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8 *Attorneys for Plaintiff, Mark Boyer on*
9 *behalf of himself and all others similarly situated*

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF RIVERSIDE

12 MARK BOYER, on behalf of himself and all others
13 similarly situated,

14 Plaintiff,

15 vs.

16 GLOBAL EXPEDITED, LLC, AMERI FREIGHT
17 WAY, INC., DD LOGISTICS, INC, and Does 1
18 through 50, inclusive,

19 Defendants.

No. **CVSW2303962**
CLASS ACTION COMPLAINT
Unlimited Civil Case
The Amount Demanded Exceeds \$25,000

1 Plaintiff Mark Boyer ("Plaintiff"), by his attorneys, brings this action on behalf of himself
2 and all other similarly situated and the general public, and on information and belief, except those
3 allegations that pertain to the named Plaintiff and his attorneys (which are alleged on personal
4 knowledge), hereby alleges as follows:

5 **SUMMARY OF CLAIMS**

6 1. This class action lawsuit arises from ongoing wrongful conduct by Defendants
7 Global Expedited, LLC, Ameri Freight Way, Inc., and DD Logistics, Inc. (collectively
8 "Defendants"), by Defendants' unlawful (1) misclassification of Plaintiff and proposed class
9 members truck drivers as independent contractors, instead of employees, in violation of California
10 Labor Code section 226.8; (2) failure to pay Plaintiff and proposed class members, who were paid
11 on a piece rate basis, by miles driven, for all non-productive time, such as pre and post trip
12 inspections, detention time, layover time, and the time to prepare necessary paperwork, etc., in
13 violation of California Labor Code section 226.2; (3) failure to reimburse Plaintiff and proposed
14 class members for work-related expenses, including but not limited to, the use of, their personal
15 cell phones to do their jobs, bridge tolls, etc., in violation of violation of Labor Code section 2802;
16 (4) failure to provide accurate itemized wage statements to Plaintiff and proposed class members
17 containing information as required by California Labor Code section 226 and 226.2; (5) failure to
18 maintain accurate records of Plaintiff's and proposed class members' payroll records showing
19 hours worked daily and wages earned in violation of California Labor Code section 1174(d); (6)
20 failure to pay Plaintiff and proposed class members all wages when due in violation of California
21 Labor Code section 204; (7) taking deductions from compensation earned by Plaintiff and
22 proposed class members in violation of California Labor Code section 221; (8) failure to pay
23 members of the proposed class all wages due at the time of termination in violation of California
24 Labor Code sections 201-203; (9) failing to provide paid sick leave and provide a record of
25 available sick leave in violation of California Labor Code section 246; and (10) obtaining the
26 wages owed to members of the proposed class through actions constituting theft in violation of
27 California Penal Code section 496. These failures further constitute unfair business practices, in
28 violation of California Business and Professions Code section 17200, et. seq. The violations of

1 Wage Orders further constitute violations of California Labor Code sections 558 and 1198 and
2 also give rise to penalties under California Government Code section 2698, et seq.

3 **JURISDICTIONAL ALLEGATIONS**

4 2. Defendants are and at all relevant times were, corporations doing business within
5 the State of California, and are employers under applicable Industrial Welfare Commission
6 Orders.

7 3. This action seeks relief for unremedied violations of California law, including, inter
8 alia; damages, reimbursements, restitution, penalties, treble damages, interest and attorneys' fees,
9 as appropriate, to members of the proposed class, aggrieved employees, and to victims of the
10 practices at issue, who have been misclassified as independent contractors, rather than employees,
11 in violation of California Labor Code section 226.8; who are paid by piece rate (per mile) but have
12 not been paid separately for non-productive time in violation of Labor Code section 226.2; who
13 have not been reimbursed for work-related expenses in violation of Labor Code section 2802; who
14 have not been furnished with accurate wage statements in violation of Labor Code section 226 and
15 226.2; whose payroll records were not properly maintained, in violation of Labor Code section
16 1174; who have not been timely paid for all wages when due, in violation of Labor Code section
17 204; who have deductions taken from their earned wages in violation of Labor Code section 221;
18 who have not been timely paid for all wages due at the time of termination, in violation of Labor
19 Code sections 201-203; who have not been provided paid sick leave, or a records setting forth
20 available paid sick leave, in violation of California Labor Code section 246; and, whose wages
21 were obtained by Defendants in a manner constituting theft in violation of California Penal Code
22 section 496. Plaintiff is informed and believes that the damages, reimbursements, restitution,
23 penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and that
24 Plaintiff's individual claims do not exceed \$74,999.99.

25 4. The names and capacities of Defendants sued herein under California Code of Civil
26 Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff, who
27 therefore sues these Defendants by such fictitious names. Plaintiff will seek to amend this
28 Complaint and include these Doe Defendants' names and capacities when they are ascertained.

1 Each fictitiously named Defendants is responsible in some manner for the conduct alleged herein
2 and for the injuries suffered by Plaintiff, the members of the class, aggrieved employees, and the
3 general public.

4 5. At all times mentioned in the causes of action alleged herein, each and every
5 Defendants was an agent and/or employee of each and every other Defendants. In doing the
6 things alleged in the causes of action stated herein, each and every Defendants was acting within
7 the course and scope of this agency or employment and was acting with the consent, permission
8 and authorization of each of the remaining Defendants. All actions of each Defendants as alleged
9 in the causes of action stated herein were ratified and approved by every other Defendants or their
10 officers or managing agents.

11 **GENERAL ALLEGATIONS**

12 6. Plaintiff is a former employee of Defendants. Throughout his employment with
13 Defendants, Plaintiff worked as a truck driver. Even though Defendants controlled all aspects of
14 Plaintiff's job, Defendants classified Plaintiff, and all other similarly situated truck drivers, as
15 independent contractors instead of employees. This conduct gives rise to penalties under Labor
16 Code section 226.8. As a consequence of the improper classification, Defendants failed to pay
17 Plaintiff and all other similarly situated truck drivers for all expenses incurred to do their jobs, in
18 violation of Labor Code section 2802. Defendants required Plaintiff and similarly situated truck
19 drivers to use their personnel cell phones to do their jobs. Defendants text, call, and email
20 Plaintiff and those similarly situated truck drivers throughout the day, and expects Plaintiff and
21 those similarly situated to respond. Drivers similarly routinely communicate with delivery
22 locations on their personal cell phones. Plaintiff, and those similarly situated truck drivers, also
23 routinely must use the GPS on their cell phones to get to and from locations assigned to them by
24 Defendants. Plaintiff, and those similarly situated truck drivers, also incur toll fees. Defendants
25 do not reimburse Plaintiff or those similarly situated of the cost of their cellular phones, or the cell
26 service costs, or for toll charges, in violation of section 2802.

27 7. Because Defendants improperly classified Plaintiff, and similarly situated truck
28 drivers, as independent contractors instead of employees, and paid them on a piece rate basis, i.e.,

1 by the mile driven, Defendants took no steps to compensate Plaintiff, and similarly situated truck
2 drivers, for non-productive time such as layovers, detention time, the time required to do pre and
3 post trip inspections, and the time to complete paperwork. As a result, Defendants did not pay
4 Plaintiff and those similarly situated truck drivers all wages due as required by Labor Code
5 sections 201-204. Defendant also took deductions from wages earned by Plaintiff and similarly
6 situated truck drivers for something called “escrow” and for something called “direct deposit” in
7 violation of Labor Code section 221.

8 8. Because Defendants improperly classified Plaintiff, and similarly situated truck
9 drivers, as independent contractors instead of employees, and Defendants did not compensate
10 Plaintiff, and similarly situated truck drivers, for all time worked, including non-productive time,
11 and took illegal deductions from earned wages of Plaintiff, and similarly situated truck drivers,
12 Plaintiff, and similarly situated truck drivers, did not receive pay for all hours worked in violation
13 of California Labor Code sections 201-204 and 221. Defendants also took from the earned wages
14 of Plaintiff, and similarly situated truck drivers, deductions for something called “escrow”, which
15 Defendants represented was held by Defendant to cover any damages to vehicles driven by the
16 truck drivers. Defendants deducted the “escrow” amounts in either \$150 or \$250 increments per
17 month from the truck drivers’ earned wages, until a \$2,500 or \$1,500 amount was reached.
18 However, when the truck drivers’ employment terminated, Defendants did not refund any portion
19 of the amounts taken from the wages earned to the truck drivers, even if the trucks suffered no
20 damage. By deducting the “escrow” funds from wages earned, and never repaying such funds to
21 the truck drivers, Defendant fraudulently appropriated the truck drivers’ wages, as Defendants
22 through false and fraudulent representations or pretense, defrauded Plaintiff, and the similarly
23 situated truck drivers of their money. Defendants’ actions constituted theft as defined by
24 California Penal Code section 484.

25 9. Because Defendants improperly classified Plaintiff and similarly situated truck
26 drivers as independent contractors, Defendants did not provide truck drivers with wage statements
27 as required by Labor Code section 226 and Labor Code section 226.2. Labor Code section 226(a)
28 required Defendants to provide Plaintiff, and similarly situated truck drivers, with accurate

1 itemized statements setting forth many things, including the following: (1) gross wages earned;
2 (2) total hours worked by the employee; (3) the number of piece rate units and rates the drivers
3 were paid on a piece rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of
4 the periods for which the employee is paid; and, (7) the name of the employee and only the last
5 four digits of his or her social security number or an employee identification number other than a
6 social security number. Among other things, the statements Defendants provided Plaintiff, and
7 similarly situated truck drivers, do not reflect the drivers gross or net wages due, in that the wage
8 statements do not reflect all hours worked, specifically for non-productive time, and compensation
9 owed for all hours worked. The wage statements also did not contain the last four digits of the
10 truck drivers' social security number or an employee identification number. The failure to keep
11 this required information also violates Labor Code section 226.3. Defendants also did not provide
12 paid sick leave or provide a written record, on a wage statement or other record, of available
13 accrued sick leave as required by Labor Code section 246. Defendant also did not reimburse
14 Plaintiff and similarly situated truck drivers for all expenses incurred to do their job, including
15 costs associated with using smart telephones for work and for tolls incurred in violation of Labor
16 Code section 2802.

17 10. Defendants failed to pay Plaintiff and proposed class members for all time worked
18 and jobs performed. During the relevant period, the employment of many proposed class
19 members with Defendants ended and they were not paid all wages due either immediately or
20 within 72 hours of termination or resignation, in violation of Labor Code sections 201 and 202.
21 Plaintiff therefore seeks wages as civil penalties on behalf of those proposed class members who
22 were not paid all wages due either immediately or within 72 of termination or resignation,
23 pursuant to Labor Code section 203.

24 11. Given the violations of the aforementioned Labor Code sections and Wage Orders,
25 Defendants is therefore liable for unfair business practices, in violation of California Business &
26 Professions Code section 17200, et. seq.

27 12. Given the violations of the aforementioned Labor Code sections and Wage Orders,
28 Defendants is therefore liable for civil penalties set forth within, and authorized by, the PAGA,

1 California Labor Code section 2698, et. seq.

2 **CLASS ALLEGATIONS**

3 13. Plaintiff brings this action on behalf of himself and all other similarly situated truck
4 drivers who worked for Defendants in California during the four years preceding the filing of this
5 complaint (the “proposed class”).

6 14. Because Defendants classified Plaintiff as an independent contractor, and not an
7 employee, Plaintiff failed to receive pay for all hours worked, and instead was paid on a piece rate
8 basis, i.e., per mile, and did not receive pay for non-productive time, such as detention time,
9 layover time, and the time required to perform pre and post trip inspections and to complete
10 paperwork, and had deductions taken from his earned wages for “escrow” and “direct deposit”;
11 failed to receive adequate reimbursement for work-related expenses, such as the use of his
12 personal cell phone to do his job; failed to receive timely and accurate wage statements or paid
13 sick leave or a record of available sick leave; did not have his payroll records maintained properly
14 by Defendants; and was not paid all wages earned when they were due; Plaintiff’s claims are
15 typical of the proposed class.

16 15. Plaintiff will fairly and adequately represent and protect the interests of the
17 proposed class members in that he has no disabling conflict of interest that would be antagonistic
18 to those of the other proposed class members. Plaintiff retained counsel who are competent and
19 experienced in the prosecution of class action wage and hour violations.

20 16. There is a well-defined community of interest in the questions of law and fact
21 involved affecting the parties to be represented. The questions of law and fact common to the
22 proposed classes predominate over questions that may affect individual class members, include
23 but are not limited to the following:

- 24 (a) Whether Defendants implemented and engaged in a practice whereby
25 Defendants unlawfully misclassified proposed class members as independent
26 contractors;

- 1 (b) Whether Defendants implemented and engaged in a practice whereby
2 Defendants unlawfully took deductions from proposed class members' earned
3 wages;
- 4 (c) Whether Defendants implemented and engaged in a practice whereby
5 Defendants unlawfully failed to separately pay proposed class members for all
6 time worked, including all non-productive time, such as pre and post trip
7 inspections, detention time, layover time, and time spent preparing necessary
8 paperwork;
- 9 (d) Whether Defendants implemented and engaged in a practice whereby
10 Defendants unlawfully failed to provide proposed class members accurate
11 itemized wage statements;
- 12 (e) Whether Defendants implemented and engaged in a practice whereby
13 Defendants failed to reimburse proposed class members for work-related
14 expenses;
- 15 (f) Whether Defendants implemented and engaged in a practice whereby
16 Defendants failed to timely pay proposed class members all wages when due,
17 including at termination;
- 18 (g) Whether Defendants implemented and engaged in a practice whereby
19 Defendants failed to provide paid sick leave or a record of available accrued
20 sick leave;
- 21 (h) Whether the practices of Defendants as alleged herein violated, inter alia,
22 applicable provisions of the California Labor Code, including but not limited to
23 sections 201-204, 226, 226.2, 226.8, 246, 558, 1174, 1194, 1198, 1198.5, 2802,
24 and the Unfair Competition Law codified in California Business and
25 Professions Code section 17200, et seq.

26 17. Plaintiff and the members of the proposed class have all similarly suffered
27 irreparable harm and damages as a result of Defendants' unlawful and wrongful conduct,
28 including but not limited to Defendants': misclassification of proposed class members; systematic

1 practice of failing to separately compensate Plaintiff and the proposed class, who are piece rate
2 workers, for all non-productive time; pattern and practice of failing to sufficiently reimburse the
3 proposed class for work-related expenses; systematic practice of failing to furnish accurate
4 itemized wages statements; systematic practice of failing to maintain accurate payroll records;
5 systematic practice of taking unlawful deductions from class members' earned compensation;
6 systematic practice of failing to provide paid sick leave and a record of available accrued sick
7 leave; and, pattern and practice of failing to pay employees all wages when due, including upon
8 termination. These issues are common to all proposed class members, making class treatment
9 especially appropriate. Because the actions of Defendants toward proposed class members follow
10 common patterns, all of which are reflected in the records possessed by Defendants, this action
11 will provide substantial benefits to all proposed class members. Absent this action, Defendants'
12 unlawful conduct will continue unremedied and uncorrected.

13 **FIRST CAUSE OF ACTION**

14 **(Failure To Pay For All Hours Worked, All Wages Owed, At Minimum Wage:** 15 **Cal. Lab. Code §§ 226.2, 510, 1194)**

16 18. Plaintiff and the proposed class members incorporate by reference the
17 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

18 19. Although Defendants paid Plaintiff, and proposed class members, on a flat-rate
19 basis, i.e., per mile, Defendants failed to pay Plaintiff and proposed class members for all hours
20 worked, including for all non-productive time, such as pre and post inspections, layover time,
21 detention time, and the time required to complete necessary paperwork. Because Defendants do
22 not pay truck drivers separately for this non-productive time, Defendants fail to comply with the
23 California Labor Code, as explained by the Court in the Gonzalez v. Downtown LA Motors, LP,
24 215 Cal. App. 4th 36 (2013), decision. Labor Code section 226.2(a)(1) also provides: "For
25 employees compensated on a piece-rate basis during a pay period, the following shall apply for
26 that pay period: (1) Employees shall be compensated for rest and recovery periods and other
27 nonproductive time separate from any piece-rate-compensation."
28

20. As a result of Defendants' failure to pay Plaintiff and those Plaintiff seeks to represent for all time worked, and improperly taking deductions from wages earned, Plaintiff, and those Plaintiff seeks to represent, are entitled to obtain the unpaid balance of the full amount of the unpaid wages owed pursuant to California Labor Code sections 226.2, 510 and 1194(a). Plaintiff, and those he seeks to represent, are also entitled to recover liquidated damages as provided by California Labor Code section 1194.2(a).

21. Pursuant to Labor Code sections 218.6, 1194(a), and Civil Code section 3287, Plaintiff, and those he seeks to represent, are entitled to recover pre-judgment interest on all amounts of unpaid wages recovered. Pursuant to Labor Code sections 218.5 and 1194(a), Plaintiff, and those he seeks to represent are also entitled to recover attorneys' fees and costs incurred by them to bring this action.

SECOND CAUSE OF ACTION

(Reimbursement Violations: Cal. Lab. Code § 2802)

22. Plaintiff and proposed class members incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

23. As a consequence of the Defendants classifying Plaintiff, and all other similarly situated truck drivers, as independent contractors, Defendants did not reimburse Plaintiff and all other similarly situated truck drivers for all the expenses the drivers incurred to do their jobs. This failure violated Labor Code section 2802. Defendants requires Plaintiff and similarly situated truck drivers to use their personnel cell phones to do their jobs. Defendants text, call, and email truck drivers throughout the day, and expects the truck drivers to respond. Plaintiff, and those similarly situated truck drivers, also routinely must use the GPS on their cell phones to get to and from locations assigned to them by Defendants. Drivers also routinely communicate with customers at pick up and drop off locations. Defendants does not indemnify Plaintiff or those similarly situated for the cost of their cellular phones, or the cell service costs, in violation of section 2802. Defendants also do not reimburse Plaintiff, and those similarly situated truck drivers, for the costs incurred to pay tolls. This too violates section 2802.

24. Defendants' policies regarding failure to fully reimburse for all work-related expenses applied to Plaintiff and all proposed class members such that all are due reimbursement, and interest thereon, for Defendants' failure to comply with Labor Code section 2802.

25. Plaintiff also seeks penalties and attorneys' fees for Defendants' violation of Labor Code section 2802, pursuant to the PAGA, including Labor Code sections 2699(g)(1), 2699.3, and 2699.5.

26. Plaintiff and proposed class members are therefore entitled to the relief requested below.

THIRD CAUSE OF ACTION

(Inaccurate Wage Statements: Cal. Lab. Code §§ 226 & 226.2)

27. Plaintiff and proposed class members incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

28. Because Defendants misclassified Plaintiff and all similarly situated truck drivers, Defendants did not provide truck drivers with accurate wage statements containing the information required by Labor Code sections 226 and 226.2. Defendants do not pay the drivers, who are paid on a piece rate basis by “mile,” for non-productive time separately from, and in addition to, their piece-rate pay, in violation of Labor Code sections 226 and 226.2. Specifically, Defendants failed to pay Plaintiff and proposed class members for all hours worked (in addition to piece-rate wages). Defendants had an obligation to list the total hours of other nonproductive time, the rate of compensation for such time, and the gross wages paid for such time during the pay period, but does not do so, and has never done so.

29. As such, Defendants failed to furnish accurate itemized wage statements to Plaintiff and proposed class members containing information as required by California Labor Code section 226 subdivision (a) paragraphs (1) gross wages earned, (2) total hours worked, and (5) net wages earned. In addition, Defendants fails to include all applicable hourly rates, (9), the piece rates and applicable rates of compensation for wage statements, (3) as well as the last 4 digits of their social security numbers or other identifying number (7). These failures caused Plaintiff and proposed class members to suffer injury as defined by California Labor Code section

226(e)(2)(B)(i). As a result of Defendants' failures, Plaintiff and proposed class members are entitled to recover the penalties and attorneys' fees as set forth in California Labor Code section 226(e)(1). These failures also violated Labor Code section 226.2.

30. As a result of Defendants' violations of Labor Code section 226(a) and 226.2, Plaintiff and proposed class members are also entitled to recover the penalties as set forth in California Labor Code section 226.3. Plaintiff and proposed class members are also entitled to penalties under California Labor Code section 226.8.

31. Plaintiff also seeks penalties for Defendants' violations of Labor Code section 226 subsection (a), paragraphs (1), (2), (3), (5), and (7), and section 226.2, pursuant to Labor Code sections 2699.3 and 2699.5, and attorneys' fees pursuant to section 2699(g)(1).

32. Plaintiff and proposed class members are therefore entitled to the relief requested below.

FOURTH CAUSE OF ACTION

(Deduction Violations: Cal. Lab. Code § 221)

33. Labor Code § 221 provides that it "shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

34. Defendants took unauthorized deductions from wages owed to Plaintiff and other similarly situated truck drivers for a myriad of things, including, but not limited to, deductions for what Defendants call "escrow" and for direct deposit fees in violation of California Labor Code § 221.

35. A violation of Labor Code § 221 is a misdemeanor pursuant to Labor Code § 225 and Defendant is also subject to civil penalties pursuant to Labor Code § 225.5 in amount according to proof at trial as set forth below.

36. Plaintiff and proposed class members are therefore entitled to the relief requested below.

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FIFTH CAUSE OF ACTION

**(Unlawful, Unfair And Fraudulent Business Practices:
Business & Professions Code § 17200, et seq.)**

37. Plaintiff and proposed class members incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

38. Business & Professions Code section 17200, et seq., prohibits acts of unfair competition, defined as an “unlawful, unfair, or fraudulent business act or practice.”

39. The policies, acts and practices heretofore described were and are unlawful business acts or practices because Defendants’ (1) misclassification of Plaintiff and proposed class members as independent contractors, instead of employees, in violation of California Labor Code section 226.8; (2) failure to pay Plaintiff and proposed class members, who were paid on a piece rate basis, by miles driven, separately for non-productive time, in violation of California Labor Code section 226.2, 510, and 1194; (3) failure to reimburse Plaintiff and proposed class members for work-related expenses, including but not limited to, the cost of, and the use of, their personal cell phones to do their jobs, and bridge tolls, in violation of violation of Labor Code section 2802; (4) failure to provide accurate itemized wage statements to Plaintiff and proposed class members containing information as required by California Labor Code section 226(a) and 226.2; (5) failure to maintain accurate records of Plaintiff’s and proposed class members’ payroll records showing hours worked daily and wages earned in violation of California Labor Code section 1174(d); (6) failure to pay Plaintiff and proposed class members all wages when due in violation of California Labor Code section 204; (8) taking illegal deductions from Plaintiff’s and proposed class members earned wages in violation of California Labor Code section 221; (8) failure to provide paid sick leave or a written record of available accrued sick time in violation of California Labor Code section 246; and, (9) failure to pay members of the proposed class all wages due at the time of termination in violation of California Labor Code sections 201-203; violate applicable Labor Code sections, Industrial Welfare Commission Wage Orders, the Private Attorneys General Act of 2004, Labor Code section 2698 et seq., and other provisions of California common and/or statutory law. Plaintiff reserves the right to allege additional statutory

1 and common law violations by Defendants. Such conduct is ongoing to this date.

2 40. Further, the policies, acts or practices described herein were and are an unfair
3 business acts or practices because any justifications for Defendants' illegal and wrongful conduct
4 were and are vastly outweighed by the harm such conduct caused to Plaintiff, proposed class
5 members, aggrieved employees, and the members of the general public. Such conduct is ongoing
6 to this date.

7 41. As a result of its unlawful and/or unfair and/or fraudulent acts, Defendants reaped
8 and continues to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed
9 class members. Defendants should be made to disgorge ill-gotten gains and provide restitution to
10 Plaintiff and proposed class members for the wrongfully withheld wages pursuant to Business and
11 Professions Code section 17203.

12 42. Accordingly, Plaintiff and proposed class members respectfully request that the
13 Court award judgment and relief in their favor, to provide restitution, and other types of equitable
14 relief.

15 43. Plaintiff and the proposed class members are therefore entitled to the relief
16 requested below.

17 **SIXTH CAUSE OF ACTION**

18 **(Theft of Wages: Violation of Penal Code section 496)**

19 44. Plaintiff and proposed class members incorporate by reference the allegations
20 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

21 45. Defendants deduct what it calls "escrow" from the earned wages of Plaintiff and
22 proposed class members. Defendants take such deductions in amounts of \$250.00 or \$150.00 per
23 pay period, until Defendants reach a total of \$2,500.00 or \$1,500.00. Defendants represent to the
24 truck drivers that the "escrow" amounts are deducted from the wages earned by the truck drivers
25 to cover the cost of any damages to the trucks driven by the drivers. However, at the end of the
26 truck drivers' employment, Defendants do not pay back any amount of the "escrow" taken from
27 the drivers' earned wages, even if the trucks driven by the drivers suffered no damage.
28

46. Defendants took the “escrow” amounts from the earned wages of the driver through false or fraudulent representations, i.e., that such amounts were to cover costs incurred by Defendants due to damages to the trucks driven by Plaintiff and proposed class members. Through the false pretenses, Defendants defrauded Plaintiff, and proposed class members of their money, i.e., the wages they earned. Engaging in this activity constitutes theft, and violates Penal Code section 496.

47. As a result of Defendants' violations of Penal Code section 496, Plaintiff and proposed class members are also entitled to recover three times the amount of actual damages sustained by the Plaintiff and proposed class members, costs of suit, and reasonable attorneys' fees, as provided by Penal Code section 496(c).

48. Plaintiff and the proposed class members are therefore entitled to the relief requested below.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment and relief as follows:

1. An order certifying that the action may be maintained as a class action;
2. Compensatory and statutory damages, treble damages, penalties, and restitution, as appropriate and available under each cause of action, in an amount to be proven at trial based on, inter alia, the unpaid balance of compensation Defendants owe;
3. Reasonable attorneys' fees pursuant to California Labor Code sections 218.5, 226(e)(1), 1194, 2699(g)(1), and 2802;
4. Costs of this suit;
5. Pre- and post-judgment interest; and
6. Such other and further relief as the Court deems just and proper.
7. Plaintiff is informed and believes that the damages, back wages, restitution, penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual claims, including damages, back wages, restitution, injunctive relief, interest, attorneys' fees, and penalties, does not exceed \$74,999.99.

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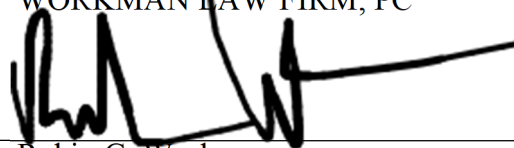
JURY DEMAND

Plaintiff hereby demands a trial by jury.

Date: May 23, 2023

WORKMAN LAW FIRM, PC

By:



Robin G. Workman

*Attorneys for Mark Boyer, and all others
similarly situated*