required
11 Aggrieved Employees to affix DEFENDANTS' company name on their trucks/vehicles as well as
12 use trailers and/or other equipment supplied by DEFENDANTS identifying Carolina Logistics /
13 DEFENDANTS' company name, and Aggrieved Employees were required to represent themselves
14 as Carolina Logistics when arriving at the shipping and/or receiving facilities for their various
15 assignments. Nevertheless, DEFENDANTS unilaterally label PLAINTIFF and other Aggrieved
16 Employees as independent contractors and requires them to enter into contracts labeling them as such,
17 when they in fact, are not independent contractors.

18 26. Based on the work relationship described above, PLAINTIFF and the Aggrieved
19 Employees were at all relevant times DEFENDANTS' non-exempt employees – not independent
20 contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful pattern and/or
21 practice of misclassification.

22 27. DEFENDANTS willfully misclassified and continue to willfully misclassify
23 PLAINTIFF and the Aggrieved Employees as independent contractors in an attempt to evade
24 California labor laws that protect employees, including but not limited to, minimum and straight
25 time wage and sick pay laws, expense reimbursement requirements, and wage statement
26 requirements. Because DEFENDANTS improperly classified PLAINTIFF as an independent
27 contractor rather than as a non-exempt employee, PLAINTIFF was not properly and fully
28 compensated for all hours worked, as PLAINTIFF was not paid all owed minimum and straight time

1 wages for all hours worked. Also, PLAINTIFF was required to use his personal cell phone and
2 personal vehicle, pay for all fuel costs and vehicle and/or equipment maintenance, tools and/or
3 equipment required to perform the job duties DEFENDANTS assigned to him. DEFENDANTS did
4 not reimburse PLAINTIFF for these expenses. Based on information and belief, other Aggrieved
5 Employees were also required to incur business related expenses that they were not reimbursed for,
6 including but not limited to, costs associated with being required to use their personal vehicles,
7 personal cell phones, and purchase and/or maintain their own hand tools/equipment and/or uniforms
8 and/or protective/safety equipment. Additionally, DEFENDANTS failed to provide accurate,
9 itemized wage statements (and/or any wage statements at all) to PLAINTIFF and other Aggrieved
10 Employees.

11 28. As part of its misclassification scheme, DEFENDANTS have failed and continue to
12 fail to pay minimum, and straight time and continue to violate sick pay requirements, failed and
13 continue to fail to reimburse expenses, failed and continue to fail to furnish timely, accurate itemized
14 wage statements, failed and continue to fail to pay all wages due and owing upon separation of
15 employment, among other labor code violations, described in further detail below.

16 29. **Unpaid Minimum, Straight Time, and Overtime Wages.** DEFENDANTS failed
17 to compensate PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the
18 underpayment of minimum and straight time wages. DEFENDANTS failed to compensate
19 PLAINTIFF and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS' willful
20 misclassification scheme as explained above and below.

21 30. DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully
22 misclassify Aggrieved Employees as independent contractors to evade California's minimum wage
23 laws.

24 31. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all
25 hours worked, resulting in the underpayment of minimum and straight time wages.

26 32. For example, DEFENDANTS suffered and permitted PLAINTIFF and Aggrieved
27 Employees to work off the clock without the payment of wages, as DEFENDANTS failed to record
28 the number of hours worked and failed to instruct PLAINTIFF and other Aggrieved Employees to

1 record their hours worked and further failed to provide any way for them to record their hours
2 worked. PLAINTIFF and other Aggrieved Employees were not compensated for all time worked,
3 including but not limited to, time spent making pre-trip and post-trip inspections, waiting time, time
4 spent fueling, cleaning, setting up, time spent completing paperwork, loading, unloading, waiting
5 between jobs and tasks and/or all time spent driving between delivery locations, time spent
6 communicating with DEFENDANTS, including but not limited to, time spent updating
7 DEFENDANTS as to the status of deliveries and/or Aggrieved Employees' location, time spent
8 communicating with DEFENDANTS regarding deliveries and/or scheduling and/or other work
9 tasks and/or time spent retrieving and/or returning equipment to DEFENDANTS' facilities/yards.

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

19 34. As such, PLAINTIFF and other Aggrieved Employees were not paid for all work
20 time. DEFENDANTS were and are required to pay PLAINTIFF and other Aggrieved Employees
21 minimum wages for all time worked. DEFENDANTS failed and continue to fail to ensure that
22 PLAINTIFF and other Aggrieved Employees receive the applicable minimum wage for all hours
23 worked. Instead, DEFENDANTS paid PLAINTIFF and other Aggrieved Employees a flat per
24 load/per mile rate regardless of how many hours they worked, thereby depriving Aggrieved
25 Employees of all owed minimum wages, and all owed straight time wages.

26 35. Moreover, by charging PLAINTIFF and other Aggrieved Employees with rate-
27 reduction fees, fees for negligently damaged property and/or fees for services required to perform
28 their assigned job duties, DEFENDANTS deprived PLAINTIFF and other Aggrieved Employees

1 of allowed minimum wages for all hours worked. For example, at times DEFENDANTS deducted
2 fees and/or costs from PLAINTIFF's paycheck, thereby depriving him of all owed wages.

3 36. DEFENDANTS' failure to pay for all time worked by virtue of its misclassification
4 scheme, its unlawful deductions, its policy and practice of payment according to scheduled work
5 time rather than actual work time, and/or other mandated off-the-clock work policies and practices,
6 resulted in the underpayment of minimum wages and straight time wages owed to PLAINTIFF and
7 Aggrieved Employees.

8 37. Based on information and belief, DEFENDANTS had actual or constructive
9 knowledge that its policy and practice of misclassifying non-exempt employees as independent
10 contractors, its unlawful deductions of wages, its policy and practice of payment according to
11 scheduled work time rather than actual work time, and/or other mandated off-the-clock work
12 resulted in the underpayment of minimum wages, and straight time wages owed to PLAINTIFF and
13 other Aggrieved Employees.

14 38. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
15 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
16 with Labor Code section 226. DEFENDANTS either failed/fails to provide wage statements at all
17 or failed/fails to provide wage statements containing all statutorily required information pursuant to
18 Labor Code section 226.

19 39. To the extent wage statements were issued at all, the wage statements failed to
20 indicate the earned gross and net wages earned during the pay period, the correct applicable rates of
21 pay for all hours worked, and the total hours worked by PLAINTIFF and Aggrieved Employees (by
22 virtue of DEFENDANTS' willful misclassification scheme and/or piece-rate compensation scheme
23 and/or other unlawful policies and practices described above) which results in a violation of Labor
24 Code section 226(a).

25 40. To the extent any wage statements were provided, the wage statements fail to indicate
26 the "total hours worked" by PLAINTIFF and other Aggrieved Employees.

27 41. Moreover, to the extent wage statements were provided, they fail to include all gross
28 and net wages earned, fail to include the number of piece-rate units earned and any applicable piece

1 rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to
2 include any applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate, in violation of Labor Code section 226(a).

4 42. Moreover, based on information and belief, to the extent any wage statements were
5 provided, they fail to list the correct name and/or address of the legal entity that is the employer, in
6 violation of Labor Code section 226(a)(8).

7 43. Based on information and belief, DEFENDANTS failed to separately compensate
8 Aggrieved Employees for non-productive time and/or failure to compensate them at the correct rates
9 for all non-productive time when such employees were paid on a piece rate basis, resulting in unpaid
10 wages and violations of Labor Code section 226.2, and further failed to include this information on
11 these employees' wage statements (to the extent any wage statements were provided) as required
12 by Labor Code section 226.2.

13 44. As a result, to the extent DEFENDANTS provided wage statements to PLAINTIFF
14 and Aggrieved Employees, the wage statements were not accurate and did not include all of the
15 statutorily required information. As DEFENDANTS either failed to issue wage statements at all
16 and/or failed to provide wage statements containing all statutorily required information pursuant to
17 Labor Code section 226, DEFENDANTS violated Labor Code section 226.

18 45. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
19 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
20 were due and owing upon termination or resignation. Based on information and belief,
21 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
22 requirements of Labor Code sections 201-202.

23 46. Upon separation of employment, Aggrieved Employees' final paychecks were not
24 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
25 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
26 include all wages owed as they were devoid of, including but not limited to, all owed minimum
27 wages, straight time wages, premium pay, vacation pay, and all owed sick leave and/or paid time
28 off wages at the properly accrued rates.

1 47. These violations subject DEFENDANTS to civil penalties under Labor Code section
2 203, 210, and/or 256.

3 48. **Unreimbursed Business Expenses.** Based on information and belief,
4 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
5 direct consequence of the performance of their job duties without providing reimbursement, in
6 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
7 Employees were improperly required to provide and maintain work tools that are supposed to be the
8 responsibility of the employer.

9 49. Based on information and belief, DEFENDANTS shifted the costs of doing business
10 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
11 to, uniforms and/or use of PLAINTIFF's and other Aggrieved Employees' cellphone and data usage,
12 vehicle mileage and related expenses. For example, based on information and belief, PLAINTIFF
13 used his personal mobile phone to receive and respond to work-related messages and/or phone calls.
14 DEFENDANTS also required PLAINTIFF to download an app on his personal cell phone to receive
15 pickup/delivery assignments. Based on information and belief other Aggrieved Employees were
16 also required to download apps and/or used/use their personal mobile phones to communicate with
17 DEFENDANTS either via phone call and/or text message about scheduling and/or other work tasks.

18 50. PLAINTIFF and other Aggrieved Employees were also required to use their
19 personal vehicles and/or other tools to complete deliveries for DEFENDANTS without
20 reimbursement for these expenses including for mileage, gas, and other costs related to the use of a
21 personal vehicle and/or personal tools. For example, PLAINTIFF was required to use his personal
22 vehicle to drive his routes/ make pickups and/or deliveries for DEFENDANTS and was required to
23 pay for all fuel costs and truck and/or equipment maintenance out of pocket.

24 51. PLAINTIFF was also required to pay for uniforms/protective/safety equipment
25 including but not limited to, hardhat, eye protection, reflective vest and/or steel-toed boots that
26 DEFENDANTS required him to wear for work. These expenses were in no way reimbursed by
27 DEFENDANTS.

28 52. Based on information and belief, other Aggrieved Employees were also improperly

1 required to pay for business expenses that are the responsibility of DEFENDANTS, including but
2 not limited to, uniforms/protective/safety equipment, hand tools/equipment and/or cost of gas, costs
3 of vehicle/equipment repairs, toll road fees, fines, vehicle/equipment cleaning fees and/or other
4 work-related fees, incurred as a direct consequence of the discharge of their assigned job duties
5 without receiving any and/or full reimbursement from DEFENDANTS for these expenses.

6 53. As a pattern and practice, DEFENDANTS regularly failed to reimburse and
7 indemnify PLAINTIFF and other Aggrieved Employees for these business expenses. Pursuant to
8 California Labor Code section 2802, PLAINTIFF and other Aggrieved Employees were entitled to
9 be reimbursed for all reasonable expenses associated with carrying out orders by their employer
10 and/or carrying out the duties assigned by their employers.

11 54. PLAINTIFF and other Aggrieved Employees were improperly required to pay for
12 business expenses that are supposed to be the responsibility of DEFENDANTS, including but not
13 limited to, cellphone/data plan charges, costs of uniforms and/or protective/safety equipment, costs
14 associated with having to use their personal vehicles, including but not limited to mileage, and/or
15 other tools for work-related purposes.

16 55. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
17 for all reasonable expenses associated with carrying out their duties required that Aggrieved
18 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
19 2802.

20 56. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
21 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
22 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

23 **FIRST CAUSE OF ACTION**
24 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
25 **2698, *ET SEQ.***
26 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
27 **Defendants)**

28 57. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

58. **Willful Misclassification as an Independent Contractor.** California Labor Code
section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor,

1 providing: “[i]t is unlawful for any person or employer to engage in any of the following activities:
2 (1) Willful misclassification of an individual as an independent contractor. (2) Charging an
3 individual who has been willfully misclassified as an independent contractor a fee, or making any
4 deductions from compensation, for any purpose, including for goods, materials, space rental,
5 services, government licenses, repairs, equipment maintenance, or fines arising from the
6 individual’s employment where any of the acts described in this paragraph would have violated the
7 law if the individual had not been misclassified.” California Labor Code section 226.8 (a).

8 59. On various diverse dates throughout the relevant period, DEFENDANTS
9 misclassified PLAINTIFF and other Aggrieved Employees as independent contractors as opposed
10 to employees to evade California wage and hour laws. To qualify as an independent contractor
11 under California law, (1) the worker must be free from the employer’s control and direction in the
12 performance of the work, both under the contract for the performance of the work and in fact; (2)
13 the work performed must be outside the usual course of the employer’s business; and (3) the worker
14 must not be customarily engaged in an independently established trade, occupation, or business of
15 the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior*
16 *Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the
17 worker has been misclassified.

18 60. Despite DEFENDANTS’ efforts to evade California wage and hour laws by setting
19 up an alleged contractor scheme, the reality is that PLAINTIFF and the Aggrieved Employees are
20 and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
21 the Aggrieved Employees are/were not free from DEFENDANTS’ control and direction in the
22 performance of work, both under the contract for the performance of the work and in fact; (b) the
23 work PLAINTIFF and the Aggrieved Employees perform/performed work is/was entirely within
24 the usual course of DEFENDANTS’ business; and (c) PLAINTIFF and the Aggrieved Employees
25 are not/were not customarily engaged in an independently established trade, occupation, or business
26 of the same nature as the work they perform/performed for DEFENDANTS.

27 61. PLAINTIFF and Aggrieved Employees are/were not free from DEFENDANTS’
28 control and direction in the performance of work, both under the contract for the performance of the

1 work and in fact. DEFENDANTS control and direct PLAINTIFF and other Aggrieved Employees'
2 work. First, DEFENDANTS scheduled pickup and delivery of PLAINTIFF's loads.
3 DEFENDANTS instructed PLAINTIFF on how to deliver loads. DEFENDANTS controlled the
4 assignments PLAINTIFF would receive, the amount PLAINTIFF was paid, and the locations
5 PLAINTIFF worked. For example, DEFENDANTS determined the rate per load, which was
6 negotiated by DEFENDANTS and unchangeable by PLAINTIFF. PLAINTIFF was not free to
7 reject loads. If PLAINTIFF had to alter his route in any way, e.g., due to traffic and/or weather
8 conditions, he was required to notify DEFENDANTS immediately. DEFENDANTS prohibited
9 PLAINTIFF from accepting loads/delivery assignments from competitors. Based on information
10 and belief, DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to affix
11 DEFENDANTS's company name on their vehicles, and/or required PLAINTIFF to represent
12 himself as Carolina Logistics when arriving at his assigned delivery/pickup locations. Based on
13 information and belief, DEFENDANTS supplied PLAINTIFF with a place to park his vehicle and/or
14 the trailers and/or other equipment with which to perform his assigned job duties. Based on
15 information and belief, if PLAINTIFF was late for his scheduled pickups or deliveries PLAINTIFF
16 would be subject to disciplinary action by DEFENDANTS, including but not limited to, a reduction
17 in the number of routes assigned and/or assignment of less desirable routes. DEFENDANTS hired
18 PLAINTIFF without any set end date for his services. PLAINTIFF's term of employment with
19 DEFENDANTS was indefinite, and PLAINTIFF could have been terminated by DEFENDANTS at
20 will (which happened) or quit at any time. DEFENDANTS required that PLAINTIFF report to a
21 Carolina Logistics supervisor, who kept tabs on PLAINTIFF and directed PLAINTIFF's work on
22 an ongoing, day-to-day basis. For example, PLAINTIFF was required to notify DEFENDANTS
23 upon arrival at each shipping facility, once his vehicle was loaded, upon arriving at the receiving
24 facility and upon unloading his vehicle. Additionally, PLAINTIFF was required to report via cell
25 phone to DEFENDANTS multiple times during his shifts to provide status updates and/or update
26 DEFENDANTS on his location and was required to respond immediately to requests for status
27 updates from DEFENDANTS regarding things such as PLAINTIFF's precise location during his
28 shift. PLAINTIFF was also required to provide DEFENDANTS with regular updates on the number

1 and/or status of loads completed, and PLAINTIFF was required to take pictures of the freight/cargo
2 with his cell phone on each pickup or delivery completed during his shift for submission to
3 DEFENDANTS at the end of his shift. DEFENDANTS also required PLAINTIFF to submit
4 photocopies of the delivery receipts to DEFENDANTS each shift worked. As a result,
5 DEFENDANTS controlled and directed PLAINTIFF's and continue to control and direct other
6 Aggrieved Employees' work.

7 62. The work PLAINTIFF and the Aggrieved Employees perform/performed work
8 is/was entirely within the usual course of the DEFENDANTS's business of providing
9 trucking/transportation services. DEFENDANTS are in the business of providing
10 trucking/transportation services, and PLAINTIFF and Aggrieved Employees work/worked in
11 various positions including but not limited to drivers in order to conduct DEFENDANTS's business.
12 The work that PLAINTIFF and the Aggrieved Employees perform/performed is/was therefore not
13 a distinct occupation or an incidental or tangential part of DEFENDANTS' operations, but rather
14 is/was central to DEFENDANTS' business.

15 63. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
16 an independently established trade, occupation, or business of the same nature as the work they
17 perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other
18 Aggrieved Employees to present themselves as workers for Carolina Logistics and/or
19 DEFENDANTS. PLAINTIFF and the Aggrieved Employees do not/did not incur profits or losses;
20 instead, DEFENDANTS manage/managed the business operation, attract/attracted any investors
21 and customers, advertise/advertised to potential customers/clients and secure/secured
22 customers/clients. PLAINTIFF and the Aggrieved Employees do not/have not made any capital
23 investment in any of DEFENDANTS's facilities or advertising or DEFENDANTS's electronic
24 systems. Moreover, as explained above, based on information and belief DEFENDANTS required
25 Aggrieved Employees to affix DEFENDANTS's company name on their trucks/vehicles as well as
26 use trailers and/or other equipment supplied by DEFENDANTS identifying Carolina Logistics /
27 DEFENDANTS's company name, and Aggrieved Employees were required to represent themselves
28 as Carolina Logistics when arriving at the shipping and/or receiving facilities for their various

1 assignments. Nevertheless, DEFENDANTS unilaterally label PLAINTIFF and other Aggrieved
2 Employees as independent contractors and requires them to enter into contracts labeling them as such,
3 when they in fact, are not independent contractors.

4 64. Based on the work relationship described above, PLAINTIFF and the Aggrieved
5 Employees were at all relevant times DEFENDANTS's non-exempt employees – not independent
6 contractors. Thus, DEFENDANTS's conduct constitutes an intentional, willful pattern and/or
7 practice of misclassification.

8 65. DEFENDANTS willfully misclassified and continue to willfully misclassify
9 PLAINTIFF and the Aggrieved Employees as independent contractors in an attempt to evade
10 California labor laws that protect employees, including but not limited to, minimum and straight
11 time wage and sick pay laws, meal and rest period laws, expense reimbursement requirements, and
12 wage statement requirements. Because DEFENDANTS improperly classified PLAINTIFF as an
13 independent contractor rather than as a non-exempt employee, PLAINTIFF was not properly and
14 fully compensated for all hours worked, as PLAINTIFF was not paid all owed minimum and straight
15 time wages for all hours worked and was denied owed overtime wages. Also, PLAINTIFF was
16 required to use his personal cell phone and personal vehicle, pay for all fuel costs and vehicle and/or
17 equipment maintenance, tools and/or equipment required to perform the job duties DEFENDANTS
18 assigned to him. DEFENDANTS did not reimburse PLAINTIFF for these expenses. Based on
19 information and belief, other Aggrieved Employees were also required to incur business related
20 expenses that they were not reimbursed for, including but not limited to, costs associated with being
21 required to use their personal vehicles, personal cell phones, and purchase and/or maintain their own
22 hand tools/equipment and/or uniforms and/or protective/safety equipment. Additionally,
23 DEFENDANTS failed to provide accurate, itemized wage statements (and/or any wage statements
24 at all) to PLAINTIFF and other Aggrieved Employees.

25 66. As part of its misclassification scheme, DEFENDANTS have failed and continue to
26 fail to pay minimum, straight time and overtime wages, violated and continue to violate meal period
27 and rest period requirements, violated and continue to violate sick pay requirements, failed and
28 continue to fail to reimburse expenses, failed and continue to fail to furnish timely, accurate itemized

1 wage statements, failed and continue to fail to pay all wages due and owing upon separation of
2 employment, among other labor code violations, described in further detail below.

3 67. **Failure to Keep Accurate Records.** California Labor Code § 1174 requires
4 employers to keep “accurate and complete” payroll records showing, among other things, the hours
5 worked daily by all non-exempt employees. All applicable Wage Orders § 7 similarly requires
6 employers to keep time records reflecting the times during which all owed meal periods were
7 provided each day.

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

13 69. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
14 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
15 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
16 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
17 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
18 period during which the referenced statutes and Wage Order provisions were violated.²

19 70. **Minimum and Straight Wage Violations.** It is fundamental that an employer must
20 pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right
21 of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a
22 wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale.
23 Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission
24 (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “i>n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
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 per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment
2 to an employee of less than the applicable minimum wage for all hours worked in a payroll period
3 is unlawful. Labor Code section 224 only permits deductions from wages when the employer is
4 required or empowered to do so by state or federal law or when the deduction is expressly authorized
5 in writing by the employee for specified purposes that do not have the effect of reducing the agreed
6 upon wage.

7 71. DEFENDANTS suffered and permitted PLAINTIFF and other Aggrieved
8 Employees to work off the clock without wages, including but not limited to pre-shift and post-shift
9 off-the-clock work as well as other off-the-clock work described above.

10 72. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
11 Aggrieved Employees for all hours worked.

12 73. Moreover, as explained above, DEFENDANTS had and continue to have a policy
13 and practice of misclassifying non-exempt employees as independent contractors, unlawfully
14 deducting wages from PLAINTIFF's and Aggrieved Employees' paychecks, such as, but not limited
15 to, unlawful deductions for costs and/or fees, including but not limited to, rate reduction fees and/or
16 fees for negligently damaged property and/or other fines and/or fees and/or deductions for costs of
17 services required to perform their assigned job duties, resulting in violations of California wage and
18 hour laws, including but not limited to, Labor Code sections 224 and 1197.

19 74. Moreover, as explained above, DEFENDANTS' failure to separately compensate
20 Aggrieved Employees for non-productive time and/or failure to compensate them at the correct rates
21 for all non-productive time resulted in the failure to pay Aggrieved Employees for all hours worked
22 and violations of California wage and hour laws, including but not limited to, Labor Code sections
23 226.2 and 1197.

24 75. Based on information and belief, DEFENDANTS had actual or constructive
25 knowledge that its policy and practice of misclassifying non-exempt employees as independent
26 contractors, its unlawful deductions of wages, its policy and practice of payment according to
27 scheduled work time rather than actual work time, and/or other mandated off-the-clock work
28 resulted in the underpayment of minimum wages and straight time wages owed to PLAINTIFF and

1 other Aggrieved Employees.

2 76. This conduct results in violations of Labor Code sections 218.5, 558, 558.1, 1194,
3 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS to civil
4 penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC Wage
5 Orders, section 20.

6 94. **Inaccurate Wage Statements.** Pursuant to California Labor Code § 226,
7 subdivision (a), PLAINTIFF and the Aggrieved Employees were entitled to receive, semimonthly
8 or at the time of each payment of wages, an itemized wage statement accurately stating the
9 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.

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

25 96. As explained above, to the extent any wage statements were issued at all, wage
26 statements issued by DEFENDANTS failed to list the "total hours worked" by PLAINTIFF and
27 Aggrieved Employees (by virtue of DEFENDANTS' willful misclassification scheme, payment
28

1 according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock
2 work policies and practices all described in greater detail *supra*), which results in a violation of
3 Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an
4 inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22
5 Cal.App.5th 1308, 1337).

6 97. Additionally, to the extent any wage statements were provided, DEFENDANTS
7 failed to issue accurate wage statements in accordance with Labor Code section 226, by issuing
8 wage statements that failed to list the total hours of compensable non-productive time, the rate of
9 compensation for the non-productive time, and the gross wage earned for the non-productive time
10 during the pay period for which the Aggrieved Employees were paid on a piece rate basis, in
11 violation of Labor Code section 226.2.

12 98. Based on information and belief, to the extent wage statements were provided, they
13 fail to include the number of piece-rate units earned and any applicable piece-rate, fail to include all
14 deductions, fail to include the inclusive dates of the pay period, fail to include any applicable hourly
15 rates in effect during the pay period and the corresponding number of hours worked at each hourly
16 rate. As such, DEFENDANTS violated Labor Code section 226(a).

17 99. Separately, and independent from the above allegations, as explained above, to the
18 extent DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees the wage
19 statements failed to list the correct name and/or address of the legal entity that is the employer, in
20 violation of Labor Code section 226(a)(8).

21 100. DEFENDANTS' failure to issue wage statements at all and/or accurately list all
22 hours worked on all wage statements caused confusion to PLAINTIFF and caused and continues to
23 cause confusion to other Aggrieved Employees over whether they received all wages owed to them.

24 101. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
25 they could not easily determine whether they received all wages owed to them and whether they
26 were paid for all hours worked.

27 102. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
28 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered

1 injury as they could not contact their employer regarding any question(s) they had about wages paid.

2 103. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
3 Aggrieved Employees with accurate, itemized wage statements.

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

13 105. Pursuant to California Labor Code section 226(e), PLAINTIFF and Aggrieved
14 Employees are entitled to recover fifty dollars per employee for the initial pay period in which a
15 Section 226 violation occurred and one hundred dollars per employee per violation for each
16 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

17 106. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Aggrieved
18 Employees are entitled to recover the full amount of penalties due under Section 226(e), reasonable
19 attorneys' fees, and costs of suit.

20 107. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
21 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
22 during which the statute provisions were violated. ³

23 108. **Untimely Payment of Final Wages.** California Labor Code section 201(a) provides,
24 in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the
25 time of discharge are due and payable immediately."

26 109. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
27 employee not having a written contract for a definite period quits his or her employment, his or her

28 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

4 110. Based on information and belief, DEFENDANTS failed and continue to fail to timely
5 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
6 violation of Labor Code section 201-202. Moreover, any final paychecks once provided to
7 PLAINTIFF and Aggrieved Employees do not include all wages owed as they are devoid of,
8 including but not limited to, all owed minimum wages, straight time wages, premium wages,
9 vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

10 111. These violations subject DEFENDANTS to civil penalties under Labor Code section
11 203, 210, and/or 256.

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

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

26 114. As described above, PLAINTIFF and the Aggrieved Employees were improperly
27 required to pay for business expenses that are legally the responsibility of the employer.

28 115. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with

1 full reimbursement for all reasonable expenses associated with carrying out their duties required
2 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
3 expenses in violation of Labor Code section 2802.

4 116. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
5 Employees have suffered injury in that they were not completely reimbursed as mandated by
6 California law.

7 117. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
8 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
9 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
10 Code § 2802 and the applicable Wage Order.

11 118. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
12 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
13 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
14 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
15 commission. Therefore, DEFENDANTS' violations with respect to overtime wages, meal periods
16 and rest periods for non-driver Aggrieved Employees, and record keeping provisions, business
17 expenses, and other violations suffered by all Aggrieved Employees result in separate violations of
18 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
19 1197.1 and 2699.

20 119. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
21 that all employers with 26 or more employees are required to provide up to 80 hours for covered
22 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
23 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
24 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
25 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
26 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

27 120. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
28 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS failed and continue to fail

1 to provide any sick leave pay to PLAINTIFF and other Aggrieved Employees.

2 121. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
3 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
4 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
5 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
6 Aggrieved Employees’ intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF
7 and other Aggrieved Employees would have used their paid sick leave at least prior to their
8 respective separations, for as on several occasions thereafter, he or she would have been entitled to
9 use the banked sick leave and earn appropriate compensation.

10 122. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
11 documenting the hours worked and paid sick days accrued by PLAINTIFF and other Aggrieved
12 Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees were
13 entitled to the maximum number of hours accruable.

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

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

20 125. Accordingly, the Aggrieved Employees are entitled to all appropriate relief under the
21 PAGA, the aforementioned code provisions including but not limited to Labor Code section 233
22 and 234, and seek injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by
23 law.

24 126. **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
26 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
27 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
28 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

13 128. During the relevant period, DEFENDANTS failed to comply with Labor Code
14 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
15 Aggrieved Employees who were paid on a piece-rate basis (e.g., per load/delivery/trip/mile/day)
16 and or commission basis separately for the non-productive time, and/or failed to pay them for this
17 time at the correct rates. Based on information and belief, DEFENDANTS further failed to include
18 the information on these employees' wage statements required by this statute.

19 129. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
20 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
21 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
22 Aggrieved Employees of all earned minimum and all overtime wages owed to non-driver Aggrieved
23 Employees which resulted in the payment of less than statutorily required wages. DEFENDANTS
24 acted with the intent to deprive them of statutory wages, including, but not limited to, minimum and
25 overtime wages, to which they were entitled to under California law. Thus, DEFENDANTS paid
26 PLAINTIFF and other Aggrieved Employees lower wages than those they were entitled to while
27 purporting that PLAINTIFF and other Aggrieved Employees were properly paid. As a result, the
28 Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon,

1 pursuant to Labor Code § 2699(f)-(g).

2 130. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
3 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
4 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
5 PLAINTIFF and Aggrieved Employees for all hours worked at the proper wage rate and by failing
6 to pay an additional hour of pay for each meal/rest period not provided to non-driver Aggrieved
7 Employees or that was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31
8 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under
9 Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each Aggrieved
10 Employee, for each pay period during which the statute provisions were violated.⁴

11 131. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
12 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
13 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
14 from Aggrieved Employees paychecks during the relevant period, including but not limited to
15 deducting for costs of uniforms, fees and/or other business costs and/or deducting wages for
16 purported overpayments from previous pay periods and/or unlawfully deducting wages for
17 negligently damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
18 Employees' final paychecks. For example, at times DEFENDANTS deducted fees and/or costs from
19 PLAINTIFF's paycheck, thereby depriving him of all owed wages. Such a practice is in violation
20 of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to
21 civil penalties under Labor Code Section 2699.

22 132. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for
23 each pay period during which the statute provisions were violated.[1] [1] See Lab. Code §225.5
24 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
25 provided in this article, every person who unlawfully withholds wages due any employee in

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 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
2 to pay each employee”).

3 133. **Unlawful Inquiries into Salary History**. Labor code section 432.3 provides in part
4 “(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history
5 information, including compensation and benefits, about an applicant for employment.” Based on
6 information and belief, DEFENDANT have a policy and/or practice of unlawfully asking
7 AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with
8 DEFENDANTS. For example, when PLAINTIFF applied for employment with DEFENDANTS,
9 PLAINTIFF was required to fill out an application that requested, among other things, the following
10 information: Name and address of former employer, length of former employment relationship, and
11 the “salary” of the former employment relationship. Based on information and belief,
12 DEFENDANTS required other Aggrieved Employees to disclose the same or similar information,
13 in violation of Labor Code section 432.3.

14 134. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
15 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
16 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
17 obtaining employment with DEFENDANTS, in violation of California law.

18 135. **Violation of Labor Code section 976**. Labor Code section 976 provides that “No
19 person shall publish or cause to be published any advertisement, solicitation or communication in
20 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
21 employee or independent contractor, which advertisement, solicitation or communication (a) is
22 willfully designed to mislead any person as to compensation or commissions which may be earned;
23 or (b) falsely represents the compensation or commissions which may be earned.”

24 136. Based on information and belief, DEFENDANTS have a policy and/or practice of
25 offering prospective employees, including Aggrieved Employees, a higher compensation and
26 commission that is misleading as it falsely represents the compensation or commission that will be
27 earned during employment, as the actual compensation or commission earned is lower than that
28 which is offered to induce employment or continued employment. Such a practice or policy is in

1 violation of Labor Code section 976.

2 137. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** *Unlawful*
3 *Agreements.* Labor Code section 432.5 provides that “no employer...shall require any employee or
4 applicant for employment to agree, in writing, to any term or condition which is known by such
5 employer...to be prohibited by law.” DEFENDANTS required and continue to require PLAINTIFF
6 and Aggrieved Employees to agree in writing to unlawful conditions of employment including but
7 not limited to unlawful non-compete/unlawful non-solicitation/non-disclosure
8 agreements/provisions, and/or other unlawful agreements, including but not limited to, unlawful
9 independent contractor and/or owner operator agreements, unlawful waivers of rights, and/or
10 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
11 in violation of Labor Code section 432.5. including but not limited to, unlawful independent
12 contractor and/or owner operator agreements and/or unlawful criminal and/or financial checks as a
13 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5. For
14 example, based on information and belief, DEFENDANTS required PLAINTIFF to sign an
15 unlawful non-compete and/or non-solicitation agreement, in violation of Business and Professions
16 Code 16600 and/or other California law, as a condition of employment. Therefore, DEFENDANTS
17 violated Labor code section 432.5.

18 138. 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

1 well as proper notice of adverse actions taken, among other statutory requirements.

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

6 140. DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit
7 and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining
8 and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

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

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

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

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

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

1 application in violation of California law.

2 146. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
3 Code section 432.7. By asking about convictions at the application phase or prior to extending an
4 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
5 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
6 disclose arrests and/or convictions as a condition of employment.

7 147. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
8 various unlawful provisions as a condition of employment.

9 148. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
10 DEFENDANTS did not secure workers' compensation for PLAINTIFF and other Aggrieved
11 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because
12 of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the
13 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
14 Employee.

15 77. Under the provisions of PAGA and the above mentioned Labor Code sections,
16 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.8,
17 245-248.5, 256, 432, 432.5, 432.7, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
18 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and all applicable Wage Orders as
19 well as all interpretations of these laws by California Courts and administrative bodies, as well as
20 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
21 penalties:

22 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
23 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
24 pursuant to Labor Code section 2699(a); and

25 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
26 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
27 by Labor Code section 2699(f).

28 c. The proper measure of penalties under PAGA is the number of violations, whether

1 those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a
2 party to this action or not.

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

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment solely on behalf of PLAINTIFF, other Aggrieved Employees and the State of California as follows:

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: July 21, 2023

CROSNER LEGAL, PC

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