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VENTURA SUPERIOR COURT

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Brenda L. McCormick
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Cristal Alvarez

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 MAYA CHEAITANI (SBN 335777)

maya@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 MARTIN ALFARO, and all others similarly situated

9 (Additional attorneys for Plaintiff(s) on next page)

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF VENTURA

12 MARTIN ALFARO, on behalf of himself, all
13 others similarly situated, and as an
14 "aggrieved employee" on behalf of other
15 "aggrieved employees" under the Labor
Code Private Attorneys General Act of 2004,

Case No. 2023CUOE012158

CLASS ACTION

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

16 Plaintiff(s),

17 vs.

18
19 A-1 TRUCK & EQUIPMENT INC., a
20 California corporation; and DOES 1-50,
inclusive,

21 Defendant(s).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 Plaintiff, Martin Alfaro (hereafter “Plaintiff” or “Alfaro”), on behalf of himself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants A-1 Truck &
9 Equipment Inc., a California corporation, and Does 1 through 50, inclusive (collectively
10 “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him and other similarly situated workers for unpaid wages, statutory penalties, interest, civil
13 penalties, and related relief. These claims are based on Defendants’ failures to:

- 14 (A) Pay all wages, including wages earned for compulsory training;
- 15 (B) Provide all meal periods;
- 16 (C) Authorize and permit all rest breaks;
- 17 (D) Pay premium wages for unprovided meal periods;
- 18 (E) Pay premium wages for unprovided rest breaks;
- 19 (F) Issue only accurate and complete itemized wage statements;
- 20 (G) Timely pay wages upon termination of employment

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
23 and representative action.

24 **II. THE PARTIES**

25 3. Plaintiff Martin Alfaro is a resident of California. At all relevant times, Plaintiff
26 was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
27 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

28 4. Defendant A-1 Truck & Equipment Inc. is a corporation organized and existing
under the laws of California and also a citizen of California based on Plaintiff’s information and
belief.



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
16 laws as alleged herein.

17 **III. CLASS ALLEGATIONS**

18 8. This action has been brought and may be maintained as a class action pursuant to
19 California Code of Civil Procedure section 382 because there is a well-defined community of
20 interest among the persons who comprise the readily ascertainable class defined below and
21 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
22 a class action.

23 9. **Class Definition:** The Class is defined as follows: All persons Defendants
24 employed in California hourly, non-exempt employees, including technicians, industrial painters,
25 assemblers, individuals performing work comparable to the aforementioned, compensated
26 comparably to the aforementioned, and individuals in similar positions at any time during the
27 period beginning four years prior to the filing of this action and ending on the date that final
28 judgment is entered in this action (“Class” or “Class Members”).

 10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
right to amend or modify the class definition with greater specificity, by further division into
subclasses and/or by limitation to particular issues.



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 11. **Numerosity:** The Class Members are so numerous that the individual joinder of
2 each individual Class Member is impractical. While Plaintiff does not currently know the exact
3 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
4 minimum required for numerosity under California laws.

5 12. **Commonality and Predominance:** Common questions of law and fact exist as to
6 all Class Members and predominate over any questions which affect only individual Class
7 Members. These questions include, but are not limited to:

8 A. Whether Defendants failed to pay all wages earned to Class Members for
9 all hours worked at the correct rates of pay;

10 B. Whether Defendants failed to provide the Class Members with all meal
11 periods in compliance with California law;

12 C. Whether Defendants failed to authorize and permit the Class Members to
13 take all rest periods in compliance with California law;

14 D. Whether Defendants failed to indemnify the Class Members for the
15 reasonable expenses they incurred during the course of performing their duties;

16 E. Whether Defendants knowingly and intentionally failed to provide the
17 class with accurate and complete itemized wage statements;

18 F. Whether Defendants willfully failed to provide the class with timely final
19 wages;

20 G. Whether Defendants engaged in unfair competition within the meaning of
21 Business and Professions Code sections 17200, et seq., with respect to the Class; and

22 H. Whether Class Members are entitled to restitution of money or property
23 that Defendants may have acquired from them through alleged Labor Code violations.

24 13. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
25 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
26 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
27 Code, the Wage Order, and the Business and Professions Code.

28 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
Members. Plaintiff will fairly and adequately represent and protect the interests of Class



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

Members.

15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

16. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

17. IWC Wage Order 9-2001 ("the Wage Order") applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean

any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Alfaro, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Alfaro, and all of the Class Members worked for, one or more establishments operated as commercial vehicle repair facilities. Accordingly, Alfaro and all of the other Class Members are entitled to the protections the Wage Order provides.

18. On approximately January 11, 2021, the Defendants began to employ Alfaro in Ventura, California in the position of hourly, non-exempt technician, industrial painter, and



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Mail:
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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 assembler. At all relevant times, Defendants paid Alfaro an hourly rate of \$21.00 , less than two
2 times the minimum wage for the State of California and the County of Ventura. The Defendants
3 continuously employed him in that capacity until on or about January 5, 2023 when his
4 employment ended.

5 19. At all relevant times, the Defendants issued wages to Alfaro and all of the other
6 Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
7 times, the Defendants classified Alfaro and all of the other Class Members as non-exempt
8 employees entitled to the protections of the Labor Code and the Wage Order.

9 20. Alfaro and the Class Members often worked four (4) to seven (7) days in a
10 workweek, and between eight (8) to twelve (12) hours per workday. At all relevant times, Alfaro
11 and the Class Members worked over eight (8) hours in one workday and over forty (40) hours in
12 one workweek. Defendants compensated Alfaro with an hourly rate of \$21.00.

13 21. At all relevant times, the Defendants failed to compensate Alfaro and all of the
14 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
15 Defendants required Alfaro and the other Class Members to attend “I-Car” collision repair
16 training sessions that lasted up to 8 hours, however, Defendants failed to compensate Alfaro and
17 the other Class Members for this time. Moreover, at all relevant times during the applicable
18 limitations period, Defendants failed to pay Alfaro and the Class Members wages at least two
19 times the minimum wage even though they did not provide them with the required tools and
20 equipment.

21 22. At all relevant times, the Defendants failed to provide Alfaro and all of the other
22 Class Members with all timely 30-minute, off-duty meal periods. Due to the workload and low
23 staffing levels, Alfaro and the other Class Members were denied their 30-minute duty-free meal
24 period within the first five hours of work. Defendants frequently forced Alfaro and the other Class
25 Members to forego timely, duty-free, 30-minute meal periods by assigning them more time-
26 sensitive work than they could reasonably expect them to complete within their first five hours of
27 work. The Defendants also failed to pay premium wages for days on which they failed to provide
28 Alfaro and all of the other Class Members with meal periods as required by law.

23. At all relevant times, the Defendants failed to authorize and permit Alfaro and all
of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
or major portion thereof. The Defendants also failed to pay premium wages for days on which



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

they failed to authorize and permit Alfaro and all of the other Class Members to take rest breaks as required by law.

24. At all relevant times, the Defendants required Alfaro and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Alfaro and all of the other Class Members to supply equipment, mobile phones, tools, supplies to perform their job duties. However, the Defendants did not provide these items and did not reimburse Alfaro and the other Class Members for these items. Defendants required Alfaro and all of the other Class Members to supply mobile phones to perform their job duties. At all relevant times, Alfaro and the other Class Members received several phone calls and text messages from their supervisors during the workday about work related matters. On a daily basis, Defendants repeatedly contacted Alfaro and the Class Members on their personal phones, in order to receive task updates. However, Defendants did not provide mobile phones and did not reimburse Alfaro and the other Class Members for these expenses. Furthermore, at all relevant times, Defendants required Alfaro and the Class Members to provide their own tools for mechanical work and all other related activities, including but not limited to drills, power tools, cordless power tool sets, electrical drills, batteries, sockets, headlights, tool boxes, boots, gloves, and heat guns, totaling approximately \$4,000, but did not reimburse them for the expense and wear and tear on such tools, nor did they provide them with the required tools as an alternative.

25. At all relevant times, the Defendants failed to issue to Alfaro and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Alfaro and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all rest break premium wages earned, all meal period premium wages earned, and related information.

26. At all relevant times, the Defendants also failed to timely pay Alfaro and all of the other Class Members all earned wages as described above during and at the conclusion of employment. Furthermore, Alfaro and the other Class Members were not fully compensated for time spent attending mandatory employee training.

27. At all relevant times, the Defendants failed to maintain accurate employee records of Alfaro and all of the other Class Members.

28. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned;
- F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;
- G. Not provided with accurate and complete wage statements; and
- H. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 510, 1194, 1197, and 1198

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

30. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

31. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

32. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

(1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

33. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

34. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

35. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

36. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 37. Labor Code section 1198 makes it unlawful for an employer to employ an
2 employee under conditions that violate the Wage Order.

3 38. In conjunction, these provisions of the Labor Code require employers to pay non-
4 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
5 worked, including unrecorded hours when the employer knew or reasonably should have known
6 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

7 39. Section 8 of the Wage Order states:

8
9 (A) When uniforms are required by the employer to be worn by the employee
10 as a condition of employment, such uniforms shall be provided and maintained
11 by the employer.

12 ...

13 (B) When tools or equipment are required by the employer or are necessary to
14 the performance of a job, such tools and equipment shall be provided and
15 maintained by the employer, except that an employee whose wages are at least
16 two (2) times the minimum wage provided herein may be required to provide and
17 maintain hand tools and equipment customarily required by the trade or craft.

18 40. At all relevant times, during the applicable limitations period, Defendants failed
19 to pay Plaintiff and the Class Members wages at least two times the minimum wage even though
20 they did not provide them with the necessary tools and equipment.

21 41. At all relevant times during the applicable limitations period, Defendants failed to
22 compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay. At
23 all relevant times, Defendants required Alfaro and the other Class Members to attend "I-Car"
24 collision repair training sessions that lasted up to 8 hours, however, the Defendants failed to
25 compensate Alfaro and the other Class Members for this time.

26 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
28 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
rates of pay as required by California law.

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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

43. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

44. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

45. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

46. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

47. In relevant part, Section 10 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

by mutual consent of the employer and the employee.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

48. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of



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compensation for each work day that the meal or rest period is not provided.

49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

50. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order.

51. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

52. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

53. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

54. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

55. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

56. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.



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PMB 42554
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1 57. In relevant part, California Labor Code § 1198 states:

2 The maximum hours of work and the standard conditions of labor
3 fixed by the commission shall be the maximum hours of work and
4 the standard conditions of labor for employees. The employment
5 of any employee for longer hours than those fixed by the order or
6 under conditions of labor prohibited by the order is unlawful.

6 58. In relevant part, Section 11 of the Wage Order states:

7 Rest Periods:

8 (A) Every employer shall authorize and permit all employees to take
9 rest periods, which insofar as practicable shall be in the middle of
10 each work period. The authorized rest period time shall be based
11 on the total hours worked daily at the rate of ten (10) minutes net
12 rest time per four (4) hours or major fraction thereof. However, a
13 rest period need not be authorized for employees whose total daily
14 work time is less than three and one-half (3 ½) hours. Authorized
15 rest period time shall be counted as hours worked for which there
16 shall be no deduction from wages.

15 (B) If an employer fails to provide an employee a rest period in
16 accordance with the applicable provisions of this order, the
17 employer shall pay the employee one (1) hour of pay at the
18 employee's regular rate of compensation for each workday
19 that the rest period is not provided.

19 59. In relevant part, California Labor Code § 226.7 states:

20 (b) An employer shall not require an employee to work during
21 a meal or rest period mandated pursuant to an applicable
22 statute, or applicable regulation, standard, or order of the
23 Industrial Welfare Commission, the Occupational Safety
24 and Health Standards Board, or the Division of
25 Occupational Safety and Health.

25 (c) If an employer fails to provide an employee a meal period
26 or rest period in accordance with a state law, including, but
27 not limited to, an applicable statute or applicable
28 regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one



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PMB 42554
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Office:
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25th Fl
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1 additional hour of pay at the employee's regular rate of
2 compensation for each work day that the meal or rest
period is not provided.

3 60. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
4 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
5 of work, or major fraction thereof.

6 61. Defendants intentionally failed to authorize and permit Plaintiff and the Class
7 Members to take all 10-minute rest periods free from any work duties in accordance with the
8 Wage Order.

9 62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
11 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
Plaintiff and the other Class Members to take timely rest periods.

12 63. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
13 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
14 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
15 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
16 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
17 to authorize and permit them to take 10-minute rest periods every four hours worked or major
18 fraction thereof.

19 64. Defendants failed to pay Plaintiff the additional wages required by California
20 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
21 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
22 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
23 Class Members with additional wages for all rest breaks not provided to them as required by
California Labor Code § 226.7.

24 65. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
25 suffered damages in amounts subject to proof to the extent they were not paid additional wages
26 owed for all rest breaks not provided to them.

27 66. By reason of the above, Plaintiff and the Class Members are entitled to premium
28 wages for workdays in which one or more rest breaks were not provided to them pursuant to



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California Labor Code § 226.7.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

67. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

68. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.” Additionally, the Wage Order states,

(B) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 8(A) and (B).

69. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

70. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

71. As described above, the Defendants required Alfaro and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Alfaro and all of the other Class members to supply equipment, mobile phones, tools, supplies to perform their job duties. However, the Defendants did not provide these items and did not reimburse Alfaro and the other Class members for these items. Defendants required Alfaro and all of the other Class Members to supply mobile phones to perform their job duties. At all relevant times, Alfaro and the other Class Members received several phone calls



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PMB 42554
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(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
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and text messages from their supervisors during the workday about work related matters. On a daily basis, Defendants repeatedly contacted Alfaro and the Class Members on their personal phones, in order to receive task updates. However, Defendants did not provide mobile phones and did not reimburse Alfaro and the other Class Members for these expenses. Furthermore, at all relevant times, Defendants required Alfaro and the Class Members to provide their own tools for mechanical work and all other related activities, including but not limited to drills, power tools, cordless power tool sets, electrical drills, batteries, sockets, headlights, tool boxes, boots, gloves, and heat guns, totaling approximately \$4,000, but did not reimburse them for the expense and wear and tear on such tools, nor did they provide them with the required tools as an alternative.

72. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

74. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;



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PMB 42554
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Office:
1801 Century Park East
25th Fl
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- 1 E. Net wages earned;
- 2 F. The inclusive dates of the period for which the employee is paid;
- 3 G. The name of the employee and his or her social security number, except
- 4 that by January 1, 2008, only the last four digits of his or her social security number or an
- 5 employee identification number other than a social security number may be shown on the itemized
- 6 statement;
- 7 H. The name and address of the legal entity that is the employer; and
- 8 I. All applicable hourly rates in effect during the pay period and the
- 9 corresponding number of hours worked at each hourly rate by the employee.

10 75. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury

11 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

12 the employer fails to provide accurate and complete information as required by California Labor

13 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement

14 alone one or more of the following:

15 A. The amount of the gross wages or net wages paid to the employee during

16 the pay period or any of the other information required to be provided on the itemized wage

17 statement pursuant to California Labor Code § 226(a);

18 B. Which deductions the employer made from gross wages to determine the

19 net wages paid to the employee during the pay period;

20 C. The name and address of the employer and, if the employer is a farm labor

21 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name

22 and address of the legal entity that secured the services of the employer during the pay period;

23 D. The name of the employee and only the last four digits of his or her social

24 security number or an employee identification number other than a social security number; and

25 E. The number of piece-rate units earned and the piece rate.

26 76. “Promptly and easily determine,” as stated in California Labor Code § 226(e),

27 means a reasonable person would be able to readily ascertain the information without reference

28 to other documents or information.

77. Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an



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25th Fl
Los Angeles, CA 90067

itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

78. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for compulsory training sessions. Defendants knowingly and intentionally did not issue either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state all rest break premium wages earned, all meal period premium wages earned.

79. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

80. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty



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8605 Santa Monica Bl
PMB 42554
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and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

82. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

83. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

84. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

85. The Defendants failed to pay Alfaro and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Alfaro, including unprovided meal period premium wages, unprovided rest break premium wages, and related compensation.

86. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

87. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

88. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of



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25th Fl
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1 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
2 penalties for each Class Member.

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **Bus. & Prof. Code §§ 17200, *et seq.***

6 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

7 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 90. At all relevant times during the applicable limitations period, Plaintiff and the
9 Class Members have been employees of Defendants and entitled to the benefits and protections
10 of the Business and Professions Code §§ 17200, *et seq.*

11 91. The unlawful conduct of Defendants alleged herein amount to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
14 gained a competitive advantage over other comparable companies doing business in California
15 that comply with their legal obligations to compensate employees for all earned wages.

16 92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
17 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
18 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
19 premium wages, missed rest period premium wages, phone expenses, supplies and tools expenses,
20 and comparable money and property.

21 93. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
22 Class Members are entitled to restitution of all monies rightfully belonging to them that
23 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
24 practices.

25 94. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
26 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
27 1021.5, the substantial benefit doctrine and/or the common fund doctrine.
28

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1801 Century Park East
25th Fl
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EIGHT CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

**(Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,
against all Defendants)**

95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

96. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning July 27, 2022, and ending on the date that final judgment is entered in this action.

97. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.



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8605 Santa Monica Bl
PMB 42554
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1801 Century Park East
25th Fl
Los Angeles, CA 90067

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

98. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

99. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

100. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

101. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by California Labor Code § 1174.5).



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1 E. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
3 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
4 (regardless of whether the initial violations were intentionally committed) (penalty amounts
5 established by California Labor Code § 1197.1).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
8 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
9 period for each subsequent violation (penalty amounts established by California Labor Code §
10 2699(f)(2)).

11 102. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated July 27, 2023, Plaintiff filed written notice online with the
13 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
14 to Defendants of the specific provisions of the California Labor Code alleged to have been
15 violated, including the facts and theories to support the alleged violations. A true and correct copy
16 of the notice to the LWDA dated July 27, 2023 is attached as **Exhibit A**. Plaintiff submitted his
17 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response
18 within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA
19 will provide written notice to Plaintiff informing him that it does not intend to investigate these
20 allegations.

21 103. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
23 connection with their claims for civil penalties.

24 **V. PRAYER FOR RELIEF**

25 104. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
26 relief and judgment against Defendants as follows:

27 A. An order that the action be certified as a class action with respect to
28 Plaintiff’s claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;



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Office:
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- 1 D. Unpaid wages, including minimum, regular, overtime, double-time;
2 E. Civil Penalties;
3 F. Liquidated damages;
4 G. Statutory penalties, including waiting time penalties;
5 H. Restitution;
6 I. Declaratory relief;
7 J. Actual damages;
8 K. Pre-judgment interest;
9 L. Costs of suit;
10 M. Reasonable attorneys' fees; and
11 N. Such other relief as the Court deems just and proper.

12 **VI. DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
14 on all issues so triable.

15 Respectfully submitted,

16 THE SPIVAK LAW FIRM

17 Dated: October 24, 2023

18 By:



19 DAVID G. SPIVAK, Attorneys for
20 Plaintiff(s), MARTIN ALFARO, and
21 all others similarly situated



22 SPIVAK LAW
23 EMPLOYEE RIGHTS

24 Mail:
25 8605 Santa Monica Bl
26 PMB 42554
27 West Hollywood, CA 90069
28 (213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM

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8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069

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(213) 725-9094

(213) 634-2485

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

July 27, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Martin Alfaro / A-1 Truck & Equipment Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Martin Alfaro (hereafter “Alfaro” or “Complainant”) provides notice that A-1 Truck & Equipment Inc., a California corporation, and related entities (collectively “the A-1 Truck Employers” or “the Employers”) violated his rights and those of all other individuals the A-1 Truck Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including technicians, industrial painters, assemblers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Alfaro hereby provides this notice to the Labor & Workforce Development Agency and the A-1 Truck Employers and their agents and representatives.

At all relevant times, the A-1 Truck Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Alfaro and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately January 11, 2021, the A-1 Truck Employers began to employ Alfaro in Ventura, California in the position of hourly, non-exempt technician, industrial painter and assembler. At all relevant times, the A-1 Truck Employers paid Alfaro an hourly rate of \$21.00, less than two times the minimum wage for the State of California and the County of Ventura. The A-1 Truck Employers continuously employed him in that capacity until on or about January 5, 2023 when his employment ended.

At all relevant times, the A-1 Truck Employers issued wages to Alfaro and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the A-1 Truck Employers classified Alfaro and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Alfaro and the Aggrieved Employees often worked four (4) to seven (7) days in a workweek, and between eight (8) to twelve (12) hours per workday. At all relevant times, Alfaro and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. The A-1 Employers compensated Alfaro with an hourly rate of \$21.00.

The A-1 Truck Employers failed to compensate Alfaro and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The A-1 Truck Employers required Alfaro and the other Aggrieved Employees to attend "I-Car" collision repair training sessions that lasted up to 8 hours. However, the A-1 Truck Employers failed to compensate Alfaro and the other Aggrieved Employees for this time. Moreover, at all relevant times during the applicable limitations period, the A-1 Truck Employers failed to pay Alfaro and the Aggrieved Employees wages at least two times the minimum wage even though they did not provide them with the required tools and equipment.

At all relevant times, the A-1 Truck Employers failed to provide Alfaro and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Due to the workload and low staffing levels, Alfaro and the other Aggrieved Employees were denied their 30-minute duty-free meal period within the first five hours of work. The A-1 Truck Employers frequently forced Alfaro and the other Aggrieved Employees to forego timely, duty-free, 30-minute meal periods by assigning them more time-sensitive

work than they could reasonably expect them to complete within their first five hours of work. The A-1 Truck Employers also failed to pay premium wages for days on which they failed to provide Alfaro and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the A-1 Truck Employers failed to authorize and permit Alfaro and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The A-1 Truck Employers also failed to pay premium wages for days on which they failed to authorize and permit Alfaro and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the A-1 Truck Employers required Alfaro and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The A-1 Truck Employers required Alfaro and all of the other Aggrieved Employees to supply mobile phones, tools, supplies, and related items to perform their job duties. However, the A-1 Truck Employers did not provide these items and did not reimburse Alfaro and the other Aggrieved Employees for these items. The A-1 Truck Employers required Alfaro and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. At all relevant times, Alfaro and the other Aggrieved Employees received several phone calls and text messages from their supervisors during the workday about work related matters. On a daily basis, the Employers repeatedly contacted Alfaro and the Aggrieved Employees on their personal phones, in order to receive task updates. However, the Employers did not provide mobile phones and did not reimburse Alfaro and the other Aggrieved Employees for these expenses. Furthermore, at all relevant times, the A-1 Truck Employers required Alfaro and the Aggrieved Employees to provide their own tools for mechanical work and all other related activities, including but not limited to drills, power tools, cordless power tool sets, electrical drills, batteries, sockets, headlights, tool boxes, boots, gloves, and heat guns, totaling approximately \$4,000, but did not reimburse them for the expense and wear and tear on such tools, nor did they provide them with the required tools as an alternative.

At all relevant times, the A-1 Truck Employers failed to issue to Alfaro and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The A-1 Truck Employers knowingly and intentionally failed to state on the wage statements they issued to Alfaro and all of the other Aggrieved Employees the unpaid wages discussed above. The wage

statements fail to state all rest break premium wages earned, all meal period premium wages earned, and other required information.

The A-1 Truck Employers also failed to timely pay Alfaro and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Furthermore, Alfaro and the other Aggrieved Employees were not fully compensated for time spent attending mandatory employee training.

The A-1 Truck Employers failed to maintain accurate employee records of Alfaro and all of the other Aggrieved Employees.

For the reasons stated herein, Alfaro alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The A-1 Truck Employers failed to pay Alfaro and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including wages for mandatory employee training and twice the minimum wage for supplying tools to the Aggrieved Employees to perform their job duties;
- (b) The A-1 Truck Employers failed to provide Alfaro and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The A-1 Truck Employers failed to authorize and permit Alfaro and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The A-1 Truck Employers failed to compensate Alfaro and all of the other Aggrieved Employees at one hour's pay for each day in which the A-1 Truck Employers failed to provide them with one or more meal periods as required by law;

The A-1 Truck Employers failed to compensate Alfaro and all of the other Aggrieved Employees at one hour's pay for each day in which the A-1 Truck Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (e) The A-1 Truck Employers failed to indemnify Alfaro and all of the other Aggrieved Employees for necessary business expenditures incurred during the discharge of their duties;
- (f) The A-1 Truck Employers knowingly and intentionally failed to provide Alfaro and all of the other Aggrieved Employees with accurate and complete wage statements;
- (g) The A-1 Truck Employers willfully failed to timely pay Alfaro and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the A-1 Truck Employers and when their employment ended; and
- (h) The A-1 Truck Employers failed to maintain accurate employment records pertaining to Alfaro and all of the other Aggrieved Employees.

Accordingly, Alfaro now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the A-1 Truck Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean,

"any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles."

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the A-1 Truck Employers, Alfaro, and all of the Aggrieved Employees were covered by the Wage Order because the A-1 Truck Employers operated, and Alfaro, and all of the Aggrieved Employees worked for, one or more establishments operated as commercial

vehicle repair facilities. Accordingly, Alfaro and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L.

2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times, the A-1 Truck Employers required Alfaro and the other Aggrieved Employees to attend “I-Car” collision repair training sessions to that lasted up to 8 hours, however, the A-1 Truck Employers failed to compensate Alfaro and the other Aggrieved Employees for this time.

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are **at least two (2) times the minimum wage** provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

(emphasis added) Wage Order, §§ 8(A) and (B).

At all relevant times during the applicable limitations period, the A-1 Truck Employers failed to pay Alfaro and the Aggrieved Employees wages at least two times the minimum wage even though they did not provide them with the necessary tools and equipment.

At all relevant times during the applicable limitations period, the A-1 Truck Employers failed to compensate Alfaro and all of the other Aggrieved Employees for all hours worked, including, but not limited to wages for mandatory employee training and twice the minimum wage for supplying tools to the Aggrieved Employees to perform their

job duties. Accordingly, Alfaro now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

In relevant part, section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the A-1 Truck Employers failed to provide Alfaro and all of the other Aggrieved Employees with all timely meal periods. The A-1 Truck Employers denied Alfaro and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the A-1 Truck Employers failed to pay premium wages for days on which they failed to provide Alfaro and all of the other Aggrieved Employees with timely meal periods. Accordingly, Alfaro now

seeks civil penalties for these Labor Code violations that the A-1 Truck Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based

on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The A-1 Truck Employers failed to authorize and permit Alfaro and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The A-1 Truck Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the A-1 Truck Employers failed to pay

Alfaro and all of the other Aggrieved Employees premium wages on workdays the A-1 Truck Employers failed to provide Alfaro and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Alfaro now seeks civil penalties for these Labor Code violations that the A-1 Truck Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (B) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be

required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 8(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the A-1 Truck Employers required Alfaro and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The A-1 Truck Employers required Alfaro and all of the other Aggrieved Employees to supply equipment, mobile phones, tools, supplies, and related items to perform their job duties. However, the A-1 Truck Employers did not provide these items and did not reimburse Alfaro and the other Aggrieved Employees for these items. Accordingly, Alfaro seeks civil penalties for these Labor Code violations that the A-1 Truck Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As stated above, A-1 Truck Employers failed to pay Alfaro and the other Aggrieved Employees wages at least two times the minimum wage (as required by section 9(B) of the Wage Order to be exempted from providing tools and equipment to its employees). As a result, A-1 Truck Employers failed to correctly state the gross and net wages earned, hours worked, hourly rates, and corresponding number of hours worked at each hourly rate. Thus, A-1 Truck Employers have violated Labor Code section 226.

At all relevant times during the applicable limitations period, the A-1 Truck Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the

Aggrieved Employee and other requirements of Labor Code section 226. The A-1 Truck Employers failed to state in the wage statements they issued to Alfaro and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for compulsory training sessions. The A-1 Truck Employers knowingly and intentionally failed to state on the wage statements they issued to Alfaro and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all rest break premium wages earned, all meal period premium wages earned, and other required information. Accordingly, Alfaro seeks civil penalties for the Labor Code violations that the A-1 Truck Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As explained above, because of the A-1 Truck Employers failures to pay Alfaro and the Aggrieved Employees at least two times the minimum wage, the A-1 Truck Employers failed to timely pay all wages due during employment within the time periods set by California Labor Code § 204.

The A-1 Truck Employers failed to compensate Alfaro and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated

above. As a result, the A-1 Truck Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Alfaro now seeks civil penalties for the Labor Code violations that the A-1 Truck Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The A-1 Truck Employers knew that Alfaro and the other Aggrieved Employees were required to provide their own tools and equipment, yet they knowingly chose not to pay Alfaro and the Aggrieved Employees wages at least two times the minimum wage as required by the Wage Order.

The A-1 Truck Employers failed to pay Alfaro and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described

above by the conclusion of their employment with Alfaro, including unprovided meal period premium wages, unprovided rest break premium wages and related compensation. By failing to pay Alfaro and all of the other Aggrieved Employees as set forth above at the end of employment, the A-1 Truck Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Alfaro seeks civil penalties from the A-1 Truck Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records

showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The A-1 Truck Employers failed to compensate Alfaro and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all rest break premium wages earned, all meal period premium wages earned and related information. As a result, the A-1 Truck Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Alfaro and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Alfaro seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Martin Alfaro will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil

LWDA / The A-1 Truck Employers

Re: Martin Alfaro

July 27, 2023

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action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.

david@spivaklaw.com

cc: Mr. Martin Alfaro

Mr. Walter L. Haines Esq.

United Employees Law Group

8605 Santa Monica Bl.

PMB 63354

West Hollywood CA 90069

walter@uelglaw.com

A-1 Truck And Equipment, Inc.

c/o Agent for service of process

Daniel Poole

1588 Los Angeles Ave.

Ventura, CA 93004

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Tuesday, October 24, 2023, I served the foregoing document described as **[PROPOSED] FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Michael Brody, Esq.
Kimberly Offenbacher
Angela Cooper
LIGHT GABLER LAW
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010
mbrody@lightgablerlaw.com
acooper@lightgablerlaw.com
koffenbacher@lightgablerlaw.com

____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address nora@spivaklaw.com.

EXECUTED on Tuesday, October 24, 2023, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



NORA GREER