

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUL 14 2023


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8 As an individual and on behalf of all others similarly situated

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 LEON JOHNSON, as an individual on
13 behalf of himself and on behalf of all others
similarly situated,

14
15 Plaintiff,

16 v.

17
18 CARVANA, LLC, an Arizona limited
19 liability company; and DOES 1-100,
inclusive,

20 Defendants.
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Case No.: CIVSB2304225

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Wages and Liquidated Damages**
2. **Failure to Furnish Accurate Itemized Wage Statements**
3. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
4. **Failure to Reimburse Business Expenses**
5. **Unfair Competition and**
6. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

JOHN H. CANTRELL'S
SOUTHERN BOOK CONCERN

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SOUTHERN BOOK CONCERN

1 Plaintiff, LEON JOHNSON ("PLAINTIFF"), an individual on behalf of himself and all
2 other similarly situated Class Members (as defined below), and Aggrieved Employees (as defined
3 below), hereby files this Complaint against Defendants CARVANA, LLC, an Arizona limited
4 liability company; and DOES 1-100, inclusive, (collectively referred to herein as
5 "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of San Bernardino pursuant to California Code of Civil Procedure section
9 395.5 because DEFENDANTS transact business within this judicial district, DEFENDANTS
10 employed PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct
11 alleged by PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral*
12 *Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in
13 any county where the defendants committed Labor Code violations against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
17 in the State of California as a non-exempt employee from in or around April 2021 through in or
18 about October 2022.

19 3. PLAINTIFF worked for DEFENDANTS as professional truck driver, Commercial
20 A truck driver, truck driver, driver and/or other similar title(s). PLAINTIFF reported to
21 DEFENDANTS' offices, yards and/or facilities located in Los Angeles, Riverside and San
22 Bernardino counties in California and completed routes at DEFENDANTS' locations/facilities in
23 various cities located throughout Southern California, including but not limited to, in San
24 Bernardino County.

25 4. DEFENDANTS are an Arizona limited liability company that, at all relevant times,
26 were authorized to do business within the State of California and are doing business in the State of
27 California.

28 5. DEFENDANTS own, operate, or otherwise manage an online vehicle-selling/trading

platform. DEFENDANTS describe themselves as “removing the traditional dealership infrastructure and replacing it with technology and exceptional customer service, Carvana offers consumers an intuitive and convenient online car buying and financing platform. Carvana.com enables consumers to quickly and easily shop more than 20,000 vehicles, finance, trade-in or sell their current vehicle to Carvana, sign contracts, and schedule as-soon-as-next-day delivery or pickup at one of Carvana’s proprietary automated Car Vending Machines.”¹ As a central part of DEFENDANTS’ operations, DEFENDANTS employed PLAINTIFF to perform transportation services, such as but not limited to, the truck transportation of vehicles to and from DEFENDANTS’ various auto lots, “Car Vending Machines” and/or other facilities.. DEFENDANTS own, operate, and/or manage multiple facilities/locations in California, including but not limited to, locations/facilities located in Bakersfield, San Diego, San Jose, Sacramento, San Francisco, Modesto, Stockton, Vallejo, Santa Cruz, Visalia, Chatsworth, Oxnard, Westminster, and Ontario.²

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

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

¹ See <https://investors.carvana.com/news-releases/2020/11-13-2020-130023849> (Last visited on February 13, 2023).

² See <https://www.carvana.com/carvanalocations> (Last visited on February 13, 2023).

1 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
2 controlled, aided and abetted the conduct of all other Defendants.

3 JOINT LIABILITY

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

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

28 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times

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

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

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

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

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

16 **CLASS ALLEGATIONS**

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

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

26 a. Numerosity. While the exact number of Class Members is unknown to
27 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
28 all members is impractical under the circumstances of this case. PLAINTIFF is

1 informed and believes the Class consists of at least 100 individuals.

- 2 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
3 because common questions of law and fact predominate over individual issues.
4 Common questions include, but are not limited to, the following: (1) whether
5 DEFENDANTS misclassified Class Members as salaried/exempt due to
6 including but not limited to, failing to pay Class Members misclassified as
7 exempt a monthly salary equivalent to no less than two (2) times the state
8 minimum wage for full-time employment; (2) whether DEFENDANTS
9 understated hours worked and failed to pay all amounts due to PLAINTIFF and
10 the Class Members for wages earned, including minimum wages and straight
11 time wages, under California law. (3) whether DEFENDANTS provided
12 PLAINTIFF and Class Members with accurate, itemized wage statements in
13 compliance with California law, displaying, including but not limited to, the
14 total hours worked during the pay period; (4) whether DEFENDANTS timely
15 paid PLAINTIFF and the Class Members all wages due upon separation of
16 employment; (5) whether DEFENDANTS failed to reimburse PLAINTIFF and
17 the Class Members for all business expenses; and (6) whether DEFENDANTS
18 violated California Business and Professions Code sections 17200, *et seq.*
- 19 c. Ascertainable Class. The proposed Class is ascertainable as members can be
20 identified and located using information in DEFENDANTS' business, payroll
21 and personnel records.
- 22 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
23 PLAINTIFF suffered a similar injury as members of the Class as a result of
24 DEFENDANTS' common practices regarding, *inter-alia*, misclassification of
25 non-exempt employees as salaried and/or otherwise exempt, failure to calculate
26 and pay all owed minimum and straight time wages, failure to provide accurate
27 wage statements, failure to reimburse business expenses, and failure to timely
28 pay all wages due upon separation of employment.

- 1 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
2 Class Members. PLAINTIFF has no interests adverse to the interests of the other
3 Class Members. Counsel who represent PLAINTIFF are competent and
4 experienced in litigating similar class action cases and are California lawyers in
5 good standing. Counsel for PLAINTIFF have the experience and resources to
6 vigorously prosecute this case.
- 7 f. Superiority. A class action is superior to other available means for the fair and
8 efficient adjudication of this controversy since individual joinder of all members
9 of the class is impractical. Class action treatment will permit a large number of
10 similarly situated persons to prosecute their common claims in a single forum
11 simultaneously, efficiently, and without the unnecessary duplication of effort
12 and expense that numerous individual actions would engender. Furthermore, as
13 the damages suffered by each individual member of the Class may be relatively
14 small, the expenses and burden of individual litigation would make it difficult
15 or impossible for individual members of the Class to redress the wrongs done to
16 them, while an important public interest will be served by addressing the matter
17 as a class action. The cost to the court system of adjudication of such
18 individualized litigation would be substantial. Individualized litigation would
19 also present the potential for inconsistent or contradictory judgments. Finally,
20 the alternative of filing a claim with the California Labor Commissioner is not
21 superior, given the lack of discovery in such proceedings, the fact that there are
22 fewer available remedies, and the losing party has the right to a trial de novo in
23 the Superior Court.

24 **FACTUAL AND LEGAL ALLEGATIONS**

25 16. During the relevant period, PLAINTIFF, and each of the Class Members and
26 Aggreived Employees worked for DEFENDANTS in the State of California. At all times referenced
27 herein, DEFENDANTS exercised control over PLAINTIFF, Class Members, and Aggreived
28 Employees and suffered and/or permitted them to work.

1 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
2 PLAINTIFF worked for DEFENDANTS as a professional truck driver, Commercial A truck driver,
3 truck driver, driver and/or other similar title(s) from in or around April 2021 through in or around
4 October 2022. PLAINTIFF regularly worked at least seven (7) hours per day, at least five (5) days
5 per week. PLAINTIFF reported to DEFENDANTS' offices, yards and/or facilities located in Los
6 Angeles, Riverside and San Bernardino counties in California. PLAINTIFF's job duties included
7 but were not limited to, driving his assigned truck to transport vehicles to and from DEFENDANTS'
8 various auto lots/facilities located throughout Southern California.

9 18. During PLAINTIFF's employment, DEFENDANTS misclassified PLAINTIFF as
10 an exempt employee and compensated PLAINTIFF on a salaried basis. DEFENDANTS paid
11 PLAINTIFF a monthly salary without regard for the hours PLAINTIFF worked in a given month.
12 PLAINTIFF also earned non-discretionary bonuses, including but not limited to, attendance
13 bonuses, quarterly bonuses, sign-up bonuses and/or other non-discretionary bonuses/incentive pay.
14 DEFENDANTS misclassified PLAINTIFF as an exempt employee and failed to compensate
15 PLAINTIFF for hours worked in excess of his scheduled hours. However, as explained below,
16 PLAINTIFF was consistently required to perform work outside of his scheduled shift times,
17 resulting in the substantial underpayment of minimum and straight time wages owed to PLAINTIFF.

18 19. During the relevant period, DEFENDANTS misclassified PLAINTIFF, other Class
19 Members, and Aggrieved Employees as exempt employees to try to evade California wage and hour
20 laws including but not limited to, payment of minimum and straight time wages for all hours worked
21 even though PLAINTIFF and other misclassified aggrieved employees did not satisfy any test for
22 exemption under California law. For example, PLAINTIFF did not supervise any employees.
23 PLAINTIFF did not have the authority to hire or terminate employees PLAINTIFF did not regularly
24 exercise discretion/independent judgment in his job and typically spent more than fifty percent of
25 his workday performing non-exempt duties. For instance, PLAINTIFF's primary job duties were to
26 drive his assigned vehicle to transport vehicles to and from DEFENDANTS' various auto
27 lots/facilities located throughout Southern California. and/or perform other work tasks that did not
28 involve the regular exercise of discretion or independent judgment. For instance, DEFENDANTS

1 set PLAINTIFF's work schedule and scheduled the times and locations for the pickups and
2 deliveries of the loads/vehicles PLAINTIFF was assigned to transport. DEFENDANTS required
3 PLAINTIFF to always remain in contact/communication with his supervisors and/or dispatch during
4 his scheduled shifts so PLAINTIFF could provide DEFENDANTS updates on the status of
5 deliveries and/or discuss other work tasks. DEFENDANTS directed and instructed PLAINTIFF as
6 to how to load and/or deliver his loads/vehicles and regarding any changes in PLAINTIFF's loads,
7 work assignments and/or routes. Most of PLAINTIFF's workday was spent performing job duties
8 that did not require the exercise of discretion or independent judgment, such as but not limited to,
9 driving routes predetermined by DEFENDANTS to DEFENDANTS' assigned locations and/or
10 completing designated routes according to a specific schedule as determined by DEFENDANTS.
11 PLAINTIFF did not have discretion to determine the nature of his loads and/or which vehicles he
12 transported, the locations the routes he was required to complete and/or his pickup and/or delivery
13 schedules, all of which were determined by DEFENDANTS. Moreover, based on information and
14 belief, PLAINTIFF, other Class Members, and other Aggrieved Employees did not earn a salary
15 equivalent to at least twice the state minimum wage rate for full-time work. See, Labor Code section
16 515 and Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the
17 employee must earn "a monthly salary equivalent to no less than two (2) times the state minimum
18 wage for full-time employment"]. Based on information and belief, DEFENDANTS misclassified
19 PLAINTIFF, other Class Members, and other Aggrieved Employees as salaried/exempt even though
20 PLAINTIFF, Class Members and Aggrieved Employees spent more than fifty percent of their
21 workdays performing non-exempt job duties, did not regularly exercise discretion and independent
22 judgment on the job, and/or did not otherwise satisfy any test for exemption under California law.

23 20. **Unpaid Minimum and Straight Time Wages.** DEFENDANTS failed to
24 compensate PLAINTIFF, Class Members, and Aggrieved Employees for all hours worked, resulting
25 in the underpayment of minimum and straight time wages.

26 21. DEFENDANTS failed to compensate PLAINTIFF, Class Members, and Aggrieved
27 Employees for all hours worked by virtue of, including but not limited to, its misclassification of
28 PLAINTIFF, Class Members, and Aggrieved Employees as exempt/salaried when they are/were

1 non-exempt employees, time-rounding policies and practices, payment according to scheduled
2 hours worked instead of actual time worked, and mandated pre-shift/post-shift and/or other mandated
3 off-the-clock work policies and practices.

4 22. Based on information and belief, Class Members and Aggrieved Employees were
5 not paid for all hours worked due to, *inter-alia*, DEFENDANTS' policy and/or practice of paying
6 according to scheduled hours worked instead of actual time worked and/or other mandated off-the
7 clock work policies and/or practices and/or time rounding policies and practices. For example,
8 DEFENDANTS compensated PLAINTIFF only for scheduled hours worked rather than all hours
9 actually worked, by requiring PLAINTIFF and other Class Members to clock in and out / report
10 their hours worked according to their scheduled hours worked in the pay period and/or month, and
11 moreover, by setting a fixed monthly salary based on the scheduled hours worked rather than actual
12 hours worked. PLAINTIFF, other Class Members, and other Aggrieved Employees were paid a
13 fixed salary regardless of the number of hours actually worked. PLAINTIFF, other Class Members,
14 and other Aggrieved Employees were misclassified as exempt, and as such PLAINTIFF, other Class
15 Members, and other Aggrieved Employees were not compensated for all hours worked.

16 23. For example, PLAINTIFF, Class Members, and Aggrieved Employees were not
17 compensated for all work time, including but not limited to, time spent making pre-trip and post-
18 trip inspections, waiting time, time spent fueling, cleaning, setting up, time spent completing
19 paperwork, loading, unloading, waiting between jobs and tasks and/or all time spent driving between
20 DEFENDANTS' offices, yards, facilities and/or delivery locations, time spent communicating with
21 DEFENDANTS, including but not limited to, time spent updating DEFENDANTS as to the status
22 of deliveries, time spent communicating with DEFENDANTS regarding deliveries and/or
23 scheduling and/or other work tasks and/or time spent retrieving and/or returning equipment to
24 DEFENDANTS' facilities/yards, and/or any work performed outside of PLAINTIFF's, Class
25 Members', and Aggrieved Employees' scheduled hours.

26 24. Moreover, on information and belief, at times, DEFENDANTS' electronic employee
27 time-keeping system / app at times malfunctioned such that Class Members and Aggrieved
28 Employees were required to either reinitiate and/or otherwise troubleshoot the system /app prior to

1 being able to clock in and/or were unable to clock in at all for the start of their shifts resulting in off-
2 the-clock work and the underpayment of wages owed to Class Members and Aggrieved Employees.
3 Based on information and belief, Class Members and Aggrieved Employees experienced the same
4 issues when clocking out for shifts. This time spent under DEFENDANTS' control was not recorded
5 and not compensated and resulted in unpaid minimum wages owed to Class Members and
6 Aggrieved Employees.

7 25. PLAINTIFF, other Class Members, and Aggrieved Employees were required to
8 complete additional off-the-clock work for which they were not compensated as result of
9 DEFENDANTS' misclassification scheme and payment according to scheduled hours worked. For
10 example, based on information and belief, DEFENDANTS did not compensate PLAINTIFF, other
11 Class Members, and Aggrieved Employees for time spent donning and doffing personal protective
12 equipment, safety equipment and/or uniforms/work clothing (e.g., reflective vests, and/or face
13 masks), before the start of a scheduled shift, and/or after completing a scheduled shift.

14 26. On information and belief, Class Members and Aggrieved Employees were also
15 required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls
16 and/or messages they received and were required to respond to, including but not limited to,
17 communications from supervisors regarding scheduling and/or other work tasks, resulting in the
18 underpayment of minimum wages and straight time wages owed to Class Members and Aggrieved
19 Employees.

20 27. Based on information and belief, Class Members and Aggrieved Employees were
21 also required to perform pre-shift and/or post-shift off-the-clock work that was neither recorded nor
22 compensated. For example, based on information and belief, Class Members and Aggrieved
23 Employees retrieved and/or put away their work tools/equipment, performed equipment inspections,
24 changed into their work clothing/uniforms and protective gear and/or completed other work tasks
25 outside of their scheduled shifts, resulting in consistent off-the-clock work and the underpayment
26 of minimum wages owed to Class Members and Aggrieved Employees.

27 28. Based on information and belief, DEFENDANTS failed to pay Class Members and
28 Aggrieved Employees for time they were required to spend completing orientation, policy

1 questionnaires, and/or time spent completing the onboarding process including but not limited to
2 reviewing various documents and policies provided by DEFENDANTS. Based on information and
3 belief, this work time was completed off-the-clock and was not compensated. For example, based
4 on information and belief, DEFENDANTS required Class Members and Aggrieved Employees to
5 review and sign various types of policies and documents, including but not limited to, safety
6 guidelines/safety awareness certifications, employee time-keeping policies, among other
7 documents, but they were not paid for all time spent reviewing and/or completing certification as
8 directed by DEFENDANTS.

9 29. As such, PLAINTIFF, other Class Members, and Aggrieved Employees were not
10 paid for all work time. DEFENDANTS were and are required to pay PLAINTIFF, other Class
11 Members, and other Aggrieved Employees minimum wages for all time worked. DEFENDANTS
12 failed and continue to fail to ensure that PLAINTIFF, other Aggrieved Employees, and other Class
13 Members receive the applicable minimum wage for all hours worked. Instead, DEFENDANTS paid
14 PLAINTIFF, other Aggrieved Employees, and other Class Members a monthly salary regardless of
15 how many hours they worked, thereby depriving PLAINTIFF, Class Members, and Aggrieved
16 Employees of all owed minimum wages, and all owed straight time wages.

17 30. DEFENDANTS failed to compensate PLAINTIFF, Class Members, and Aggrieved
18 Employees for all hours worked by virtue of, DEFENDANTS' misclassification, automatic
19 deduction and/or time rounding policies, and/or payment according to scheduled hours work rather
20 than actual hours worked. For example, based on information and belief, Class Members worked
21 more than their scheduled hours due to including but not limited to their need to complete delivery
22 routes, and/or complete other assigned work tasks, and/or time spent waiting between delivery
23 routes, and/or time spent inside and/or in immediate physical proximity to their assigned vehicles,
24 but were not paid for all such work time due to DEFENDANTS' misclassifications scheme and
25 resulting failure to pay for all hours worked.

26 31. Based on information and belief, Class Members and Aggrieved Employees were
27 not paid for all hours worked due to DEFENDANTS' misclassification scheme, policy and/or
28 practice of rounding time entries or paying according to scheduled hours worked instead of actual

1 time worked, and/or mandated off-the clock work policies and/or practices.

2 32. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
3 provide PLAINTIFF, other Class Members, and Aggrieved Employees with accurate wage
4 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
5 PLAINTIFF, Class Members, and Aggrieved Employees with meal and rest periods that complied
6 with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF, Class
7 Members, and Aggrieved Employees failed and continue to fail to correctly set forth the gross wages
8 earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect during
9 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

10 33. DEFENDANTS issued wage statements to PLAINTIFF, Class Members, and
11 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
12 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
13 PLAINTIFF, Class Members, and Aggrieved Employees (by virtue of DEFENDANTS'
14 misclassification scheme, rounded time entries, payment according to scheduled hours worked
15 rather than actual hours worked, and/or other off-the-clock work policies and practices) which
16 results in a violation of Labor Code section 226(a).

17 34. Additionally, DEFENDANTS issued wage statements to Class Members and
18 Aggrieved Employees that failed to list all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours worked at each hourly rate, in violation of Labor Code
20 section 226(a)(9). For example, DEFENDANTS issued wage statements to PLAINTIFF showing
21 80.00 hours worked without listing any rate of pay for those hours worked, in violation of Labor
22 Code section 226(a), including but not limited to, Labor Code section 226(a)(9).

23 35. Moreover, based on information and belief, DEFENDANTS issued wage statements
24 to PLAINTIFF, Class Members, and Aggrieved Employees that further violate Labor Code section
25 226(a), by among other things, failing to list the correct name and/or address of the legal entity that
26 is the employer.

27 36. As a result, DEFENDANTS issued wage statements to PLAINTIFF, Class Members,
28 and Aggrieved Employees that were not accurate and did not include all of the statutorily required

1 information. As such, DEFENDANTS violated Labor Code section 226.

2 37. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
3 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
4 Employees all wages that were due and owing upon termination or resignation. Based on
5 information and belief, DEFENDANTS untimely provide final wages to Class Members and
6 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

7 38. Upon separation of employment, Class Members' and Aggrieved Employees' final
8 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
9 and/or paid time off. Moreover, PLAINTIFF's, Class Members', and Aggrieved Employees, final
10 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
11 limited to, all owed minimum wages, straight time wages, vacation pay, and all owed sick leave
12 and/or paid time off wages at the properly accrued rates. For example, PLAINTIFF was not provided
13 with a final paycheck at the time of termination. Rather, PLAINTIFF was required to wait at least a
14 couple days until the next pay period for DEFENDANTS to provide him with his final paycheck,
15 and the final paycheck was devoid of all wages owed, including but not limited to, all owed
16 minimum wages, straight time wages, vacation pay, and all owed sick leave and/or paid time off
17 wages at the properly accrued rates. Based on information and belief, DEFENDANTS had and/or
18 have a policy and/or practice of failing to timely provide Class Members and Aggrieved Employees
19 with their final paychecks upon separation of employment, instead requiring Class Members and
20 Aggrieved Employees to wait until the next regularly scheduled pay day to receive their final
21 paychecks in disregard for the timing requirements of and in violation of Labor Code sections 201
22 and/or 202.

23 39. These violations subject DEFENDANTS to civil penalties under Labor Code section
24 203, 210, and/or 256.

25 40. **Unreimbursed Business Expenses.** Based on information and belief,
26 DEFENDANTS required PLAINTIFF, Class Members, and Aggrieved Employees to incur business
27 expenses as a direct consequence of the performance of their job duties without providing
28 reimbursement, in violation of Labor Code section 2802. Based on information and belief,

1 PLAINTIFF, Class Members, and Aggrieved Employees were improperly required to provide and
2 maintain work tools that are supposed to be the responsibility of the employer.

3 41. Based on information and belief, DEFENDANTS shifted the costs of doing business
4 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
5 including but not limited to, the purchase and/or maintenance of uniforms/work clothing/shoes
6 and/or protective/safety and/or the use of Class Members' and Aggrieved Employees' personal
7 mobile phone and data usage for work related purposes to receive and respond to work related
8 messages and/or phone calls. For example, while at times DEFENDANTS provided PLAINTIFF
9 with a company phone to use an app called Keep Trucking to clock in and out for his shifts, the
10 company phone consistently did not operate properly, and as such, PLAINTIFF was required to use
11 his personal cell phone/mobile device to download and access this Keep Trucking app to clock in
12 and out for his shifts as well as to remain in contact with the company throughout his shifts.
13 DEFENDANTS did not provide PLAINTIFF with any reimbursement for this business use of his
14 personal cell phone/mobile device. Based on information and belief, other Class Members and
15 Aggrieved Employees were also required to use their personal cell phones/mobile devices for work-
16 related purposes, including but not limited to, to download, access and/or use time-keeping
17 applications and/or to communicate with DEFENDANTS about scheduling and/or other work tasks
18 during, before and/or after their scheduled shifts, yet were not reimbursed by DEFENDANTS for
19 this business use of their personal cell phones/ mobile devices.

20 42. Based on information and belief, DEFENDANTS regularly failed to reimburse and
21 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
22 Labor Code section 2802, PLAINTIFF, Class Members, and Aggrieved Employees were entitled to
23 be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
24 and/or carrying out the duties assigned by DEFENDANTS. For example, based on information and
25 belief, Class Members and Aggrieved Employees were improperly required to pay for business
26 expenses that are the responsibility of DEFENDANTS, including but not limited to, hand
27 tools/equipment and/or cost of gas, fluid cleaner, costs of repairs, fines, cleaning fees and/or other
28 work-related fees, incurred as a direct consequence of the discharge of their assigned job duties

1 without receiving any and/or full reimbursement from DEFENDANTS for these expenses.

2 43. Based on information and belief, Class Members and Aggrieved Employees were at
3 times required to use their personal vehicles for DEFENDANTS' business purposes, such as but not
4 limited to driving between job sites and/or DEFENDANTS' offices/yards/facilities yet were not
5 provided with any and/or full reimbursement from DEFENDANTS for the expenses they incurred
6 in connection therewith, including but not limited to, cost of gas, mileage, and wear and tear on the
7 vehicle.

8 44. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
9 full reimbursement for all reasonable expenses associated with carrying out their duties required
10 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
11 expenses in violation of Labor Code section 2802.

12 45. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
13 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
14 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

15 **FIRST CAUSE OF ACTION**

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

18 46. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

19 47. It is fundamental that an employer must pay its employees for all time worked.
20 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
21 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
22 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
23 Code sections 1194 and 1197, and the Industrial Wage Commission ("IWC") Wage Orders, an
24 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
25 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
26 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
27 section 224 only permits deductions from wages when the employer is required or empowered to
28 do so by state or federal law or when the deduction is expressly authorized in writing by the
employee for specified purposes that do not have the effect of reducing the agreed upon wage.

1 48. California Labor Code section 1197.1 provides penalties for any employer who pays
2 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
3 local law.

4 49. DEFENDANTS violated the above-described laws by failing to compensate
5 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
6 DEFENDANTS' policy and practice of misclassifying non-exempt employees as salaried and/or
7 otherwise non-exempt, time rounding policies and practices, payment according to scheduled hours
8 worked instead of actual time worked, mandated off-the-clock work policies and/or practices
9 (described above), which resulted in the failure to account for all hours worked and thus the denial
10 of all owed straight time wages.

11 50. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
12 Class Members for all hours worked.

13 51. Based on information and belief, DEFENDANTS had and continue to have a
14 continuous policy of requiring PLAINTIFF and the Class Members to perform work prior to
15 clocking in for their shifts and/or outside of their scheduled shift times which resulted in the failure
16 to pay Class Members for all hours worked and violations of California wage and hour laws,
17 including but not limited to Labor Code section 1197, and the underpayment of minimum wages
18 and straight time wages owed to Class Members.

19 52. Based on information and belief, DEFENDANTS had actual or constructive
20 knowledge that its time-rounding policies and practices, misclassification scheme, policy and
21 practice of payment according to scheduled work time rather than actual work time, and/or other
22 mandated off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF
23 and other Class Members.

24 53. 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 **SECOND CAUSE OF ACTION**

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

1 54. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

22 56. Due to violations detailed above, including but not limited to, DEFENDANTS'
23 failure to pay straight time wages and minimum wages for all hours worked and failure to pay all
24 sick leave wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by
25 willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage
26 statements that listed the gross and net wages earned and the correct applicable rates of pay for all
27 hours worked.

28 57. As explained above, wage statements issued by DEFENDANTS failed to list the
"total hours worked" by PLAINTIFF and Class Members (by virtue of DEFENDANTS'
misclassification scheme, rounded time entries, and/or payment according to scheduled hours
worked rather than actual hours worked, and/or other off-the-clock work policies and practices all
described in greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure
to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code
Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

 58. Additionally, DEFENDANTS issued wage statements to Class Members that failed
to list all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate, in violation of Labor Code section 226(a)(9).

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

6 60. DEFENDANTS' failure to accurately list all hours worked on all wage statements
7 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
8 Members over whether they received all wages owed to them.

9 61. As a result, PLAINTIFF and other Class Members have suffered injury as they could
10 not easily determine whether they received all wages owed to them and whether they were paid for
11 all hours worked.

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

15 63. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
16 Class Members with accurate, itemized wage statements.

17 64. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
18 have suffered injury. The absence of accurate information on their wage statements has prevented
19 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
20 mathematical computations to determine the amount of wages owed, and will cause difficulty and
21 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
22 submission of inaccurate information about wages and amounts deducted from wages to state and
23 federal government agencies. As a result, PLAINTIFF and Class Members are required to
24 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
25 and pay records than if DEFENDANTS had complied with its legal obligations.

26 65. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
27 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
28 violation occurred and one hundred dollars per employee per violation for each subsequent pay

1 period, not to exceed an aggregate penalty of four thousand dollars per employee.

2 66. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
3 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
4 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
5 provide currently employed Class Members with inaccurate wage statements in violation of
6 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
7 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
8 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
9 with California Labor Code § 226(a).

10 67. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
11 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
12 attorneys' fees, and costs of suit.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
15 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

16 68. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

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

25 71. Based on information and belief, DEFENDANTS failed and continue to fail to timely
26 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
27 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
28 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
minimum wages, straight time wages, vacation pay, and all owed sick leave and/or paid time off

1 wages at the properly accrued rates.

2 72. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
3 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
4 pay, plus attorney's fees and costs, in an amount to be proved at trial.

5 **FOURTH CAUSE OF ACTION**
6 **Failure to Reimburse Business Expenses**
7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

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

28 78. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class

1 Members have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

6 **FIFTH CAUSE OF ACTION**

7 **Unfair Competition**

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

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

10 81. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
11 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
12 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
13 misclassification of non-exempt employees as salaried/exempt; DEFENDANTS' failure to pay
14 minimum and straight time wages by virtue of its illegal policies and practices; DEFENDANTS'
15 failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to
16 reimburse business expenses; DEFENDANTS' failure to timely pay all wages owed upon separation
17 of employment; and DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu
18 thereof) at the properly accrued rates (due to, including but not limited to, DEFENDANTS' failure
19 to incorporate all non-discretionary compensation into the sick pay calculation and failure to base
20 the accrued sick leave on the correct number of hours worked as a result of DEFENDANTS' time-
21 rounding/auto deduction policies and practices, payment according to scheduled hours worked
22 and/or other off-the-clock work policies and practices).

23 82. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
24 California Labor Code, DEFENDANTS have gained a competitive advantage over other
25 comparable companies doing business in the State of California that comply with their obligations
26 to not misclassify its non-exempt employees as salaried/exempt, to properly accrue and pay sick
27 time benefits, to provide complete and accurate itemized wage statements, to reimburse employees
28 for all business expenses, to pay all owed minimum and straight time wages and to pay all wages
due upon separation of employment of their employees.

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

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

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

SIXTH CAUSE OF ACTION

Violation of the Private Attorneys General Act of 2004

(By PLAINTIFF and Aggrieved Employee Class Members Against All DEFENDANTS)

86. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

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

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

88. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved

1 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
2 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
3 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
4 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
5 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
6 for all known violations committed by the employer - regardless of whether Plaintiff experienced
7 all violations personally. *Id.* at 760-761.

8 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

9 89. On February 17, 2023, PLAINTIFF through counsel, gave written notice by online
10 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
11 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
12 in this Complaint ("PAGA Notice"). Plaintiff's PAGA Notice was assigned LWDA Case No.
13 LWDA-CM-937014-23.

14 90. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
15 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
16 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
17 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
18 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
19 has duly accrued.

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

23 92. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
24 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
25 Labor Code sections including but not limited, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6,
26 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802,
27 2810.5, and all applicable Wage Orders.

28 93. As set forth above, DEFENDANTS have committed numerous violations of the

1 California Labor Code due to including but not limited to their failure to pay all owed minimum
2 wages, failure to provide accurate wage statements, failure to reimburse business expenses, and
3 failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties are
4 in addition to any other relief available under the Labor Code.

5 94. Additionally, DEFENDANTS have violated the following Labor Code sections and
6 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

7 **Failure to Keep Accurate Records**

8 95. 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 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
11 times during which all owed meal periods were provided each day.

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

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

23 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

24 98. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage

25 ³ 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 Orders, section 7 require that employers keep the following information on file for each employee
2 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
3 and the corresponding number of hours worked by the employee at each hourly rate, when the
4 employee begins and ends each work period (including meal periods) and split intervals; total hours
5 worked by the employee; all deductions; gross wages earned; and net wages earned.

6 99. Section (b) of Labor Code section 226 further requires employers to "afford current
7 and former employees the right to inspect or receive a copy of records pertaining to their
8 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
9 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
10 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
11 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
12 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
13 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
14 the employer. Lab. Code section 226(f).

15 100. Personnel Records. In addition to their right to time and pay records, employees, and
16 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
17 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
18 section 432 further specifies that employers must furnish copies of all employment records bearing
19 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
20 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
21 from the date the employer receives a written request." An employer's failure to comply within this
22 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
23 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

24 101. Based on information and belief, DEFENDANTS fail to timely produce or make
25 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
26 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
27 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

28 **Unpaid Overtime Wages**

1 102. Employees in California must be paid overtime, equal to one and one-half times the
2 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
3 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
4 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
5 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
6 consecutive day of work in a workweek, unless they are exempt.

7 103. Aggrieved Employees that did not work as drivers were entitled to overtime and
8 worked overtime hours for which they were not compensated by DEFENDANTS by virtue of,
9 among other things, DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-
10 clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-
11 the-clock work, and/or payment according to scheduled hours worked rather than actual hours
12 worked (described above), and/or other unlawful policies and/or practices described above which
13 resulted in unpaid minimum and overtime wages which resulted in the failure to account for all
14 hours worked and thus the denial of all owed overtime wages.

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

19 105. Based on information and belief, DEFENDANTS further violated California's
20 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
21 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
22 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
23 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
24 the overtime wage rate, resulting in the underpayment of overtime wages owed to Aggrieved
25 Employees that worked for DEFENDANTS in a non-driver position.

26 106. DEFENDANTS' conduct described above is in violation of California Labor Code
27 sections 510 and 1194 and all applicable Wage Orders.

28 **Meal Period Violations**

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

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

17 109. Aggrieved Employees that worked in a non-driver position were entitled to meal
18 periods, yet based on information and belief, such Aggrieved Employees were consistently unable
19 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
20 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
21 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
22 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
23 completely.

24 110. Based on information and belief, DEFENDANTS had and continue to have a policy
25 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
26 minutes per shift despite having actual and/or constructive knowledge that Aggrieved Employees
27 (that worked in a non-driver position) did not receive compliant meal periods.

28 111. Moreover, based on information and belief, these Aggrieved Employees did not

1 receive a timely, uninterrupted second meal period when working shifts over ten (10) hours in a
2 workday.

3 112. 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.

7 113. 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 **Rest Period Violations**

13 114. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
14 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
15 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
16 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
17 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
18 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
19 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
20 The rest period requirement obligates employers to permit and authorize employees to take off-duty
21 rest periods, meaning employers must relieve employees of all duties and relinquish control over
22 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

23 115. If the employer fails to provide any required rest period, the employer must pay the
24 employee one hour of pay at the employee's regular rate of compensation for each workday the
25 employer did not provide at least one legally required rest period, pursuant to Labor Code section
26 226.7.

27 116. Moreover, under California law rest periods must be a "net" ten minutes in a suitable
28 rest area. *Id.* at 268 (relying on January 3, 1986, and February 22, 2002, Division of Labor Standards

1 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
2 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
3 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
4 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
5 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
6 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
7 “onus is on the employer to clearly communicate the authorization and permission [to take rest
8 periods] to its employees.”).

9 117. Aggrieved Employees that worked in a non-driver position were entitled to rest
10 periods, yet based on information and belief, such Aggrieved Employees did not receive legally
11 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
12 As explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or
13 otherwise subject to DEFENDANTS’ control due to the nature and constraints of Class Members’
14 job duties, understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class
15 Members to skip rest periods completely or otherwise take non-compliant rest periods.

16 118. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve Aggrieved Employees of all duties and employer control during rest
18 periods. Based on further information and belief, Aggrieved Employees were pressured to complete
19 their work duties according to a designated schedule such that rest periods were only taken once
20 tasks were completed, and/or as time permitted.

21 119. As a result, Aggrieved Employees that worked in a non-driver position were entitled
22 to rest periods, but did not receive legally compliant first, second, or third rest periods as required
23 by California law.

24 120. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
25 period premium to these non-driver Aggrieved Employees for each workday in which there was a
26 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
27 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
28 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the

1 regular rate of compensation for purposes of determining the owed rest period premium.

2 121. DEFENDANTS are therefore liable to non-driver Aggrieved Employees one hour of
3 additional pay at the regular rate of compensation for each workday that a required rest period was
4 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus
5 pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at trial.

6 **Violation of Labor Code Section 226.2**

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

18 123. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
19 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
20 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
21 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
22 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
23 226.2.

24 **Statutory Wage Violations**

25 124. California Labor Code section 223 makes it unlawful for an employer to secretly pay
26 wages lower than required by statute while purporting to pay legal wages. As described above,
27 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
28 earned minimum and overtime compensation for all hours worked which resulted in the payment of

1 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
2 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
3 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
4 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
5 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
6 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
7 Labor Code § 2699(f)-(g).

8 **Refusal to Make Payment**

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

17 **Standard Conditions of Labor Violations**

18 126. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
19 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
20 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
21 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
22 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
23 minimum/overtime wages and other violations described herein result in separate violations of
24 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
25 1197.1 and 2699.

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 **Sick Leave Violations**

2 127. DEFENDANTS violated California's paid sick leave laws including, Labor Code
3 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
4 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
5 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
6 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
7 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
8 compensation into the sick leave pay rate calculation.

9 128. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
10 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
11 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
12 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
13 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

18 130. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
19 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
20 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
21 were entitled to the maximum number of hours accruable.

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

27 132. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

28 133. On information and belief, PLAINTIFF alleges that all of these practices were

1 experienced and continue to be experienced by other Aggrieved Employees.

2 134. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
3 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
4 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

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

13 **Unlawful Deductions**

14 136. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
15 an employee any part of wages theretofore paid by said employer to said employee." Based on
16 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
17 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
18 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
19 Section 2699.

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

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

27 138. California Labor Code section 227.3 provides that when an employer policy provides
28 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,

her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination.

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

Willful Misclassification as an Independent Contractor

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

141. Based on information and belief, on various diverse dates throughout the relevant period, DEFENDANTS misclassified some Aggrieved Employees as independent contractors as opposed to employees to evade California wage and hour laws. To qualify as an independent contractor under California law, (1) the worker must be free from the employer's control and direction in the performance of the work, both under the contract for the performance of the work and in fact; (2) the work performed must be outside the usual course of the employer's business; and (3) the worker must not be customarily engaged in an independently established trade, occupation, or business of the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three

1 conditions must be met, or the worker has been misclassified.

2 142. Despite DEFENDANTS efforts to evade California wage and hour laws by setting
3 up an alleged contractor scheme, the reality is that Aggrieved Employees are and were, in fact, at
4 all relevant times, employees according to the law, in that: (1) Aggrieved Employees are/were not
5 free from DEFENDANTS' control and direction in the performance of work, both under the contract
6 for the performance of the work and in fact; (2) the work Aggrieved Employees perform/performed
7 work is/was entirely within the usual course of the DEFENDANTS' business of providing
8 trucking/delivery/transportation services; and (3) Aggrieved Employees were not not customarily
9 engaged in an independently established trade, occupation, or business of the same nature as the
10 work they perform/performed for DEFENDANTS. Additionally, Aggrieved Employees work is in
11 the usual course of DEFENDANTS' business; some Aggrieved Employees worked/work as truck
12 drivers, and DEFENDANTS is a trucking company.

13 143. Additionally, Aggrieved Employees that were mis incur/incurred no opportunity for
14 "profit" or "loss"; rather, DEFENDANTS manages/managed the business operation,
15 attracts/attracted customers or clients, advertises/advertised and obtains/obtained customers.
16 Aggrieved Employees' investment is/was minor compared to that of DEFENDANTS. Aggrieved
17 Employees that were misclassified have made no capital investment in any of DEFENDANTS'
18 facilities, advertising, maintenance, staffing, or electronic systems. Aggrieved Employees that were
19 misclassified own/owned no enterprise, exercise/exercised no business management skills, and
20 maintain/maintained no separate business structures or facilities. Aggrieved Employees that were
21 misclassified do not/did not hire or subcontract other individuals to provide additional services to
22 customers and increase their revenues nor were they allowed to do so, as independent contractors in
23 business for themselves would.

24 144. Based on the work relationship described above, there can be no doubt that
25 Aggrieved Employees that were misclassified were at all relevant times DEFENDANTS'
26 employees – not independent contractors. Thus, DEFENDANTS' conduct constitutes an
27 intentional, willful pattern and/or practice of misclassification.

28 145. DEFENDANTS misclassified and continues to misclassify some Aggrieved

1 Employees as independent contractors to try to evade California labor laws that protect employees,
2 such as but not limited to, minimum and overtime wage and sick pay laws, workers' compensation
3 laws, expense reimbursement requirements, record-keeping requirements, wage statement
4 requirements, and requirements as to the timely payment of wages during and upon separation of
5 employment.

6 146. As part of its misclassification scheme, DEFENDANTS have failed and continue to
7 fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements,
8 failed and continues to fail to secure workers' compensation, failed and continues to fail to
9 reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed
10 and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to
11 fail to pay all wages due and owing upon separation of employment, and failed and continues to fail
12 to pay all wages owed every pay period, among other labor code violations, described in further
13 detail herein.

14 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

15 147. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
16 require any employee or applicant for employment to agree, in writing, to any term or condition
17 which is known by such employer...to be prohibited by law." DEFENDANTS required and
18 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
19 conditions of employment including but not limited to unlawful criminal and/or financial checks as
20 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

21 148. The California Labor Code places certain procedural and substantive limits on an
22 employers' ability to conduct employee background checks and on how employers can use the
23 information they obtain through those background checks. Labor Code section 1024.5 states that
24 employers, except for financial institutions, may order a credit check only if the individual works
25 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
26 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
27 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
28 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee

1 background check, including but not limited to identifying an appropriate reason for the background
2 check, a separate consent form with required disclosures and certain formatting requirements,
3 additional forms such as a summary of rights, a way by which to request a copy of the report, as
4 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

22 Unlawful Inquires into Criminal History

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

27 155. Upon information and belief, DEFENDANTS, in violation of California law,
28 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act

1 ("FEHA"), asked Aggrieved Employees about convictions prior to extending an offer of
2 employment and/or otherwise impermissibly inquired into criminal history on its employment
3 application in violation of California law.

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

9 157. Under the provisions of PAGA and the above mentioned Labor Code sections,
10 including but not limited to Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6,
11 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5
12 and all applicable Wage Orders as well as all interpretations of these laws by California Courts and
13 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
14 are liable for the following penalties:

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

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

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1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed as class representative;
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.

CROSNER LEGAL, PC

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DEMAND FOR JURY TRIAL

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

Dated: July 14, 2023

CROSNER LEGAL, PC

By: 

Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff
LEON JOHNSON

PROOF OF SERVICE

LEON JOHNSON v. CARVANA, LLC
San Bernardino County Superior Court Case No. CIVSB2304225

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Suite 301, Beverly Hills, CA 90210.

On July 14, 2023, I served true copies of the following document(s) described as

• **FIRST AMENDED CLASS ACTION COMPLAINT**

on the interested parties in this action as follows:

Robert S. Blumberg (SBN 161649)
Brooke S. Hammond (SBN 264305)
Jennifer A. Goldberg (SBN 292216)
Alan H. Emurian (SBN 328587)
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☒ BY ELECTRONIC TRANSMISSION. Pursuant to the Court's Order re Electronic Service, I caused the documents described above to be E-Served through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 14, 2023, at Martinez, California.


Ashley Boyd