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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

ANA ORTEGA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

AGGRESSIVE TRANSPORT LTD-USA, a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CV-23-003207
*[Assigned for all purposes to Hon. John R.
Mayne, Dept. 21]*

FIRST AMENDED COMPLAINT

CLASS ACTION COMPLAINT

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (3) Failure to Reimburse Business Expenses;
- (4) Failure to Timely Pay Final Wages;
- (5) Failure to Provide Accurate Itemized Wage Statements;
- (6) Unfair and Unlawful Competition;

PAGA CLAIMS

- (7) Failure to Pay Minimum Wages;
- (8) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (9) Failure to Reimburse Business Expenses;
- (10) Failure to Timely Pay Wages (§ 204);
- (11) Failure to Timely Pay Final Wages; and
- (12) Failure to Provide Accurate Itemized Wage Statements

1 Plaintiff Ana Ortega (“Plaintiff”) on behalf of herself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

13 2. Plaintiff was employed by Defendants from October 2022 through April 2023 as a
14 truck 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 her 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 she 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 Stanislaus County and the unlawful acts
19 alleged herein have a direct effect on Plaintiff and the Represented Employees in Stanislaus
20 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
21 Stanislaus 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 Stanislaus
26 County.

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1 **Defendants**

2 16. Plaintiff is informed and believes and thereon alleges that Defendant Aggressive
3 Transport LTD-USA, is a Canadian corporation authorized to and doing business in Stanislaus
4 County, California, and is and/or was the legal employer of Plaintiff and the Represented
5 Employees during the applicable statutory periods.

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

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

20 19. Plaintiff is informed and believes and thereon alleges that, in conducting
21 themselves in the manner described herein, Defendants, and each of them, were acting in active
22 concert with one another such that the acts of each were and are fully attributable to the others in
23 all material respects. Plaintiff is further informed and believes that at all relevant times
24 Defendants and each of them are now, and at all material times herein mentioned were, the
25 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
26 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
27 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
28 their remaining co-Defendants.

1 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
2 Defendants, and each of them, are an integrated enterprise and should be treated as a single
3 employer because these entities share an interrelation of operations, with common human
4 resources and personnel policies and shared common offices and facilities. Additionally,
5 Defendants also have a shared website, common management, a centralized control of labor
6 operations, and common ownership or financial control.

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

15 **V. CLASS ACTION ALLEGATIONS**

16 22. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 23. Plaintiff brings this action on behalf of herself and all others similarly situated as
19 a class action, pursuant to Code of Civil Procedure § 382.

20 24. The relevant time period for this class action is defined as the time period
21 beginning four years prior to the filing of this action until class certification (the “Relevant Time
22 Period”).

23 25. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
24 represent is defined as follows:

25 **California Class**

26 All current and former California resident truck drivers
27 employed by Defendants and who drove in California at any
28 time during the Relevant Time Period.

1 26. Plaintiff reserves the right to amend or modify the class description with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 27. Plaintiff, as Class Representative, is a member of the class that she seeks to
4 represent.

5 28. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
8 records.

9 29. **Numerosity:** The potential members of the Class as defined are so numerous that
10 a joinder of all Represented Employees is impracticable. Although the exact number is currently
11 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
12 personnel records.

13 30. **Commonality:** There are questions of law and fact common to the class which
14 predominate over any questions affecting only individual members of the class, including
15 without limitation:

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

19 ii. Whether Defendants violated California Labor Code and IWC Wage
20 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
21 hourly compensation for nonproductive time;

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

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

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

3 vi. Whether Defendants violated California Business & Professions Code §§
4 17200 *et seq.* due to the: failure to pay all wages owed, failure to reimburse business expenses,
5 unlawful deduction of wages, and failure to timely pay final wages; and

6 vii. Whether Plaintiff and Represented Employees are entitled to equitable
7 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

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

13 32. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
14 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
15 conflict with those of the Class. Class Representative's counsel are competent and experienced in
16 litigating large employment class actions and other complex litigation matters, including cases
17 like this case.

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

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1 **FIRST CAUSE OF ACTION**

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

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

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

6 35. Plaintiff and the Represented Employees were not exempt from the requirement
7 to be paid at least the applicable California minimum wage throughout the statutory period for
8 each hour worked.

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

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

19 38. Plaintiff and the Represented Employees were also not provided proper minimum
20 and regular wages due to Defendants' failure to accurately record and compensate for all hours
21 worked. For example, Plaintiff and the Represented Employees were often required to clock out
22 for meal periods and/or rest breaks yet were under Defendants' control and required to perform
23 duties for Defendants while off the clock. As a result of this policy and practice, Plaintiff and the
24 Represented Employees were required to perform off-the-clock work that Defendants either
25 knew or should have known they were performing.

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY FOR NONPRODUCTIVE TIME

(Labor Code § 226.2)

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

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

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

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

50. 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)

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

52. 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.

53. 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.

54. 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.

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

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

7 57. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
8 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
9 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
10 compel Defendants to fully perform their obligations under the law, all in an amount to be
11 proved at time of trial.

12 58. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
13 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
14 civil actions, and said interest will accrue from the date on which the employee incurred the
15 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
16 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
17 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

18 59. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
19 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
20 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
21 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
22 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
23 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
24 fees will be in an amount to be proved at the time of trial.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

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

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

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

11 63. 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 64. 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 65. At all relevant times, Defendants employed a policy and practice whereby
18 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
19 of employment within the time required by Labor Code §§ 201 and 202.

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

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

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

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

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

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

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

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

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

18 75. As a result of Defendants’ knowing and intentional failure to comply with Labor
19 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
20 prevented from knowing, understanding and disputing the wage payments paid to them.
21 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
22 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
23 Represented Employees being denied all necessary deductions, payments, and withholdings
24 owed by the employer, including, but not limited to, the failure to make all necessary
25 contributions for unemployment benefits, social security benefits, proper payment of taxes and
26 withholdings, and other mandated state and federal benefits.
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76. Plaintiff has also been injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

SIXTH CAUSE OF ACTION

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

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

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

83. As a result of Defendants' failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in

1 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
2 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*
3 Defendants' violations of the California Labor Code and IWC Wage Orders and its scheme to
4 lower its payroll costs as alleged herein, constitute unlawful and unfair business practices
5 because it was done in a systematic manner over a period of time to the detriment of the Plaintiff
6 and all others similarly-situated.

7 84. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
8 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
9 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
10 of Civil Procedure § 1021.5.

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

17 86. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
18 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
19 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
20 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
21 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
22 harm unless Defendants, and each of them, are restrained from continuing to engage in said
23 unfair, unlawful and/or fraudulent business practices.

24 87. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
25 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
26 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
27 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
28 Represented Employees are not obligated to establish individual knowledge of the unfair

1 practices of Defendants in order to recover restitution.

2 88. Plaintiff, individually, and on behalf of the Represented Employees, is further
3 entitled to and do seek a declaration that the above described business practices are unfair,
4 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
5 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
6 the future.

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

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

14 90. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
15 Defendants during the applicable statutory period and suffered one or more of the Labor Code
16 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
17 action filed on behalf of herself and all other similarly situated current and former aggrieved
18 employees in California against whom one or more of the alleged violations was committed
19 (hereinafter the “Aggrieved Employees”).

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

25 92. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
26 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
27 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
28 the facts and theories to support the alleged violations. More than sixty-five (65) days have

1 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
2 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
3 satisfied the administrative prerequisites to suit under the PAGA.

4 **SEVENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

7 93. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
8 as if fully alleged herein.

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

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

18 96. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to the
19 Aggrieved Employees at less than the required California minimum wages for all hours worked.
20 Due to traffic and other conditions, Defendants' per-mile pay often illegally resulted in a rate of
21 pay under the applicable minimum wage.

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

25 98. Plaintiff is informed and believes and thereon alleges that Defendants
26 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
27 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.
28

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

4 **EIGHTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR NONPRODUCTIVE TIME**

6 (Labor Code § 226.2)

7 100. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
8 as if fully alleged herein.

9 101. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
10 who were paid on a piece-rate basis.

11 102. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
12 basis to provide separate payment for nonproductive time at an hourly rate that is no less than the
13 applicable minimum wage. Labor Code § 226.2(a)(4).

14 103. At all relevant times herein, Defendants failed to compensate the Aggrieved
15 Employees, including Plaintiff, for all nonproductive time separate from any piece-rate
16 compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor
17 Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Aggrieved
18 Employees.

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

22 **NINTH CAUSE OF ACTION**

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

24 (Labor Code § 2802)

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

1 106. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing reimbursement of
3 business expenses.

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

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

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

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

18 **TENTH CAUSE OF ACTION**

19 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

20 (Labor Code § 204)

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

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

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

1 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
2 the following month.

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

6 115. At all relevant times herein, Defendants did not provide Plaintiff and the
7 Aggrieved Employees with all wages due and owing each period within the time required by
8 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
9 Employees with all wages due and owing each pay period, including, but not limited to,
10 minimum wages and wages for unpaid nonproductive time within the time specified by Labor
11 Code § 204.

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

15 **ELEVENTH CAUSE OF ACTION**

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

17 (Labor Code §§ 201 – 203)

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

20 118. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing the timing and
22 payment of final wages.

23 119. Labor Code § 201 requires that the employer immediately pay any wages, without
24 abatement or reduction, to any employee who is discharged.

25 120. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
26 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
27 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.
28

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

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

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

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

13 125. 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 **TWELFTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR**

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

19 (Labor Code § 226)

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

22 127. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
23 who did not receive proper protections and benefits of the laws governing the provision of
24 accurate itemized wage statements.

25 128. Labor Code § 226(a) requires an employer to provide its employees with itemized
26 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
27 inclusive dates of the pay period, the employee's name and the last four digits of his or her
28 Social Security number (or employee identification number), the name and address of the legal

entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

129. Defendants violates Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide any document that could constitute a wage statement within the meaning of Labor Code § 226.

130. Furthermore, Defendants violate Labor Code § 226(a) every pay period with respect to the Aggrieved Employees due to violations including: failure to accurately state gross wages earned, total hours worked, all deductions, net wages earned, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, and all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

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

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

133. 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.

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others
3 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
4 follows:

5 1. As to the Seventh through Twelfth Causes of Action, the assessment of all
6 remedies and/or penalties available under PAGA;

7 2. That the First through Sixth Causes of Action be certified as a class action;

8 3. That Plaintiff be appointed as Class Representative;

9 4. That counsel for Plaintiff be appointed Class Counsel;

10 5. For all applicable statutory penalties recoverable under the First through Sixth
11 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
12 Orders of the Industrial Welfare Commission;

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

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

17 8. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
18 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 256, 558, 1194, and 2802, among
19 other sections inadvertently omitted;

20 9. For an award of damages in the amount of unpaid compensation including, but
21 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
22 thereon;

23 10. For pre- and post-judgment interest; and

24 11. For such other relief as the Court deems just and proper.

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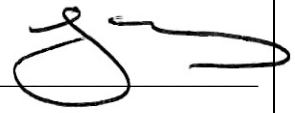
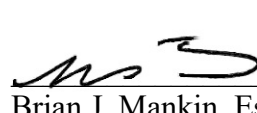
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1 Dated: August 21, 2023

LAUBY, MANKIN & LAUBY LLP

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3 BY:



4 Brian J. Mankin, Esq.
5 Misty M. Lauby, Esq.
6 Attorneys for Plaintiff
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