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County of Alameda

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8 on behalf of the State of California

and all Aggrieved Employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11 AARON AUSTIN, on behalf of the State of
12 California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15
16 FLOYD INC., an Illinois Corporation;
17 SUPER EGO HOLDING LLC, an Illinois
18 Limited Liability Company; SUPER EGO
19 INC., an Illinois corporation; SUPER EGO
LOGISTICS LLC, an Illinois Limited
Liability Company; and DOES 1-100,
inclusive,

20 Defendants.

Case No.: **24CV062510**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF
THE PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE
SECTIONS 2698, et seq.**

1 Plaintiff, AARON AUSTIN, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below) hereby files this Complaint against Defendants FLOYD
3 INC., an Illinois Corporation; SUPER EGO HOLDING LLC, an Illinois Limited Liability
4 Company; SUPER EGO INC., an Illinois corporation; SUPER EGO LOGISTICS LLC, an Illinois
5 Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
6 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

7 **INTRODUCTION**

8 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
9 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
10 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
11 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
12 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

13 **JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
15 California statutes, including but not limited to the PAGA, and decisional law and regulations.

16 3. Venue is proper in this judicial district and the County of Alameda pursuant to
17 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
18 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
19 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
20 in a PAGA action is proper in any county where the defendants committed Labor Code violations
21 against some of its employees). Venue is also proper pursuant to section 393 of the California Code
22 of Civil Procedure because the cause, or some part of the cause, arose in the County of Alameda.

23 **THE PARTIES**

24 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
25 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
26 in the State of California as a non-exempt employee that DEFENDANTS misclassified as an
27 independent contractor from on or around August 2022, through on or around December 15, 2022.

28 5. PLAINTIFF worked for DEFENDANTS as a driver, professional driver, lease
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PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 operator, truck driver and/or similar title(s) and/or position(s), with routes initiated and completed
2 routes in various counties throughout California, including but not limited to, Alameda County.
3 PLAINTIFF was a non-exempt employee of DEFENDANTS but was misclassified as an
4 independent contractor.

5 6. DEFENDANTS are an Illinois limited liability company and/or Illinois corporation
6 that, at all relevant times, were authorized to do business within the State of California and are doing
7 business in the State of California.

8 7. DEFENDANTS own, operate, or otherwise manage a transportation and/or logistics
9 business.

10 8. The true names and capacities of the DOE Defendants sued herein as DOES 1
11 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
12 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
13 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
14 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
15 become known.

16 9. PLAINTIFF is further informed and believes that, at all relevant times, each
17 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
18 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
19 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
20 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
21 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
22 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
23 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
24 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
25 controlled, aided and abetted the conduct of all other Defendants.

26 **JOINT LIABILITY**

27 10. Under California law, the definition of the terms “to employ” are broadly construed
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1 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1)
2 to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or
3 (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*,
4 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
5 was to reach situations in which multiple entities control different aspects of the employment
6 relationship. Supervision of the work, in the specific sense of exercising control over how services
7 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
8 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
9 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
10 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
11 California, applying a less stringent standard to what constitutes sufficient control by a business
12 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
13 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
14 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
15 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
16 employment,” *Id.* at 875 [emphasis added].

17 11. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
18 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
19 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
20 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
21 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
22 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
23 and Aggrieved Employees to work for them.

24 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
27 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
28 policies and practices regardless of the location(s) where they worked. Among other things,

1 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
2 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
3 over the day-to-day operations and employment matters, including the power to hire and fire, set
4 schedules, issue employee policies, and determine rates of compensation across its locations in
5 California; (3) DEFENDANTS utilize the same policies and procedures for all California
6 employees, including issuing the same employee handbooks and other form agreements; (4)
7 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
8 employment matters; and, (6) DEFENDANTS share employees.

9 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
10 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
11 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
12 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
13 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
14 considered the joint employers of PLAINTIFF and Aggrieved Employees.

15 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
16 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
17 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
18 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
19 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
20 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
21 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
22 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
23 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
24 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
25 writing the details of their compensation, and the manner in which they were to take meal and rest
26 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
27 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
28 collectively would evaluate their wage rates.

15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved Employees' employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Aggrieved Employees.

17. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF.

18. By reason of their status as joint employers of PLAINTIFF and Aggrieved Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to all Aggrieved Employees.

PAGA ALLEGATIONS

19. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of the State of California and all Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

All individuals who worked either directly or via a staffing agency for any one or more of the DEFENDANTS at any location in California at any time from one year plus 65 days from the filing of the initial Complaint through the present (“PAGA Period”).

20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein.

1 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
2 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
3 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
4 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
5 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
6 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
7 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
8 *Id.* at 760-761.

9 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

10 21. On July 28, 2023, PLAINTIFF, through counsel, gave written notice by online filing
11 with the California Labor and Workforce Development Agency ("LWDA") informing it that
12 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
13 in this Complaint ("PAGA Notice").

14 22. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
15 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
16 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
17 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
18 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit against DEFENDANTS
19 has duly accrued.

20 23. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
21 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
22 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

23 **FACTUAL ALLEGATIONS**

24 24. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
25 worked for DEFENDANTS in the State of California. At all times referenced herein,
26 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
27 permitted them to work.

28 25. PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
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1 exempt employee that DEFENDANTS misclassified as an independent contractor from on or
2 around August 2022, through on or around December 15, 2022.

3 26. PLAINTIFF worked for DEFENDANTS as a driver, professional driver, lease
4 operator, truck driver and/or similar title(s) and/or position(s), with routes initiated and completed
5 routes in various counties throughout California, including but not limited to, Alameda County.
6 PLAINTIFF was a non-exempt employee of DEFENDANTS but was misclassified as an
7 independent contractor.

8 27. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
9 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
10 minimum wages and straight time wages and unpaid overtime wages for Aggrieved Employees
11 working in non-truck-driving positions. DEFENDANTS failed to compensate PLAINTIFF and
12 Aggrieved Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and
13 time rounding policies, and failure to relieve employees of all duties/employer control during unpaid
14 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
15 below.

16 28. Based on information and belief, DEFENDANTS implemented a policy and/or
17 practice of rounding meal period start and end times and/or automatically deducting at least thirty
18 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
19 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
20 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
21 PLAINTIFF and Aggrieved Employees of all wages owed.

22 29. Based on information and belief, Aggrieved Employees were not paid for all hours
23 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
24 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
25 the clock work policies and/or practices.

26 30. DEFENDANTS willfully misclassified PLAINTIFF and continue to willfully
27 misclassify Aggrieved Employees as independent contractors to evade California's minimum wage
28 laws. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours

1 worked, resulting in the underpayment of minimum and straight time wages.

2 31. For example, DEFENDANTS suffered and permitted PLAINTIFF and Aggrieved
3 Employees to work off the clock without the payment of wages, as DEFENDANTS failed to record
4 the number of hours worked and failed to instruct PLAINTIFF and other Aggrieved Employees to
5 record their hours worked and further failed to provide any way for them to record their hours
6 worked. PLAINTIFF and other Aggrieved Employees were not compensated for all time worked,
7 including but not limited to, time spent making pre-trip and post-trip inspections, time spent fueling,
8 cleaning, setting up, time spent completing paperwork, loading, unloading, all waiting and/or
9 standby time between jobs and tasks and/or all time spent driving between delivery locations, time
10 spent communicating with DEFENDANTS, including but not limited to, time spent updating
11 DEFENDANTS as to the status of deliveries, time spent communicating with DEFENDANTS
12 regarding deliveries and/or scheduling and/or other work tasks and/or time spent returning
13 equipment to DEFENDANTS' facilities/yards.

14 32. For example, on information and belief, at times, DEFENDANTS paid Aggrieved
15 Employees on a strictly piece-rate basis (e.g., per load/per delivery/per mile/per trip/per day), at
16 least during some pay periods, during the relevant time period. However, as explained above,
17 DEFENDANTS failed to separately compensate Aggrieved Employees for all non-piece rate related
18 activities/all non-productive time, including but not limited to, all pre-trip and post-trip inspections,
19 waiting time, fueling, cleaning, setting up, time spent completing paperwork, loading, unloading,
20 waiting between jobs and tasks, and/or performing work duties that otherwise fall outside of the
21 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
22 their non-productive time and/or failure to compensate them at the correct rates for all non-
23 productive time resulted in the failure to pay Aggrieved Employees for all hours worked and
24 violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2
25 and/or 1197.

26 33. Based on information and belief, DEFENDANTS further failed to include this
27 information on these employees' wage statements required by Labor Code section 226.2. As such,
28 PLAINTIFF and other Aggrieved Employees were not paid for all work time. DEFENDANTS were

1 and are required to pay PLAINTIFF and other Aggrieved Employees minimum wages for all time
2 worked. DEFENDANTS failed and continue to fail to ensure that PLAINTIFF and other Aggrieved
3 Employees receive the applicable minimum wage for all hours worked. Instead, DEFENDANTS
4 paid PLAINTIFF and other Aggrieved Employees per load basis regardless of how many hours they
5 worked, thereby depriving Aggrieved Employees of all owed minimum wages, and all owed straight
6 time wages.

7 34. Moreover, by charging PLAINTIFF and other Aggrieved Employees with fees for,
8 including but not limited to, dispatch services and/or other administrative services and/or
9 tools/equipment required to perform their jobs, DEFENDANTS deprived PLAINTIFF and other
10 Aggrieved Employees of allowed minimum wages for all hours worked. For example, at times
11 DEFENDANTS deducted fees and/or costs from PLAINTIFF's paycheck, thereby depriving him
12 of all owed wages. Based on further information and belief, DEFENDANTS have a policy and
13 practice of deducting percentages of the price of each load transported to reduce load rates, resulting
14 in unlawful deductions, unreimbursed business expenses, and the underpayment of all wages owed,
15 including but not limited to straight time wages, owed to Aggrieved Employees.

16 35. Based on information and belief, DEFENDANTS failed to pay Aggrieved
17 Employees for time they were required to spend completing orientation, policy questionnaires,
18 and/or time spent completing the onboarding process including but not limited to reviewing various
19 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
20 was completed off-the-clock and was not compensated.

21 36. Based on information and belief, DEFENDANTS implemented a time-rounding
22 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
23 compensable time because the time-rounding system implemented by DEFENDANTS would
24 almost always, if not always, result in understating actual compensable work time.

25 37. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
26 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
27 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
28 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages

1 for those Aggrieved Employees working in non-truck-driving positions who worked more than eight
2 (8) hours in a day and/or more than forty (40) hours in a week.

3 38. Based on information and belief, DEFENDANTS had actual and/or constructive
4 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
5 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
6 underpayment of minimum wages and straight time wages as well as unpaid overtime wages owed
7 to Aggrieved Employees working in non-truck-driving positions, in violation of California's
8 minimum and overtime wage laws.

9 39. Based on information and belief, DEFENDANTS failed and continue to fail to pay
10 Aggrieved Employees working in non-truck-driving positions two times their regular rate of pay for
11 time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on
12 the seventh consecutive day of work in a work week, in violation of California's overtime laws.

13 40. Based on information and belief, DEFENDANTS failed to incorporate all non-
14 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
15 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
16 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
17 wages owed to Aggrieved Employees working in non-truck-driving positions.

18 41. **Meal Period Violations.** Aggrieved Employees working in non-truck-driving
19 positions consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least
20 one meal period.

21 42. Aggrieved Employees working in non-truck-driving positions would not receive
22 legally compliant thirty (30) minute first meal breaks. Based on information and belief, Aggrieved
23 Employees working in non-truck-driving positions were consistently unable to take timely, off duty,
24 thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted
25 meal periods, and/or work through part or all their meal periods due to understaffing, the nature and
26 constraints of their job duties and/or commentary from supervisors pressuring them to take non-
27 compliant meal breaks or skip meal breaks completely.

28 43. For example, based on information and belief, Aggrieved Employees not employed

1 as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered to their
2 workstations and/or were required to monitor work communication devices during purportedly off-
3 duty meal periods, and as such were not relieved of all duties and DEFENDANTS' control during
4 purported meal periods. Based on information and belief, DEFENDANTS did not pay legally
5 compliant meal period premiums and/or any and/or all meal period premiums for these missed
6 and/or otherwise legally noncompliant meal periods, in violation of California meal period law.

7 44. Based on information and belief, other Aggrieved Employees working in non-truck-
8 driving positions were consistently suffered and permitted to take meal periods past the fifth hour
9 of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises
10 and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and
11 constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

12 45. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve Aggrieved Employees working in non-truck-driving positions of all
14 duties and DEFENDANTS' control during unpaid meal periods.

15 46. Based on information and belief, DEFENDANTS required Aggrieved Employees
16 working in non-truck-driving positions to complete off-the-clock work prior to their scheduled shift
17 time which DEFENDANTS failed to take into account when scheduling meal periods for Aggrieved
18 Employees working in non-truck-driving positions. Based on information and belief, meal periods
19 were late, in part due to unaccounted pre-shift off-the-clock work.

20 47. Based on information and belief, DEFENDANTS had actual and/or constructive
21 knowledge that their policies and practices resulted in the denial of uninterrupted meal periods
22 which were free of DEFENDANTS' control owed to Aggrieved Employees working in non-truck-
23 driving positions, in violation of California's meal period laws.

24 48. Based on information and belief, per DEFENDANTS' uniform policy and practice,
25 Aggrieved Employees working in non-truck-driving positions who worked shifts of more than ten
26 hours did not receive a second legally compliant thirty (30) minute second meal break.

27 49. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

1 times of Aggrieved Employees (working in non-truck-driving positions)' meal periods and/or
2 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
3 periods (including meal periods restricted to DEFENDANTS' premises), despite having actual
4 and/or constructive knowledge that Aggrieved Employees working in non-truck-driving positions
5 did not receive lawful meal periods.

6 50. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
7 records of the true start and end times of Aggrieved Employees (working in non-truck-driving
8 positions)' meal periods. Based on information and belief, to the extent meal period were recorded,
9 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
10 Aggrieved Employees working in non-truck-driving positions not being paid for all time worked as
11 well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
12 58.

13 51. Based on information and belief, DEFENDANTS failed to instruct Aggrieved
14 Employees working in non-truck-driving positions as to the timing and duty-free nature of meal
15 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
16 meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability
17 for the Aggrieved Employees working in non-truck-driving positions can be established by evidence
18 that an employer adopted a uniform corporate break policy that failed to give full effect to California
19 law and the applicable Wage Order requirements. The fact that employees may legally waive meal
20 breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

21 52. PLAINTIFF is further informed and believes and thereon alleges that
22 DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-
23 deduction policies and practices resulted in the denial of lawful meal periods owed to Aggrieved
24 Employees working in non-truck-driving positions, in violation of California's meal period laws.

25 53. DEFENDANTS failed to pay Aggrieved Employees working in non-truck-driving
26 positions, an additional hour of wages at their respective regular rates of compensation for each
27 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
28 premium at all for each workday a lawful meal period was not provided and/or failed to pay the

1 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
2 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
3 the regular rate or compensation for purposes of calculating the owed meal period premium not the
4 regular rate or compensation for purposes of calculating the owed meal period premium.

5 **54. Rest Period Violations.** DEFENDANTS did not properly authorize and provide
6 Aggrieved Employees working in non-truck-driving positions with legally compliant rest periods at
7 a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are
8 provided in the middle of the work period, as required by law.

9 **55.** Aggrieved Employees working in non-truck-driving positions were not adequately
10 informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per
11 California law. Based on information and belief, DEFENDANTS had no policy in place nor
12 instruction as to the taking of duty-free rest periods. Based on information and belief,
13 DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have
14 any sort of compliant rest period policy in practice.

15 **56.** For example, based on information and belief, Aggrieved Employees not employed
16 as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered to their
17 workstations and/or were required to monitor work communication devices during purported rest
18 periods, and as such were not relieved of all duties and DEFENDANTS' control during their rest
19 periods, in violation of California rest period law.

20 **57.** Based on information and belief, Aggrieved Employees working in non-truck-
21 driving positions' rest periods were interrupted, cut short, on duty, restricted to premises and/or late
22 due to understaffing, the nature and constraints of their job duties, and/or due to commentary from
23 supervisors/ managers pressuring Aggrieved Employees working in non-truck-driving positions to
24 skip rest breaks completely or otherwise take non-compliant rest periods.

25 **58.** Moreover, based on information and belief, DEFENDANTS failed to provide any
26 form of a third rest period on shifts lasting longer than ten hours.

27 **59.** Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve Aggrieved Employees working in non-truck-driving positions of all

1 duties and DEFENDANTS' control during rest periods.

2 60. Based on information and belief, Aggrieved Employees working in non-truck-
3 driving positions were pressured to complete their work duties according to a designated schedule
4 such that rest breaks were only taken once tasks were completed, and/or as time permitted.

5 61. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
6 which Aggrieved Employees working in non-truck-driving positions experienced a missed or
7 otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013)
8 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay Aggrieved Employees working in non-
9 truck-driving positions, an additional hour of wages at their respective regular rates of pay for each
10 workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period
11 premium at all for each workday a lawful rest period was not provided and/or failed to pay the
12 proper rest period premium for failure to incorporate all non-discretionary remuneration, including
13 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
14 the regular rate of compensation for purposes of calculating the owed rest period premium.

15 62. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
16 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
17 with Labor Code section 226. DEFENDANTS either failed/fails to provide wage statements at all
18 or failed/fails to provide wage statements containing all statutorily required information pursuant to
19 Labor Code section 226.

20 63. To the extent wage statements were issued at all, the wage statements failed to
21 indicate the earned gross and net wages earned during the pay period, the correct applicable rates of
22 pay for all hours worked, and the total hours worked by PLAINTIFF and Aggrieved Employees (by
23 virtue of DEFENDANTS' willful misclassification scheme and payment based on a per load rate
24 regardless of the number of hours worked and/or other unlawful policies and practices described
25 above) which results in a violation of Labor Code section 226(a).

26 64. To the extent any wage statements were provided, the wage statements fail to indicate
27 the "total hours worked" by PLAINTIFF and other Aggrieved Employees.

28 65. Moreover, to the extent wage statements were provided, they fail to include all gross

1 and net wages earned, fail to include the number of piece-rate units earned and any applicable piece
2 rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to
3 include any applicable hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate, in violation of Labor Code section 226(a).

5 66. Moreover, based on information and belief, to the extent any wage statements were
6 provided, they fail to list the correct name and/or address of the legal entity that is the employer, in
7 violation of Labor Code section 226(a)(8).

8 67. Based on information and belief, DEFENDANTS failed to separately compensate
9 Aggrieved Employees for non-productive time and/or failure to compensate them at the correct rates
10 for all non-productive time when such employees were paid on a piece rate basis, resulting in unpaid
11 wages and violations of Labor Code section 226.2, and further failed to include this information on
12 these employees' wage statements (to the extent any wage statements were provided) as required
13 by Labor Code section 226.2.

14 68. As a result, to the extent DEFENDANTS provided wage statements to PLAINTIFF
15 and Aggrieved Employees, the wage statements were not accurate and did not include all of the
16 statutorily required information. As DEFENDANTS either failed to issue wage statements at all
17 and/or failed to provide wage statements containing all statutorily required information pursuant to
18 Labor Code section 226, DEFENDANTS violated Labor Code section 226.

19 69. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
20 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
21 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
22 from Aggrieved Employees paychecks during the relevant period. Such a practice is in violation of
23 including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil
24 penalties under Labor Code Section 2699.

25 70. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
26 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
27 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
28 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as

1 required by law, including but not limited to the following records: total daily hours worked,
2 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
3 began and ended each work period, time records of meal periods, and accurate itemized wage
4 statements.

5 71. DEFENDANTS have failed and continue to fail to keep accurate and complete
6 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
7 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
8 employer control during unpaid meal periods, failure to record the true start and end times of meal
9 periods, shift start times and shift end times, and other off-the-clock work policies and practices
10 described herein.

11 72. **Failure to Provide Written Commission Agreements.** Labor Code section 2751
12 requires that all commission contracts "be in writing and . . . set forth the method by which the
13 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,
14 employers must also "give a signed copy of the contract to every employee who is a party [to the
15 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

16 73. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
17 Aggrieved Employees who were compensated on a commission basis with proper written
18 commission agreements, in violation of Labor Code section 2751.

19 74. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
20 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
21 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
22 employer to include on the wage statements for these employees the total hours of compensable rest
23 and recovery period, the total hours for other non-productive time, the rates of compensation for
24 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
25 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
26 higher of: (i) an average hourly rate determined by dividing the total compensation for the
27 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
28 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,

1 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
2 employees compensated on a commission basis.

3 75. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
4 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
5 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
6 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
7 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
8 226.2.

9 76. **Unreimbursed Business Expenses.** Based on information and belief,
10 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
11 as a direct consequence of the performance of their job duties without providing reimbursement, in
12 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
13 Aggrieved Employees were improperly required to provide and maintain work tools that are
14 supposed to be the responsibility of the employer.

15 77. Based on information and belief, DEFENDANTS regularly failed to reimburse and
16 indemnify Aggrieved Employees for business expenses, including but not limited to, uniforms
17 and/or use of PLAINTIFF's and other Aggrieved Employees' cellphone and data usage and/or cost
18 of internet, vehicle mileage and related expenses. For example, based on information and belief,
19 PLAINTIFF used his personal mobile phone to receive and respond to work-related messages and/or
20 phone calls. Based on information and belief other Aggrieved Employees used/use their personal
21 mobile phones to communicate with DEFENDANTS either via phone call and/or text message about
22 scheduling and/or other work tasks.

23 78. PLAINTIFF and other Aggrieved Employees were also required to use their personal
24 vehicles and/or trucks and/or other tools to complete deliveries for DEFENDANTS without
25 reimbursement for these expenses including for mileage, gas, and other costs related to the use of a
26 personal vehicle and/or personal tools. For example, PLAINTIFF was required to use his personal
27 vehicle to drive his routes/ make deliveries for DEFENDANTS and was required to pay for all fuel
28 costs and truck and/or equipment maintenance out of pocket without any and/or full reimbursement

1 from DEFENDANTS for these business expenses.

2 79. Based on information and belief, Aggrieved Employees were required to use their
3 personal cell phones, pay for data plan usage and/or internet and/or use their personal vehicles/trucks
4 for work purposes, pay for fuel costs and vehicle and/or equipment maintenance, supply their own
5 tools and/or equipment and were charged fees for dispatch and/or other administrative services
6 and/or for the use of tools and/or equipment required to perform the job duties DEFENDANTS
7 assigned to Aggrieved Employees. DEFENDANTS did not reimburse Aggrieved Employees for
8 these business expenses.

9 80. Based on information and belief Aggrieved Employees were required to incur
10 business related expenses that they were not reimbursed for, including but not limited to, costs
11 associated with being required to use their personal vehicles, personal cell phones, and purchase
12 and/or maintain their own hand tools/equipment and/or uniforms and/or protective/safety
13 equipment. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
14 Employees were entitled to be reimbursed for all reasonable expenses associated with carrying out
15 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

16 81. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
17 for all reasonable expenses associated with carrying out their duties required that Aggrieved
18 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
19 2802.

20 82. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
21 provides as follows:

22 83. (A) Each workday an employee is required to report for work and does report, but is
23 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
24 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
25 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
26 than the minimum wage. (B) If an employee is required to report for work a second time in any one
27 workday and is furnished less than two (2) hours of work on the second reporting said employee
28 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the

1 minimum wage.

2 84. Aggrieved Employees were not paid reporting time wages in accordance with
3 California law, including but not limited to the applicable IWC Wage Order. For example, based on
4 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
5 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
6 in accordance with California law.

7 85. Based on information and belief, DEFENDANTS have a policy and practice of
8 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
9 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
10 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
11 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

12 86. **Violation of California Day of Rest Law.** Under California law, every employee in
13 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its
14 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor
15 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

16 87. Based on information and belief, DEFENDANTS have and continue to have a
17 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
18 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
19 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
20 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
21 violation of California law, including but not limited to Labor Code Section 551.

22 88. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
23 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
24 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
25 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
26 accrued sick leave hours on the correct number of hours worked (as a result of the
27 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
28 times/other required off-the-clock work including but not limited to unpaid meal periods) and by

1 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

4 89. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
5 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
6 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
7 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
8 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
9 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
10 used sick leave and the balance of paid sick leave.

11 90. Based on information and belief, throughout the relevant time period,
12 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
13 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
14 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
15 prior to their respective separations, for as on several occasions thereafter, he or she would have
16 been entitled to use the banked sick leave and earn appropriate compensation.

17 91. Upon information and belief, DEFENDANTS failed and continue to fail to comply
18 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
19 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
20 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
21 wages.

22 92. As such, DEFENDANTS have violated California's paid sick leave laws and
23 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
24 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
25 unlawful practices and policies violate Labor Code sections 245-248.5.

26 93. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
27 that all employers with 26 or more employees are required to provide up to 80 hours for covered
28 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

1 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
2 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
3 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
4 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

5 94. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
6 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
7 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
8 from gratuities, or from using gratuities as direct or indirect credits against an employee's
9 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
10 received.

11 95. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
12 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
13 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
14 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
15 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
16 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
17 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
18 Labor Code section 351.

19 96. Based on information and belief, DEFENDANTS charges an additional service
20 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
21 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
22 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
23 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
24 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
25 constitute a gratuity that is intended to the employees providing the service).

26 97. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
27 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
28 they experienced within the statutory period, and \$200 per pay period for each additional violation.

1 **98. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
2 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
3 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
4 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
5 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

6 **99. Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
7 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
8 were due and owing upon termination or resignation. Based on information and belief,
9 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
10 requirements of Labor Code sections 201-202.

11 **100.** Upon separation of employment, Aggrieved Employees' final paychecks were not
12 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
13 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
14 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
15 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
16 accrued rates.

17 **101.** Based on further information and belief, DEFENDANTS failed to timely provide all
18 owed wages immediately upon discharge of employment. Based in information and belief, at times,
19 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
20 Aggrieved Employees would not be called in for work for longer than a single pay period due to
21 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
22 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
23 the end of such periods of employment, in violation of including but not limited to Labor Code
24 section 201-202.

25 **102. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
26 employee who is discharged shall be paid at the place of discharge, and every employee who quits
27 shall be paid at the office or agency of the employer in the county where the employee has been
28 performing labor. All payments shall be made in the manner provided by law.

1 103. Based on information and belief, DEFENDANTS have a policy and practice of
2 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
3 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
4 office or agency of DEFENDANTS in the county where the work was performed, in violation of
5 Labor Code Section 208.

6 104. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

7 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

8 105. Based on information and belief, DEFENDANTS required Aggrieved Employees to
9 agree in writing to unlawful conditions of employment including but not limited to, unlawful
10 independent contractor agreements, unlawful non-solicitation/non-compete agreements, unlawful
11 confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers of rights,
12 unlawful forum selection clauses and/or unlawful choice of law provisions/agreements and/or
13 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
14 in violation of Labor Code section 432.5.

15 106. Based on information and belief, DEFENDANTS ordered unlawful financial credit
16 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
17 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
18 employment, in violation of California and Federal law, which results in a further violation of Labor
19 Code section 432.5.

20 107. Based on information and belief, DEFENDANTS also required Aggrieved
21 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
22 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
23 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
24 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
25 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
26 FCRA when conducting background screenings for applicants, including but not limited to
27 Aggrieved Employees that were subject to a background check as a condition of employment during
28 the application phase.

1 108. Based on information and belief, DEFENDANTS required Aggrieved Employees to
2 agree in writing to a background check which failed to abide by the requirements set forth in CA
3 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
4 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
5 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
6 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
7 failing to provide a way by which the individual could request a copy of the report, failing to disclose
8 the name, address, and telephone number of the third party preparing the report, and failing to
9 properly obtain authorization or consent to such a background check, and thus was an unlawful
10 background check.

11 109. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
12 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
13 section 432.5.

14 110. Based on further information and belief, DEFENDANTS also required Aggrieved
15 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
16 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
17 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
18 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

19 111. Based on further information and belief, DEFENDANTS knew that requiring
20 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
21 condition of obtaining and/or holding employment was unlawful.

22 112. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
23 condition of employment, DEFENDANTS violated Labor Code section 432.5.

24 Unlawful Inquires into Criminal History

25 113. Labor Code section 432.7 prohibits an employer from asking applicants about past
26 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
27 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
28 convictions on its employment application, in violation of California law.

114. Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law, and in violation of Labor code section 432.5.

Unlawful PAGA Waiver

115. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

116. An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

117. Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

118. Upon information and belief, DEFENDANTS required Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

119. **Violation of Labor Code section 976.** Labor Code section 976 provides that “No person shall publish or cause to be published any advertisement, solicitation or communication in any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an

1 employee or independent contractor, which advertisement, solicitation or communication (a) is
2 willfully designed to mislead any person as to compensation or commissions which may be earned;
3 or (b) falsely represents the compensation or commissions which may be earned.”

4 120. Based on information and belief, DEFENDANTS have a policy and/or practice of
5 offering prospective employees, including Aggrieved Employees, a higher compensation and
6 commission that is misleading as it falsely represents the compensation or commission that will be
7 earned during employment, as the actual compensation or commission earned is lower than that
8 which is offered to induce employment or continued employment. Such a practice or policy is in
9 violation of Labor Code section 976.

10 121. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.**
11 DEFENDANTS did not secure workers’ compensation for PLAINTIFF and other Aggrieved
12 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because
13 of DEFENDANTS’ violations of those statutes, DEFENDANTS are liable for civil penalties in the
14 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
15 Employee.

16 **FIRST CAUSE OF ACTION**
17 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
18 **2698, *ET SEQ.***
19 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
20 **DEFENDANTS)**

21 122. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 **Willful Misclassification as an Independent Contractor**

23 123. California Labor Code section 226.8 makes it illegal to willfully misclassify an
24 employee as an independent contractor, providing: “[i]t is unlawful for any person or employer to
25 engage in any of the following activities: (1) Willful misclassification of an individual as an
26 independent contractor. (2) Charging an individual who has been willfully misclassified as an
27 independent contractor a fee, or making any deductions from compensation, for any purpose,
28 including for goods, materials, space rental, services, government licenses, repairs, equipment
maintenance, or fines arising from the individual’s employment where any of the acts described in
this paragraph would have violated the law if the individual had not been misclassified.” California

1 Labor Code section 226.8(a).

2 124. At all relevant times, DEFENDANTS misclassified PLAINTIFF and other
3 Aggrieved Employees as independent contractors as opposed to employees to evade California wage
4 and hour laws. To qualify as an independent contractor under California law, (1) the worker must
5 be free from the employer's control and direction in the performance of the work, both under the
6 contract for the performance of the work and in fact; (2) the work performed must be outside the
7 usual course of the employer's business; and (3) the worker must not be customarily engaged in an
8 independently established trade, occupation, or business of the same nature as the work he
9 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
10 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

11 125. Despite DEFENDANTS efforts to evade California wage and hour laws by setting
12 up an alleged contractor scheme, the reality is that PLAINTIFF and other Aggrieved Employees are
13 and were, in fact, at all relevant times, employees according to the law. As explained above:

14 126. (a) PLAINTIFF and the Aggrieved Employees are/were not free from
15 DEFENDANTS' control and direction in the performance of work, both under the contract for the
16 performance of the work and in fact; (b) the work PLAINTIFF and the Aggrieved Employees
17 perform/performed work is/was entirely within the usual course of DEFENDANTS' business; and
18 (c) PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in an
19 independently established trade, occupation, or business of the same nature as the work they
20 perform/performed for DEFENDANTS.

21 127. DEFENDANTS misclassify other Aggrieved Employees as independent contractors
22 to try to evade California labor laws that protect employees, including but not limited to, minimum
23 wage law for all Aggrieved Employees and overtime laws for non-truck-driver Aggrieved
24 Employees, wage and sick pay laws, workers' compensation laws, expense reimbursement
25 requirements, record-keeping requirements, wage statement requirements, and requirements as to
26 the timely payment of wages during and upon separation of employment among others described
27 herein.

28 **Failure to Keep Accurate Records**

1 128. California Labor Code § 1174 requires employers to keep “accurate and complete”
2 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
3 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
4 times during which all owed meal periods were provided each day.

5 129. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
6 and complete records as required by law, including but not limited to the following records: total
7 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
8 Aggrieved Employees began and ended each work period, time records of meal periods for
9 Aggrieved Employees working in non-truck-driving positions, and accurate itemized wage
10 statements.

11 130. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
12 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
13 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
14 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
15 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
16 period during which the referenced statutes and Wage Order provisions were violated.¹

17 **Minimum and Overtime Wage Violations**

18 131. California law provides that employees in California must be paid for all hours
19 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
20 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
21 The minimum wage standard applies to each hour employees worked for which they were not paid.
22 Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful
23 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average
24 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 132. California law also provides that employees in California must be paid overtime,
2 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
3 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
4 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
5 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
6 consecutive day of work in a work week. *Ibid.*

7 133. As explained above, DEFENDANTS violated California's minimum and overtime
8 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
9 by virtue of, among other things, DEFENDANTS' misclassification scheme, time rounding policies
10 and practices (for shift start and end times and meal period start and end times), payment according
11 to scheduled hours worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work
12 completed during meal periods, and/or other otherwise off-the-clock work (described above), and/or
13 other unlawful policies and/or practices described above which resulted in unpaid minimum and
14 overtime wages.

15 134. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
16 Aggrieved Employees for all hours worked.

17 135. Based on information and belief, DEFENDANTS had actual or constructive
18 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
19 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
20 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
21 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
22 Employees.

23 136. Based on information and belief, DEFENDANTS failed and continue to fail to pay
24 a premium wage rate to Aggrieved Employees working in non-truck-driving positions for all hours
25 worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

26 137. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
27 Employees working in non-truck-driving positions' regular rate(s) of pay for time worked beyond
28 twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh

1 consecutive day of work in a work week, in violation of California's overtime laws.

2 138. Based on information and belief, DEFENDANTS further violated California's
3 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
4 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
5 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
6 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
7 the overtime wage rate, resulting in the underpayment of overtime wages owed Aggrieved
8 Employees working in non-truck-driving positions.

9 139. This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1,
10 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
11 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
12 Wage Orders, section 20.

13 **Meal Period Violations**

14 140. California law requires employers to provide employees a duty-free, uninterrupted
15 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
16 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
17 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
18 *Court* (2012) 53 Cal.4th 1004.

19 141. Employers must also provide employees with a second duty-free, uninterrupted thirty
20 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
21 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
22 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
23 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
24 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
25 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
26 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon
27 information and belief, Aggrieved Employees working in non-truck driving positions did not sign
28 any valid meal period waiver(s) throughout their respective employments by DEFENDANTS.

1 142. Employers covered by any and all applicable IWC Wage Orders have an obligation
2 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
3 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
4 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
5 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
6 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
7 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
8 provided”).

9 143. Employers must pay employees an additional hour of wages at the employees’
10 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
11 meal period, first meal period provided after five (5) hours, second meal period provided after 10
12 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
13 provide an employee a meal period in accordance with the applicable provision of this Order, the
14 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
15 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

16 144. Aggrieved Employees that worked in a non-truck-driver positions were entitled to
17 meal periods, yet DEFENDANTS have a consistent policy and/or practice of not providing lawful
18 meal periods to such non-truck-driver Aggrieved Employees and/or providing compensation in lieu
19 thereof. Based on information and belief, non-truck-driver Aggrieved Employees were regularly
20 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
21 being forced to take late meal periods, interrupted meal periods and/or work through part or all of
22 their meal periods due to DEFENDANTS’ misclassification scheme and/or the nature and
23 constraints of their job duties.

24 145. Aggrieved Employees that worked in a non-truck-driver positions consistently
25 worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

26 146. Aggrieved Employees that worked in a non-truck-driver positions did not receive
27 legally compliant thirty (30) minute first meal breaks. Based on information and belief, non-truck-
28 driver Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute,

1 uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods,
2 and/or work through part or all their meal periods due to understaffing, the nature and constraints of
3 their job duties and/or commentary from supervisors pressuring them to take non-compliant meal
4 breaks or skip meal breaks completely.

5 147. Based on information and belief, non-truck-driver Aggrieved Employees were
6 consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their
7 meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty
8 due to commentary from supervisors, understaffing, the nature and constraints of their job duties,
9 and/or the need to meet DEFENDANTS' goals and expectations.

10 148. For example, based on information and belief, Aggrieved Employees not employed
11 as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered to their
12 workstations and/or were required to monitor work communication devices during purportedly off-
13 duty meal periods, and as such were not relieved of all duties and DEFENDANTS' control during
14 purported meal periods.

15 149. Based on information and belief, DEFENDANTS required non-truck-driver
16 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
17 DEFENDANTS failed to take into account when scheduling meal periods for non-truck-driver
18 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
19 unaccounted pre-shift off-the-clock work.

20 150. Moreover, non-truck-driver Aggrieved Employees did not receive a timely,
21 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

22 151. DEFENDANTS also failed to pay premiums at the regular rate of pay for
23 missed/otherwise unlawful meal periods in violation of California law.

24 152. These unlawful meal period policies and practices result in violations of Labor Code
25 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
26 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
27 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
28 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

1 **Rest Period Violations**

2 153. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
3 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
4 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
5 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
6 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
7 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
8 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
9 1029). The rest period requirement obligates employers to permit and authorize employees to take
10 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
11 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
12 257. If the employer fails to provide any required rest period, the employer must pay the employee
13 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
14 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
15 applicable IWC Wage Order.

16 154. Aggrieved Employees that worked in a non-truck-driver position were entitled to rest
17 periods, yet based on information and belief, such Aggrieved Employees did not receive legally
18 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.

19 155. Non-truck-driver Aggrieved Employees were not adequately informed, authorized,
20 instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based
21 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
22 duty-free rest periods. Based on information and belief, DEFENDANTS did not have a have a
23 compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period
24 policy in practice. For example, based on information and belief, Aggrieved Employees not
25 employed as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered
26 to their workstations and/or were required to monitor work communication devices during purported
27 rest periods, and as such were not relieved of all duties and DEFENDANTS’ control during their
28 rest periods, in violation of California rest period law.

1 156. Based on information and belief, non-truck-driver Aggrieved Employees' rest
2 periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing,
3 the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers
4 pressuring them to skip rest breaks completely or otherwise take non-compliant rest periods.

5 157. Moreover, based on information and belief, DEFENDANTS failed to provide any
6 form of a third rest period on shifts lasting longer than ten hours.

7 158. Based on information and belief, DEFENDANTS implemented policies and/or
8 practices that failed to relieve non-truck-driver Aggrieved Employees of all duties and
9 DEFENDANTS' control during rest periods.

10 159. Based on information and belief, non-truck-driver Aggrieved Employees were
11 pressured to complete their work duties according to a designated schedule such that rest breaks
12 were only taken once tasks were completed, and/or as time permitted.

13 160. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
14 which non-truck-driver Aggrieved Employees experienced a missed or otherwise unlawful rest
15 period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864,
16 872. DEFENDANTS failed to pay non-truck-driver Aggrieved Employees, an additional hour of
17 wages at their respective regular rates of pay for each workday a proper rest period was not provided.
18 DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest
19 period was not provided and/or failed to pay the proper rest period premium for failure to incorporate
20 all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay,
21 and/or other non-discretionary compensation into the regular rate of compensation for purposes of
22 calculating the owed rest period premium.

23 161. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
24 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
25 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

26 **Overtime Wage Violations**

27 162. California law requires employers to pay overtime equal to one and one-half times
28 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each

1 hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All
2 applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly
3 rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked
4 in excess of eight (8) hours on the seventh consecutive day of work in a work week. Ibid.

5 163. Based on information and belief, DEFENDANTS violated California's overtime
6 laws by, among other things, failing to correctly calculate, or record, the total number of hours
7 worked by Aggrieved Employees working in non-truck-driving positions and not paying proper
8 overtime rates for overtime worked by virtue of same.

9 164. Namely, DEFENDANTS' automatic deduction and time rounding policies and
10 practices for meal periods and shift start times and shift end times, payment according to scheduled
11 hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal
12 periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS'
13 control during off-the-clock meal periods (described above), and/or other off-the-clock work
14 resulted in the failure to account for all hours worked and thus the denial of minimum wages as well
15 as overtime wages owed to Aggrieved Employees working in non-truck-driving positions who
16 worked more than eight (8) hours in a day or more than forty (40) hours in a week.

17 165. Based on information and belief, DEFENDANTS failed and continue to fail to pay
18 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
19 in a week.

20 166. Based on information and belief, DEFENDANTS failed and continue to fail to pay
21 twice Aggrieved Employees working in non-truck-driving positions' regular rate(s) of pay for time
22 worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the
23 seventh consecutive day of work in a work week, in violation of California's overtime laws.

24 167. Based on information and belief, DEFENDANTS failed to incorporate all non-
25 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple
26 base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the
27 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
28 to Aggrieved Employees working in non-truck-driving positions.

1 168. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
2 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS
3 to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC
4 Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in
5 a separate civil penalty, for each AGGRIEVED EMPLOYEE working in a non-truck-driving
6 position, for each pay period during which the referenced statutes and Wage Order provisions were
7 violated.

8 **Violation of Labor Code Section 226.2**

9 169. Labor Code section 226.2 requires an employer to pay employees compensated on
10 a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
11 piece-rate pay. This statute further requires an employer to include on the wage statements for these
12 employees the total hours of compensable rest and recovery period, the total hours for other non-
13 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
14 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
15 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
16 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
17 periods and any premium compensation for overtime, by the total hours worked during the
18 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
19 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

20 170. During the relevant period, DEFENDANTS failed to comply with Labor Code
21 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
22 Aggrieved Employees who were paid on a piece-rate basis (e.g., per load/delivery/trip/mile/day)
23 and or commission basis separately for the rest periods and nonproductive time, and/or failed to pay
24 them for this time at the correct rates. Based on information and belief, DEFENDANTS further
25 failed to include the information on these employees' wage statements required by this statute.

26 **Business Expense Violations**

27 171. California law requires employers to indemnify their employees for all necessary
28 expenditures incurred by the employee in direct consequence of the discharge of their duties or of

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

5 172. Among other things, under California law, when employees must use their personal
6 cellphones for work-related purposes, the employer must reimburse them for a reasonable
7 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
8 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
9 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
10 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
11 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
12 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

13 173. Further, “any contract or agreement, express or implied, made by any employee to
14 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
15 any employee or his personal representative of any right or remedy to which he is entitled to under
16 the laws of this State.” *See* Cal. Lab. Code section 2804.

17 174. As described above, PLAINTIFF and the Aggrieved Employees were improperly
18 required to pay for business expenses that are legally the responsibility of the employer.

19 175. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
20 full reimbursement for all reasonable expenses associated with carrying out their duties required
21 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
22 expenses in violation of Labor Code section 2802.

23 176. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
24 Employees have suffered injury in that they were not completely reimbursed as mandated by
25 California law.

26 177. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

2 178. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
3 Employees have suffered injury in that they were not completely reimbursed as mandated by
4 California law.

5 179. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
6 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
7 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
8 Code § 2802 and the applicable Wage Order.

9 **Wage Statement Violations**

10 180. California law requires every employer semi-monthly or at the time of each payment
11 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
12 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
14 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
15 is paid; (7) the name of the employee and only the last four digits of his or her social security number
16 or an employee identification number other than a social security number; (8) the name and address
17 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

19 181. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
20 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
21 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
22 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
23 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
24 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours worked at each hourly rate by
26 the employee, in violation of Labor Code section 226(a)(9).

27 182. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
4 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
5 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Aggrieved Employees.

9 183. As explained above, DEFENDANTS either failed to issue wage statements at all
10 and/or any wage statements issued by DEFENDANTS failed to list the “total hours worked” by
11 PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for
12 meal periods/failure to relieve Aggrieved Employees of all duties and employer control during
13 unpaid meal periods, and/or other off-the-clock work policies and practices described above), which
14 results in a violation of Labor Code section 226(a).

15 184. Separately, and independent of the above allegations, based on information and
16 belief, any wage statements issued by DEFENDANTS to Aggrieved Employees failed to list the
17 total hours worked, in violation of including but not limited to, Labor Code section (a)(2).

18 185. Failure to list all hours worked on a wage statement, gives rise to an inference of
19 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th
20 1308, 1337).

21 186. Based on information and belief, any wage statements issued by DEFENDANTS
22 failed to list all applicable hourly rates in effect during the pay period and the corresponding number
23 of hours worked at each hourly rate by the employee, in violation of, including but not limited to,
24 Labor Code section 226(a)(9).

25 187. Separately, and independent from the above allegations, based on information and
26 belief, any wage statements issued by DEFENDANTS to Aggrieved Employees violate Labor Code
27 section 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the
28 employer.

1 188. Based on information and belief, to the extent DEFENDANTS issued wage
2 statements, any wage statements issued by DEFENDANTS failed to list the inclusive dates of the
3 pay period for which the Aggrieved Employee is being paid.

4 189. DEFENDANTS' failure to provide PLAINTIFF and other Aggrieved Employees
5 with wage statements and/or DEFENDANTS' failure to accurately list all hours worked on all wage
6 statements caused confusion to PLAINTIFF and caused and continues to cause confusion to other
7 Aggrieved Employees over whether they received all wages owed to them.

8 190. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
9 they could not easily determine whether they received all wages owed to them and whether they
10 were paid for all hours worked.

11 191. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
12 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
13 injury as they could not contact their employer regarding any question(s) they had about wages paid.

14 192. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
15 Aggrieved Employees with accurate, itemized wage statements.

16 193. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
17 Employees have suffered injury. The absence of accurate information on their wage statements has
18 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
19 mathematical computations to determine the amount of wages owed, and will cause difficulty and
20 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
21 submission of inaccurate information about wages and amounts deducted from wages to state and
22 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
23 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
24 and pay records than if DEFENDANT had complied with its legal obligations.

25 194. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
26 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
27 during which the statute provisions were violated. ²

28 ² Labor Code § 226.3 (establishing that the civil penalty is ~~4~~ ¹ per employee per violation").

1
2 **Failure to Provide Written Commission Agreements**

3 195. Labor Code section 2751 requires that all commission contracts "be in writing and .
4 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
5 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
6 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
7 from each employee." *Id.* section 2751(b).

8 196. Based on information and belief, DEFENDANTS failed to provide Aggrieved
9 Employees who were compensated on a commission basis with proper written commission
10 agreements, in violation of Labor Code section 2751.

11 **Reporting Time Pay Violations**

12 197. Section 5 of all applicable IWC Wage Orders, provides as follows:

13 198. (A) Each workday an employee is required to report for work and does report, but is
14 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
15 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
16 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
17 than the minimum wage. (B) If an employee is required to report for work a second time in any one
18 workday and is furnished less than two (2) hours of work on the second reporting said employee
19 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
20 minimum wage.

21 199. Aggrieved Employees were not paid reporting time wages in accordance with
22 California law, including but not limited to the applicable IWC Wage Order. For example, based on
23 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
24 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
25 in accordance with California law.

26 200. Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
28 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to

1 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
2 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

3 **Violation of California Day of Rest Law**

4 201. Under California law, every employee in California is "entitled" to "one day's rest
5 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
6 seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
7 the foregoing sections is a misdemeanor.

8 202. Based on information and belief, DEFENDANTS have and continue to have a
9 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
10 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
11 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
12 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
13 violation of California law, including but not limited to Labor Code Section 551.

14 **Statutory Wage Violations**

15 203. California Labor Code section 223 makes it unlawful for an employer to secretly
16 pay wages lower than required by statute while purporting to pay legal wages. As described above,
17 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
18 earned minimum and all overtime wages owed to non-truck-driver Aggrieved Employees which
19 resulted in the payment of less than statutorily required wages. DEFENDANTS acted with the intent
20 to deprive them of statutory wages, including, but not limited to, minimum and overtime wages, to
21 which they were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other
22 Aggrieved Employees lower wages than those they were entitled to while purporting that
23 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, the Aggrieved
24 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
25 Labor Code § 2699(f)-(g).

26 **Refusal to Make Payment**

27 204. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
28 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated

1 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
2 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
3 meal/rest period not provided to non-truck-driver Aggrieved Employees or that was otherwise
4 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
5 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
6 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
7 the statute provisions were violated.³

8 **Violation of Labor Code section 351 and 353**

9 205. Labor Code Section 351 prohibits employers and their agents from sharing in or
10 keeping any portion of a gratuity left for or given to one or more employees by a patron.
11 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
12 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
13 mandates employers to keep accurate records of all gratuities received.

14 206. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
15 Employees fully received the gratuities left for Aggrieved Employees by patrons, in that
16 DEFENDANTS and its agents would collect and/or take a portion of the gratuities for themselves,
17 in violation of Labor Code Section 351. Based on further information and belief, DEFENDANTS
18 also failed to keep accurate records of all tips received, in violation of Labor Code Section 353.
19 Based on information and belief, DEFENDANTS failed to pay gratuities paid by customers using
20 credit cards to Aggrieved Employees by the next regular payday following the credit card payment,
21 in violation of Labor Code section 351.

22 207. Based on information and belief, DEFENDANTS charged an additional service
23 charge to its customers/patrons. Based on information and belief, customers are led to believe that
24 the service charge will be paid to Aggrieved Employees. Instead, DEFENDANTS keep a majority
25 (if not the entirety) of the service charge, thereby depriving Aggrieved Employees of the service

26
27 ³ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 charge/gratuity that is left by the patron/customer. *See O'Grady v Merchant Exchanges Production,*
2 *Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended
3 to the employees providing the service).

4 208. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
5 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
6 they experienced within the statutory period, and \$200 per pay period for each additional violation.

7 **Standard Conditions of Labor Violations**

8 209. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
9 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
10 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
11 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
12 violations with respect to overtime wages, meal periods and rest periods for non-truck-driver
13 Aggrieved Employees, and record keeping provisions, business expenses, and other violations
14 suffered by all Aggrieved Employees result in separate violations of sections 1198 and 1199, which
15 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

16 **Failure To Provide Supplemental Paid Sick Leave**

17 210. Labor Code § 248.2 provides that all employers with 26 or more employees are
18 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
19 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based
20 on information and belief, DEFENDANTS violated Labor Code § 248.2 by not providing Aggrieved
21 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
22 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
23 Labor Code section 248.6.

24 **Sick Leave Violations.**

25 211. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS failed and continue to fail to provide any sick leave
27 pay to PLAINTIFF and other Aggrieved Employees.

28 212. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees

1 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
2 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
3 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
4 Aggrieved Employees’ intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF
5 and other Aggrieved Employees would have used their paid sick leave at least prior to their
6 respective separations, for as on several occasions thereafter, he or she would have been entitled to
7 use the banked sick leave and earn appropriate compensation.

8 213. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
9 documenting the hours worked and paid sick days accrued by PLAINTIFF and other Aggrieved
10 Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees were
11 entitled to the maximum number of hours accruable.

12 214. Upon information and belief, DEFENDANTS failed and continue to fail to comply
13 with Labor Code section 246, by failing to provide PLAINTIFF and other Aggrieved Employees
14 with a Labor Code section 226 wage statement, or separate writing containing the amount of paid
15 sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it
16 pays wages.

17 215. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

18 216. Accordingly, the Aggrieved Employees are entitled to all appropriate relief under the
19 PAGA, the aforementioned code provisions including but not limited to Labor Code section 233
20 and 234, and seek injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by
21 law.

22 **Untimely Payment of Final Wages**

23 217. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
24 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
25 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
26 employee not having a written contract for a definite period quits his or her employment, his or her
27 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
28 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled

1 to his or her wages at the time of quitting.”

2 218. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
3 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
4 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
5 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
6 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
7 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

8 219. Based on information and belief, DEFENDANTS failed and continue to fail to timely
9 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
10 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
11 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
12 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
13 sick leave and/or paid time off wages at the properly accrued rates.

14 220. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
15 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
16 256.

17 **Failure to Pay Vested Vacation/Paid Time Off**

18 221. Based on information and belief, DEFENDANTS have and continue to have a
19 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
20 vacation/paid time off during their employment and/or failing to pay all vested, accrued paid time
21 off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including
22 non-discretionary compensation, including but not limited to, shift differentials) to Aggrieved
23 Employees upon separation of employment, in violation of California law, including but not limited
24 to, Labor Code section 227.3.

25 **Violation of Labor Code Section 208**

26 222. Labor Code Section 208 provides: Every employee who is discharged shall be paid
27 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
28 employer in the county where the employee has been performing labor. All payments shall be made

1 in the manner provided by law.

2 223. Based on information and belief, DEFENDANTS have a policy and practice of
3 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
4 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
5 office or agency of DEFENDANTS in the county where the work was performed, in violation of
6 Labor Code Section 208.

7 **Unlawful Deductions**

8 224. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
9 an employee any part of wages theretofore paid by said employer to said employee.” Based on
10 information and belief DEFENDANTS made unlawful deductions from PLAINTIFF and Aggrieved
11 Employees’ paychecks during the relevant period, by including but not limited to, deducting costs
12 of uniforms and/or other business costs and/or deducting wages for purported overpayments from
13 previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or
14 deducting percentages of the price of each load transported to reduce load rates from Aggrieved
15 Employees’ paychecks.

16 225. Such a practice is in violation of including but not limited to, Labor Code Sections
17 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699. Each
18 violation results in a separate civil penalty, for each Aggrieved Employee, for each pay period during
19 which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition
20 to, and entirely independent and apart from, any other penalty provided in this article, every person
21 who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or
22 223 shall be subject to a civil penalty...for each failure to pay each employee”).

23 **Unlawful Agreements/ Unlawful Criminal History Inquiries.**

24 *Unlawful Agreements*

25 226. Labor Code section 432.5 provides that “no employer...shall require any employee
26 or applicant for employment to agree, in writing, to any term or condition which is known by such
27 employer...to be prohibited by law.” DEFENDANTS required and continue to require PLAINTIFF
28 and Aggrieved Employees to agree in writing to unlawful conditions of employment including but

1 not limited to, unlawful independent contractor agreements, unlawful non-solicitation/non-compete
2 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
3 waivers of rights, unlawful forum selection clauses and/or unlawful choice of law
4 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
5 and/or continuing employment in violation of Labor Code section 432.5.

6 227. The California Labor Code places certain procedural and substantive limits on an
7 employers' ability to conduct employee background checks and on how employers can use the
8 information they obtain through those background checks. Labor Code section 1024.5 states that
9 employers, except for financial institutions, may order a credit check only if the individual works
10 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
11 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
12 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
13 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
14 background check, including but not limited to identifying an appropriate reason for the background
15 check, a separate consent form with required disclosures and certain formatting requirements,
16 additional forms such as a summary of rights, a way by which to request a copy of the report, as
17 well as proper notice of adverse actions taken, among other statutory requirements.

18 228. Based on information and belief, DEFENDANTS ordered unlawful financial credit
19 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
20 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
21 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

22 229. DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit
23 and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining
24 and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

25 230. Based on further information and belief, DEFENDANTS required Aggrieved
26 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
27 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
28 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by

1 requiring applicants and employees to agree in writing to an unlawful provision as a condition of
2 employment.

3 231. Based on further information and belief, DEFENDANTS knew that requiring
4 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
5 condition of obtaining and/or holding employment was unlawful.

6 232. By requiring that Aggrieved Employees sign off on the illegal background and/or
7 financial checks, DEFENDANTS violated Labor Code section 432.5.

8 Unlawful Inquires into Criminal History

9 233. Labor Code section 432.7 prohibits an employer from asking applicants about past
10 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
11 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
12 convictions on its employment application, in violation of California law.

13 234. Upon information and belief, DEFENDANTS, in violation of California law,
14 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
15 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
16 employment and/or otherwise impermissibly inquired into criminal history on its employment
17 application in violation of California law.

18 235. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
19 Code section 432.7. By asking about convictions at the application phase or prior to extending an
20 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
21 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
22 disclose arrests and/or convictions as a condition of employment.

23 Unlawful PAGA Waiver

24 236. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
25 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
26 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

27 237. An action pursuant to PAGA “...is a representative action on behalf of the state”
28 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements

1 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
2 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
3 ("We conclude that where, as here, an employment agreement compels the waiver of representative
4 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

5 238. Moreover, the California Supreme Court has ruled that a court cannot compel
6 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
7 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
8 no individual component to a PAGA action because 'every PAGA action ... is a representative
9 action on behalf of the state.'")

10 239. Upon information and belief, DEFENDANTS required Aggrieved Employees to
11 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
12 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
13 required written agreement to an unlawful provision as a condition of employment which is a
14 violation of labor code section 432.5.

15 240. As such, Aggrieved Employees continue to be subject to various unlawful provisions
16 as a condition of employment.

17 **Violation of Labor Code section 976**

18 241. Labor Code section 976 provides that "No person shall publish or cause to be
19 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
20 offering employment as a salesman, broker or agent whether as an employee or independent
21 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
22 any person as to compensation or commissions which may be earned; or (b) falsely represents the
23 compensation or commissions which may be earned."

24 242. Based on information and belief, DEFENDANTS have a policy and/or practice of
25 offering prospective employees, including Aggrieved Employees, a higher compensation and
26 commission that is misleading as it falsely represents the compensation or commission that will be
27 earned during employment, as the actual compensation or commission earned is lower than that
28 which is offered to induce employment or continued employment. Such a practice or policy is in

violation of Labor Code section 976.

Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.

243. DEFENDANTS did not secure workers' compensation for PLAINTIFF and other Aggrieved Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved Employee.

244. Under the provisions of PAGA and the above mentioned Labor Code sections, including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226, 226.2, 226.7, 226.8, 245-248.5, 256, 351, 353, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 976, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and all applicable Wage Orders as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

a. All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute, pursuant to Labor Code section 2699(a); and

b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).

c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a party to this action or not.

245. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of PLAINTIFF, the State of California, and all Aggrieved Employees:

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: February 2, 2024

CROSNER LEGAL, PC

By: 
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
AARON AUSTIN