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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

PHILLIP HEREDIA on behalf of
himself, all others similarly situated,
and on behalf of the general public,

Plaintiffs,

v.

SUNBELT TOWING, INC.;
WESTERN TOWING, INC.; and
DOES 1-100,

Defendants.

Case No. 37-2023-00023634-CU-OE-CTL

**PLAINTIFF PHILLIP HEREDIA'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

- 1. Violation of the PAGA for Failure to Pay Straight Time Wages;**
- 2. Violation of the PAGA for Failure to Pay All Overtime Wages;**
- 3. Violation of PAGA for Failure to Provide Meal Periods;**
- 4. Violation of PAGA for Failure to Provide Rest Periods;**
- 5. Violation of PAGA for Failure to Pay Wages Due at Termination of Employment;**
- 6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements;**
- 7. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth Amount of Sick Leave Available; and**
- 8. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/06/2023 at 10:15:05 AM
Clerk of the Superior Court
By Amando Villaseñor, Deputy Clerk

1 Plaintiff PHILLIP HEREDIA (hereinafter referred to as “Plaintiff”), on behalf himself and all other
2 non-exempt, hourly employees who worked for Defendants and/or DOES in California (hereinafter
3 referred to as the “Aggrieved Employees”), files this Complaint against Defendants Sunbelt Towing,
4 Inc. and Western Towing, Inc. (hereinafter referred to as “Defendants” or “SUNBELT”) and/or DOES
5 1-100.

6 **I. INTRODUCTION**

7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et
9 seq., against Defendants and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
10 bring a lawsuit on behalf of himself and other current and former employees to address an
11 employer’s violations of the *California Labor Code*.

12 2. SUNBELT is a towing company.

13 3. Sunbelt Towing, Inc. and Western Towing, Inc. are California corporations that operate out of
14 locations in California.

15 4. SUNBELT employs non-exempt drivers to work at its locations.

16 5. Defendants and/or DOES have maintained uniform policies that violate the wage and hour
17 rights of Plaintiff and similarly situated non-exempt, hourly employees in the manner
18 complained of herein.

19 6. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendants
20 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
21 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
22 break; were not provided accurate itemized wage statements; were not paid compensation for
23 all time worked at the straight or overtime rate; were not reimbursed for business expenses;
24 were not paid waiting time penalties; and were not provided with paid sick leave / paid time
25 off and/or a written notice setting forth the amount of sick leave available. Plaintiff seeks
26 penalties on behalf of himself and all other Aggrieved Employees of Defendants and/or DOES
27 as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA,
28 *California Labor Code* section 2699(g)(1).

7. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified as “exempt” or primarily employed in an executive, professional, or administrative capacity. Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid compensation for all time worked at the regular or overtime rate; provided meal periods; authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid penalties for not being provided itemized wage statements; paid compensation for all time worked at the regular or overtime rate; paid penalties for not being paid timely at the time of termination; provided with sick pay in compliance with California law; and reimbursed for business expenses.

8. At all times mentioned herein, Defendants and/or DOES control the working conditions of Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or where to work. In addition, Defendants and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved Employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight-time, rest periods, wage statements, paying compensation at time of termination, timing of payment, and sick pay/paid time off. Further, Defendants and/or DOES had the ability to prevent Plaintiff and the Aggrieved Employees from working.

II. JURISDICTION AND VENUE

9. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was employed by Defendants and/or DOES in California. Plaintiff, and each of the Aggrieved Employees, were employees of Defendants and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).

10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operate industrial facilities, employ hourly employees, conduct business, and commit *California Labor Code* violations within San Diego County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within San Diego County. Defendant and/or DOES employ numerous aggrieved employees in California and/or San Diego County.
11. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendants and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.
12. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.
13. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendants and/or DOES either own, maintain offices, transact business, have an agent or agents, and/or otherwise are found within the County of San Diego, California.

III. THE PARTIES

A. Plaintiff

14. Throughout the Statutory Period, Plaintiff Phillip Heredia is and was a resident of California. During the Statutory Period, Mr. Heredia was employed by SUNBELT and/or DOES in California as a tow truck driver / patrol driver and performed work in SUNBELT's and/or DOES' locations in San Diego, California in San Diego County.

1 15. Plaintiff and the Aggrieved Employees were and are employed in the State of California by
2 Defendants and/or DOES as non-exempt, hourly employees.

3 16. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to the
4 LWDA and Defendants on March 13, 2023. This notice demonstrates that Plaintiff is an
5 aggrieved employee and has standing to bring a representative action on behalf of the LWDA
6 and as a private attorney general. The violations alleged in this notice also forms the basis for
7 the allegations herein. No notice of cure by Defendants and/or DOES was provided and no
8 notice of investigation was received from the LWDA in the statutorily proscribed sixty-five
9 (65) day period since the mailing of the notices of the action. Accordingly, Plaintiff files this
10 action as a “Representative Action” as authorized by *Labor Code* section 2699.3(a)(2)(C).

11 **B. Defendants**

12 17. SUNBELT is a towing company.

13 18. Sunbelt Towing, Inc. and Western Towing, Inc. are California corporations that operate out of
14 locations in California.

15 19. SUNBELT employs non-exempt drivers to work at its locations.

16 20. SUNBELT employed Plaintiff and similarly situated non-exempt drivers in California

17 21. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
18 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
19 information and belief alleges that said Defendants are now, and/or at all times mentioned in
20 this Complaint were doing business in the State of California and/or throughout the United
21 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
22 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
23 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

24 22. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects
25 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
26 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
27 attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized
28 the acts of each of the remaining Defendants.

23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

24. During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendants and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt, hourly employees of Defendants and/or DOES, or any of its operating divisions and/or subsidiaries, who worked in California.

25. At all times mentioned herein, Defendants and/or DOES have not paid Plaintiff and the Aggrieved Employees for all time they were performing work and/or are subject to Defendants' and/or DOES' control. Defendants and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all hours worked. Specifically, SUNBELT and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Heredia and the Aggrieved Employees are not paid for this time. For example, Mr. Heredia and the Aggrieved Employees have to perform pre-trip and post-trip inspections before clocking in and after clocking out. In addition, Mr. Heredia and the Aggrieved Employees are responsible for SUNBELT'S and/or DOES' company truck that they are required to park at their personal residences when they are not performing work duties. As such, Mr. Heredia and the Aggrieved Employees are responsible for SUNBELT's and/or DOES' company truck and its contents at all times. Moreover, Mr. Heredia and the Aggrieved Employees were required to clock out before the end of their fifth hour of work to create the appearance of a lawful meal period and to avoid being disciplined, even if they were in the middle of work duties such as impounding a vehicle. This forced Mr. Heredia and the Aggrieved Employees to clock out for a meal period and continue working while clocked out. Further, Mr. Heredia and the Aggrieved Employees are not relieved of all duties and employer control during their unpaid meal periods. Mr. Heredia and the Aggrieved Employees have to keep their phones on and with them during their

meal periods. SUNBELT and/or DOES calls and/or otherwise contacts Mr. Heredia and the Aggrieved Employees while they are on unpaid meal periods for dispatch and other business purposes. Thus, Mr. Heredia and the Aggrieved Employees are owed wages for meal period time during which they are subject to SUNBELT's and/or DOES' control and during which they are not free from all work duties. Failing to pay for all hours worked while under Defendants' and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees being deprived of straight time and/or overtime wages.

26. At all times mentioned herein, SUNBELT and/or DOES fail to pay Plaintiff and the Aggrieved Employees at the appropriate regular rate of pay for all overtime hours worked. Specifically, SUNBELT and/or DOES fail to incorporate bonuses employees are paid when calculating employees' regular rate of pay for purposes of paying overtime compensation.

27. At all times mentioned herein, SUNBELT and/or DOES fail to provide Plaintiff and the Aggrieved Employees with meal periods that comply with California law and failed to authorize and permit rest periods that comply with California law.

28. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by failing to provide compensation for these unprovided meal periods, Defendants and/or DOES willfully violate the provisions of *California Labor Code* section 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations, Section 11090(11). In addition, SUNBELT and/or DOES fail to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

29. At all times mentioned herein, SUNBELT and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one (1) hour of pay as additional compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

30. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to provide

1 compensation for these periods, SUNBELT and/or DOES willfully violate the provisions of
2 *California Labor Code* section 226.7, IWC Wage Order No. 9-2001, and California Code of
3 Regulations, Section 11090(12).

4 31. At all times mentioned herein, SUNBELT and/or DOES knew and/or should have known that
5 Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay
6 statements in accordance with California law.

7 32. At all times mentioned herein, SUNBELT and/or DOES knew and/or should have known that
8 they were not providing complete and accurate pay statements in accordance with California
9 law to Plaintiff and the Aggrieved Employees.

10 33. At all times mentioned herein, SUNBELT and/or DOES knowingly and intentionally fail to
11 include the address of the legal entity that is the employer on wage statements.

12 34. At all times mentioned herein, SUNBELT and/or DOES have had a consistent policy and/or
13 practice of failing to itemize the amount of accrued/available sick leave non-exempt drivers
14 have on wage statements each pay period.

15 35. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
16 they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with
17 California law, and that Defendants and DOES had the ability to pay such compensation, but
18 willfully and intentionally failed to do so, and Defendants and DOES falsely represented to
19 Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the
20 Aggrieved Employees.

21 36. At all times mentioned herein, SUNBELT and/or DOES failed to pay all wages owed to
22 Plaintiff and to other terminated or resigned Aggrieved Employees and failed to timely pay
23 wages during employment.

24 37. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
25 Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination.
26 Defendants and/or DOES did not pay all timely wages owed, straight-time wages owed, meal
27 period premiums, and/or rest period premiums owed at the time of termination.

28 38. At all times mentioned herein, Defendants and/or DOES fail to pay Plaintiff and the Aggrieved

Employees a sum certain at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

39. At all times mentioned herein, SUNBELT and/or DOES fail to reimburse Mr. Heredia and Aggrieved Employees for all necessary expenses incurred in the performance of their jobs. These expenses include, but are not limited to, having to use their personal cell phones for business purposes when not provided with a company phone. In addition, Mr. Heredia and the Aggrieved Employees are required to maintain and launder uniforms that they must wear in completing employment duties without reimbursement. Moreover, SUNBELT and/or DOES provides company vehicles for Mr. Heredia and the Aggrieved Employees to use. SUNBELT and/or DOES requires Mr. Heredia and the Aggrieved Employees to park these vehicles in the driveway of their residences and prohibits company vehicles from being parked on public streets. SUNBELT and/or DOES fails to reimburse Mr. Heredia and the Aggrieved Employees for this expense.

40. At all times mentioned herein, SUN BELT and/or DOES knew and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to be reimbursed for expenses incurred in direct consequence of their duties.

41. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all Defendants' non-exempt, hourly employees who worked in California beginning one year prior to the date Plaintiff sent notice to the LWDA.

42. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).

43. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

44. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked.

45. It is fundamental that an employer must pay its employees for the time worked. *California*

1 *Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code*
2 section 223 prohibits the payment of less than a statutory or contractual wage scale. *California*
3 *Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage.
4 *California Labor Code* section 224 only permits deductions from wages when the employer is
5 required or empowered to do so by state or federal law or when the deduction is expressly
6 authorized in writing by the employee for specified purposes that do not in effect reduce the
7 agreed upon wage.

8 46. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting
9 individually as an officer, agent, or employee of another person, who pays or causes to be paid
10 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
11 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
12 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

13 47. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendants
14 and/or DOES at all relevant times. Defendants and/or DOES were required to compensate
15 Plaintiff for all hours worked and were prohibited from making deductions that had the effect
16 of reducing the agreed upon wage.

17 48. Defendants and/or DOES have a continuous policy of not paying Plaintiff and those similarly
18 situated Aggrieved Employees for all hours worked. Specifically, SUNBELT and/or DOES
19 has a continuous and consistent policy of requiring employees to work before clocking in, after
20 clocking out, and during meal periods. Mr. Heredia and the Aggrieved Employees are not paid
21 for this time. For example, Mr. Heredia and the Aggrieved Employees have to perform pre-
22 trip and post-trip inspections before clocking in and after clocking out. In addition, Mr. Heredia
23 and the Aggrieved Employees are responsible for SUNBELT’S and/or DOES’ company truck
24 that they are required to park at their personal residences when they are not performing work
25 duties. As such, Mr. Heredia and the Aggrieved Employees are responsible for SUNBELT’s
26 and/or DOES’ company truck and its contents at all times. Moreover, Mr. Heredia and the
27 Aggrieved Employees were required to clock out before the end of their fifth hour of work to
28 create the appearance of a lawful meal period and to avoid being disciplined, even if they were

1 in the middle of work duties such as impounding a vehicle. This forced Mr. Heredia and the
2 Aggrieved Employees to clock out for a meal period and continue working while clocked out.
3 Further, Mr. Heredia and the Aggrieved Employees are not relieved of all duties and employer
4 control during their unpaid meal periods. Mr. Heredia and the Aggrieved Employees have to
5 keep their phones on and with them during their meal periods. SUNBELT and/or DOES calls
6 and/or otherwise contacts Mr. Heredia and the Aggrieved Employees while they are on unpaid
7 meal periods for dispatch and other business purposes. Thus, Mr. Heredia and the Aggrieved
8 Employees are owed wages for meal period time during which they are subject to SUNBELT's
9 and/or DOES' control and during which they are not free from all work duties.

10 49. Defendants and/or DOES have a continuous and consistent policy of failing to pay full wages
11 to Plaintiff and the Aggrieved Employees by deducting a portion of the wages earned by
12 Plaintiff and the Aggrieved Employees when they worked through their meal periods, are not
13 relieved of all work duties during their meal periods and/or when SUNBELT and/or DOES
14 recorded a meal period for Plaintiff and the Aggrieved Employees when no meal period was
15 taken.

16 50. Defendants and/or DOES have a continuous and consistent policy of recording a meal period,
17 even though Plaintiff and Aggrieved Employees work through their meal periods and/or were
18 subject to SUNBELT's control during meal periods. Thus, SUNBELT and/or DOES do not
19 pay Plaintiff and Aggrieved Employees for all time worked each and every day they work
20 without a meal period and have time deducted.

21 51. Failing to pay for all hours worked while under Defendants' and/or DOES' control and/or
22 while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees
23 being deprived of straight time wages.

24 52. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
25 unpaid wages, and lost interest on such wages, and expenses.

26 53. Plaintiff and the Aggrieved Employees were employed by Defendants and/or DOES at all
27 relevant times. Defendants and/or DOES were required to compensate Plaintiff and the
28 Aggrieved Employees for all hours worked and were prohibited from making deductions that

1 had the effect of reducing the agreed upon wage.

2 54. Defendants and/or DOES commit the acts alleged herein knowingly and willfully, with the
3 wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.
4 Defendants and/or DOES act with malice or in conscious disregard of Plaintiff's and the
5 Aggrieved Employees' rights.

6 55. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants
7 in California.

8 56. Plaintiff, as a former "non-exempt" employee of Defendants and/or DOES who Defendants
9 and/or DOES fail to pay all wages, is an aggrieved employee with standing to bring an action
10 under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general
11 public to enforce California's labor laws, and the penalty provisions identified in *California*
12 *Labor Code* section 2699.5.

13 57. Plaintiff, as a representative of the people of the State of California, seeks any and all penalties
14 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
15 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in
16 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any
17 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

18 58. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
19 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
20 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
21 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
22 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
23 *California Labor Code* section 2699(f)(2).

24 59. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
25 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
26 violations pursuant to this chapter or any provisions regulating hours and days of the week of
27 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
28 558(a)(2).

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the
PAGA for Failure to Pay All Overtime Wages Owed**

60. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

61. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

62. *California Labor Code* section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

63. Defendants and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Defendants and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

64. Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours worked because Defendants and/or DOES fail to pay them overtime wages for all overtime hours worked. This resulted in Plaintiff and the Aggrieved Employees not being paid all overtime wages owed to them.

65. Defendants and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all overtime hours worked because Defendants and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all hours worked. Specifically, SUNBELT and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Heredia and the Aggrieved Employees are not paid for this time. For example, Mr. Heredia and the Aggrieved Employees have to perform pre-trip and post-trip

1 inspections before clocking in and after clocking out. In addition, Mr. Heredia and the
2 Aggrieved Employees are responsible for SUNBELT'S and/or DOES' company truck that they
3 are required to park at their personal residences when they are not performing work duties. As
4 such, Mr. Heredia and the Aggrieved Employees are responsible for SUNBELT's and/or
5 DOES' company truck and its contents at all times. Moreover, Mr. Heredia and the Aggrieved
6 Employees were required to clock out before the end of their fifth hour of work to create the
7 appearance of a lawful meal period and to avoid being disciplined, even if they were in the
8 middle of work duties such as impounding a vehicle. This forced Mr. Heredia and the
9 Aggrieved Employees to clock out for a meal period and continue working while clocked out.
10 Further, Mr. Heredia and the Aggrieved Employees are not relieved of all duties and employer
11 control during their unpaid meal periods. Mr. Heredia and the Aggrieved Employees have to
12 keep their phones on and with them during their meal periods. SUNBELT and/or DOES calls
13 and/or otherwise contacts Mr. Heredia and the Aggrieved Employees while they are on unpaid
14 meal periods for dispatch and other business purposes. Thus, Mr. Heredia and the Aggrieved
15 Employees are owed wages for meal period time during which they are subject to SUNBELT's
16 and/or DOES' control and during which they are not free from all work duties. When Plaintiff
17 and the Aggrieved Employees work over eight (8) hours in a shift, these unpaid hours must be
18 compensated at an overtime rate. Because Plaintiff and the Aggrieved Employees were
19 typically scheduled to work shifts lasting over eight (8) hours, the majority of these unpaid
20 hours would qualify for the overtime rate.

21 66. Furthermore, SUNBELT and/or DOES failed to pay Mr. Heredia and the Aggrieved
22 Employees at the appropriate regular rate of pay for all overtime hours worked. Specifically,
23 SUNBELT and/or DOES failed to incorporate bonuses employees were paid when calculating
24 employees' regular rate of pay for purposes of paying overtime compensation. For example,
25 Mr. Heredia and the Aggrieved Employees are paid non-discretionary bonuses per impound.
26 These bonuses were not included in employees' regular rate of pay.

27 67. Plaintiff and the Aggrieved Employees are informed and believe and thereon allege that
28 Defendants and/or DOES breach the legal duty to pay full wages to Mr. Heredia by failing to

1 pay Mr. Heredia and similarly aggrieved employees for meal period time when Plaintiff and
2 the Aggrieved Employees were not relieved of all duties and employer control.

3 68. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
4 unpaid wages, and lost interest on such wages, and expenses.

5 69. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants
6 in California.

7 70. Plaintiff, as a representative of the people of the State of California, will seek any and all
8 penalties otherwise capable of being collected by the Labor commission and/or the Department
9 of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

10 71. Plaintiff, as a representative of the people of the State of California, will seek all penalties
11 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
12 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
13 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
14 222, 223 and 510.

15 72. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
16 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
17 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
18 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
19 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
20 *California Labor Code* section 2699(f)(2).

21 73. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
22 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
23 violations pursuant to this chapter or any provisions regulating hours and days of the week of
24 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
25 558(a)(2).

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THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the PAGA for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).

74. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

75. Under *California Labor Code* section 512, and IWC Wage Order 9-2001(11), no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

76. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes.

77. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

78. Defendants and/or DOES breach the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Defendants and/or DOES fail to provide Plaintiff and the Aggrieved Employees with meal periods within the first five continuous hours of work.

79. Defendants and/or DOES breach the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Plaintiff and the Aggrieved Employees to work through their meal periods to satisfy the demanding workload duties imposed by SUNBELT and/or DOES, thereby denying Plaintiff and the Aggrieved Employees of the right to be completely free from employer control under California law. Nonetheless, Mr. Heredia

1 and the Aggrieved Employees were forced to clock out before the end of their fifth hour of
2 work to create the appearance of a lawful meal period to avoid being disciplined by SUNBELT
3 and/or DOES, even if they were in the middle of work duties such as impounding a vehicle.
4 This forced Mr. Heredia and the Aggrieved Employees to clock out for a meal period and
5 continue working while clocked out. Thus, Plaintiff and the Aggrieved Employees did not
6 receive lawful meal periods while working for SUNBELT and/or DOES.

7 80. Alternatively, when Mr. Heredia and the Aggrieved Employees are able to take a meal period,
8 they are not relieved of all duties during their meal periods. Mr. Heredia and the Aggrieved
9 Employees have to keep their phones on and with them during their meal periods. Mr. Heredia
10 and the Aggrieved Employees must be ready to answer any calls that come in from
11 management during their meal periods. SUNBELT and/or DOES calls and/or otherwise
12 contacts Mr. Heredia and the Aggrieved Employees while they are on unpaid meal periods for
13 dispatch and other business purposes.

14 81. Defendants and/or DOES have a consistent policy and/or practice of not providing second meal
15 periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu
16 thereof. Specifically, Plaintiff and the Aggrieved Employees were not provided with second
17 meal periods when they worked shifts over ten (10) hours long.

18 82. By failing to provide statutory first and/or second meal periods, and by failing to provide
19 compensation for unprovided meal periods, as alleged above, Defendants and/or DOES
20 willfully violated the provisions of the *California Labor Code* section 226.7 and 512.

21 83. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants
22 in California.

23 84. By failing to provide statutory first and/or second meal periods, and by failing to provide
24 compensation for unprovided meal periods, as alleged above, Defendants and/or DOES
25 willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and IWC
26 Wage Order No. 9-2001.

27 85. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Aggrieved
28 Employees have been deprived of premium wages and/or other compensation in amounts to

be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys' fees, and costs.

86. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

87. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not waive their legally-mandated meal periods by mutual consent were required to work in excess of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted meal period of not less than thirty (30) minutes.

88. During the relevant time period, Defendants and/or DOES fail to pay Plaintiff and the Aggrieved Employees all meal period premiums due pursuant to *California Labor Code* section 226.7.

89. Defendants' and/or DOES' conduct violates applicable IWC Wage Order 5-2001 and *California Labor Code* sections 226.7 and 512(a).

90. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

91. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7 and 512.

92. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the

1 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
2 (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per
3 *California Labor Code* section 2699(f)(2).

4 93. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
5 employees, seeks penalties pursuant to *California Labor Code* Section 558 for violations
6 pursuant to this chapter or any provisions regulating hours and days of the week of the
7 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

8 **FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
9 **PAGA for Failure to Provide Rest Periods (California Labor Code §2698 et. seq.).**

10 94. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
11 as if fully plead.

12 95. Industrial Welfare Commission Order No. 5-2001 section 12(A) states “[e]very employer shall
13 authorize and permit all employees to take rest periods, which insofar as practicable shall be
14 in the middle of each work week period. The authorized rest period time shall be based on the
15 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
16 fraction thereof.”

17 96. At all times mentioned herein, Defendants and/or DOES fail to authorize and/or permit rest
18 period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
19 per four (4) hours or major fraction thereof.

20 97. Further, Plaintiff and the Aggrieved Employees are required to work shifts lasting nine (9) to
21 eleven (11) hours long but are not provided with first, second, third, and/or fourth rest breaks
22 free of their employer’s control, or compensation in lieu thereof.

23 98. Defendants and/or DOES have a consistent policy and/or practice of not providing duty free,
24 net-ten minute, paid rest periods to Plaintiff and all Aggrieved Employees and/or providing
25 compensation in lieu thereof.

26 99. Defendants and/or DOES breach the legal duty to provide rest periods to employees by
27 imposing a continuous and consistent policy of requiring Plaintiff and all Aggrieved
28 Employees to work through their rest periods to satisfy the demanding workload duties

imposed by Defendants and/or DOES, thereby denying Plaintiff and all Aggrieved Employees of the right to be completely free from employer control under California law.

100. Alternatively, when Plaintiff and all Aggrieved Employees are able to take rest periods, Plaintiff and all Aggrieved Employees are not relieved of all duties during their rest periods. Plaintiff and all Aggrieved Employees have to keep their phones on and with them during their rest periods. Plaintiff and all Aggrieved Employees must be ready to answer any calls that come in from management during their meal periods. Defendants and/or DOES call and/or otherwise contact Plaintiff and all Aggrieved Employees while they are on rest periods.

101. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Defendants and/or DOES willfully violate the provisions of *California Labor Code* section 226.7.

102. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants in California.

103. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of *California Labor Code* section 226.7.

104. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

105. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections

226.7.

106. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

107. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor Code §2698 et. seq.).

108. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

109. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the Aggrieved Employees who left Defendants' and/or DOES' employ or who were terminated.

110. Plaintiff and the Aggrieved Employees who ended their employment with Defendants and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

111. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

112. During the relevant time period, Defendants and/or DOES intentionally and willfully fail to pay the Aggrieved Employees who are no longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ.

113. Plaintiff's employment with Defendants and/or DOES was terminated by Defendants and/or DOES on or about February 2, 2023.

114. Whether Plaintiff Phillip Heredia voluntarily or involuntarily terminated his employment with Defendants SUNBELT and/or DOES, Defendants and/or DOES did not timely pay him all straight time wages owed at the time of his termination.

115. Whether Plaintiff Phillip Heredia voluntarily or involuntarily terminated his employment with Defendants SUNBELT and/or DOES, Defendants and/or DOES did not timely pay him all overtime wages owed at the time of his termination.

116. Whether Plaintiff Phillip Heredia voluntarily or involuntarily terminated his employment with Defendants SUNBELT and/or DOES, Defendants and/or DOES did not timely pay him meal and/or rest period premiums owed at the time of his termination.

117. As outlined above, Defendants and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked by requiring employees to work before clocking in, after clocking out, and during meal periods. For example, SUNBELT and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Heredia and the Aggrieved Employees are not paid for this time. Mr. Heredia and the Aggrieved Employees have to perform pre-trip and post-trip inspections before clocking in and after clocking out. In addition, Mr. Heredia and the Aggrieved Employees are responsible for SUNBELT'S and/or DOES' company truck that they are required to park at their personal residences when they are not performing work duties. As such, Mr. Heredia and the Aggrieved Employees are responsible for SUNBELT's and/or DOES' company truck and its contents at all times. Moreover, Mr. Heredia and the Aggrieved Employees were required to clock out before the end of their fifth hour of work to create the

appearance of a lawful meal period and to avoid being disciplined, even if they were in the middle of work duties such as impounding a vehicle. This forced Mr. Heredia and the Aggrieved Employees to clock out for a meal period and continue working while clocked out. Further, Mr. Heredia and the Aggrieved Employees are not relieved of all duties and employer control during their unpaid meal periods. Mr. Heredia and the Aggrieved Employees have to keep their phones on and with them during their meal periods. SUNBELT and/or DOES calls and/or otherwise contacts Mr. Heredia and the Aggrieved Employees while they are on unpaid meal periods for dispatch and other business purposes. Thus, Mr. Heredia and the Aggrieved Employees are owed wages for meal period time during which they are subject to SUNBELT's and/or DOES' control and during which they are not free from all work duties.

118. Defendants' and/or DOES' failure to pay Plaintiff and the Aggrieved Employees who are no longer employed by Defendants and/or DOES their wages, that were earned and unpaid, at the time of termination or within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of *California Labor Code* sections 201 and 202.

119. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

120. Plaintiff, as a non-exempt employee who Defendants and/or DOES fail to pay all wages, failed to provide a minimum statutory first and/or second meal periods, and failed to provide paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

121. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any

alleged violation of the following provisions: sections 201 through 203.

122. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants in California.

123. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

124. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

125. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

126. *California Labor Code* section 226(a) requires Defendants and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires Defendants and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s 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...(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 the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

127. *California Labor Code* section 226, subdivision (a) also requires that “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.”

128. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

129. Defendants and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the Aggrieved Employees.

130. SUNBELT and/or DOES knowingly and intentionally fail to include the address of the legal entity that is the employer on wage statements.

131. SUNBELT and/or DOES knowingly and intentionally did not include the total gross wages earned on wage statements. SUNBELT and/or DOES therefore knowingly and intentionally failed to itemize the total gross wages earned on Plaintiff’s and the Aggrieved Employees’ wage statements.

1 132. In every pay period during the period of the relevant statute of limitations, Defendants and/or
2 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
3 as *California Labor Code* section 226 (a), requires. In every pay period during the period of
4 the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did
5 not include the total hours worked on wage statements and failed to include this information
6 accurately. Defendants and/or DOES therefore knowingly and intentionally fail to itemize the
7 total hours worked on Plaintiff's and the Aggrieved Employees' wage statements.

8 133. In every pay period during the period of the relevant statute of limitations, Defendants and/or
9 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
10 as *California Labor Code* section 226 (a), requires. Defendants and/or DOES have a
11 continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked
12 by requiring employees to work before clocking in, after clocking out, and during meal periods.
13 Specifically, SUNBELT and/or DOES has a continuous and consistent policy of requiring
14 employees to work before clocking in, after clocking out, and during meal periods. Mr. Heredia
15 and the Aggrieved Employees are not paid for this time. For example, Mr. Heredia and the
16 Aggrieved Employees have to perform pre-trip and post-trip inspections before clocking in
17 and after clocking out. In addition, Mr. Heredia and the Aggrieved Employees are responsible
18 for SUNBELT'S and/or DOES' company truck that they are required to park at their personal
19 residences when they are not performing work duties. As such, Mr. Heredia and the Aggrieved
20 Employees are responsible for SUNBELT's and/or DOES' company truck and its contents at
21 all times. Moreover, Mr. Heredia and the Aggrieved Employees were required to clock out
22 before the end of their fifth hour of work to create the appearance of a lawful meal period and
23 to avoid being disciplined, even if they were in the middle of work duties such as impounding
24 a vehicle. This forced Mr. Heredia and the Aggrieved Employees to clock out for a meal period
25 and continue working while clocked out. Further, Mr. Heredia and the Aggrieved Employees
26 are not relieved of all duties and employer control during their unpaid meal periods. Mr.
27 Heredia and the Aggrieved Employees have to keep their phones on and with them during their
28 meal periods. SUNBELT and/or DOES calls and/or otherwise contacts Mr. Heredia and the

Aggrieved Employees while they are on unpaid meal periods for dispatch and other business purposes. Thus, Mr. Heredia and the Aggrieved Employees are owed wages for meal period time during which they are subject to SUNBELT's and/or DOES' control and during which they are not free from all work duties.

134. In addition, SUNBELT and/or DOES failed to include all meal and rest period premiums that were owed to Mr. Heredia and the Aggrieved Employees on wage statements.

135. Also, SUNBELT and/or DOES failed to include all overtime hours worked by Mr. Heredia and the Aggrieved Employees on wage statements at the proper regular rate of pay that incorporated bonuses earned during that pay period.

136. SUNBELT and/or DOES also fails to provide employees with written notice that sets forth the amount of sick leave available for use, either in employees' itemized wage statements or in a separate writing provided to employees on the designated pay date.

137. SUNBELT and/or DOES also fails to provide employees with written notice that sets forth the amount of sick leave available for use, either in employees' itemized wage statements or in a separate writing provided to employees on the designated pay date.

138. Throughout the statutory period, because of the knowing and intentional failure by Defendants and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

139. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants in California.

140. Plaintiff, as a non-exempt employee who Defendants and/or DOES fail to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

141. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes

each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

142. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

143. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth the Amount of Sick Leave Available (California Labor Code §2698 et. seq.).

144. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

145. Section 246(a)(1) of the *California Labor Code* states: “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.”

146. *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, “an employee shall accrue paid sick days at the rate of not less than one hour per every thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.”

147. *California Labor Code* section 246(k) provides that, “[a]n employee may determine how much

- 1 paid sick leave they need to use, provided that an employer may set a reasonable minimum
2 increment, not to exceed two hours, for the use of paid sick leave.”
- 3 148. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid
4 sick days beginning on the 90th day of employment, after which day the employee may use
5 paid sick days as they are accrued.”
- 6 149. Section 233(c) of the *California Labor Code* states: “An employer shall not deny an employee
7 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any
8 manner discriminate against an employee for using, or attempting to exercise the right to use,
9 sick leave to attend to an illness or the preventive care of a family member, or for any other
10 reason specified in subdivision (a) of Section 246.5.”
- 11 150. Section 233(d) of the *California Labor Code* provides relief for violations of this section,
12 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to
13 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate
14 equitable relief.”
- 15 151. Section 234 of the *California Labor Code* further forbids employers from adopting an “absence
16 control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead
17 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section
18 233. An employee working under this policy is entitled to appropriate legal and equitable relief
19 pursuant to Section 233.”
- 20 152. SUN BELT and/or DOES operate under an absence control policy that counts sick leave taken
21 pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge,
22 demotion, or termination. Thus, SUN BELT and/or DOES’ sick pay policy punishes Plaintiff
23 and Aggrieved Employees by way of suspension and/or termination for use of protected and
24 appropriate sick leave. Plaintiff and the Aggrieved Employees are entitled to actual damages
25 or one day’s pay pursuant to Labor Code Section 233(d).
- 26 153. Further, SUN BELT’s and/or DOES’ sick pay policy fails to pay sick pay for all appropriate
27 and protected purposes enumerated in Labor Code section 233, 234, and 246.
- 28 154. Section 246(i) of the California Labor Code states, “[a]n employer shall provide an employee

1 with written notice that sets forth the amount of sick leave available, or paid time off an
2 employer provides in lieu of sick leave, for use on either the employee's itemized wage
3 statement described in Section 226 or in a separate writing provided on the designated pay date
4 with the employee's payment of wages."

5 155. SUN BELT and/or DOES fail to itemize sick leave available, or paid time off an employer
6 provides in lieu of sick leave, for us on Plaintiff's and the Aggrieved Employees' itemized
7 wage statements or in a separate writing provided on the designated pay date with the
8 employee's payment of wages.

9 156. SUN BELT's and/or DOES' sick pay policy fails to pay sick pay for all appropriate and
10 protected purposes enumerated in Labor Code sections 233, 234, 246, and 246.5, and SUN
11 BELT and/or DOES fail to itemize the amount of accrued/available sick leave employees have
12 on wage statements each pay period.

13 157. As a result of the unlawful acts of SUN BELT and/or DOES, Plaintiff and the Aggrieved
14 Employees he seeks to represent have been incurred damages, in amounts to be determined at
15 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
16 attorneys' fees and costs, pursuant to Labor Code section 233(e).

17 158. These claims are on behalf of all non-exempt, hourly employees who worked in for Defendants
18 in California.

19 159. Plaintiff, as a non-exempt employee who was subject to Defendants' and/or DOES' unlawful
20 sick pay/paid time off policy, is an aggrieved employee with standing to bring an action under
21 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
22 public to enforce California's labor laws, and the penalty provisions identified in *California*
23 *Labor Code* section 2699.5 for violations of the *California Labor Code* sections 233, 234, 246,
24 and 246.5.

25 160. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
26 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
27 violations pursuant to this chapter or any provisions regulating hours and days of the week of
28 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and

1 558(a)(2).

2 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
3 **Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business**
4 **Expenses (California Labor Code §2698 et. seq.)**

5 161. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
6 as if fully plead.

7 162. Section 2802(a) of the *California Labor Code* requires “[a]n employer [to] indemnify his or
8 her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties.”

10 163. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without
11 receiving reimbursement from Defendants and/or DOES.

12 164. SUNBELT and/or DOES fail to reimburse Mr. Heredia and Aggrieved Employees for all
13 necessary expenses incurred in the performance of their jobs including, but not limited to,
14 having to use their personal cell phones for business purposes when not provided with a
15 company phone. In addition, Mr. Heredia and the Aggrieved Employees are required to
16 maintain and launder uniforms that they must wear in completing employment duties without
17 reimbursement. Moreover, SUNBELT and/or DOES provides company vehicles for Mr.
18 Heredia and the Aggrieved Employees to use. SUNBELT and/or DOES requires Mr. Heredia
19 and the Aggrieved Employees to park these vehicles in the driveway of their residences and
20 prohibits company vehicles from being parked on public streets. SUNBELT and/or DOES fails
21 to reimburse Mr. Heredia and the Aggrieved Employees for this expense.

22 165. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to
23 reimbursement for said necessary expenditures, plus interest and expenses.

24 166. These claims are on behalf of all non-exempt, hourly employees who worked for Defendants
25 in California.

26 167. Plaintiff, as a non-exempt employee who incurred business expenses which Defendants and/or
27 DOES fail to reimburse, is an aggrieved employee with standing to bring an action under the
28 PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public

to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

168. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: for violations of the *California Labor Code* section 2802.

169. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays for relief and judgment against Defendants and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compliant meal periods;
- C. For all statutory penalties for each pay period during which an employee was underpaid due to failure to provide compliant meal periods;
- D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide all rest periods;
- E. For all statutory penalties provided under *California Labor Code* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to timely pay wages at separation;
- G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time

- 1 worked;
- 2 H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 3 2699, et. seq. for failure to provide compensation at the minimum wage;
- 4 I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 5 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 6 J. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 7 2699, et. seq. for failure to adopt a lawful sick pay policy;
- 8 K. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 9 2699, et. seq. for failure to reimburse business expenses; and
- 10 L. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section
- 11 2699(g)(1).

12 **DEMAND FOR JURY TRIAL**

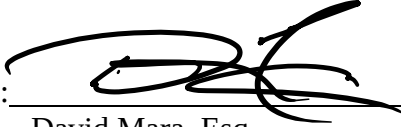
13 Plaintiff demands a jury trial as to liability.

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15 **MARA LAW FIRM, PC**

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17 Date: June 6, 2023

Signed: 

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff PHILLIP HEREDIA,
on behalf of himself and all others similarly
situated, and on behalf of the general public

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