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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CASE ATTACHMENT COVER PAGE                                                                                                                                                                                                                                                                             |                                  | (ENDORSED)<br><b>ELECTRONICALLY<br/>FILED</b><br><br>BY SUPERIOR COURT<br>OF CALIFORNIA, COUNTY OF<br><b>San Bernardino</b><br>on <b>Jun 21, 2023</b><br><i>CLERK OF THE SUPERIOR COURT</i><br><i>Deputy Clerk: Brian Summers</i> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO<br><br>STREET ADDRESS: 247 West Third Street<br><br>MAILING ADDRESS:<br><br>CITY AND ZIP CODE: San Bernardino, CA 92415<br>BRANCH NAME: San Bernardino Justice Center<br>WEBSITE: <a href="http://www.sb-court.org">http://www.sb-court.org</a> |                                  |                                                                                                                                                                                                                                   |
| ATTACHMENT NAME: <b>Answer: First Amended Complaint</b>                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                   |
| CASE NAME: <b>Joshua Lorenz vs. Hawk Transportation Inc.</b>                                                                                                                                                                                                                                           | CASE NUMBER:<br><br>CIVSB2303256 |                                                                                                                                                                                                                                   |
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

JOSHUA LORENZ, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

HAWK TRANSPORTATION INC., a  
California Corporation; BEANT BHANGU,  
an Individual; JEET SINGH, an Individual;  
MANPRIT SANDHU, an Individual; and  
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2303256  
*[Assigned to Hon. Judge David Cohn, Dept  
S26, for all purposes]*

**FIRST AMENDED COMPLAINT**

**CLASS ACTION COMPLAINT**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Rest and Recovery  
Periods Under Labor Code § 226.2;
- (3) Failure to Reimburse Bus. Expenses;
- (4) Unlawful Deduction of Wages;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized  
Wage Statements;
- (7) Unfair and Unlawful Competition;

**PAGA CLAIMS**

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay for Rest and Recovery  
Periods Under Labor Code § 226.2;
- (10) Failure to Reimburse Bus. Expenses;
- (11) Unlawful Deduction of Wages;
- (12) Failure to Timely Pay Wages Each  
Period;
- (13) Failure to Timely Pay Final Wages;
- (14) Failure to Provide Accurate Itemized  
Wage Statements

**JURY TRIAL DEMANDED**

1 Plaintiff Joshua Lorenz (“Plaintiff”) on behalf of himself, on a representative basis, and  
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employers, Defendant Hawk Transportation  
5 Inc., Beant Bhangu, Jeet Singh, Manprit Sandhu, and DOES 1 through 20, inclusive,  
6 (collectively, the “Defendants”) on behalf of himself and all other current and former California  
7 resident truck drivers employed by Defendants and who drove in California within the last four  
8 years (the “Represented Employees”), for Defendants’ violations of the California Labor Code  
9 stemming from Defendants’ failure to pay all wages owed, including minimum and regular  
10 wages, failure to pay for rest and recovery periods and other nonproductive time under Labor  
11 Code § 226.2, failure to reimburse business expenses, the unlawful deduction of wages, failure to  
12 timely pay wages, and failure to provide accurate itemized wage statements, among other claims.

13 2. Plaintiff was employed by Defendants from 2020 through April 2023 as a truck  
14 driver.

15 3. Plaintiff alleges on information and belief that the Represented Employees were  
16 subjected to the same policies, working conditions, and corresponding wage and hour violations  
17 to which Plaintiff was subjected during his employment.

18 4. Plaintiff and the Represented Employees were not provided proper minimum and  
19 regular wages owed due to Defendants’ policy which only provided piece-rate compensation  
20 (*i.e.*, for each mile driven). Under this pay plan, Plaintiff and the Represented Employees did not  
21 receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty,  
22 time including tasks, such as but not limited to, pre-trip and post-trip inspections, detention time,  
23 completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate  
24 compensation paid to Plaintiff and the Represented Employees often resulted in a payment of  
25 wages at less than the required California minimum wages for all hours worked.

26 5. Furthermore, Plaintiff and the Represented Employees were not provided proper  
27 minimum and regular wages due to Defendants’ failure to accurately record and compensate for  
28 all hours worked. For example, Plaintiff and the Represented Employees were often required to

1 clock out for meal periods and/or rest breaks yet were under Defendants' control and required to  
2 perform duties for Defendants while off the clock. As a result of this policy and practice,  
3 Plaintiff and the Represented Employees were required to perform off-the-clock work that  
4 Defendants either knew or should have known they were performing.

5 6. Additionally, Plaintiff and the Represented Employees are/were employees of  
6 Defendants who were paid on a piece-rate basis. However, Defendants did not comply with the  
7 requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate  
8 employees for rest and recovery periods and other nonproductive time.

9 7. Also, Defendants required Plaintiff and the Represented Employees to incur  
10 substantial business-related expenses and costs without reimbursement. For example,  
11 Defendants required Plaintiff and the Represented Employees to use personal cell phones to  
12 carry out their duties for Defendants without reimbursement. And Defendants also violated  
13 Labor Code § 221 regarding the unlawful deduction of wages when they took money from the  
14 checks of Plaintiff and the Represented Employees for reasons such as reimbursement for tow  
15 truck expenses (which cost should be borne by Defendants – not its employees).

16 8. Plaintiff also alleges that he and the Represented Employees were not paid all  
17 wages due and owing upon separation of employment within the time required by Labor Code §§  
18 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all  
19 wages due and owing to Plaintiff and the Represented Employees at the time their employment  
20 ended with Defendants, including, but not limited to minimum wages and regular wages.

21 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage  
22 statements that fully complied with the requirements of Labor Code § 226(a).

23 10. Plaintiff alleges that Defendants' violations of the wage and hour components of  
24 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level  
25 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its  
26 competitors.

27 11. At all material times, Defendants and DOES 1 through 10 were and/or are  
28 Represented Employees' employers or persons acting on behalf of Represented Employees'

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be  
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating  
3 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are  
4 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under  
5 California law.

6 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and  
7 monetary relief against Defendants and each of them, on behalf of himself and the Represented  
8 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,  
9 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,  
10 221, 223, 226, 226.2, 226.3, 558, 1194, 1194.2, and 2802, among possibly other sections  
11 inadvertently omitted. Plaintiff also reserves the right to name additional representatives  
12 throughout the State of California.

13 **II. JURISDICTION**

14 13. This Court has jurisdiction over the claims for relief of Plaintiff and the  
15 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

16 **III. VENUE**

17 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil  
18 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful  
19 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San  
20 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented  
21 Employees in San Bernardino County.

22 **IV. PARTIES**

23 **Plaintiff**

24 15. Plaintiff and Class Representative Joshua Lorenz was employed by Defendants  
25 from approximately 2020 through April 2023 and performed work for Defendants in San  
26 Bernardino County.

27 ///

28 ///

**Defendants**

16. Plaintiff alleges that Defendant Hawk Transportation Inc., is a California corporation authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

17. Plaintiff alleges that Defendants Beant Bhangu, Jeet Singh, Manprit Sandhu were the owners/officers of Defendant Hawk Transportation Inc. and, moreover, were the actual employers of Plaintiff and the Represented Employees. Plaintiff also alleges that, in the alternative, Defendants Beant Bhangu, Jeet Singh, Manprit Sandhu were individuals employed by Defendant Hawk Transportation Inc. as a managerial and/or supervisory employee of Plaintiff and the Represented Employees. In addition, Plaintiff alleges that at all relevant times herein Defendants Beant Bhangu, Jeet Singh, Manprit Sandhu had the authority, to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Plaintiff and the Represented Employees, and were direct responsible for the wrongful conduct outlined herein.

18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20, inclusive, but on information and belief alleges that those Defendants are legally responsible for the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

19. Plaintiff is informed and believes and thereon alleges that he worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff

1 and other similarly situated employees.

2         20. Plaintiff is informed and believes and thereon alleges that, in conducting  
3 themselves in the manner described herein, Defendants, and each of them, were acting in active  
4 concert with one another such that the acts of each were and are fully attributable to the others in  
5 all material respects. Plaintiff is further informed and believes that at all relevant times  
6 Defendants and each of them are now, and at all material times herein mentioned were, the  
7 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining  
8 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and  
9 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of  
10 their remaining co-Defendants.

11         21. Furthermore, Plaintiff is informed and believes and thereon alleges that  
12 Defendants, and each of them, are an integrated enterprise and should be treated as a single  
13 employer because these entities share an interrelation of operations, with common human  
14 resources and personnel policies and shared common offices and facilities. Additionally,  
15 Defendants also have a shared website, common management, a centralized control of labor  
16 operations, and common ownership or financial control.

17         22. Plaintiff is further informed and believes that at all relevant times, Defendants  
18 have been inadequately capitalized to conduct business, have failed to follow appropriate  
19 corporate formalities, and have simply been a shell and instrumentality through which  
20 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,  
21 the corporate veil should be pierced and any liability attached, Defendants should be imposed  
22 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the  
23 separate existence of these corporate entities would permit abuse of the corporate privilege,  
24 thereby sanctioning fraud and promoting injustice.

25 **V. CLASS ACTION ALLEGATIONS**

26         23. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
27 as if fully alleged herein.

28 ///

1           24.     Plaintiff brings this action on behalf of himself and all others similarly situated as  
2 a class action, pursuant to Code of Civil Procedure § 382.

3           25.     The relevant time period for this class action is defined as the time period  
4 beginning four years prior to the filing of this action until class certification (the “Relevant Time  
5 Period”).

6           26.     The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to  
7 represent is defined as follows:

8                   **California Class**

9                   All current and former California resident truck drivers  
10                  employed by Defendants and who drove in California at any  
11                  time during the Relevant Time Period.

12          27.     Plaintiff reserves the right to amend or modify the class description with greater  
13 specificity or further division into subclasses or limitation to particular issues as appropriate.

14          28.     Plaintiff, as Class Representative, is a member of the class that he seeks to  
15 represent.

16          29.     This action has been brought and may properly be maintained as a class action  
17 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the  
18 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll  
19 records.

20          30.     **Numerosity:** The potential members of the Class as defined are so numerous that  
21 a joinder of all Represented Employees is impracticable. Although the exact number is currently  
22 unknown to Plaintiff, this information is easily ascertainable from Defendants’ payroll and  
23 personnel records.

24          31.     **Commonality:** There are questions of law and fact common to the class which  
25 predominate over any questions affecting only individual members of the class, including  
26 without limitation:

27     ///

28     ///

1           i.       Whether Defendants violated the California Labor Code and IWC Wage  
2 Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented  
3 Employees for all hours worked;

4           ii.      Whether Defendants violated California Labor Code and IWC Wage  
5 Order by paying the Represented Employees on a piece-rate basis yet not providing separate  
6 hourly compensation for rest periods and other nonproductive time;

7           iii.     Whether Defendants violated the California Labor Code and applicable  
8 IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business  
9 expenses incurred while discharging their duties or in obedience to the directions of their  
10 employer;

11          iv.      Whether Defendants violated the California Labor Code and applicable  
12 IWC Wage Order by unlawfully deducting amounts from the wages of Plaintiff and the  
13 Represented Employees;

14          v.       Whether Defendants violated the California Labor Code by failing to  
15 timely pay all wages due upon separation of employment between Defendants and Plaintiff and  
16 Represented Employees, whether such separation was voluntary or involuntary;

17          vi.      Whether Defendants violated the California Labor Code by failing to  
18 provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

19          vii.     Whether Defendants violated California Business & Professions Code §§  
20 17200 *et seq.* due to the: failure to pay all wages owed, failure to reimburse business expenses,  
21 unlawful deduction of wages, and failure to timely pay final wages; and

22          viii.    Whether Plaintiff and Represented Employees are entitled to equitable  
23 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

24       32.    **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the  
25 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'  
26 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all  
27 wages owed, failure to reimburse business expenses, unlawful deduction of wages, failure to  
28 timely pay final wages, and failure to provide accurate itemized wage statements.

1           33.     **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly  
2 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in  
3 conflict with those of the Class. Class Representative's counsel are competent and experienced in  
4 litigating large employment class actions and other complex litigation matters, including cases  
5 like this case.

6           34.     **Superiority of Class Action.** Class certification is appropriate because a class  
7 action is superior to other available means for the fair and efficient adjudication of this  
8 controversy. Individual joinder of all Represented Employees is not practicable, and questions of  
9 law and fact common to the Class predominate over any questions affecting only individual  
10 members of the Class. Each Represented Employee has been damaged and is entitled to  
11 recovery by reason of Defendants' illegal policies and practices set forth above. Class action  
12 treatment will allow those similarly situated persons to litigate their claims in the manner that is  
13 most efficient and economical for the parties and the judicial system.

14                                   **FIRST CAUSE OF ACTION**

15                           **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

16                           (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

17           35.     Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
18 as if fully alleged herein.

19           36.     Plaintiff and the Represented Employees were not exempt from the requirement  
20 to be paid at least the applicable California minimum wage throughout the statutory period for  
21 each hour worked.

22           37.     Plaintiff and the Represented Employees were not provided proper minimum and  
23 regular wages owed due to Defendants' policy which only provided piece-rate compensation  
24 (*i.e.*, for each mile driven). Under this pay plan, Plaintiff and the Represented Employees did not  
25 receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty  
26 time tasks, such as but not limited to, pre-trip and post-trip inspections, detention time,  
27 completing paperwork, refueling or repair, and downtime between runs.

28     ///

1           38.     Also, Defendants' piece-rate pay plan often resulted in a payment of wages to  
2 Plaintiff and the Represented Employees at less than the required California minimum wages for  
3 all hours worked. Due to traffic and other conditions, Defendants' piece-rate pay often illegally  
4 resulted in a rate of pay under the applicable minimum wage.

5           39.     Plaintiff and the Represented Employees were also not provided proper minimum  
6 and regular wages due to Defendants' failure to accurately record and compensate for all hours  
7 worked. For example, Plaintiff and the Represented Employees were often required to clock out  
8 for meal periods and/or rest breaks yet were under Defendants' control and required to perform  
9 duties for Defendants while off the clock. As a result of this policy and practice, Plaintiff and the  
10 Represented Employees were required to perform off-the-clock work that Defendants either  
11 knew or should have known they were performing.

12           40.     Consequently, Defendants violated California Labor Code laws and minimum  
13 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and  
14 Cal. Code Regs., tit. 8, section 11090, subs. 1 and 4(B).

15           41.     Plaintiff is informed and believes and thereon alleges that Defendants  
16 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented  
17 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

18           42.     Defendants' conduct was willful, as Defendants knew that Plaintiff and the  
19 Represented Employees were entitled to be paid wages throughout the statutory period for each  
20 hour worked, including proper minimum wages, yet Defendants chose not to pay them in  
21 accordance thereto.

22           43.     At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's  
23 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the  
24 Represented Employees' employer, within the meaning of California Labor Code § 558, who  
25 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,  
26 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

27           44.     During employment of Plaintiff and the Represented Employees, Defendants  
28 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

1           45.     As a result of the Defendants’ wrongful conduct, Plaintiff and the Represented  
2 Employees have been damaged in amounts to be proven at trial.

3           46.     Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of  
4 all unpaid wages, liquidated damages, penalties, interest, attorneys’ fees and costs, pursuant to  
5 Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

6                                   **SECOND CAUSE OF ACTION**

7                   **FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**  
8                   **NONPRODUCTIVE TIME**

9                                   (Labor Code § 226.2)

10          47.     Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
11 as if fully alleged herein.

12          48.     Plaintiff and the Represented Employees are and/or were employees of  
13 Defendants who were paid on a piece-rate basis.

14          49.     Labor Code § 226.2 requires employers that pay their employees on a piece-rate  
15 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no  
16 less than the higher of the applicable minimum wage or “an average hourly rate determined by  
17 dividing the total compensation for the workweek, exclusive of compensation for rest and  
18 recovery periods and any premium compensation for overtime, by the total hours worked during  
19 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

20          50.     Furthermore, Labor Code § 226.2 requires employers that pay their employees on  
21 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no  
22 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

23          51.     At all relevant times herein, Defendants failed to compensate the Represented  
24 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time  
25 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.  
26 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and  
27 each and every one of the Represented Employees.

28     ///

52. As a result of Defendant's violation of Labor Code § 226.2, Plaintiff and the Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount of unpaid payments for rest and recovery periods and other nonproductive time, including interest thereon, reasonable attorneys' fees, and costs of suit.

### **THIRD CAUSE OF ACTION**

## FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

53. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

54. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

55. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses incurred while discharging their duties or in obedience to directions of their employer.

56. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Represented Employees to incur substantial business-related expenses and costs without reimbursement. For example, Defendants required Plaintiff and the Represented Employees to incur costs relating to tolls and gas, without reimbursement, and also required personal cell phone use to carry out duties for Defendants without reimbursement.

57. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

58. At all relevant times herein, Defendants failed to reimburse the Represented Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants, thereby receiving an economic benefit.

59. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to

1 compel Defendants to fully perform their obligations under the law, all in an amount to be  
2 proved at time of trial.

3 60. Labor Code § 2802(b) states that “[a]ll awards made by a Court for  
4 reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in  
5 civil actions, and said interest will accrue from the date on which the employee incurred the  
6 necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees  
7 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact  
8 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

9 61. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section,  
10 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not  
11 limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this  
12 section.” Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed  
13 expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily  
14 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney’s  
15 fees will be in an amount to be proved at the time of trial.

16 **FOURTH CAUSE OF ACTION**  
17 **UNLAWFUL DEDUCTION OF WAGES**

18 (Labor Code § 221)

19 62. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
20 as if fully alleged herein.

21 63. California Labor Code § 221 states that “[i]t shall be unlawful for any employer to  
22 collect or receive from an employee any part of wages theretofore paid by said employer to said  
23 employee.” Labor Code § 221 reflects “‘California's strong public policy favoring the protection  
24 of employees' wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166,  
25 quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41.

26 64. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221  
27 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor  
28 Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, *supra* at 1166.

1 Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent  
2 to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34  
3 Cal.App.4th 1109, 1124.

4 65. As previously alleged herein, Defendant engaged in the unlawful deduction of  
5 wages when it took monies from the wages of Plaintiff and the Represented Employees. As a  
6 result of Defendants’ violations of Labor Code § 221, Plaintiff and the Represented Employees  
7 seek to recover the total amount of wages unlawfully deducted, as well as penalties, interest,  
8 attorneys’ fees, and costs as permitted under California law

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO TIMELY PAY FINAL WAGES**

11 (Labor Code §§ 201 – 203)

12 66. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
13 as if fully alleged herein.

14 67. Plaintiff and the Represented Employees are and/or were employees of  
15 Defendants who did not receive proper protections and benefits of the laws governing the timing  
16 and payment of wages.

17 68. Labor Code § 201 requires that the employer immediately pay any wages, without  
18 abatement or reduction, to any employee who is discharged.

19 69. Labor Code § 202 requires that the employer pay all wages earned and unpaid,  
20 without abatement or reduction, no later than 72 hours of receiving an employee's notice of  
21 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

22 70. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a  
23 penalty from the due date thereof at the same rate until paid or until an action therefore is  
24 commenced, but the wages shall not continue for more than thirty (30) days.

25 71. At all relevant times, Defendants employed a policy and practice whereby  
26 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation  
27 of employment within the time required by Labor Code §§ 201 and 202.

28 ///

1           72.     Also, at all relevant times, Defendants engaged in the practice of failing to pay all  
2 wages due and owing to Plaintiff and the Represented Employees upon separation of  
3 employment, including, but not limited to, minimum and regular wages.

4           73.     Plaintiff alleges that, at all times material to this action, Defendants had a planned  
5 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages  
6 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.  
7 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented  
8 Employees the above-described waiting time penalty, all in an amount to be shown according to  
9 proof at trial and within the jurisdiction of this Court.

10                                   **SIXTH CAUSE OF ACTION**

11                   **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12                                   (Labor Code § 226)

13           74.     Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
14 as if fully alleged herein.

15           75.     Plaintiff and the Represented Employees are and/or were employees of  
16 Defendants who did not receive proper protections and benefits of the laws governing the  
17 provision of accurate itemized wage statements.

18           76.     Labor Code § 226(a) requires an employer to provide its employees with itemized  
19 wage statements accurately stating the number of piece-rate units earned and any applicable  
20 piece rate, gross wages earned, all deductions, net wages earned, the inclusive dates of the pay  
21 period, the employee's name and the last four digits of his or her Social Security number (or  
22 employee identification number), the name and address of the legal entity that is the employer,  
23 and all applicable hourly rates in effect during the pay period and the corresponding number of  
24 hours worked at each hourly rate by the employee.

25           77.     Defendants violates Labor Code § 226(a) every pay period with respect to  
26 Plaintiff and the Represented Employees because the wage statements that Defendants issued to  
27 Plaintiff and the Represented Employees failed to accurately state the number of piece-rate units  
28 earned and the applicable piece rate, gross wages earned, total hours worked, all deductions, net

1 wages earned, the name and address of the legal entity that is the employer, and all applicable  
2 hourly rates in effect during the pay period and the corresponding number of hours at each  
3 hourly rate by the employee.

4 78. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a  
5 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the  
6 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items  
7 specified in that subdivision, separately state the following, to which the provisions of Section  
8 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the  
9 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)  
10 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross  
11 wages paid for that time during the pay period.”

12 79. At all relevant times, Defendants failed to provide a wage statement to Plaintiff  
13 and the Represented Employees that complied with the requirements of Labor Code §  
14 226.2(a)(2) because the wage statements did not include any information regarding compensable  
15 rest and recovery periods, nonproductive time, or the rates of pay and compensation for the  
16 same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect  
17 to Plaintiff and the Represented Employees.

18 80. Defendants’ failure to provide the required writing deprived Plaintiff and the  
19 Represented Employees of the ability to know, understand, and question the calculation and rate  
20 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the  
21 Represented Employees had no way to dispute the resulting miscalculation of wages, all of  
22 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,  
23 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses  
24 related to the use and enjoyment of such wages, lost interest on such wages and expenses and  
25 attorney’s fees in seeking to compel Defendants to fully perform its obligation under state law,  
26 all to their respective damages in amounts according to proof at trial.

27 81. As a result of Defendants’ knowing and intentional failure to comply with Labor  
28 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was

1 prevented from knowing, understanding and disputing the wage payments paid to them.  
2 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the  
3 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the  
4 Represented Employees being denied all necessary deductions, payments, and withholdings  
5 owed by the employer, including, but not limited to, the failure to make all necessary  
6 contributions for unemployment benefits, social security benefits, proper payment of taxes and  
7 withholdings, and other mandated state and federal benefits.

8 82. Plaintiff has also been injured as a result of having to bring this action to attempt  
9 to obtain correct wage information following Defendants' refusal to comply with many of the  
10 mandates of California's Labor Code and related laws and regulations.

11 83. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages  
12 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and  
13 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus  
14 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by  
15 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable  
16 penalty is all in an amount to be shown according to proof at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **UNFAIR AND UNLAWFUL COMPETITION**

19 (Business and Professions Code § 17200 *et seq.*)

20 84. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
21 as if fully alleged herein.

22 85. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair  
23 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The  
24 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,  
25 due to the unfair and unlawful business practices of Defendants as alleged herein.

26 86. Defendants, and each of them, are "persons" as defined under Business &  
27 Professions Code § 17021.

28 ///

1           87.     As alleged herein, Defendants engaged in conduct that violated California's wage  
2 and hour laws, including failure to pay minimum and regular wages, failure to reimburse  
3 business expenses, unlawful deduction of wages, and failure to timely pay final wages, all in  
4 order to decrease their costs and increase their profits.

5           88.     At all times relevant herein, Defendants did not pay Plaintiff and the Represented  
6 Employees wages and monies and other financial obligations to which they were entitled.

7           89.     As a result of Defendants' failure to comply with the Labor Code and IWC  
8 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in  
9 an amount to be shown according to proof at trial. Defendants' ongoing violations of the  
10 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*  
11 Defendants' violations of the California Labor Code and IWC Wage Orders and its scheme to  
12 lower its payroll costs as alleged herein, constitute unlawful and unfair business practices  
13 because it was done in a systematic manner over a period of time to the detriment of the Plaintiff  
14 and all others similarly-situated.

15           90.     Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
16 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.  
17 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code  
18 of Civil Procedure § 1021.5.

19           91.     A violation of California Business & Professions Code § 17200, *et seq.* may be  
20 predicated on the violation of any state or federal law. All of the acts described herein as  
21 violations of, among other things, the California Labor Code and IWC Wage Orders, are  
22 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,  
23 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business  
24 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

25           92.     Plaintiff, individually, and on behalf of the Represented Employees, has no plain,  
26 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a  
27 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of  
28 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,

1 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable  
2 harm unless Defendants, and each of them, are restrained from continuing to engage in said  
3 unfair, unlawful and/or fraudulent business practices.

4 93. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,  
5 and does, seek such relief as may be necessary to disgorge the profits which Defendants have  
6 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the  
7 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the  
8 Represented Employees are not obligated to establish individual knowledge of the unfair  
9 practices of Defendants in order to recover restitution.

10 94. Plaintiff, individually, and on behalf of the Represented Employees, is further  
11 entitled to and do seek a declaration that the above described business practices are unfair,  
12 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from  
13 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in  
14 the future.

15 95. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and  
16 Represented Employees are entitled to restitution of the wages withheld and retained by  
17 Defendants during a period that commences four years prior to the filing of this complaint; a  
18 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and  
19 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil  
20 Procedure § 1021.5 and other applicable laws; and an award of costs.

21 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

22 96. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by  
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
24 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil  
25 action filed on behalf of himself and all other similarly situated current and former aggrieved  
26 employees in California against whom one or more of the alleged violations was committed  
27 (hereinafter the “Aggrieved Employees”).

28 ///

97. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

98. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

### EIGHTH CAUSE OF ACTION

## PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM AND REGULAR WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

99. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

100. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

101. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages owed due to Defendants' policy which only provided piece-rate compensation (*i.e.*, for each mile driven). Under this pay plan, Plaintiff and the Aggrieved Employees did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty time tasks, such as but not limited to, pre-trip and post-trip inspections, detention time, completing paperwork, refueling or repair, and downtime between runs.

102. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to Plaintiff and the Aggrieved Employees at less than the required California minimum wages for

1 all hours worked. Due to traffic and other conditions, Defendants' piece-rate pay often illegally  
2 resulted in a rate of pay under the applicable minimum wage.

3 103. Plaintiff and the Aggrieved Employees were also not provided proper minimum  
4 and regular wages due to Defendants' failure to accurately record and compensate for all hours  
5 worked. For example, Plaintiff and the Aggrieved Employees were often required to clock out  
6 for meal periods and/or rest breaks yet were under Defendants' control and required to perform  
7 duties for Defendants while off the clock. As a result of this policy and practice, Plaintiff and the  
8 Aggrieved Employees were required to perform off-the-clock work that Defendants either knew  
9 or should have known they were performing.

10 104. Consequently, Defendants violated California Labor Code laws and minimum  
11 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and  
12 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

13 105. Plaintiff is informed and believes and thereon alleges that Defendants  
14 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved  
15 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

16 106. As a result of the unlawful employment practices alleged herein, Plaintiff seeks  
17 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,  
18 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

19 **NINTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY**

21 **PERIODS AND OTHER NONPRODUCTIVE TIME**

22 (Labor Code § 226.2)

23 107. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
24 as if fully alleged herein.

25 108. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
26 who were paid on a piece-rate basis.

27 109. Labor Code § 226.2 requires employers that pay their employees on a piece-rate  
28 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no

1 less than the higher of the applicable minimum wage or “an average hourly rate determined by  
2 dividing the total compensation for the workweek, exclusive of compensation for rest and  
3 recovery periods and any premium compensation for overtime, by the total hours worked during  
4 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

5 110. Furthermore, Labor Code § 226.2 requires employers that pay their employees on  
6 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no  
7 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

8 111. At all relevant times herein, Defendants failed to compensate the Aggrieved  
9 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time  
10 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.  
11 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and  
12 each and every one of the Aggrieved Employees.

13 112. As a result of the unlawful employment practices alleged herein, Plaintiff seeks  
14 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,  
15 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

16 **TENTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 (Labor Code § 2802)

19 113. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
20 as if fully alleged herein.

21 114. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
22 who did not receive proper protections and benefits of the laws governing reimbursement of  
23 business expenses.

24 115. Labor Code § 2802(a) requires that the employer indemnify its employees for  
25 expenses and losses incurred while discharging their duties or in obedience to the directions of  
26 their employer.

27 116. At all relevant times herein mentioned, as a condition of employment, Defendants  
28 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses

1 and costs without reimbursement. For example, Defendants required Plaintiff and the Aggrieved  
2 Employees to incur costs relating to tolls and gas, without reimbursement, and also required  
3 personal cell phone use to carry out duties for Defendants without reimbursement.

4 117. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they  
5 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct  
6 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

7 118. As a result of the unlawful employment practices alleged herein, Plaintiff seeks  
8 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and  
9 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

#### 10 **ELEVENTH CAUSE OF ACTION**

#### 11 **PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES**

12 (Labor Code § 221)

13 119. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
14 as if fully alleged herein.

15 120. California Labor Code § 221 states that "[i]t shall be unlawful for any employer to  
16 collect or receive from an employee any part of wages theretofore paid by said employer to said  
17 employee." Labor Code § 221 reflects "'California's strong public policy favoring the protection  
18 of employees' wages.'" *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166,  
19 quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41.

20 121. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221  
21 cannot "be contravened or set aside by a private agreement." Therefore, the rights under Labor  
22 Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, supra at 1166.  
23 Also, under Labor Code §§ 219 and 221, an employer may not "require its employees to consent  
24 to unlawful deductions from their wages." *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34  
25 Cal.App.4th 1109, 1124.

26 122. As previously alleged herein, Defendant engaged in the unlawful deduction of  
27 wages when it took monies from the wages of Plaintiff and the Aggrieved Employees.

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123. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

## TWELFTH CAUSE OF ACTION

## PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

124. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

125. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

126. Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month.

127. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

128. At all relevant times herein, Defendants did not provide Plaintiff and the Aggrieved Employees with all wages due and owing each period within the time required by Labor Code § 204.

129. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 130. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
5 as if fully alleged herein.

6 131. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
7 who did not receive proper protections and benefits of the laws governing the timing and  
8 payment of final wages.

9 132. Labor Code § 201 requires that the employer immediately pay any wages, without  
10 abatement or reduction, to any employee who is discharged.

11 133. Labor Code § 202 requires that the employer pay all wages earned and unpaid,  
12 without abatement or reduction, no later than 72 hours of receiving an employee's notice of  
13 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

14 134. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a  
15 penalty from the due date thereof at the same rate until paid or until an action therefore is  
16 commenced, but the wages shall not continue for more than thirty (30) days.

17 135. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved  
18 Employees with all wages due and owing upon separation of employment within the time  
19 specified by Labor Code §§ 201 – 203.

20 136. Plaintiff alleges that, at all times material to this action, Defendants had a planned  
21 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages  
22 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

23 137. As a result of the unlawful employment practices alleged herein, Plaintiff seeks  
24 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,  
25 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 138. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
6 as if fully alleged herein.

7 139. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
8 who did not receive proper protections and benefits of the laws governing the provision of  
9 accurate itemized wage statements.

10 140. Labor Code § 226(a) requires an employer to provide its employees with itemized  
11 wage statements accurately stating the number of piece-rate units earned and any applicable  
12 piece rate, gross wages earned, all deductions, net wages earned, the inclusive dates of the pay  
13 period, the employee's name and the last four digits of his or her Social Security number (or  
14 employee identification number), the name and address of the legal entity that is the employer,  
15 and all applicable hourly rates in effect during the pay period and the corresponding number of  
16 hours worked at each hourly rate by the employee.

17 141. Defendants violates Labor Code § 226(a) every pay period with respect to  
18 Plaintiff and the Aggrieved Employees because the wage statements that Defendants issued to  
19 Plaintiff and the Aggrieved Employees failed to accurately state the number of piece-rate units  
20 earned and the applicable piece rate, gross wages earned, total hours worked, all deductions, net  
21 wages earned, the name and address of the legal entity that is the employer, and all applicable  
22 hourly rates in effect during the pay period and the corresponding number of hours at each  
23 hourly rate by the employee.

24 142. Furthermore, Labor Code § 226.2(a) states "[f]or employees compensated on a  
25 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the  
26 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items  
27 specified in that subdivision, separately state the following, to which the provisions of Section  
28 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the

1 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)  
2 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross  
3 wages paid for that time during the pay period.”

4 143. At all relevant times, Defendants failed to provide a wage statement to Plaintiff  
5 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)  
6 because the wage statements did not include any information regarding compensable rest and  
7 recovery periods, nonproductive time, or the rates of pay and compensation for the same. As  
8 such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect to Plaintiff  
9 and the Aggrieved Employees.

10 144. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect  
11 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and  
12 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the  
13 requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15  
14 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section  
15 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of  
16 section 226(e)(1)”).

17 145. As a result of the unlawful employment practices alleged herein, Plaintiff seeks  
18 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,  
19 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

## 20 **VII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others  
22 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as  
23 follows:

- 24 1. As to the Eighth through Fourteenth Causes of Action, the assessment of all  
25 applicable and available remedies under PAGA;
- 26 2. For reasonable attorneys’ fees and costs as permitted under PAGA;
- 27 3. That the First through Seventh Causes of Action be certified as a class action;
- 28 4. That Plaintiff be appointed as Class Representative;

1           5.       That counsel for Plaintiff be appointed Class Counsel;

2           6.       For all applicable statutory penalties recoverable under the First through Seventh  
3 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and  
4 Orders of the Industrial Welfare Commission;

5           7.       For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by  
6 law, including those pursuant to the Labor Code;

7           8.       For injunctive relief and/or restitution as provided by the Labor Code and  
8 Business and Professions Code § 17200, *et seq.*;

9           9.       For a declaratory judgment that Defendants have violated Labor Code §§ 200,  
10 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 256, 558, 1194, and 2802, among  
11 other sections inadvertently omitted;

12          10.      For an award of damages in the amount of unpaid compensation including, but  
13 not limited to, unpaid wages, benefits, and penalties according to proof, including interest  
14 thereon;

15          11.      For pre- and post-judgment interest; and

16          12.      For such other relief as the Court deems just and proper.

17                   **DEMAND FOR JURY TRIAL**

18          WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby  
19 demand a jury trial as to the First through Sixth Causes of Action pled herein.

20  
21 Dated: June 15, 2023

LAUBY, MANKIN & LAUBY LLP

22  
23 BY:



24 Brian J. Mankin, Esq.  
25 Peter J. Carlson, Esq.  
26 Attorneys for Plaintiff  
27  
28