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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

OSCAR PEREZ,

Plaintiff,

vs.

**DGA SERVICES, INC. DBA JIT
Transportation, a corporation and DOES 1-
100, inclusive,**

Defendants.

Case No.:

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- 1. FAILURE TO PAY MINIMUM WAGE**
- 2. FAILURE TO PAY OVERTIME**
- 3. FAILURE TO PROVIDE MEAL BREAKS**
- 4. FAILURE TO PROVIDE REST BREAKS**
- 5. FAILURE TO PAY ALL WAGES DUE
AND OWING AT END OF
EMPLOYMENT**
- 6. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 7. UNLAWFUL BUSINESS PRACTICES**
- 8. PRIVATE ATTORNEYS GENERAL ACT**

Plaintiff Oscar Perez brings this class and representative action against DGA Services, Inc. DBA JIT Transportation, and Does 1-100 for violations of the California Labor Code and the Business and Professions Code.

PARTIES

1. Oscar Perez (“Perez” or “Plaintiff”) is and at all times relevant herein was employed in Santa Clara County, California, and was an “employee” as defined by the California Labor Code (“Labor Code”) and the applicable California Industrial Wage Commission (“IWC”) Order(s).

2. DGA Services, Inc. DGA JIT Transportation (“JIT”) is a corporation organized and existing under the laws of the state of California company which does business in California and throughout the United States.

3. At all times relevant herein, JIT has been an “employer” as defined by the Labor Code and the applicable IWC Order(s).

4. JIT and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Santa Clara because JIT conducts business in this County and Plaintiff has performed work for JIT in this County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

8. JIT offers numerous services to its customers. These services include, but are not limited to shipment delivery, e-commerce fulfillment (i.e., picking, packing, and shipping orders for various companies themselves or through third parties), distribution and fulfillment (i.e., warehousing, storage and distribution services via their own warehouses and those of third parties), and value added services (e.g., pick and pack, testing and revision upgrades, vendor managed inventory, label

1 production and application, enterprise resource planning and system integration and returns
2 management authorization).

3 9. Perez was employed as a box truck driver for JIT from approximately May 2019
4 through March 2023. At all times relevant herein, Perez reported exclusively to JIT's Milpitas, CA
5 warehouse.

6 10. During his employment, Perez worked as a Box Truck Driver for JIT and drove box
7 trucks.

8 11. The box trucks which Perez and JIT's other Box Truck Drivers drive have gross weight
9 ratings of 10,000lbs. to 26,000lbs. and are not driven in interstate commerce.

10 12. Perez and JIT's other Box Truck Drivers did not ever drive outside of California and
11 there was no expectation or reasonable chance that Perez or JIT's other Box Truck Drivers would be
12 called upon to make deliveries outside of California or deliveries that were part of a continuous chain
13 of interstate commerce.

14 13. Accordingly, Perez and JIT's other Box Truck Drivers were non-exempt employees
15 and entitled to be paid minimum wage and overtime, as appropriate, for every hour worked pursuant to
16 California law.

17 14. Notwithstanding the foregoing, JIT did not pay Perez and its other Box Truck Drivers
18 minimum wage and overtime, as appropriate, for every hour worked.

19 15. Specifically, JIT paid Perez and its other Box Truck Drivers only at their base rate of
20 pay regardless of whether they had worked more than 8 hours in a day, 40 in a week, or 7 or more
21 days straight.

22 16. By way of specific example, during the workweek/pay period July 12-18, 2021, Perez's
23 wage statement reflects that he worked 56.52 hours. Despite having necessarily worked overtime
24 during the workweek, JIT only compensated Perez for 56.52 hours at his base hourly rate of \$30.00.
25 He was not paid overtime premium wages as required by law.

26 17. Similarly, on June 13, 2022, Perez logged 13.55 hour in the workday. Despite working
27 both overtime and doubletime on June 13, 2022, JIT only compensated Perez at his base hourly rate
28 for that time.

1 18. Perez and JIT's other Box Truck Drivers were also not consistently authorized or
2 permitted to take meal and rest breaks as required by California law.

3 19. JIT required Perez and its Box Truck Drivers to work through meal and rest breaks due
4 to understaffing and work demands.

5 20. On the occasions that Perez and JIT's other Box Truck Drivers were able to take their
6 meal breaks, they routinely occurred after 5 hours of work.

7 21. By way of specific example, Perez's timecard for June 20, 2022, reflects that he began
8 work at 7:56 a.m., but was not authorized to take a meal period until 3:10 p.m., more than seven (7)
9 hours after his shift began. This was a frequent occurrence.

10 22. On June 23, 2022, Perez began work at 7:45 a.m., but was unable to take a meal break
11 until 5:00 p.m. due to his driving/delivery requirements.

12 23. Further, JIT frequently failed to relieve Perez and JIT's other Box Truck Drivers of
13 employer control during their meal and rest breaks.

14 24. When Perez and JIT's other Box Truck Drivers were not provided compliant meal and
15 rest breaks, Defendants did not pay premiums as required by California law.

16 25. Because of the violations set forth above, the wage statements furnished by JIT to Perez
17 and its other Box Truck Drivers violate California Labor Code section 226(a) insofar as they fail to
18 accurately show:

- 19 a. The gross wages earned, in violation of section 226(a)(1);
20 b. The total hours worked, in violation of section 226(a)(2)
21 c. The net wages earned, in violation of section 226(a)(5); and
22 d. All applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate in violation of section 226(a)(9).

24 26. Because JIT fails to pay its Box Truck Drivers for all the hours they worked, overtime
25 at the correct rate of pay, and because they are not provided compliant meal and rest breaks, or the
26 premiums associated with missing the same, they are not timely paid all wages due and owing to them
27 during each pay period and at the end of their employment.

28 27. Perez and JIT's other Box Truck Drivers have not been paid all such wages due and
owing to them when their employment with JIT ended.

1 28. From at least four years prior to the filing of this action, JIT has adopted and employed
2 unfair business practices. These unfair business practices include, but are not limited to, failing to
3 properly pay all minimum and overtime wages due, failing to provide compliant meal and rest breaks,
4 and failing to reimburse employees for all business expenses.

5 **CLASS ACTION ALLEGATIONS**

6 29. Perez seeks to maintain this action as a class action as to the First through Eighth
7 Causes of Action. Perez brings this action, on behalf of himself and all others similarly situated, as a
8 class action pursuant to Code of Civil Procedure 382. The putative classes which Perez seek to
9 represent consist of the following:

- 10 a. All current and former California Box Truck Drivers who worked from May 24,
11 2019, through the date of trial (the “Box Truck Driver Class”);
- 12 b. All current and former California Box Truck Drivers who worked overtime during
13 one or more pay periods May 24, 2019, through the date of trial (the “Overtime
14 Class”);
- 15 c. All current and former California Box Truck Drivers who worked one or more
16 shifts of longer than five hours from May 24, 2019, through the date of trial (the
17 “Meal Break Class”);
- 18 d. All current and former California Box Truck Drivers who worked one or more shift
19 of longer than three and one-half hours from May 24, 2019, through the date of trial
20 (the “Rest Break Class”);
- 21 e. All current and former California Box Truck Drivers who worked from May 24,
22 2019, through the date of trial (the “Wage Statement Class”); and
- 23 f. All members of the Box Truck Driver Class, Overtime Class, Meal Break Class,
24 and the Rest Break Class, whose employment ended May 24, 2020, through the
25 date of trial (the “Waiting Time Penalty Class”).

26 The Box Truck Driver Class, Overtime Class, Meal Break Class, Rest Break Class, Wage Statement
27 Class, and Waiting Time Penalty Class are collectively referred to as the “Class”.
28

1 30. The class of persons is so numerous that joinder of all members is impracticable, and
2 the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
3 informed and believes, and based thereon alleges, that Defendants employ more than 500 employees
4 who satisfy the class definition. Although the exact number and identity of class members is not
5 presently known, they can be identified in Defendants' records through coordinated discovery
6 pursuant to this class action.

7 31. This action may be maintained as a class because the questions of law and fact which
8 are common to class members clearly predominate over any questions affecting only individual
9 members and because a class action is superior to other available methods for adjudicating the
10 controversy.

11 32. There are numerous common questions of law and fact arising out of Defendants'
12 conduct. This class action focuses on Defendants': (a) systematic failure to properly pay employees
13 for all hours worked, including overtime; (b) systemic failure to authorize and permit meal and rest
14 breaks or to pay the requisite premiums in lieu of providing said breaks; (c) systematic failure to
15 provide accurate itemized wage statements, and (d) systematic failure to pay all wages due and owing
16 at the end of employment.

17 33. Furthermore, common questions of fact and law predominate over any questions
18 affecting only individual members of the class. The predominating common or class-wide questions
19 of law and fact include the following:

- 20 a. Whether Defendants failed to pay all their California Box Truck Drivers for all
21 hours worked;
- 22 b. Whether California Box Truck Drivers are entitled to California overtime;
- 23 c. Whether Defendants failed to pay their California Box Truck Drivers for all
24 overtime worked;
- 25 d. Whether Defendants failed to provide compliant meal and breaks to their
26 California Box Truck Drivers;
- 27 e. Whether Defendants failed to pay all earned wages to their California Box
28 Truck Drivers;

- f. Whether Defendants failed to pay premiums to their California Box Truck Drivers as a result of non-compliant meal and rest breaks;
- g. Whether the Defendants failed to furnish accurate itemized wage statements;
- h. Whether Defendants failed to pay all wages due and owing at end of their California Box Truck Drivers' employment;
- i. Whether the alleged violations constitute unfair business practices;
- j. Whether the Class is entitled to injunctive relief; and
- k. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

34. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Plaintiff's claims are typical of those of the Class because Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

35. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

36. Plaintiff will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and adequately protect the interests of all members of the class because it is in her best interest to prosecute the claims alleged herein in order to obtain the full compensation due herself and the other class members.

37. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims

1 because the damages available to them are relatively small, and 6) public policy encourages the use of
2 the class actions to enforce employment laws and protect individuals who, by virtue of their
3 subordinate position, are particularly vulnerable.

4 38. Judicial economy will be served by maintenance of this lawsuit as a class action. To
5 process numerous virtually identical individual cases will significantly increase the expense on the
6 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
7 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
8 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
9 limited to, efficiency, economy, and uniform adjudication with consistent results.

10 39. Notice of a certified class action and any result or resolution of the litigation can be
11 provided to class members by mail, email, publication, or such other methods of notice as deemed
12 appropriate by the Court.

13 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

14 40. The Private Attorney General Act (“PAGA”), as set forth at California Labor Code §
15 2698 et seq., is and at all times relevant herein was applicable to Perez’s employment by Defendants.

16 41. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides
17 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
18 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil
19 action brought by an aggrieved employee on behalf of himself or herself and other current or
20 former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor
21 Code § 2699(a).

22 42. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by
23 the alleged violator and against whom one or more of the alleged violations was committed.”
24 Labor Code § 2699(c).

25 43. Perez was employed by JIT and the alleged violations were committed against him
26 during his time of employment. Perez is therefore an aggrieved employee as defined by Labor
27 Code § 2699(c). Other current and former employees are also aggrieved employees in that one or
28

1 more of the alleged violations were also committed against them during their time of employment
2 with JIT.

3 44. As is outlined herein, JIT violated the Labor Code as to Perez and other current and
4 former employees it employed and/or employs within California. Specifically, JIT violated Labor
5 Code sections 201-204, 210, 226, 226.7, 510, 512, 1182.12 et seq., 1198 and 2802, as well as the
6 applicable IWC Wage Orders.

7 45. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
8 that which is provided for by the by the Labor Code. When the Labor Code does not provide a
9 civil penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay
10 period and \$200 for each subsequent violation per employee per pay period.

11 46. Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover
12 the civil penalty on behalf of himself or herself and other current or former employees against
13 whom one or more of the alleged violations was committed. Furthermore, any employee who
14 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

15 47. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Perez, may
16 pursue a civil action arising under PAGA after the following requirements have been met:

- 17 a. The aggrieved employee shall give written notice by certified mail to the LWDA
18 and the employer (hereinafter "Employee's Notice") of the specific provisions
19 of California Labor Code alleged to have been violated, including the facts and
20 theories to support the alleged violations;
- 21 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
22 employer and the aggrieved employee by certified mail that it does not intend to
23 investigate the alleged violation within 60 days of the postmark date of the
24 Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does
25 not provide notice with 65 calendar days of the postmark date of the Employee's
26 Notice, the aggrieved employee may commence a civil action pursuant to
27 California Labor Code § 2699 to recover civil penalties in addition to any other
28 penalties to which the employee may be entitled.

1 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer
2 is given thirty-three (33) days to cure and notify the aggrieved employee by
3 certified mail that the violation has been cured. If the violation is not cured, the
4 aggrieved employee may commence a civil action pursuant to California Labor
5 Code § 2699 to recover civil penalties in addition to any other penalties to which
6 the employee may be entitled.

7 48. On May 24, 2023, Perez provided written notice by certified mail to JIT and by
8 online filing to the LWDA of the specific provisions of the Labor Code alleged to have been
9 violated, including the facts and theories to support the alleged violations.

10 49. As of the filing of this First Amended Class and Representative Action Complaint,
11 which is more 65 days after May 24, 2023, the LWDA has not responded to Perez's notification or
12 otherwise indicated an intention to investigate his claims. Perez has therefore satisfied the
13 administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover penalties
14 against JIT, in addition to other remedies, for violations of Labor Code sections 201-204, 210, 226,
15 226.7, 510, 512, 1182.12 et seq., 1198 and 2802, as well as and the applicable IWC Wage Orders.

16 **FIRST CAUSE OF ACTION**
17 **VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.**
18 **(Failure to Pay Minimum Wage)**
19 **Against Defendants**

20 50. Plaintiff hereby realleges and incorporates by reference each and every allegation set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 51. California Labor Code section 1182.12 establishes the minimum wage for California
24 employees from July 1, 2014, to present.

25 52. Labor Code Section 1194 provides, in relevant part:

26 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
27 than the legal minimum wage ... applicable to the employee is entitled to recover in a
28 civil action the unpaid balance of the full amount of this minimum wage ... including
interest thereon, reasonable attorney's fees, and costs of suit.

53. Labor Code section 1194.2 provides, in relevant part:

1 In any action under ... Section 1194 to recover wages because of the payment of a wage
2 less than the minimum wage fixed by an order of the commission, an employee shall be
3 entitled to recover liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

4 54. Labor Code section 1197 provides that the minimum wage for employees fixed by the
5 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
6 unlawful

7 55. Pursuant to California Labor Code section 1198, the maximum hours of work and
8 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
9 standard conditions of labor for employees and the employment of any employee for longer hours than
10 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

11 56. During the relevant time period, Defendants intentionally and willfully failed to pay
12 Plaintiff and its other California Box Truck Drivers for every hour worked.

13 57. Wherefore, Plaintiff and the other members of the Box Truck Driver Class have been
14 injured as set forth above and request relief as hereafter provided.

15 **SECOND CAUSE OF ACTION**
16 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**
17 **(Failure to Pay Overtime)**
Against Defendants

18 58. Plaintiff hereby realleges and incorporates by reference each and every allegation set
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
20 allegations of this cause of action.

21 59. Pursuant to California Labor Code section 510, any work in excess of eight hours in
22 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
23 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less
24 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours
25 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
26 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
27 compensated at the rate of no less than twice the regular rate of pay of an employee.
28

60. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

61. During the relevant time period, Plaintiff and JIT's other California Box Truck Drivers regularly worked overtime.

62. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other members of the Overtime Class the proper overtime wages due to them.

63. Wherefore, Plaintiff and the other members of the other members of the Overtime Class have been injured as set forth above and request relief as hereafter provided.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Meal Periods)
Against Defendants

64. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

65. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

66. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An

1 employer may not employ a person for a work period of more than 10 hours per day without providing
2 an employee with a second meal period of not less than 30 minutes, except that if the total work period
3 per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual
4 consent of both the employer and the employee, and if the first meal period was not waived.

5 67. During the relevant time period, Plaintiff and JIT's other California Box Truck Drivers
6 were not provided with compliant meal breaks, nor did they receive an additional hour of premium pay
7 for each missed meal break.

8 68. Wherefore, Plaintiff and the other members of the Meal Break Class have been injured
9 as set forth above and request relief as hereafter provided.

10 **FOURTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS**
12 **(Failure to Provide Rest Periods)**
Against Defendants

13 69. Plaintiff hereby realleges and incorporates by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 70. Labor Code § 226.7 requires employers to provide employees rest periods as mandated
17 by Order of the Industrial Welfare Commission. It states:

- 18 a. No employer shall require any employee to work during any meal or rest period
19 mandated by an applicable order of the Industrial Welfare Commission.
20 b. If an employer fails to provide an employee a meal period or rest period in
21 accordance with an applicable order of the Industrial Welfare Commission, the
22 employer shall pay the employee 1 additional hour of pay at the employee's
23 regular rate of compensation for each work day that the meal or rest period is
not provided

24 71. The applicable Wage Order(s) provides that every "employer shall authorize and permit
25 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
26 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten
27 (10) minutes net rest time per four (4) hours or major fraction thereof..." The applicable Wage Order
28 further provides that "[i]f an employer fails to provide an employee rest period in accordance with the

1 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the rest period is not provided."

3 72. During the relevant time period, Plaintiff JIT's other California Box Truck Drivers
4 were not provided with compliant rest breaks, nor did they receive an additional hour of premium pay
5 for each missed rest break.

6 73. Wherefore, Plaintiff and the other members of the Rest Break Class have been injured
7 as set forth above and request relief as hereafter provided.

8 **FIFTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE §§ 201, ET SEQ.**
10 **(Failure to Pay All Wages Due and Owing at End of Employment)**
11 **Against Defendants**

12 74. Plaintiff hereby realleges and incorporates by reference each and every allegation set
13 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
14 allegations of this cause of action.

15 75. California Labor Code section 201 provides that if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

17 76. California Labor Code section 202 requires an employer to pay an employee all earned
18 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
19 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

20 77. As set forth above, Plaintiff and JIT's other former California Box Truck Drivers were not
21 timely paid all of their earned but unpaid wages, including minimum wage, overtime, and meal and
22 rest break premiums, when their employment with Defendants ended.

23 78. Wherefore, Plaintiff and the other members of the Waiting Time Penalty Class have
24 been injured as set forth above and request relief as hereafter provided.

25 **SIXTH CAUSE OF ACTION**
26 **VIOLATION OF LABOR CODE § 226(a)**
27 **(Failure to Furnish Accurate Itemized Wage Statements)**
28 **Against Defendants**

79. Plaintiff hereby realleges and incorporates by reference each and every allegation set
forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

1 80. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
2 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
3 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
4 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
5 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and
6 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
7 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of his or her social security number or an employee
9 identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all
10 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
11 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate
12 of pay and the total hours worked for each temporary services assignment.”

13 81. An employee suffering injury as a result of the knowing and intentional failure by an
14 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
15 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
16 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
17 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
18 attorney’s fees. Labor Code § 226(e)(1).

19 82. An employee is deemed to suffer injury if the employer fails to provide a wage
20 statement or if the employer fails to provide accurate and complete information as required by any one
21 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
22 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
23 during the pay period or any of the other information required to be provided pursuant to Labor Code
24 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
25 name and address of the employer and iv) the name of the employee and the last four digits of his or
26 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
27 (iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain
28 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

1 83. As set forth above, Defendants intentionally and willfully failed to furnish accurate
2 itemized wage statements which complied with Labor Code section 226.

3 84. Wherefore, Plaintiff and the other members of the Wage Statement Class have been
4 injured as set forth above and request relief as hereafter provided.

5 **SEVENTH CAUSE OF ACTION**
6 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***
7 **(Unfair Business Practices)**
8 **Against Defendants**

9 85. Plaintiff hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 86. The statutory violations, as alleged above, are unfair business practices within the
13 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and
14 include, but are not limited to failing to properly pay minimum and overtime wages and failing to
15 provide complaint meal and rest breaks or to pay premiums associated with the same.

16 87. Wherefore, Plaintiff and the other members of the Class have been damaged as set forth
17 above and request relief as hereafter provided.

18 **NINTH CAUSE OF ACTION**
19 **VILATION OF PRIVATE ATTORNEYS GENERAL ACT**
20 **(“PAGA”0**
21 **Against Defendants**

22 88. Plaintiff hereby realleges and incorporates by reference each and every allegation set
23 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
24 allegations of this cause of action.

25 89. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations outlined herein. Other current and former employees are also aggrieved employees in that
28 one or more of the alleged violations were also committed against them during their time of
employment with Defendants.

90. Plaintiff seeks to recover, on behalf of and as a proxy for the Labor and Workforce Development Agency (the “LWDA”), the civil penalties provided by the PAGA through a representative action permitted by the PAGA and *Arias v, Sup. Ct. (2009) 46 Cal.4th 969*. Class certification of the PAGA claims is not required.

91. Plaintiff seeks to enforce the California Labor Code and related regulations and Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of violations which include, but are not limited to, all of the following: Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1182.12 et seq., 1198 and 2802, as well as and the applicable IWC Wage Orders.

92. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

93. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs

94. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set forth above, Plaintiff seeks recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA as set forth below

95. Wherefore, Plaintiff and the other aggrieved employees have been damaged as set forth above and request relief as hereafter provided

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays judgment against Defendants as follows:

As to the First through Seventh Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiff as representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;

4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff and the members of the Class;
5. That this Court award injunctive relief, including that available under Labor Code sections 226(h) and Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 203, 226, 226.7, 512 and 1194.2;
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226(e)(1), and 1194 as well as Code of Civil Procedure section 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

As to the Eighth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§ 210, 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

DATED: July 31, 2023

MAYALL HURLEY P.C.

By



ROBERT J. WASSERMANN

JENNY D. BAYSINGER

Attorneys for Plaintiff and the Putative Class

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, CA 95240, that is located in the county where the mailing and/or delivery below took place.

On July 31, 2023, I served the following document:

FIRST AMENDED COMPLAINT

addressed to:

John T. Egley
Chris C. Scheithauer
D. Eric Lystrup
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
jegley@calljensen.com
cscheithauer@calljensen.com
elystrup@calljensen.com
Julie Sandoval
jsandoval@calljensen.com

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 31, 2023, at Lodi, California.

