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Attorney for PLAINTIFF,
WILLIAM WOOD

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

WILLIAM WOOD, an individual, on behalf of
himself, other current and former AGGRIEVED
EMPLOYEES, and the State of California, as a
private attorneys general,

PLAINTIFF,

vs.

SUGAR CREEK TRANSPORTATION, INC., a
California corporation; SUGAR CREEK
ENTERPRISES, INC., a Nevada corporation;
MOTHER TRUCKER, INC., a Nevada
corporation; MONICA BETH MYERS a/k/a
MONICA BETH JENSEN, an individual; and
DOES 1 through 25, Inclusive,

DEFENDANTS.

Case No. 23STCV16154

COMPLAINT FOR DAMAGES FOR:

1. Violations of *Cal. Labor Code* §§ 204 & 210
2. Violations of *Cal. Labor Code* § 226
3. Violations of *Cal. Labor Code* § 2802
4. Violations of *Cal. Labor Code* § 203
5. Violations of *Cal. Bus. & Prof. Code* § 17200
6. Violations of *Cal. Labor Code* § 2698, *et. seq.*

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

7. Violations of *Cal. Labor Code* § 226(c)
8. Violations of *Cal. Labor Code* § 1198.5

DEMAND FOR JURY TRIAL

1 Plaintiff WILLIAM WOOD (hereinafter individually referred to as "PLAINTIFF"), on
2 behalf of (1) himself as an AGGRIEVED EMPLOYEE, (2) other current and former AGGRIEVED
3 EMPLOYEES, and (3) the State of California as a private attorneys general, under the Labor Code
4 Private Attorneys General Act of 2004, *California Labor Code* section 2698, *et seq.* hereby alleges
5 and states as follows:

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7 **PARTIES**

- 8 1. At all times relevant herein, PLAINTIFF was employed by and worked for DEFENDANTS,
9 and each of them, within the State of California, including Los Angeles County.
- 10 2. At all times relevant herein, Defendant SUGAR CREEK TRANSPORTATION, INC. (herein
11 "SCT") was and is a California corporation formed in and doing business in the State of
12 California, including Los Angeles County.
- 13 3. At all times relevant herein, Defendant SUGAR CREEK ENTERPRISES, INC. (herein
14 "DEFENDANT SCE") was and is a California corporation formed in and doing business in the
15 State of California, including Los Angeles County.
- 16 4. At all times relevant herein, Defendant MOTHER TRUCKER, INC. (herein "DEFENDANT
17 MT") was and is a California corporation formed in and doing business in the State of
18 California, including Los Angeles County.
- 19 5. Herein, SCT, SCE, MT and DOES 1 through 25 are collectively referred to as "CORPORATE
20 DEFENDANTS."
- 21 6. At all times relevant herein, Defendant MONICA BETH MYERS a/k/a MONICA BETH
22 JENSEN (herein referred to as "INDIVIDUAL DEFENDANT") is/was a/the officer, director,
23 CEO, secretary, CFO, agent for service of process, and/or president of CORPORATE
24 DEFENDANTS. At all times relevant, INDIVIDUAL DEFENDANT was the natural person
25 acting within a supervisory and/or managerial role, in State of California, including the County
26 of Los Angeles and institutes/d, implements/ed and controls/led all conditions of employment,
27 including CORPORATE DEFENDANTS' wage and hour policies under which PLAINTIFF
28 and all other of its/their employees are/were employed and paid.

1 7. PLAINTIFF is informed and believes, and therefore alleges, that INDIVIDUAL
2 DEFENDANT was and is a “managing and/or supervisory agent” of DEFENDANT BAJA, as
3 the term was defined by the California Supreme Court in *White v. Ultramar, Inc.* (1999) 21
4 Cal.4th 563 and Section 3294 of the Code Civil Procedure.

5 8. Herein, CORPORATE DEFENDANTS, INDIVIDUAL DEFENDANT and DOES 1 through
6 25 are collectively referred to as “DEFENDANTS.”

7 9. At all times relevant herein, PLAINTIFF was employed by and worked for DEFENDANTS,
8 and each of them, in the State of California, including performing services in the County of
9 Los Angeles.

10 10. Herein, any and all of DEFENDANTS’ current and former non-exempt employees that
11 are/were employed in the State of California, including PLAINTIFF, are collectively referred
12 to as “AGGRIEVED EMPLOYEES.”

13 11. The true names and capacities, whether individual, corporate, associate, or otherwise, of
14 DEFENDANTS named herein as DOES 1 through 25, Inclusive, and each of them, are
15 unknown to PLAINTIFF, who therefore bring this action against said DEFENDANTS by their
16 fictitious names pursuant to *Cal. Code Civ. Pro.* § 474.

17 12. PLAINTIFF therefore seeks leave to amend this Complaint to include the true names and
18 capacities of said DOE DEFENDANTS(s) in the event that identification of such DOE parties
19 is ascertained.

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1 13. PLAINTIFF is informed and believe and based thereupon allege that at all relevant times
2 herein mentioned each of the DEFENDANTS and DOES 1 through 25, inclusive, were the
3 agents, servants and/or employees, partner, predecessor-in-interest, successor-in-interest,
4 beneficiary, executor, fictitious business name, trustee, subsidiary, related/affiliated entity,
5 assignee, assignor, legal representative, general administrator, member, co-conspirator, and/or
6 joint venturer or occupied other relationships with each of the other named DEFENDANTS
7 and at all times herein mentioned acted within the course and scope of said agency and/or
8 employment and/or other relationship and each other DEFENDANTS have ratified, consented
9 to, had actual and/or constructive knowledge of, was bound by, approved or, and/or failed to
10 prevent the acts of their agents, employees, predecessor-in-interest, successor-in-interest,
11 trustees, trustors, and/or representatives, and that each actively, passively, acquiesced,
12 participated in, allowed, aided and abetted, assisted, acted, or failed to act, with one another in
13 the commission of the wrongdoing alleged in this Complaint.

14 **JURISDICTION AND VENUE**

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16 14. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
17 set forth herein.

18 15. The above-captioned Court has jurisdiction over the subject matter of this action and has
19 personal jurisdiction over DEFENDANTS, which: (1) conducts business in the State of
20 California; (2) hires and maintains employees in the State of California; and (3) avails
21 itself/themselves of the protection of the laws of the State of California.

22 16. Venue in the above-captioned Court is proper because DEFENDANTS committed some or all
23 of the acts complained of herein in the County of Los Angeles.

24 **FACTUAL ALLEGATIONS**

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26 17. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
27 set forth herein.

28 18. PLAINTIFF was hired by DEFENDANTS in or around December 2020 as a driver.

- 1 19. CORPORATE DEFENDANTS is/are logistical/transportation/trucking company(ies) that
2 is/are owned and operated by its/their director, office, CEO, secretary, CFO, agent for service
3 of process and managing agent, the natural person, INDIVIDUAL DEFENDANT.
- 4 20. From December 2020 through June 2021, DEFENDANTS classified and paid PLAINTIFF as
5 its/their employee.
- 6 21. At some point in June 2021 and through in or around June 2022, DEFENDANTS willfully
7 misclassified and paid PLAINTIFF as an independent contractor, thus, during this time
8 reported his earnings via a 1099. During the period DEFENDANTS willfully misclassified
9 PLAINTIFF as an independent contractor, DEFENDANTS paid PLAINTIFF \$600.00 per day.
- 10 22. During the entirety of PLAINTIFF's employment with DEFENDANTS, PLAINTIFF used his
11 personal truck to pick-up trailers from various Amazon facilities, and drive those trailers for
12 drop-off at other locations, including but not limited to other Amazon facilities.
- 13 23. Upon PLAINTIFF's hiring, DEFENDANTS failed to provide PLAINTIFF and upon
14 information and belief, DEFENDANTS fails/ed to provide, any and all AGGRIEVED
15 EMPLOYEES written notices containing (a) the rate or rates of pay and basis thereof, (b) any
16 allowances claimed as part of the minimum wage, including meal or lodging allowances, (c)
17 the regular payday designated by DEFENDANTS, (d) DEFENDANTS' name, including any
18 and all of its "doing business as" names, (e) the physical address of DEFENDANTS' main
19 office / principal place of business / mailing address, (f) DEFENDANTS' telephone number,
20 (g) the name, address, and telephone number of DEFENDANTS' workers' compensation
21 insurance carrier, and (h) information about PLAINTIFF and any and all AGGRIEVED
22 EMPLOYEES accruing and using sick leave; and having the right to request and use accrued
23 paid sick leave without fear of being terminated or retaliated against for using or requesting the
24 use of accrued paid sick leave, and that PLAINTIFF and any and all AGGRIEVED
25 EMPLOYEES have the right to file a complaint against DEFENDANTS if DEFENDANTS
26 retaliates.

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1 24. Despite DEFENDANTS and PLAINTIFF's employment relationship having all the earmarks
2 of PLAINTIFF being DEFENDANTS' "employee," DEFENDANTS nevertheless willfully
3 misclassified PLAINTIFF as an independent contractor, and at all times relevant during
4 nothing short of the period June 2021 through June 2022. During this time, DEFENDANTS
5 paid PLAINTIFF as an independent contractor, thus, during this time reported his earnings via
6 a 1099 and willfully refused to extend PLAINTIFF the protections and benefits carefully
7 enumerated in the *California Labor Code* and applicable IWC Wage Order.

8 25. PLAINTIFF is informed and believes, and thereon alleges, that despite DEFENDANTS and
9 the AGGRIEVED EMPLOYEES' employment relationships also having all the earmarks of
10 them being DEFENDANTS' employees, DEFENDANTS willfully misclassified them as
11 independent contractors, and at all times relevant, paid them via 1099 and willfully refused to
12 extend them the protections and benefits carefully enumerated in the *California Labor Code*
13 and applicable IWC Wage Order.

14 26. Specifically, the "earmarks" of PLAINTIFF and all AGGRIEVED EMPLOYEES being
15 DEFENDANTS' employees as found in the factors set forth in the *Borello* Test found in *S.G.*
16 *Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal.3d 341 (Cal. 1989) and/or the ABC
17 Test found in *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018) and
18 later codified in *California Labor Code* Sections 2775, *et. seq.*

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- 1 27. Under the *Borello* test, PLAINTIFF and all AGGRIEVED EMPLOYEES (1) are not
2 performing services in an occupation that is distinct from DEFENDANTS' business, rather, (2)
3 the work is part of DEFENDANTS' regular business, (3) supply the rigs, but DEFENDANTS
4 provides the trailers and workplaces by and through its client/customer, Amazon, (4) perform
5 the functions of their employ under DEFENDANTS and DEFENDANTS' client/customer,
6 Amazon's specific and detailed direction and supervision, (5) do not have an opportunity for
7 profit or loss depending on their managerial skills; rather, their profit and loss depends only
8 upon DEFENDANTS paying them their agreed upon day-rate/salary, (6) were employed for
9 long periods of time with DEFENDANTS and with indications of permanency (*e.g.*,
10 PLAINTIFF was willfully misclassified as an independent contractor for no less than one (1)
11 year of employment with DEFENDANTS), and (7) were in addition to DEFENDANTS' other
12 *employees* (in fact, during PLAINTIFF's first half year of employment, he was
13 DEFENDANTS' employee), and (8) could be fired by DEFENDANTS at will. Based on the
14 preceding, PLAINTIFF and all AGGRIEVED EMPLOYEES were in fact DEFENDANTS'
15 employees, thus, DEFENDANTS willfully misclassified them as independent contractors.
- 16 28. Under the ABC Test, DEFENDANTS will be unable to prove that PLAINTIFF and all
17 AGGRIEVED EMPLOYEES (1) performed their work with the director and control of
18 DEFENDANTS, or (2) performed work that was outside the usual course of DEFENDANTS'
19 business (*i.e.*, logistical/transportation/trucking company(ies)). Based on the preceding,
20 PLAINTIFF and all AGGRIEVED EMPLOYEES were in fact DEFENDANTS' employees,
21 thus, DEFENDANTS willfully misclassified them as independent contractors.
- 22 29. DEFENDANTS not only engage/s in the unlawful pattern(s) and practice(s) of willfully
23 misclassifying its/their employees as independent contractors, but further engages in the patten
24 and practice of charging fees to, making deductions, collecting and receiving and withholding
25 from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation for
26 various purposes and business expenditures.
- 27 30. For example, DEFENDANTS withhold(s) and deduct(s) insurance premiums from
28 PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation.

1 31. DEFENDANTS' preceding pattern and practice violated/s California law because PLAINTIFF
2 and all the AGGRIEVED EMPLOYEES are and were in fact employees, but by willfully
3 misclassifying them as independent contractors, PLAINTIFF and all the AGGRIEVED
4 EMPLOYEES were and are shouldering DEFENDANTS' costs of doing business.

5 32. Based on DEFENDANTS' ongoing, company-wide pattern(s) and practice(s) of willfully
6 withholding/reducing all forms of wages/pay/compensation from PLAINTIFF and all
7 AGGRIEVED EMPLOYEES, DEFENDANTS also willfully fail/ed to pay PLAINTIFF and
8 all AGGRIEVED EMPLOYEES all wages they earn/ed twice during each calendar month, as
9 well as, all wages owing within the statutorily required time, and place, after PLAINTIFF's
10 resignation and any one of the AGGRIEVED EMPLOYEES' resignation, or termination from
11 employment.

12 33. Also resulting from, and necessary to conceal DEFENDANTS' ongoing, company-wide
13 pattern and practice of willfully withholding/reducing all forms of wages/pay/compensation
14 from PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANTS also failed/fail to
15 furnish PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements, or at best
16 issues them inaccurate written explanations of pay that fail to meet the requirements set forth in
17 California's laws. The "wage statements," if any, that DEFENDANTS furnish/ed to
18 PLAINTIFF and all AGGRIEVED EMPLOYEES' fail to accurately
19 show/evidence/contain/include their gross and net wages earned, the amount of paid sick leave
20 available, the name and address of the employer, the name and/or employee number(s), and the
21 start and end dates of the period during which the compensation was earned.

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1 34. Moreover, DEFENDANTS failed to provide PLAINTIFF and all AGGRIEVED
2 EMPLOYEES sick days, thus, there was no accrual of sick days at any rate and they were not
3 entitled to sick days. Based thereon, DEFENDANTS never provide/d PLAINTIFF and/or all
4 AGGRIEVED EMPLOYEES with written notice setting forth the amount of paid sick leave
5 available to them, and never kept record of the sick days accrued/used. And DEFENDANTS
6 failed to display a poster in a conspicuous place containing all information regarding sick days.

7 35. During all times relevant, PLAINTIFF and all AGGRIEVED EMPLOYEES are and were
8 incurring expenses discharging their duties for, and/or at the direction of DEFENDANTS.

9 36. First, as mentioned above, during the entirety of PLAINTIFF's employment with
10 DEFENDANTS, DEFENDANTS required PLAINTIFF to use his personal truck to perform all
11 duties he discharged for DEFENDANTS. Specifically, PLAINTIFF picked-up trailers from
12 various Amazon facilities, and drove those trailers for drop-off at other locations, including but
13 not limited to other Amazon facilities. Similarly, during all times relevant, DEFENDANTS
14 required PLAINTIFF to use his personal truck to pick-up and drop off goods and merchandise
15 from and to Amazon's merchants' places of business.

16 37. When discharging the just-described duties, PLAINTIFF paid for his own fuel, and all
17 mechanical upkeep of his personal truck. DEFENDANTS never reimbursed him for his fuel
18 expenses, or mechanic expenses, nor paid him the prevailing IRS mileage rate, or any rate, for
19 all miles he drove.

20 38. PLAINTIFF is informed and believes and thereon alleges that any and all AGGRIEVED
21 EMPLOYEES also use/d their personal trucks in discharging their duties for DEFENDANTS,
22 including paying for their own fuel and mechanical upkeep. And like PLAINTIFF,
23 DEFENDANTS never reimburse/ them for their fuel expenses, or mechanic expenses, nor
24 pay/d them the prevailing IRS mileage rate, or any rate, for all miles they drive.

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- 1 39. Moreover, PLAINTIFF and all AGGRIEVED EMPLOYEES also incurred the following
2 expenses at the direction of DEFENDANTS and/or in discharging their duties for
3 DEFENDANTS, including but not limited to, (1) using their personal cellular phone services
4 for texting, calling and apps DEFENDANTS require/d be downloaded and used during the
5 course and scope of employment.
- 6 40. Despite PLAINTIFF and all AGGRIEVED EMPLOYEES incurring the herein-described
7 business expenditures, DEFENDANTS never reimbursed them for the same.
- 8 41. Moreover, DEFENDANTS has failed/fails to secure workers' compensation insurance /
9 payment of compensation via, including but not limited to: being insured against liability to
10 pay compensation by one or more insurers authorized by the State of California, or by securing
11 from the Director of Industrial Relations a certificate of consent to self-insure either as an
12 individual employer, or as one employer in a group of employers.
- 13 42. Because of DEFENDANTS' preceding failure, DEFENDANTS requires PLAINTIFF and any
14 and all AGGRIEVED EMPLOYEES to seek private medical care for any and all injuries
15 sustained during the course and scope of their employment. In fact, when DEFENDANTS
16 offered/offers PLAINTIFF and any and all AGGRIEVED EMPLOYEES the opportunity to
17 enroll in private medical insurance through DEFENDANTS' provider, DEFENDANTS'
18 managing agent(s) emphasize that the employees should get covered in case they have an
19 accident/get injured at work. Of course, PLAINTIFF and any and all AGGRIEVED
20 EMPLOYEES must come out of pocket for their private medical care, and DEFENDANTS
21 do/does not reimburse them. And because of DEFENDANTS' failure to secure workers'
22 compensation insurance / payment of compensation as required by law, DEFENDANTS also
23 fail/ed to submit reports and information as required.
- 24 43. When PLAINTIFF resigned in or around June 2022, DEFENDANTS failed to pay
25 PLAINTIFF all wages he earned while employed by DEFENDANTS within seventy-two (72)
26 hours of his resignation; specifically, the wages it/they/she withheld from him for insurance
27 premiums. To date, DEFENDANTS have failed to pay PLAINTIFF all wages he earned while
28 employed by DEFENDANTS.

- 1 44. PLAINTIFF is informed and believes and thereon alleges that any and all other current and
2 former non-exempt California employees of DEFENDANTS, including non-exempt
3 employees other than those in PLAINTIFF's specific department, or specific location, *i.e.*, any
4 and all AGGRIEVED EMPLOYEES, were/are also subjected to all of DEFENDANTS'
5 herein-detailed violations of the *California Labor Code* and applicable IWC Wage Order
- 6 45. PLAINTIFF is informed and believes and thereon alleges that any and all of DEFENDANTS'
7 other current and former non-exempt California employees, including non-exempt employees
8 other than those in PLAINTIFF's specific department, and/or working at, or out of
9 PLAINTIFF's specific location, *i.e.*, the AGGRIEVED EMPLOYEES, were/are also subjected
10 to all of DEFENDANTS' herein-described *California Labor Code* violations and violations of
11 California law, including the applicable IWC Wage Order(s); here, IWC Wage Order No. 9-
12 2001, Regulating Wages, Hours and Working Conditions in the Transportation Industry, and
13 codified at *Cal. Code Regs.* tit. 8 § 11090. Herein, IWC Wage Order No. 9-2001 and *Cal.*
14 *Code Regs.* tit. 8 § 11090 are interchangeable (when citing one, this complaint is also citing the
15 other), and/or are collectively referred to as "the applicable IWC Wage Order."
- 16 46. All the herein-detailed violations of the *California Labor Code* and applicable IWC Wage
17 order were/are violated, or were/are caused to be violated by INDIVIDUAL DEFENDANT,
18 the natural person, who is/was a/the officer, director, CEO, secretary, CFO, agent for service of
19 process, and/or president of CORPORATE DEFENDANTS, and institutes/d, implements/ed
20 and controls/led all conditions of employment, including CORPORATE DEFENDANTS'
21 wage and hour policies under which PLAINTIFF and all AGGRIEVED EMPLOYEES
22 are/were employed and paid.
- 23 47. During all times relevant PLAINTIFF and all other AGGRIEVED EMPLOYEES were/are
24 paid weekly, thus, had/have weekly pay periods, and the herein-described violations took/take
25 place during all, and in at least one, pay period(s) they work/ed during no less than one (1) year
26 and sixty-five days back from the date of this complaint, and any currently or future employed
27 AGGRIEVED EMPLOYEES will be further subjected to said violations, up to and including
28 each and every present day until a Court enters judgment.

1 48. Furthermore, on March 3, 2023, PLAINTIFF sent a written request by USPS first-class
2 certified mail to DEFENDANTS to produce, or give PLAINTIFF access to, PLAINTIFF's
3 personnel file, timekeeping records and itemized wage statements pursuant to *California Labor*
4 *Code* sections 226, 247.5 and 1198.5.

5 49. However, as of the date of this complaint, DEFENDANTS have failed to provide PLAINTIFF
6 with, or access to, PLAINTIFF's personnel file timekeeping records and/or itemized wage
7 statements.

8 9 **EXHAUSTION OF PROCEDURAL REQUIREMENTS**

10 50. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
11 set forth herein.

12 51. On March 3, 2023, PLAINTIFF sent written notice by USPS first-class certified mail to all
13 DEFENDANTS notifying them of the specific violations set forth therein and herein, and the
14 facts and theories supporting the violations pursuant to the Private Attorneys General Act
15 (herein, "PAGA"). (A true and correct copy of the March 3, 2023 PAGA notice is attached
16 hereto as Exhibit 1 and is incorporated herein.)

17 52. On March 3, 2023, PLAINTIFF submitted the PAGA notice electronically to California's
18 Labor and Workforce Development Agency (herein, "LWDA").

19 53. The LWDA provided no notice of investigation to PLAINTIFF within the statutorily required
20 period of time following March 3, 2023. As of the date of this complaint, the LWDA has
21 provided no notice of investigation to PLAINTIFF.

22 54. Thus, PLAINTIFF can commence this civil action pursuant to *California Labor Code* section
23 2698, *et. seq.*

24 25 **TOLLING OF STATUTES OF LIMITATIONS**

26 55. PLAINTIFF re-alleges and incorporates by reference all preceding paragraphs as though fully
27 set forth herein.

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- 1 56. Any application statute of limitation for *California Labor Code* and *California Business and*
2 *Professions Code*, are equitably tolled by virtue of PLAINTIFF's PAGA Notice.
- 3 57. The doctrine of equitable tolling is well-recognized in California. In *Elkins v. Derby*, the
4 Supreme Court of California stated, "DEFENDANTS' interest in being properly apprised of
5 claims against them in order that they may gather and preserve evidence is fully satisfied when
6 prospective tort intervenors file compensation claims Thus, as the DEFENDANTS were
7 already in litigation regarding the same sets of facts and circumstances, and no prejudice can
8 be shown towards the DEFENDANTS, the doctrine of equitable tolling should be
9 recognized...." *Elkins v. Derby*, (1974) 12 Cal.3d 410, 417.
- 10 58. On March 3, 2023, PLAINTIFF sent written notice by USPS first-class certified mail to all
11 DEFENDANTS notifying them of the specific violations set forth therein and herein, and the
12 facts and theories supporting the violations. (See Exh. 1.)
- 13 59. The serving and submission of PLAINTIFF's written notice to DEFENDANTS to gather any
14 and all relevant information relating to DEFENDANTS' alleged liability for violations of the
15 *California Labor Code* pertaining to his wages and hours and conditions of his employment.
16 See *McDonald v. Antelope Valley Community College District*, (2008) 45 Cal. 4th 88, 102;
17 *Hopkins v. Kedzierski*, (2014) 255 Cal.App4th 736,750-751; *Structural Steel Fabricators, Inc.*
18 *v. City of Orange*, (1995) 40 Cal. App.4th 459.
- 19 60. DEFENDANTS are not prejudiced from the filing of this Complaint because it/they had
20 sufficient time to investigate the facts giving rise to this Complaint based upon PLAINTIFF
21 serving DEFENDANTS with the written PAGA notice.

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23 **FIRST CAUSE OF ACTION**

24 **Failure to Pay All Wages Earned Twice During a Calendar Month in Violation of *Cal. Labor***
25 ***Code* §§ 204 & 210**
26 **(Against All CORPORATE DEFENDANTS)**

- 27 61. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
28 herein.

1 62. At all times relevant herein, *California Labor Code* sections 204, 210, 558.1, as well as, the
2 applicable IWC Wage Order are and were in full force and effect and binding on
3 DEFENDANTS.

4 63. “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by
5 any person in any employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays.” *Cal. Lab. Code* § 204.

7 64. “In addition to, and entirely independent and apart from, any other penalty provided in this
8 article, every person who fails to pay the wages of each employee as provided in Sections
9 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as
10 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
11 employee. (2) For each subsequent violation, or any willful or intentional violation, two
12 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
13 unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory
14 penalty pursuant to Section 98” *Id.* at 210.

15 65. As set forth herein, PLAINTIFF was victim of DEFENDANTS’ violations of *California Labor*
16 *Code* section 204 because DEFENDANTS withheld portions of his wages to pay for insurance
17 premiums, thus, is entitling PLAINTIFF to the statutory penalties set forth in Section 210.

18 66. PLAINTIFF was victim of DEFENDANTS’ said violations in at least one pay period during
19 PLAINTIFF’s employment with DEFENDANTS.

20 67. “In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or
21 pension fund contributions, the court shall award reasonable attorney’s fees and costs to the
22 prevailing party if any party to the action requests attorney’s fees and costs upon the initiation
23 of the action.” *Id.* at 218.5.

24 68. PLAINTIFF prays that the Court award PLAINTIFF all statutory penalties available under
25 *California Labor Code* section 210, plus twenty-five percent (25%) of the wages unlawfully
26 withheld by DEFENDANTS, reasonable attorney’s/s’ fees, costs, and any other relief available
27 to PLAINTIFF under the *California Labor Code* and any further relief that the Court deems
28 proper as a result of DEFENDANTS’ violations.

1 **SECOND CAUSE OF ACTION**

2 **Failure to Furnish Accurate Wage Statements in Violation *Cal. Labor Code* § 226**
3 **(Against All DEFENDANTS)**

4 69. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
5 herein.

6 70. At all times relevant herein, *California Labor Code* sections 226. 558.1 and the applicable
7 IWC Wage Order are and were in full force and effect and binding on DEFENDANTS.

8 71. DEFENDANTS, and each of them, were obligated under *California Labor Code* section 226
9 and the applicable IWC Wage Order, to keep an accurate record of the hours of labor worked
10 by PLAINTIFF and all other AGGRIEVED EMPLOYEES and to prepare and furnish
11 PLAINTIFF and all other AGGRIEVED EMPLOYEES with each payment of wages an
12 itemized statement accurately showing nine specific categories of information: “(1) gross
13 wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units
14 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
15 deductions, provided that all deductions made on written orders of the employee may be
16 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
17 for which the employee is paid, (7) the name of the employee and only the last four digits of
18 his or her social security number or an employee identification number other than a social
19 security number, (8) the name and address of the legal entity that is the employer . . . , and (9)
20 all applicable hourly rates in effect during the pay period and the corresponding number of
21 hours worked at each hourly rate by the employee” *Cal. Lab. Code* § 226(a).

22 72. Section (7)(B) of the applicable IWC Wage Order states: “Every employer shall semimonthly
23 or at the time of each payment of wages furnish each employee, either as a detachable part of
24 the check, draft, or voucher paying the employee's wages, or separately, an itemized statement
25 in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the
26 employee is paid; (3) the name of the employee or the employee's social security number; and
27 (4) the name of the employer, provided all deductions made on written orders of the employee
28 may be aggregated and shown as one item.”

1 73. "An employee suffering injury as a result of a knowing and intentional failure by an
2 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages
3 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
4 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
5 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
6 reasonable attorney's fees." *Cal. Lab. Code* § 226(e)(1).

7 74. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
8 *Code* section 226 and the applicable IWC Wage Order.

9 75. DEFENDANTS' conduct was willful, and its failure to include this information on wage
10 statements caused PLAINTIFF damage, and resulted in PLAINTIFF's inability to determine
11 whether he was paid accurately.

12 76. PLAINTIFF was victim of DEFENDANTS' said violations in at least one pay period during
13 PLAINTIFF's employment with DEFENDANTS.

14 77. PLAINTIFF is informed and believes and, on that basis, alleges that DEFENDANTS furnished
15 wage statements, if at all, containing the same deficiencies set forth herein to all other
16 AGGRIEVED EMPLOYEES.

17 78. PLAINTIFF is informed and believes and, on that basis, alleges that all other AGGRIEVED
18 EMPLOYEES were victim of DEFENDANTS' said violations in at least one pay period
19 during their employment with DEFENDANTS.

20 79. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
21 violated, any provision regulating minimum wages or hours and days of work in any order of
22 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
23 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
24 *Labor Code* § 558.1(a).

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1 80. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANT
2 knowingly and intentionally violated *California Labor Code* section 226, the corresponding
3 Section of the applicable IWC Wage Order and, and/or the preceding was knowingly and
4 intentionally caused to be violated by INDIVIDUAL DEFENDANT, the natural person, who
5 is/was a/the officer, director, CEO, secretary, CFO, agent for service of process, and/or
6 president of CORPORATE DEFENDANTS, and institutes/d, implements/ed and controls/led
7 all conditions of employment, including CORPORATE DEFENDANTS' wage and hour
8 policies under which PLAINTIFF and all AGGRIEVED EMPLOYEES are/were employed
9 and paid.

10 81. Accordingly, CORPORATE DEFENDANTS, as well as, INDIVIDUAL DEFENDANT can be
11 held liable for the damages stemming from the violations of *California Labor Code* section 226
12 and the applicable IWC Wage Order.

13 82. PLAINTIFF prays that the Court award PLAINTIFF all statutory penalties available under
14 *California Labor Code* section 226 and any other applicable section of the *California Labor*
15 *Code*, as well as, an award of costs and reasonable attorney's/s' fees and any further relief that
16 the Court deems proper as a result of DEFENDANTS' violations.

17
18 **THIRD CAUSE OF ACTION**

19 **Failure to Indemnify PLAINTIFF for Expenses in Violation of *Cal. Labor Code* § 2802**
20 **(Against All DEFENDANTS)**

21 83. PLAINTIFF re-alleges and incorporates by reference each of the above paragraphs as alleged
22 herein.

23 84. At all times mentioned herein *California Labor Code* sections 2802, 558.1, as well as, the
24 applicable IWC Order were and are in full force and effect and binding on DEFENDANTS.

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- 1 85. *California Labor Code* section 2802(a) states: “An employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the
5 directions, believed them to be unlawful.”
- 6 86. “All awards made by a court or by the Division of Labor Standards Enforcement for
7 reimbursement of necessary expenditures under this section shall carry interest at the same rate
8 as judgments in civil actions. Interest shall accrue from the date on which the employee
9 incurred the necessary expenditure or loss.” *Id.* at 2802(b).
- 10 87. “For purposes of this section, the term “necessary expenditures or losses” shall include all
11 reasonable costs, including, but not limited to, attorney’s fees incurred by the employee
12 enforcing the rights granted by this section.” *Id.* at 2802(c).
- 13 88. As set forth herein, PLAINTIFF was victim of DEFENDANTS’ violations of *California Labor*
14 *Code* section 2802 and the applicable IWC Wage Order.
- 15 89. PLAINTIFF was victim of DEFENDANTS’ said violations in at least one pay period during
16 PLAINTIFF’s employment with DEFENDANTS.
- 17 90. PLAINTIFF is informed and believes and thereon alleges that all other AGGRIEVED
18 EMPLOYEES were also victim of DEFENDANTS’ violations of *California Labor Code*
19 section 2802 and the applicable IWC Wage Order.
- 20 91. PLAINTIFF is informed and believes and, on that basis, alleges that all other AGGRIEVED
21 EMPLOYEES were victim of DEFENDANTS’ said violations in at least one pay period
22 during their employment with DEFENDANTS.
- 23 92. “Any employer or other person acting on behalf of an employer, who violates, or causes to be
24 violated, any provision regulating minimum wages or hours and days of work in any order of
25 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
26 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal.*
27 *Labor Code* § 558.1(a).

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1 93. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANT
2 violated *California Labor Code* section 2802, and/or the preceding was caused to be violated
3 by INDIVIDUAL DEFENDANT, the natural person, who is/was a/the officer, director, CEO,
4 secretary, CFO, agent for service of process, and/or president of CORPORATE
5 DEFENDANTS, and institutes/d, implements/ed and controls/led all conditions of
6 employment, including CORPORATE DEFENDANTS' wage and hour policies under which
7 PLAINTIFF and all AGGRIEVED EMPLOYEES are/were employed and paid.

8 94. Accordingly, CORPORATE DEFENDANTS, as well as, INDIVIDUAL DEFENDANT can be
9 held liable for the damages stemming from the violations of *California Labor Code* section
10 2802.

11 95. As a proximate result of DEFENDANTS' failure to indemnify PLAINTIFF for these necessary
12 expenditures pursuant to the provisions of *California Labor Code* section 2802 and the
13 applicable IWC Wage Order, PLAINTIFF suffered/is suffering losses all in an amount to be
14 proven at trial.

15 96. As a proximate result of DEFENDANTS' failure to indemnify PLAINTIFF for these necessary
16 expenditures pursuant to the provisions of *California Labor Code* section 2802, PLAINTIFF
17 has been forced to hire attorney(s) to prosecute PLAINTIFF's claims herein, and has incurred
18 and will continue to incur attorneys'/s fees and costs in connection therewith.

19 97. PLAINTIFF prays that the Court award PLAINTIFF reimbursement of all necessary
20 expenditures and/or losses incurred discharging PLAINTIFF's duties for DEFENDANTS with
21 interest thereon, reasonable attorneys' fees and other costs incurred enforcing PLAINTIFF's
22 rights granted by *California Labor Code* section 2802.

23
24 **FOURTH CAUSE OF ACTION**

25 **Waiting Time Penalties in Violation of *Cal. Labor Code* §§ 202, 203 & 208**

26 **(Against All DEFENDANTS)**

27 98. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
28 herein.

1 99. At all times relevant herein, *California Labor Code* sections 201, 202, 203, 208 and 558.1 are
2 and were in full force and effect and binding on DEFENDANTS.

3 100. Under *California Labor Code* Section “If an employee not having a written contract for a
4 definite period quits his or her employment, his or her wages shall become due and payable not
5 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or
6 her intention to quit, in which case the employee is entitled to his or her wages at the time of
7 quitting. Notwithstanding any other provision of law, an employee who quits without providing
8 a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
9 designates a mailing address. The date of the mailing shall constitute the date of payment for
10 purposes of the requirement to provide payment within 72 hours of the notice of quitting.” *Id.*
11 at 202(a).

12 101. “If an employer willfully fails to pay, without abatement or reduction, in accordance with
13 Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is
14 discharged or who quits, the wages of the employee shall continue as a penalty from the due
15 date thereof at the same rate until paid or until an action therefor is commenced; but the wages
16 shall not continue for more than 30 days.” *Id.* at 203(a).

17 102. Pursuant to *California Labor Code* Section 208: “Every employee who is discharged shall be
18 paid at the place of discharge, and every employee who quits shall be paid at the office or
19 agency of the employer in the county where the employee has been performing labor. All
20 payments shall be made in the manner provided by law.” *Id.* at 208.

21 103. “Suit may be filed for these penalties at any time before the expiration of the statute of
22 limitations on an action for the wages from which the penalties arise.” *Id.* at 203(b).

23 104. As set forth herein, PLAINTIFF was victim of DEFENDANTS’ violations of *California Labor*
24 *Code* sections 202, plus 203 and 208.

25 105. And PLAINTIFF is informed and believes and thereon alleges that all AGGRIEVED
26 EMPLOYEES who were terminated or resigned were also victim of DEFENDANTS’
27 violations of *California Labor Code* sections 201 or 202, plus 203 and 208.

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1 106. “Any employer or other person acting on behalf of an employer, who violates, or causes to be
2 violated, any provision regulating minimum wages or hours and days of work in any order of
3 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
4 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal. Lab.*
5 *Code* § 558.1(a).

6 107. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANT
7 violated *California Labor Code* sections 202, 203 and 208 and/or the preceding were caused to
8 be violated by INDIVIDUAL DEFENDANT, the natural person, who is/was a/the officer,
9 director, CEO, secretary, CFO, agent for service of process, and/or president of CORPORATE
10 DEFENDANTS, and institutes/d, implements/ed and controls/led all conditions of
11 employment, including CORPORATE DEFENDANTS’ wage and hour policies under which
12 PLAINTIFF and all AGGRIEVED EMPLOYEES are/were employed and paid.

13 108. Accordingly, CORPORATE DEFENDANTS, as well as, INDIVIDUAL DEFENDANT can be
14 held liable for the damages stemming from the violations of *California Labor Code* section
15 202, 203 and 208.

16 109. “In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or
17 pension fund contributions, the court shall award reasonable attorney’s fees and costs to the
18 prevailing party if any party to the action requests attorney’s fees and costs upon the initiation
19 of the action.” *Id.* at 218.5.

20 110. PLAINTIFF prays that the Court award PLAINTIFF all statutory penalties available under
21 *California Labor Code* section 203 and any other applicable section of the *California Labor*
22 *Code*, as well as, an award of costs and reasonable attorney’s/s’ fees and any further relief that
23 the Court deems proper as a result of DEFENDANTS’ violations.

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1 **FIFTH CAUSE OF ACTION**

2 **Violations of *Cal. Bus. & Prof. Code* § 17200**
3 **(Against All CORPORATE DEFENDANT)**

4 111. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
5 herein.

6 112. At all times relevant herein, *California Business and Professions Code* § 17200 *et seq.* is and
7 was in full force and effect and binding on all DEFENDANTS.

8 113. The Unfair Competition Law (“UCL”), which is codified under *California Business and*
9 *Professions Code* § 17200 *et seq.* prohibits acts of “unfair competition,” including any
10 unlawful, unfair, fraudulent *or* deceptive business act *or* practice as well as “unfair, deceptive,
11 untrue or misleading advertising.”

12 114. By virtue of the direct injuries that PLAINTIFF sustained from DEFENDANTS’ wrongful
13 conduct, PLAINTIFF has standing to sue in order to obtain the remedies that are available to
14 PLAINTIFF under the UCL.

15 115. The UCL authorizes injunctive relief to prevent unlawful, unfair, or fraudulent business acts
16 for practices, and both restitution and disgorgement of money or property wrongfully obtained
17 by means of such unfair competition. *Bus. & Prof. Code* § 17203.

18 116. An action may be brought under the UCL by any person, corporation or association, or by any
19 person action for the interests of itself, its members, or the general public. *Bus. & Prof. Code* §
20 17204.

21 117. A PLAINTIFF may bring § 17200 claim even when the underlying statutory violation does not
22 provide the PLAINTIFF with a private right of action. *See Manser v. Serra Foothills Public*
23 *Utility Dist.* (E.D. Cal. 2008) 2008 WL 5114619, at * 7; *Kasky v. Nike, Inc.* (2002) 27 Cal.
24 App. 4th 832, 839.

25 **Unfair Conduct**

26 118. As set forth herein, DEFENDANTS engaged in a pattern of unfair and unlawful business
27 practices with respect to PLAINTIFF’s employment at DEFENDANTS and Limited in
28 violation of *Bus. & Prof. Code* § 17200.

1 119. DEFENDANTS violated the “unfair prong” of *Cal. Bus. & Prof. Code* § 17200 by engaging in
2 the following, wrongful, improper, and unfair conduct:

3 a. DEFENDANTS unfairly failed to indemnify PLAINTIFF for the expenses incurred in
4 discharging PLAINTIFF’s duties for DEFENDANTS.

5 120. DEFENDANTS’ conduct also violated the “unfair” prong of the UCL because the utility of
6 DEFENDANTS’ actions and/or omissions was significantly outweighed by the gravity of the
7 harm that it imposed on employees.

8 121. Further, the public is led to believe that DEFENDANTS provides a fair, safe, and legally
9 sufficient work environment for their employees and complies with California laws governing
10 Labor and Employment issues, despite the fact that both of these impressions are untrue.
11 DEFENDANTS’ pattern of wrongful, improper, and unlawful business practices is injurious to
12 DEFENDANTS’ employees and consumers alike.

13 **Unlawful Conduct**

14 122. “Unlawful” conduct under *Bus. & Prof. Code* § 17200 is any practices forbidden by law,
15 whether civil or criminal, federal or state, or municipal, statutory, regulatory, or court made.
16 *See Farmers Ins. Exchange v. Super. Ct.*, 2 Cal.4th 377, 383 (1992).

17 123. By proscribing ‘any unlawful’ business practice, § 17200 ‘borrows’ violations of other laws
18 and treats them as unlawful practices that the UCL makes independently actionable. *See*
19 *Blanks v. Shaw*, 171 Cal. App. 4th 336, 363-64 (2009); *Schnall v. Hertz Corp.*, 78 Cal. App.
20 4th 1144, 1153 (2000).

21 124. DEFENDANTS violated the “unlawful” prong of *Cal. Bus. & Prof. Code* § 17200 as follows:

22 a. Violations of *Cal. Labor Code* § 2802.

23 125. The violation of these laws serves as unlawful predicate acts which have resulted in injury in
24 fact and loss of money and property to PLAINTIFF for purposes of *Business and Professions*
25 *Code* §§17200 *et seq.*

26 126. PLAINTIFF is entitled to restitutionary damages resulting from not being reimbursed all
27 necessary expenses PLAINTIFF incurred in discharging duties for, or at the direction of
28 DEFENDANTS.

1 **SIXTH CAUSE OF ACTION**

2 **Violations of *Cal. Lab. Code* § 2698, *et seq.***

3 **(Against All DEFENDANTS)**

4 127. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
5 herein.

6 128. At all times relevant herein, *California Labor Code* § 2698, *et seq.* are and were in full force
7 and effect and are binding on DEFENDANTS.

8 129. “Notwithstanding any other provision of law, any provision of this code that provides for a
9 civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
10 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation
11 of this code, may, as an alternative, be recovered through a civil action brought by an
12 aggrieved employee on behalf of himself or herself and other current or former employees
13 pursuant to the procedures specified in Section 2699.3.” *Cal. Lab. Code* § 2699(a).

14 130. “For all provisions of this code except those for which a civil penalty is specifically
15 provided, there is established a civil penalty for a violation of these provisions, as follows: . . .
16 If, at the time of the alleged violation, the person employs one or more employees, the civil
17 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for
18 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
19 period for each subsequent violation.” *Id.* at (f)(2).

20 131. “Any employee who prevails in any action shall be entitled to an award of reasonable
21 attorney’s fees and costs, including any filing fee paid pursuant to subparagraph (B) of
22 paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of
23 Section 2699.3.” *Id.* at (g)(1).

24 132. “Nothing in this part shall operate to limit an employee’s right to pursue or recover other
25 remedies available under state or federal law, either separately or concurrently with an action
26 taken under this part.” *Id.* at 2699(g).

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1 133. On March 2, 2023, PLAINTIFF sent written notice by USPS first-class certified mail to all
2 DEFENDANTS notifying them of the specific violations set forth therein and herein, and the
3 facts and theories supporting the violations. (*See* Exh. 1.)

4 134. On March 2, 2023, PLAINTIFF submitted the PAGA notice electronically to the LWDA.

5 135. The LWDA provided no notice of investigation to PLAINTIFF within the statutorily required
6 period of time following March 2, 2023. As of the date of this complaint, the LWDA has
7 provided no notice of investigation to PLAINTIFF.

8 136. Thus, PLAINTIFF can commence this civil action pursuant to *California Labor Code* section
9 2698, *et. seq.*

10 **CORPORATE DEFENDANTS' CIVIL PENALTIES**

11 137. At all times relevant herein, *California Labor Code* section 226.8 is and was in full force and
12 effect and binding on DEFENDANTS.

13 138. "It is unlawful for any person or employer to engage in any of the following activities:
14 (1) Willful misclassification of an individual as an independent contractor. (2) Charging an
15 individual who has been willfully misclassified as an independent contractor a fee, or making
16 any deductions from compensation, for any purpose, including for goods, materials, space
17 rental, services, government licenses, repairs, equipment maintenance, or fines arising from the
18 individual's employment where any of the acts described in this paragraph would have violated
19 the law if the individual had not been misclassified. (b) If the Labor and Workforce
20 Development Agency or a court issues a determination that a person or employer has engaged
21 in any of the enumerated violations of subdivision (a), the person or employer shall be subject
22 to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
23 thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
24 permitted by law." *Cal. Lab. Code* § 226.8.

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1 139. "If the Labor and Workforce Development Agency or a court issues a determination that a
2 person or employer has engaged in any of the enumerated violations of subdivision (a) and the
3 person or employer has engaged in or is engaging in a pattern or practice of these violations,
4 the person or employer shall be subject to a civil penalty of not less than ten thousand dollars
5 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in
6 addition to any other penalties or fines permitted by law." *Id.*

7 140. DEFENDANTS willfully misclassified PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES as independent contractors, and thereafter, deducted insurance premiums and
9 other fees from their compensation.

10 141. At all times relevant herein, *California Labor Code* section 2810.5, as well as, the applicable
11 IWC Wage Order, are and were in full force and effect and are binding on DEFENDANTS.

12 142. "At the time of hiring, an employer shall provide to each employee a written notice, in the
13 language the employer normally uses to communicate employment-related information to the
14 employee, containing the following information: (A) The rate or rates of pay and basis thereof,
15 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
16 any rates for overtime, as applicable. (B) Allowances, if any, claimed as part of the minimum
17 wage, including meal or lodging allowances. (C) The regular payday designated by the
18 employer in accordance with the requirements of this code. (D) The name of the employer,
19 including any "doing business as" names used by the employer. (E) The physical address of the
20 employer's main office or principal place of business, and a mailing address, if different.
21 (F) The telephone number of the employer. (G) The name, address, and telephone number of
22 the employer's workers' compensation insurance carrier. (H) That an employee: may accrue
23 and use sick leave; has a right to request and use accrued paid sick leave; may not be
24 terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
25 has the right to file a complaint against an employer who retaliates." *Cal. Lab. Code* §
26 2810.5(a)(1)(A)-(H).

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1 143. "An employer shall notify his or her employees in writing of any changes to the information
2 set forth in the notice within seven calendar days after the time of the changes, unless one of
3 the following applies: (1) All changes are reflected on a timely wage statement furnished in
4 accordance with Section 226. (2) Notice of all changes is provided in another writing required
5 by law within seven days of the changes." *Id.* at (b)(1)-(2).

6 144. Upon PLAINTIFF's hiring, DEFENDANT failed to provide PLAINTIFF and any and all
7 AGGRIEVED EMPLOYEES written notices containing (a) the rate or rates of pay and basis
8 thereof, (b) any allowances claimed as part of the minimum wage, including meal or lodging
9 allowances, (c) the regular payday designated by DEFENDANT, (d) DEFENDANT's name,
10 including any and all of its "doing business as" names, (e) the physical address of
11 DEFENDANT's main office / principal place of business / mailing address, (f)
12 DEFENDANT's telephone number, (g) the name, address, and telephone number of
13 DEFENDANT's workers' compensation insurance carrier, and (h) information about
14 PLAINTIFF and any and all AGGRIEVED EMPLOYEES accruing and using sick leave; and
15 having the right to request and use accrued paid sick leave without fear of being terminated or
16 retaliated against for using or requesting the use of accrued paid sick leave, and that
17 PLAINTIFF and any and all AGGRIEVED EMPLOYEES have the right to file a complaint
18 against DEFENDANT if DEFENDANT retaliates. PLAINTIFF is informed and believes, and
19 thereon alleges, DEFENDANT also fails to provide any and all newly-hired AGGRIEVED
20 EMPLOYEES written notices containing the preceding information. Similarly, when
21 DEFENDANT made any changes to the above-listed information, it further failed to notify
22 PLAINTIFF and any and all AGGRIEVED EMPLOYEES of those changes within seven
23 calendar days after the changing by notice, other writing or by a timely furnished itemized
24 wage statement.

25 145. As set forth herein, CORPORATE DEFENDANT fails/ed to provide PLAINTIFF and all other
26 AGGRIEVED EMPLOYEES the just-described written notices or any notifications of changes
27 to the information those not-provided written notices were/are to contain.

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1 146. At all times relevant herein, *California Labor Code* sections 221, 222, 223 and 225.5 are and
2 were in full force and effect and binding on DEFENDANTS.

3 147. "It shall be unlawful for any employer to collect or receive from an employee any part of
4 wages theretofore paid by said employer to said employee." *Cal. Lab. Code* § 221.

5 148. "It shall be unlawful, in case of any wage agreement arrived at through collective bargaining,
6 either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other
7 person, to withhold from said employee any part of the wage agreed upon." *Id.* at 222.

8 149. "Where any statute or contract requires an employer to maintain the designated wage scale, it
9 shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by
10 statute or by contract." *Id.* at 223.

11 150. "In addition to, and entirely independent and apart from, any other penalty provided in this
12 article, every person who unlawfully withholds wages due any employee in violation of
13 Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any
14 initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each
15 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
16 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. *Id.* at
17 225.5.

18 151. As described herein, DEFENDANTS withheld earned wages from PLAINTIFF and all
19 AGGRIEVED EMPLOYEES.

20 152. At all times relevant herein, *California Labor Code* section 226.3 is and was in full force and
21 effect and binding on DEFENDANTS.

22 153. "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in
23 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation
24 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
25 which the employer fails to provide the employee a wage deduction statement or fails to keep
26 the records required in subdivision (a) of Section 226. The civil penalties provided for in this
27 section are in addition to any other penalty provided by law." *Cal. Lab. Code* § 226.3.

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1 154. As set forth herein, DEFENDANTS violated *California Labor Code* section 226 by failing to
2 furnish PLAINTIFF and the AGGRIEVED EMPLOYEES itemized wage statements, or if
3 DEFENDANTS did, those statements were inaccurate.

4 155. At all times relevant herein, *California Labor Code* section 201 is and was in full force and
5 effect and binding on DEFENDANTS.

6 156. "If an employer discharges an employee, the wages earned and unpaid at the time of discharge
7 are due and payable immediately." *Id.* at 201(a).

8 157. As set forth herein, DEFENDANTS willfully failed to pay PLAINTIFF and all other
9 AGGRIEVED EMPLOYEES all wages earned, thus, CORPORATE DEFENDANT also failed
10 to pay any other AGGRIEVED EMPLOYEES who resigned or was discharge all wages owing
11 within 72 hours, or at the time and place of their discharge.

12 158. Accordingly, DEFENDANTS violated *California Labor Code* sections 201, 202, 203 and 208
13 and PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES
14 and the State of California all penalties owed by DEFENDANTS pursuant to the PAGA.

15 159. At all times relevant herein, *California Labor Code* sections 246 and 247.5 are and were in full
16 force and effect and binding on DEFENDANTS.

17 160. "An employee who, on or after July 1, 2015, works in California for the same employer for 30
18 or more days within a year from the commencement of employment is entitled to paid sick
19 days as specified in this section." *Cal. Lab. Code* § 246(a)(1).

20 161. "An employer shall provide an employee with written notice that sets forth the amount of paid
21 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use
22 on either the employee's itemized wage statement described in Section 226 or in a separate
23 writing provided on the designated pay date with the employee's payment of wages." *Id.* at (i).

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1 162. “An employer shall keep for at least three years records documenting the hours worked and
2 paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to
3 access these records pursuant to the requirements set forth in Section 1174. An employer shall
4 make these records available to an employee in the same manner as described in Section 226.
5 If an employer does not maintain adequate records pursuant to this section, it shall be
6 presumed that the employee is entitled to the maximum number of hours accruable under this
7 article, unless the employer can show otherwise by clear and convincing evidence.” *Id.* at
8 247.5; *see also Cal. Code Regs.* tit. 8 § 11090(7)(A)-(C).

9 163. DEFENDANTS failed to keep records showing all hours worked, paid sick days accrued and
10 used by its employees, and all wages paid to PLAINTIFF and all other AGGRIEVED
11 EMPLOYEES. DEFENDANTS also failed to provide PLAINTIFF and all other
12 AGGRIEVED EMPLOYEES written notice that sets forth the amount of paid sick leave
13 available to them, or paid time off leave DEFENDANTS provide/d in lieu of sick leave.

14 164. Accordingly, DEFENDANTS violated *California Labor Code* sections 246 and 247.5 and
15 PLAINTIFF prays this Court award PLAINTIFF, all other AGGRIEVED EMPLOYEES and
16 the State of California all penalties owed by DEFENDANTS.

17 165. At all times relevant herein, *California Labor Code* sections 3700, 3701, 3702.3 and 3702.9 are
18 and were in full force and effect and binding on DEFENDANTS.

19 166. “Every employer except the state shall secure the payment of compensation in one or more of
20 the following ways: (a) By being insured against liability to pay compensation by one or more
21 insurers duly authorized to write compensation insurance in this state. (b) By securing from
22 the Director of Industrial Relations a certificate of consent to self-insure either as an individual
23 employer, or as one employer in a group of employers, which may be given upon furnishing
24 proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any
25 compensation that may become due to his or her employees.” *Cal. Lab. Code* § 3700.

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1 167. “(a) Each year every private self-insuring employer shall secure incurred liabilities for the
2 payment of compensation and the performance of the obligations of employers imposed under
3 this chapter by renewing the prior year’s security deposit or by making a new deposit of
4 security.” *Id.* at 3701.

5 168. “Failure to submit reports or information as deemed necessary by the director to implement the
6 purposes of Section 3701, 3702, or 3702.2 may result in the assessment of a civil penalty as set
7 forth in subdivision (a) of Section 3702.9. Moneys collected shall be used for the
8 administration of self-insurance plans.” *Id.* at 3702.3.

9 169. “In addition to remedies and penalties otherwise provided for a failure to secure the payment of
10 compensation, the director may, after a determination that an obligation created in this article
11 has been violated, also enter an order against any self-insured employer, including employers
12 who are no longer self-insured, but who are required to comply with Section 3702.8, directing
13 compliance, restitution for any losses, and a civil penalty in an amount not to exceed the
14 following: (1) For a failure to file a complete or timely annual report, an amount up to 5
15 percent of the incurred liabilities in the last report or one thousand five hundred dollars
16 (\$1,500), whichever is less, for each 30 days or portion thereof during which there is a failure.
17 (2) For failure to deposit and maintain a security deposit, an amount up to 10 percent of the
18 increase not timely filed or five thousand dollars (\$5,000), whichever is less, for each 30 days
19 or portion thereof during which there is a failure. (3) For a failure to timely or completely pay
20 an assessment, an amount up to the assessment or two thousand five hundred dollars (\$2,500),
21 whichever is less, for each 30 days or portion thereof during which there is a failure.” *Id.* at
22 3702.9.

23 170. As set forth herein, DEFENDANTS fail/ed to secure workers’ compensation insurance /
24 payment of compensation as required by law, thus, DEFENDANTS also fail/ed to submit
25 reports and information as required.

26 171. Accordingly, DEFENDANTS violated *California Labor Code* Sections 3700, 3701 and 3702.3
27 and is/are, thus, liable for civil penalties pursuant to *California Labor Code* Sections 3702.9
28 and/or 2699(f)(2).

1 172. PLAINTIFF and all other AGGRIEVED EMPLOYEES were victims of these violations in all
2 pay periods and in at least one pay period.

3 173. As detailed herein, PLAINTIFF and all other AGGRIEVED EMPLOYEES were victims of
4 DEFENDANTS' violations of *California Labor Code* sections 226.8; 2810.5; 221; 222; 223;
5 226; 201; 202; 203; 208; 246; 247.5; 3700; 3701; 3702.3 and 3702.9, as well as, Sections 7 of
6 the applicable IWC Wage Order.

7 174. Based on all DEFENDANTS' herein-detailed violations, PLAINTIFF, all other AGGRIEVED
8 EMPLOYEES and the State of California are entitled to civil penalties pursuant to *California*
9 *Labor Code* sections 1197.1; 225.5; 226.3; and/or 2699(f)(2).

10 **CORPORATE DEFENDANTS AND INDIVIDUAL DEFENDANT'S JOINT CIVIL**
11 **PENALTIES**

12 175. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
13 herein.

14 176. At all times relevant herein, *California Labor Code* sections 558.1 and 1197.1 are and were in
15 full force and effect and binding on DEFENDANTS, including INDIVIDUAL DEFENDANT.

16 177. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
17 violated, any provision regulating minimum wages or hours and days of work in any order of
18 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
19 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
20 *Lab. Code* § 558.1(a). "Nothing in this section shall be construed to limit the definition of
21 employer under existing law." *Id.* at 558.1(c).

22 178. "For purposes of this section, the term "other person acting on behalf of an employer" is
23 limited to a natural person who is an owner, director, officer, or managing agent of the
24 employer, and the term "managing agent" has the same meaning as in subdivision (b) of
25 Section 3294 of the Civil Code." *Id.* at (b).

26 179. "Nothing in this section shall be construed to limit the definition of employer under existing
27 law." *Id.* at (c).

28 ///

1 180. “Any employer or other person acting either individually or as an officer, agent, or employee
2 of another person, who pays or causes to be paid to any employee a wage less than the
3 minimum fixed by an applicable state or local law, or by an order of the commission shall be
4 subject to a civil penalty” *Id.* at 1197.1(a). “For any initial violation that is intentionally
5 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
6 which the employee is underpaid. *Id.* at (a)(1).

7 181. As detailed herein, INDIVIDUAL DEFENDANT violate/d, and/or cause/d to be violated
8 *California Labor Code* sections 203, 226, and 2802. PLAINTIFF and all other AGGRIEVED
9 EMPLOYEES were victim of the just-listed violations in all pay periods and in at least one pay
10 period.

11 182. Based on all INDIVIDUAL DEFENDANT’s herein-detailed violations, PLAINTIFF, all other
12 AGGRIEVED EMPLOYEES and the State of California are entitled to civil penalties pursuant
13 to *California Labor Code* sections 1197.1; 226.3; and/or 2699(f)(2).

14 183. PLAINTIFF prays that the Court award all civil penalties for PLAINTIFF, all AGGRIEVED
15 EMPLOYEES and the State of California, as well as, reasonable attorneys’ fees and costs
16 incurred in this action, and any filing fee paid in this action.

17 **SEVENTH CAUSE OF ACTION**

18 **Penalties and Injunctive Relief for Violation of *Cal. Labor Code* § 226(c)**
19 **(Against All DEFENDANTS)**

20 184. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
21 herein.

22 185. At all times relevant herein, *California Labor Code* section 226(c) is and was in full force and
23 effect and is binding on DEFENDANTS.

24 186. “An employer that is required by this code or any regulation adopted pursuant to this code to
25 keep the information required by subdivision (a) shall afford current and former employees the
26 right to inspect or copy records pertaining to their employment, upon reasonable request to the
27 employer.” *Cal. Lab. Code* § 226(b).
28

1 187. "An employer who receives a written or oral request to inspect or copy records pursuant to
2 subdivision (b) pertaining to a current or former employee shall comply with the request as
3 soon as practicable, but no later than 21 calendar days from the date of the request." *Cal. Lab.*
4 *Code* § 226(c).

5 188. "A failure by an employer to permit a current or former employee to inspect or copy records
6 within the time set forth in subdivision (c) entitles the current or former employee or the Labor
7 Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer."
8 *Cal. Lab. Code* § 226(f).

9 189. "An employee may also bring an action for injunctive relief to ensure compliance with this
10 section, and is entitled to an award of costs and reasonable attorney's fees." *Cal. Lab. Code* §
11 226(h).

12 190. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
13 violated, any provision regulating minimum wages or hours and days of work in any order of
14 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
15 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
16 *Labor Code* § 558.1(a).

17 191. PLAINTIFF is informed and believes and thereon alleges that INDIVIDUAL DEFENDANT
18 violated *California Labor Code* section 226, and/or the preceding was caused to be violated by
19 INDIVIDUAL DEFENDANT, the natural person, who is/was a/the officer, director, CEO,
20 secretary, CFO, agent for service of process, and/or president of CORPORATE
21 DEFENDANTS, and institutes/d, implements/ed and controls/led all conditions of
22 employment, including CORPORATE DEFENDANTS' wage and hour policies under which
23 PLAINTIFF and all AGGRIEVED EMPLOYEES are/were employed and paid.

24 192. Accordingly, CORPORATE DEFENDANTS, as well as, INDIVIDUAL DEFENDANT can be
25 held liable for the damages stemming from the violations of *California Labor Code* section
26 226(c).

27 ///

28 ///

1 193. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
2 *Code* section 226(c) and DEFENDANTS are liable for the damages stemming from the
3 violations of *California Labor Code* section 226(c).

4 194. PLAINTIFF prays that the Court award PLAINTIFF all penalties from DEFENDANTS and
5 injunctive relief to ensure compliance with this section, and an award of costs and reasonable
6 attorney's/s' fees pursuant to *California Labor Code* section 226(f) and (h).

7
8 **EIGHTH CAUSE OF ACTION**

9 **Penalties and Injunctive Relief for Violation of *Cal. Labor Code* § 1198.5**
10 **(Against All Non-INDIVIDUAL DEFENDANT)**

11 195. PLAINTIFF re-alleges and incorporates all preceding paragraphs as though fully set forth
12 herein.

13 196. At all times relevant herein, *California Labor Code* section 1198.5 is and was in full force and
14 effect and is binding on DEFENDANTS.

15 197. *California Labor Code* section 1198.5, subdivision (b) mandates that an employer who
16 receives a written or oral request from an employee or former employee to inspect records
17 pursuant to that section "shall" comply with the request within 30 days. *Cal. Lab. Code* §
18 1198.5(b).

19 198. Whenever an employer fails to comply with section 1198.5, the employee is entitled to recover
20 a penalty of \$750 from the employer. *Cal. Lab. Code* § 1198.5(k). In the event an employee
21 must bring an action to ensure compliance with the code, he/she is entitled to recover attorney's
22 fees. *Cal. Lab. Code* § 1198.5(1).

23 199. As set forth herein, PLAINTIFF was victim of DEFENDANTS' violations of *California Labor*
24 *Code* section 1198.5.

25 200. Accordingly, DEFENDANTS can be held liable for the damages stemming from the violations
26 of *California Labor Code* section 1198.5.

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28 ///

1 201. PLAINTIFF prays that the Court award PLAINTIFF all penalties from DEFENDANTS and
2 injunctive relief to ensure compliance with this section, and an award of costs and reasonable
3 attorney's/s' fees pursuant to *California Labor Code* section 1198.5(k) and (l).

4
5 **PRAYERS FOR RELIEF**

6 WHEREFORE, PLAINTIFF WILLIAM WOOD prays for judgment for PLAINTIFF
7 WILLIAM WOOD against DEFENDANTS SUGAR CREEK TRANSPORTATION, INC.,
8 SUGAR CREEK ENTERPRISES, INC., MOTHER TRUCKER, INC., MONICA BETH MYERS
9 a/k/a MONICA BETH JENSEN and DEFENDANT DOES 1 through 25, as follows:

- 10 1. All actual, consequential and incidental financial losses, unpaid wages, unreimbursed
11 business expenditures and restitution, together with pre-judgment interest, according to
12 proof, but not less than \$100,000.00;
- 13 2. Additional compensatory and/or general damages according to proof;
- 14 3. All statutory penalties and relief allowed under the *California Labor Code*, according to
15 proof;
- 16 4. Reasonable attorney's/s' fees, and costs of suit according to proof, but not less than
17 \$250,000.00;
- 18 5. Post-judgment interest according to any applicable provision of law, and according to proof;
- 19 6. Injunctive relief; and
- 20 7. Any additional, further relief as the Court deems proper.

21
22 WHEREFORE, PLAINTIFF WILLIAM WOOD, prays for judgment for (1) PLAINTIFF
23 WILLIAM WOOD as an AGGRIEVED EMPLOYEE, (2) all AGGRIEVED EMPLOYEES and (3)
24 the State of California against DEFENDANTS SUGAR CREEK TRANSPORTATION, INC.,
25 SUGAR CREEK ENTERPRISES, INC., MOTHER TRUCKER, INC., MONICA BETH MYERS
26 a/k/a MONICA BETH JENSEN and DEFENDANT DOES 1 through 25, as follows:

- 27 1. All civil penalties and relief allowed under the *California Labor Code* in an amount
28 according to proof, but not less than \$5,000,000.00;

- 1 2. Reasonable attorney's/s' fees, and costs of suit according to proof, but not less than
2 \$1,000,000.00;
3 3. Any additional, further relief as the Court deems proper.
4

5 Dated: July 11, 2023

TWOMEY LAW, P.C.

6
7
8 BY: _____


J.B. Twomey
Attorney for PLAINTIFF,
WILLIAM WOOD
9
10
11
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13 **DEMAND FOR JURY TRIAL**

14
15 WILLIAM WOOD hereby demands a trial by jury for all causes of action set forth herein
16 that are entitled to a trial by jury.
17

18 Dated: July 11, 2023

TWOMEY LAW, P.C.

19
20
21 BY: _____


J.B. Twomey
Attorney for PLAINTIFF,
WILLIAM WOOD
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28

EXHIBIT 1

[illegible]

Fax: 818.937.6897

Bloomington, California 92316

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Hereinafter, Sugar Creek Transportation, Inc., Sugar Creek Enterprises, Inc., Mother Trucker, Inc. and DOES 1 through 25 are collectively referred to as “CORPORATE DEFENDANT.” Hereinafter, Monica B. Byers a/k/a Monica B. Jensen and DOES 1 through 25 are collectively referred to as “INDIVIDUAL DEFENDANT.”

PLAINTIFF implores California’s Labor and Workforce Development Agency (hereinafter referred to as “LWDA”) to investigate each aspect of DEFENDANT’s herein-detailed violations of the *California Labor Code* and *California Code of Regulations* and any others that may exist, as those violations pertain to PLAINTIFF and any and all of DEFENDANT’s current and former non-exempt California employees. Hereinafter, any and all of DEFENDANT’s current and former non-exempt California employees, including PLAINTIFF, working at, for, or out of any and all of DEFENDANT’s California offices/locations are collectively referred to as “AGGRIEVED EMPLOYEES.” And PLAINTIFF and all AGGRIEVED EMPLOYEES were, and are being subjected to, *inter alia*, DEFENDANT’s herein-detailed violations of the *California Labor Code* and applicable IWC Wage Order.

PLAINTIFF is informed and believes and based thereupon alleges that at all relevant times herein mentioned each DEFENDANT and DOES 1 through 25, inclusive, were the agents, servants and/or employees, partner, predecessor-in-interest, successor-in-interest, beneficiary, executor, fictitious business name, trustee, subsidiary, related/affiliated entity, assignee, assignor, legal representative, general administrator, member, co-conspirator, co-employer, integrated enterprise and/or joint venturer or occupied other relationships with each of the other named Defendants and at all times herein mentioned acted within the course and scope of said agency and/or employment and/or other relationship and each other DEFENDANTS has/have ratified, consented to, had actual and/or constructive knowledge of, was bound by, approved or, and/or failed to prevent the acts of its agents, employees, predecessor-in-interest, successor-in-interest, trustees, trustors, and/or representatives, and that each actively, passively, acquiesced, participated in, allowed, aided and abetted, assisted, acted, or failed to act, with one another in the commission of the wrongdoing alleged in this notice.

FACTS

PLAINTIFF was hired by DEFENDANT in or around December 2020 as a driver. From December 2020 through June 2021, DEFENDANT classified and paid PLAINTIFF as its/their employee. At some point in June 2021 and through in or around June 2022, DEFENDANT willfully misclassified PLAINTIFF as an independent contractor and paid him via a 1099. During the period DEFENDANT willfully misclassified PLAINTIFF as an independent contractor, DEFENDANT paid PLAINTIFF \$600.00 per day.

During the entirety of PLAINTIFF’s employment with DEFENDANT, PLAINTIFF used his personal truck to pick-up trailers from various Amazon facilities, and drive those trailers for drop-off at other locations, including but not limited to other Amazon facilities.

Upon PLAINTIFF’s hiring, DEFENDANT failed to provide PLAINTIFF and upon information and belief, DEFENDANT fails/ed to provide, any and all AGGRIEVED EMPLOYEES written notices containing (a) the rate or rates of pay and basis thereof, (b) any allowances claimed as part of the minimum wage, including meal or lodging allowances, (c) the regular payday designated by DEFENDANT, (d) DEFENDANT’s name, including any and all of

its “doing business as” names, (e) the physical address of DEFENDANT’s main office / principal place of business / mailing address, (f) DEFENDANT’s telephone number, (g) the name, address, and telephone number of DEFENDANT’s workers’ compensation insurance carrier, and (h) information about PLAINTIFF and any and all AGGRIEVED EMPLOYEES accruing and using sick leave; and having the right to request and use accrued paid sick leave without fear of being terminated or retaliated against for using or requesting the use of accrued paid sick leave, and that PLAINTIFF and any and all AGGRIEVED EMPLOYEES have the right to file a complaint against DEFENDANT if DEFENDANT retaliates.

Despite DEFENDANT and PLAINTIFF’s employment relationship having all the earmarks of PLAINTIFF being DEFENDANT’S “employee,” DEFENDANT nevertheless willfully misclassified PLAINTIFF as an independent contractor, and at all times relevant during nothing short of the period June 2021 through June 2022. During this time, DEFENDANT paid PLAINTIFF via 1099 and willfully refused to extend PLAINTIFF the protections and benefits carefully enumerated in the *California Labor Code* and applicable IWC Wage Order. PLAINTIFF is informed and believes, and thereon alleges, that despite DEFENDANT and the AGGRIEVED EMPLOYEES’ employment relationships also having all the earmarks of them being DEFENDANT’S employees, DEFENDANT willfully misclassified them as independent contractors, and at all times relevant, paid them via 1099 and willfully refused to extend them the protections and benefits carefully enumerated in the *California Labor Code* and applicable IWC Wage Order.

Specifically, the “earmarks” of PLAINTIFF and all AGGRIEVED EMPLOYEES being DEFENDANT’S employees as found in the factors set forth in the *Borello* Test found in *S.G. Borello & Sons, Inc. v. Dep’t of Indus. Relations*, 48 Cal.3d 341 (Cal. 1989) and/or the ABC Test found in *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018) and later codified in *California Labor Code* Sections 2775, *et. seq.*

Under the *Borello* test, PLAINTIFF and all AGGRIEVED EMPLOYEES (1) are not performing services in an occupation that is distinct from DEFENDANT’S business, rather, (2) the work is part of DEFENDANT’S regular business, (3) supply the rigs, but DEFENDANT provides the trailers and workplaces by and through its client/customer, Amazon, (4) perform the functions of their employ under DEFENDANT and DEFENDANT’S client/customer, Amazon’s specific and detailed direction and supervision, (5) do not have an opportunity for profit or loss depending on their managerial skills; rather, their profit and loss depends only upon DEFENDANT paying them their agreed upon day-rate/salary, (6) were employed for long periods of time with DEFENDANT and with indications of permanency (*e.g.*, PLAINTIFF was willfully misclassified as an independent contractor for no less than one (1) year of employment with DEFENDANT), and (7) were in addition to DEFENDANT’S other *employees* (in fact, during PLAINTIFF’S first half year of employment, he was DEFENDANT’S employee), and (8) could be fired by DEFENDANT at will. Based on the preceding, PLAINTIFF and all AGGRIEVED EMPLOYEES were in fact DEFENDANT’S employees, thus, DEFENDANT willfully misclassified them as independent contractors.

Under the ABC Test, DEFENDANT will be unable to prove that PLAINTIFF and all AGGRIEVED EMPLOYEES (1) performed their work with the director and control of DEFENDANT, or (2) performed work that was outside the usual course of DEFENDANT’S business (*i.e.*, logistical/transportation/trucking company(ies)). Based on the preceding,

PLAINTIFF and all AGGRIEVED EMPLOYEES were in fact DEFENDANT's employees, thus, DEFENDANT willfully misclassified them as independent contractors.

DEFENDANT not only engages in the unlawful pattern and practice of willfully misclassifying its employees as independent contractors, but further engages in the pattern and practice of charging fees to, making deductions, collecting and receiving and withholding from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation for various purposes and business expenditures. For example, DEFENDANT withholds and deducts insurance premiums from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation. DEFENDANT's preceding pattern and practice violates California law because PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were in fact employees, thus, misclassified as independent contractors and were shouldering DEFENDANT's cost of doing business.

Based on DEFENDANT's ongoing, company-wide pattern and practice of willfully withholding/reducing all forms of wages/pay/compensation from PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANT also willfully fails to pay PLAINTIFF and all AGGRIEVED EMPLOYEES all wages they earn twice during each calendar month, as well as, all wages owing within the statutorily required time, and place, after PLAINTIFF's resignation and any one of the AGGRIEVED EMPLOYEES' resignation, or termination from employment.

Also resulting from, and necessary to conceal DEFENDANT's ongoing, company-wide pattern and practice of willfully withholding/reducing all forms of wages/pay/compensation from PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANT also failed/fails to furnish PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements, or at best issues them inaccurate written explanations of pay that fail to meet the requirements set forth in California's laws. The "wage statements," if any, that DEFENDANT furnishes to PLAINTIFF and all AGGRIEVED EMPLOYEES' fail to accurately show/evidence/contain/include their gross and net wages earned, the amount of paid sick leave available, the name and address of the employer, the name and/or employee number(s), and the start and end dates of the period during which the compensation was earned.

PLAINTIFF sent DEFENDANT records requests pursuant to *California Labor Code* Sections 226(c), 247.5 and 1198.5 in the same certified envelope containing this notice. PLAINTIFF does not believe DEFENDANT will produce or give PLAINTIFF access to the records within the statutorily required time, if at all.

Moreover, DEFENDANT failed to provide PLAINTIFF and all AGGRIEVED EMPLOYEES sick days, thus, there was no accrual of sick days at any rate and they were not entitled to sick days. Based thereon, DEFENDANT never provide/d PLAINTIFF and/or all AGGRIEVED EMPLOYEES with written notice setting forth the amount of paid sick leave available to them, and never kept record of the sick days accrued/used. And DEFENDANT failed to display a poster in a conspicuous place containing all information regarding sick days.

During all times relevant, PLAINTIFF and all AGGRIEVED EMPLOYEES are and were incurring expenses discharging their duties for, and/or at the direction of DEFENDANT. Specifically, DEFENDANT required PLAINTIFF and all AGGRIEVED EMPLOYEES to incur business expenses carrying out their employment duties for, including but not limited to, (1) using their personal cellular phone services for texting, calling and apps DEFENDANT required be downloaded

and used during the course and scope of employment, (2) paying for fuel, and (3) paying for upkeep/mechanical issues with their personal trucks; all to carry out their duties for DEFENDANT's business. Further, DEFENDANT failed to pay PLAINTIFF and all AGGRIEVED EMPLOYEES the IRS's then prevailing mileage reimbursement per mile they drove their personal trucks. Despite PLAINTIFF and all AGGRIEVED EMPLOYEES incurring no less than the preceding business expenditures, DEFENDANT never reimbursed them for the same.

All the herein-detailed violations of the *California Labor Code* and applicable IWC Wage order, *i.e.*, *California Code of Regulations* tit. 8 Section 11090, were/are violated, or were/are caused to be violated by INDIVIDUAL DEFENDANT, the natural person, who, as the owner, director and managing agent of Sugar Creek Transportation, Inc., Sugar Creek Enterprises, Inc. and Mother Trucker, Inc. controls all conditions of employment, including wages and hours for PLAINTIFF and any and all AGGRIEVED EMPLOYEES.

Moreover, DEFENDANT has failed/fails to secure workers' compensation insurance / payment of compensation via, including but not limited to: being insured against liability to pay compensation by one or more insurers authorized by the State of California, or by securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers. Because of DEFENDANT's preceding failure, DEFENDANT requires PLAINTIFF and any and all AGGRIEVED EMPLOYEES to seek private medical care for any and all injuries sustained during the course and scope of their employment. In fact, when DEFENDANT offered/offers PLAINTIFF and any and all AGGRIEVED EMPLOYEES the opportunity to enroll in private medical insurance through DEFENDANT's provider, DEFENDANT's managing agent(s) emphasize that the employees should get covered in case they have an accident/get injured at work. Of course, PLAINTIFF and any and all AGGRIEVED EMPLOYEES must come out of pocket for their private medical care, and DEFENDANT does not reimburse them. And because of DEFENDANT's failure to secure workers' compensation insurance / payment of compensation as required by law, DEFENDANT also fails to submit reports and information as required.

PLAINTIFF is informed and believes and thereon alleges that any and all other current and former non-exempt California employees of DEFENDANT, including non-exempt employees other than those in PLAINTIFF's specific department, or specific location, *i.e.*, any and all AGGRIEVED EMPLOYEES, were/are also subjected to all of DEFENDANT's herein-detailed violations of the *California Labor Code* and applicable IWC Wage Order during each and every pay period they work/ed during no less than one (1) year back from the date of this notice, and will be further subjected to said violations, up to and including each and every present day until citations are issued by the LWDA, or a Court enters judgment.

DEFENDANT'S VIOLATIONS

I. DEFENDANT'S Violations of California Labor Code Section 2810.5.

a. California Labor Code Section 2810.5.

At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information: (A) The rate or rates of pay and

basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. (C) The regular payday designated by the employer in accordance with the requirements of this code. (D) The name of the employer, including any "doing business as" names used by the employer. (E) The physical address of the employer's main office or principal place of business, and a mailing address, if different. (F) The telephone number of the employer. (G) The name, address, and telephone number of the employer's workers' compensation insurance carrier. (H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

Cal. Lab. Code § 2810.5(a)(1)(A)-(H).

Moreover,

An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) All changes are reflected on a timely wage statement furnished in accordance with Section 226. (2) Notice of all changes is provided in another writing required by law within seven days of the changes.

Id. at (b)(1)-(2).

b. Facts and Theories Supporting Defendant's Violations of *California Labor Code* Section 2810.5.

Upon PLAINTIFF's hiring, DEFENDANT failed to provide PLAINTIFF and upon information and belief, DEFENDANT fails/ed to provide, any and all AGGRIEVED EMPLOYEES written notices containing (a) the rate or rates of pay and basis thereof, (b) any allowances claimed as part of the minimum wage, including meal or lodging allowances, (c) the regular payday designated by DEFENDANT, (d) DEFENDANT's name, including any and all of its "doing business as" names, (e) the physical address of DEFENDANT's main office / principal place of business / mailing address, (f) DEFENDANT's telephone number, (g) the name, address, and telephone number of DEFENDANT's workers' compensation insurance carrier, and (h) information about PLAINTIFF and any and all AGGRIEVED EMPLOYEES accruing and using sick leave; and having the right to request and use accrued paid sick leave without fear of being terminated or retaliated against for using or requesting the use of accrued paid sick leave, and that PLAINTIFF and any and all AGGRIEVED EMPLOYEES have the right to file a complaint against DEFENDANT if DEFENDANT retaliates. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Section 2810.5. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The

provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 2810.5.

II. DEFENDANT’S Violations of California Labor Code Section 226.8.

a. California Labor Code Section 226.8.

(a) It 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.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

Cal. Lab. Code § 226.8.

b. Facts and Theories Supporting Defendant’s Violation of California Labor Code Section 226.8.

Despite DEFENDANT and PLAINTIFF’s employment relationship having all the earmarks of PLAINTIFF being DEFENDANT’S “employee,” DEFENDANT nevertheless willfully misclassified PLAINTIFF as an independent contractor, and at all times relevant during nothing short of the period June 2021 through June 2022. During this time, DEFENDANT paid PLAINTIFF via 1099 and willfully refused to extend PLAINTIFF the protections and benefits carefully enumerated in the *California Labor Code* and applicable IWC Wage Order. PLAINTIFF is informed and believes, and thereon alleges, that despite DEFENDANT and the AGGRIEVED EMPLOYEES’ employment relationships also having all the earmarks of them being DEFENDANT’S employees, DEFENDANT willfully misclassified them as independent contractors, and at all times relevant, paid them via 1099 and willfully refused to extend them the protections and benefits carefully enumerated in the *California Labor Code* and applicable IWC Wage Order. Specifically, the “earmarks” of PLAINTIFF and all AGGRIEVED EMPLOYEES

being DEFENDANT's employees as found in the factors set forth in the *Borello* Test found in *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal.3d 341 (Cal. 1989) and/or the ABC Test found in *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018) and later codified in *California Labor Code* Sections 2775, *et. seq.* Under the *Borello* test, PLAINTIFF and all AGGRIEVED EMPLOYEES (1) are not performing services in an occupation that is distinct from DEFENDANT's business, rather, (2) the work is part of DEFENDANT's regular business, (3) supply the rigs, but DEFENDANT provides the trailers and workplaces by and through its client/customer, Amazon, (4) perform the functions of their employ under DEFENDANT and DEFENDANT's client/customer, Amazon's specific and detailed direction and supervision, (5) do not have an opportunity for profit or loss depending on their managerial skills; rather, their profit and loss depends only upon DEFENDANT paying them their agreed upon day-rate/salary, (6) were employed for long periods of time with DEFENDANT and with indications of permanency (*e.g.*, PLAINTIFF was willfully misclassified as an independent contractor for no less than one (1) year of employment with DEFENDANT), and (7) were in addition to DEFENDANT's other *employees* (in fact, during PLAINTIFF's first half year of employment, he was DEFENDANT's employee), and (8) could be fired by DEFENDANT at will. Based on the preceding, PLAINTIFF and all AGGRIEVED EMPLOYEES were in fact DEFENDANT's employees, thus, DEFENDANT willfully misclassified them as independent contractors. Under the ABC Test, DEFENDANT will be unable to prove that PLAINTIFF and all AGGRIEVED EMPLOYEES (1) performed their work with the director and control of DEFENDANT, or (2) performed work that was outside the usual course of DEFENDANT's business (*i.e.*, logistical/transportation/trucking company(ies)). Based on the preceding, PLAINTIFF and all AGGRIEVED EMPLOYEES were in fact DEFENDANT's employees, thus, DEFENDANT willfully misclassified them as independent contractors. DEFENDANT not only engages in the unlawful pattern and practice of willfully misclassifying its employees as independent contractors, but further engages in the patten and practice of charging fees to, and making deductions from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation for various purposes and business expenditures. For example, DEFENDANT withholds and deducts insurance premiums from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation. DEFENDANT's preceding pattern and practice violates California law because PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were in fact employees, thus, misclassified as independent contractors and were shouldering DEFENDANT's cost of doing business. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Section 226.8. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 226.8.

III. DEFENDANT'S Violations of California Labor Code Sections 221, 222 and 223, Thus, Liability for Penalties Pursuant to Section 225.5.

a. California Labor Code Section 221, 222, 223 and 225.5.

"It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Section 221 specifies that it is unlawful for an employer to collect or receive any part of wages already paid to an employee. The law, though, does allow for an employee to volunteer repayment of overpaid wages. The employee must agree to this via a written authorization. *Cal. Lab. Code* § 221.

“It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.” *Id.* at 222. “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” *Id.* at 223.

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Id. at 225.5.

b. Facts and Theories Supporting Defendant’s Violations of *California Labor Code* Sections 221, 222 and 223, Thus, Liability for Penalties Pursuant to Section 225.5.

DEFENDANT not only engages in the unlawful pattern and practice of willfully misclassifying its employees as independent contractors, but further engages in the pattern and practice of charging fees to, making deductions, collecting and receiving and withholding from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES’ compensation for various purposes and business expenditures. For example, DEFENDANT withholds and deducts insurance premiums from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES’ compensation. DEFENDANT’s preceding pattern and practice violates California law because PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were in fact employees, thus, misclassified as independent contractors and were shouldering DEFENDANT’s cost of doing business. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Sections 221, 222 and 223, and is, thus, liable for civil penalties pursuant to Section 225.5. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 221, 222 and 223, and subdivision (c) applies to 225.5.

IV. **DEFENDANT’S Violations of *California Labor Code* Section 204, Thus, Liability for Penalties Pursuant to Section 210.**

a. ***California Labor Code* Sections 204 and 210.**

“All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” *Cal. Lab. Code* § 204.

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,

205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Id. at 210.

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 204, Thus, Liability for Penalties Pursuant to Section 210.

As set forth herein, DEFENDANT at all times failed to pay PLAINTIFF and all AGGRIEVED EMPLOYEES their lawful wages twice during each calendar month that were due and owing because of DEFENDANT's violations of *California Labor Code* Sections 226.8, 221, and 222. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Section 204 and is, thus, liable for civil penalties pursuant to Section 210. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 204 and provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 210.

V. **DEFENDANT'S Violations of *California Labor Code* Section 226, Thus, Liability for Penalties Pursuant to Section 226.3 or 2699(f)(2).**

a. *California Labor Code* Section 226, 226.3 and 2699(f)(2).

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employees wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services

assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, copy includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

Cal. Lab. Code § 226(a); *see also Cal. Code Regs.* tit. 8 § 11090(7)(B).

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Id. at 226.3.

“If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” *Cal. Lab. Code* § 2699(f)(2).

b. Facts and Theories Supporting Defendant’s Violations of *California Labor Code* Section 226, Thus, Liability for Penalties Pursuant to Section 226.3 or 2699(f)(2).

Resulting from, and necessary to conceal DEFENDANT’s ongoing, company-wide pattern and practice of willfully withholding/reducing all forms of wages/pay/compensation from PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANT also failed/fails to furnish PLAINTIFF and all AGGRIEVED EMPLOYEES itemized wage statements, or at best issues them inaccurate written explanations of pay that fail to meet the requirements set forth in California’s laws. The “wage statements,” if any, that DEFENDANT furnishes to PLAINTIFF and all AGGRIEVED EMPLOYEES’ fail to accurately show/evidence/contain/include their gross and net wages earned, the amount of paid sick leave available, the name and address of the employer, the name and/or employee number(s), and the start and end dates of the period during which the compensation was earned. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Section 226 and *Cal. Code Regs.* tit. 8 Section 11090(7)(A)-(C), and is, thus, liable for civil penalties pursuant to Section 226.3, or 2699(f)(2). The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to paragraphs (1) through (5), inclusive, (7) and (9) of subdivision (a) of *California Labor Code* Section 226 and subdivision (c) applies to 226.3.

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XI. DEFENDANT’S Violations of California Labor Code Sections 226(c), 247.5 and 1198.5.

a. California Labor Code Sections 226(c), 247.5 and 1198.5.

“An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer.” *Cal. Lab. Code* § 226(b). “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” *Id.* at (c).

An employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174. An employer shall make these records available to an employee in the same manner as described in Section 226.

California Labor Code section 1198.5, subdivision (b) mandates that an employer who receives a written or oral request from an employee or former employee to inspect records pursuant to that section “shall” comply with the request within 30 days. *Id.* at 1198.5(b).

b. Facts and Theories Supporting Defendant’s Violation of California Labor Code Sections 226(c), 247.5 and 1198.5.

PLAINTIFF sent Defendant records requests pursuant to *California Labor Code* Sections 226(c), 247.5 and 1198.5 in the same certified envelope containing this notice. PLAINTIFF does not believe DEFENDANT will produce or give PLAINTIFF access to the records within the statutorily required time, if at all. Accordingly, PLAINTIFF believes DEFENDANT will be in violation of *California Labor Code* Sections 226, 247.5, 1198.5 and *Cal. Code Regs.* tit. 8 Section 11090(7)(A)-(C) by the time his civil complaint is ripe for filing. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 226 and subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 247.5 and 1198.5.

VI. DEFENDANT’S Violations of California Labor Code Sections 246, Thus, Liability for Penalties Pursuant to Section 247.

a. California Labor Code Sections 246 and 247.

“An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” *Cal. Lab. Code* § 246(a)(1).

“An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.” *Id.* at (b)(1).

“An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.” *Id.* at (c).

Accrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. The term "full amount of leave" means three days or 24 hours.

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare Commission only on and after January 21, 2016.

Id. at (i).

(1) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Id. at (1)(1)-(3).

(a) In each workplace of the employer, the employer shall display a poster in a conspicuous place containing all the information specified in subdivision (b). The Labor Commissioner shall create a poster containing this information and make it available to employers. (b) The poster shall state all of the following: (1) An employee is entitled to accrue, request, and use paid sick days. (2) The amount of sick days provided for by this article. (3) The terms of use of paid sick days.

Id. at 247(a)-(b)(1)-(3).

“That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.” *Id.* at (b)(4).

“An employer who willfully violates the posting requirements of this section is subject to a civil penalty of not more than one hundred dollars (\$100) per each offense.” *Id.* at (c).

b. Facts and Theories Supporting Defendant’s Violation of *California Labor Code* Section 246, Thus, Liability for Penalties Pursuant to Section 247.

Moreover, DEFENDANT failed to provide PLAINTIFF and all AGGRIEVED EMPLOYEES sick days, thus, there was no accrual of sick days at any rate and they were not entitled to sick days. Based thereon, DEFENDANT never provide/d PLAINTIFF and/or all AGGRIEVED EMPLOYEES with written notice setting forth the amount of paid sick leave available to them, and never kept record of the sick days accrued/used. And DEFENDANT failed to display a poster in a conspicuous place containing all information regarding sick days. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Section 246 and is, thus, liable for civil penalties pursuant to Section 247. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 246 and 247.

VII. DEFENDANT’S Violations of *California Labor Code* Section 2802, Thus, Liability for Penalties Pursuant to Section 1197.1.

a. *California Labor Code* Sections 2802 and 1197.1.

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Id. at (b).

Also, Section 2802 states: “For purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” *Id.* at 2802(c).

In addition to recovery of penalties under this section in a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against an employer or other person acting on behalf of the employer who violates reimbursement obligations for an amount determined to be due to

an employee under this section. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.

Id. at (d).

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203

Id. at 1197.1(a).

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Id. at (a)(1)-(2).

b. Facts and Theories Supporting Defendant's Violation of California Labor Code Section 2802, Thus, Liability for Penalties Pursuant to Section 1197.1.

DEFENDANT not only engages in the unlawful pattern and practice of willfully misclassifying its employees as independent contractors, but further engages in the patten and practice of charging fees to, making deductions, collecting and receiving and withholding from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation for various purposes and business expenditures. For example, DEFENDANT withholds and deducts insurance premiums from PLAINTIFF and any and all of the AGGRIEVED EMPLOYEES' compensation. DEFENDANT's preceding pattern and practice violates California law because PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were in fact employees, thus, misclassified as independent contractors and were shouldering DEFENDANT's cost of doing business. During all times relevant, PLAINTIFF and all AGGRIEVED EMPLOYEES are and were incurring expenses discharging their duties for, and/or at the direction of DEFENDANT. Specifically, DEFENDANT required PLAINTIFF and all AGGRIEVED EMPLOYEES to incur business expenses carrying out their employment duties for, including but not limited to, (1) using their personal cellular phone services for texting, calling and apps DEFENDANT required be downloaded and used during the course and scope of employment, (2) paying for fuel, and (3) paying for upkeep/mechanical issues with their personal trucks; all to carry out their duties for

DEFENDANT's business. Further, DEFENDANT failed to pay PLAINTIFF and all AGGRIEVED EMPLOYEES the IRS's then prevailing mileage reimbursement per mile they drove their personal trucks. Despite PLAINTIFF and all AGGRIEVED EMPLOYEES incurring no less than the preceding business expenditures, DEFENDANT never reimbursed them for the same. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Section 2802 and is, thus, liable for civil penalties pursuant to Section 1197.1. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 2802. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1197.1.

XII. DEFENDANT'S Violations of California Labor Code Sections 201, 202, 203 and 208.

a. California Labor Code Sections 201, 202, 203 and 208.

"If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." *Cal. Lab. Code* § 201(a).

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Id. at 202(a).

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Id. at 203(a).

"Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law."

Id. at 208.

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b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Sections 201, 202, 203 and 208.

Based on DEFENDANT's ongoing, company-wide pattern and practice of willfully withholding/reducing all forms of wages/pay/compensation from PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANT also willfully fails to pay PLAINTIFF and all AGGRIEVED EMPLOYEES all wages they earn twice during each calendar month, as well as, all wages owing within the statutorily required time, and place, after PLAINTIFF's resignation and any one of the AGGRIEVED EMPLOYEES' resignation, or termination from employment.

Accordingly, DEFENDANT is and was in violation of *California Labor Code* Sections 201, 202, 203 and 208. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 201, 202, 203 and 208.

XIII. DEFENDANT'S Liability Pursuant to *California Labor Code* Section 558.1.

a. *California Labor Code* Section 558.1.

Under *California Labor Code* Section 558.1:

(a) Any **employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.** (b) For purposes of this section, the term “**other person acting on behalf of an employer**” is limited to a natural person who is an **owner, director, officer, or managing agent of the employer**, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Cal. Lab. Code § 558.1 (emphasis added).

b. Facts and Theories Supporting Defendant's Liability Pursuant to *California Labor Code* Section 558.1.

All the herein-detailed violations of the *California Labor Code* and applicable IWC Wage order, *i.e.*, *California Code of Regulations* tit. 8 Section 11090, were/are violated, or were/are caused to be violated by INDIVIDUAL DEFENDANT, the natural person, who, as the owner, director and managing agent of Sugar Creek Transportation, Inc., Sugar Creek Enterprises, Inc. and Mother Trucker, Inc. controls all conditions of employment, including wages and hours for PLAINTIFF and any and all AGGRIEVED EMPLOYEES. Accordingly, the CORPORATE DEFENDANT, as well as, the INDIVIDUAL DEFENDANT can be held liable as the employer for all damages, including civil penalties, for the identified provisions and Sections pursuant to *California Labor Code* Section 558.1. The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.1.

XI. DEFENDANT’S Violations of California Labor Code Sections 3700, 3701 and 3702.3 Thus, Liability for Penalties Pursuant to Sections 3702.9 and/or 2699(f)(2).

a. California Labor Code Sections 3700, 3701, 3702.3 and 3702.9.

“Every employer except the state shall secure the payment of compensation in one or more of the following ways: (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state. (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.” *Cal. Lab. Code* § 3700.

“(a) Each year every private self-insuring employer shall secure incurred liabilities for the payment of compensation and the performance of the obligations of employers imposed under this chapter by renewing the prior year’s security deposit or by making a new deposit of security.” *Id.* at 3701.

“Failure to submit reports or information as deemed necessary by the director to implement the purposes of Section 3701, 3702, or 3702.2 may result in the assessment of a civil penalty as set forth in subdivision (a) of Section 3702.9. Moneys collected shall be used for the administration of self-insurance plans.” *Id.* at 3702.3.

In addition to remedies and penalties otherwise provided for a failure to secure the payment of compensation, the director may, after a determination that an obligation created in this article has been violated, also enter an order against any self-insured employer, including employers who are no longer self-insured, but who are required to comply with Section 3702.8, directing compliance, restitution for any losses, and a civil penalty in an amount not to exceed the following: (1) For a failure to file a complete or timely annual report, an amount up to 5 percent of the incurred liabilities in the last report or one thousand five hundred dollars (\$1,500), whichever is less, for each 30 days or portion thereof during which there is a failure. (2) For failure to deposit and maintain a security deposit, an amount up to 10 percent of the increase not timely filed or five thousand dollars (\$5,000), whichever is less, for each 30 days or portion thereof during which there is a failure. (3) For a failure to timely or completely pay an assessment, an amount up to the assessment or two thousand five hundred dollars (\$2,500), whichever is less, for each 30 days or portion thereof during which there is a failure.

Id. at 3702.9.

b. Facts and Theories Supporting Defendant’s Violation of California Labor Code Sections 3700, 3701 and 3702.3, Thus, Liability for Penalties Pursuant to Sections 3702.9 and/or 2699(f)(2).

DEFENDANT has failed/fails to secure workers’ compensation insurance / payment of compensation via, including but not limited to: being insured against liability to pay compensation by one or more insurers authorized by the State of California, or by securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one

employer in a group of employers. Because of DEFENDANT's preceding failure, DEFENDANT requires PLAINTIFF and any and all AGGRIEVED EMPLOYEES to seek private medical care for any and all injuries sustained during the course and scope of their employment. In fact, when DEFENDANT offered/offers PLAINTIFF and any and all AGGRIEVED EMPLOYEES the opportunity to enroll in private medical insurance through DEFENDANT's provider, DEFENDANT's managing agent(s) emphasize that the employees should get covered in case they have an accident/get injured at work. Of course, PLAINTIFF and any and all AGGRIEVED EMPLOYEES must come out of pocket for their private medical care, and DEFENDANT does not reimburse them. And because of DEFENDANT's failure to secure workers' compensation insurance / payment of compensation as required by law, DEFENDANT also fails to submit reports and information as required. Accordingly, DEFENDANT is and was in violation of *California Labor Code* Sections 3700, 3701 and 3702.3 and is, thus, liable for civil penalties pursuant to *California Labor Code* Sections 3702.9 and/or 2699(f)(2). The LWDA should investigate these violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. The provisions of subdivision (b) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 3700, 3701, 3702.3 and 3702.9. To be clear, the Labor and Workforce Development Agency and Defendant should investigate these violations as applying to all Aggrieved Employees.

XII. DEFENDANT'S Liability for Penalties Pursuant to California Labor Code Section 2698, et seq.

a. California Labor Code Section 2698, et seq.

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Cal. Lab. Code § 2699(a).

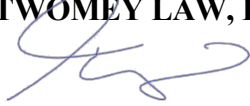
Section 2699 further states in part: "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." *Id.* at 2699(f)(2).

b. Facts and Theories Supporting Defendant's Violation of California Labor Code Section 2698, et seq.

As set forth in this notice, during all times relevant, DEFENDANT is and was continually violating and/or causing to be violated all the herein-identified Sections of the *California Labor Code* and *Cal. Code Regs.* tit. 8 Section based on its/their unlawful company-wide policies and procedures regarding, *inter alia*, payment of wages, hours and conditions work, record keeping regarding the same. PLAINTIFF implores the LWDA to investigate all DEFENDANT's herein-detailed violations as applying to PLAINTIFF and any and all AGGRIEVED EMPLOYEES. If the LWDA does not investigate DEFENDANT's violations outlined in this notice, and does not provide PLAINTIFF notice that it intends to investigate within the statutorily required time,

PLAINTIFF, on behalf of PLAINTIFF, the State of California, and any and all AGGRIEVED EMPLOYEES, as a Private Attorneys General, will seek the herein-detailed penalties and all other damages available to PLAINTIFF, the State of California and all AGGRIEVED EMPLOYEES as a result of DEFENDANT's unlawfulness. PLAINTIFF will also seek recovery of reasonable attorney's fees and costs of suit.

Very truly yours,
TWOMEY LAW, P.C.



J.B. TWOMEY

cc: **SENT VIA FIRST CLASS CERTIFIED MAIL TO:**

Sugar Creek Transportation, Inc.
Attn: Monica Byers
PO Box 55054
Riverside, California 92517

SENT VIA FIRST CLASS CERTIFIED MAIL TO:

Sugar Creek Transportation, Inc.
Sugar Creek Enterprises, Inc.
Attn: Monica Byers a/k/a Monica Jensen
231 E. Alessandro Blvd., Suite A391
Riverside, California 92508

SENT VIA FIRST CLASS CERTIFIED MAIL TO:

Mother Trucker, Inc.
Attn: Monica Jensen
231 E. Alessandro Blvd., Suite A105
Riverside, California 92508

SUBMITTED ELECTRONICALLY TO:

State of California, Dept. of Industrial Relations
Labor and Workforce Development Agency
<https://dir.tfaforms.net/308>