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Attorneys for Plaintiff, HECTOR GALVEZ,
and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HECTOR GALVEZ, individually, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

APRIL FREIGHT, INC., a California
Corporation; and DOES 1 to 10, inclusive,

Defendants.

Case No.: **23ST CV 27489**

**CLASS ACTION & PAGA REPRESENTATIVE
ACTION COMPLAINT**

- (1) FAILURE TO PAY MINIMUM WAGES;**
- (2) FAILURE TO PAY ALL WAGES OWED
EVERY PAY PERIOD;**
- (3) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
- (4) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (5) FAILURE TO REIMBURSE NECESSARY,
BUSINESS-RELATED EXPENSES;**
- (6) FAILURE TO MAINTAIN RECORDS;**
- (7) VIOLATION OF CALIFORNIA'S UNFAIR
COMPETITION LAW ("UCL"), BUS. &
PROF. CODE §§ 17200; *et seq.*; and**
- (8) CIVIL PENALTIES FOR VIOLATIONS OF
LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"), §§ 2698, *ET
SEQ.***

DEMAND FOR JURY TRIAL

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19

XVI. PRAYER

24

XVII.DEMAND FOR JURY TRIAL

26

1 **CLASS ACTION AND PAGA REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff HECTOR GALVEZ (“Plaintiff”), on behalf of himself and all others similarly situated
3 and aggrieved, by and through his attorneys, Shegerian & Associates, Inc., hereby files this Class
4 Action and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Complaint against
5 Defendant APRIL FREIGHT, INC. (“APRIL FREIGHT”), a California Corporation; and DOES 1
6 through 10 (“Doe Defendants”) (collectively with APRIL FREIGHT, “Defendants”), and states as
7 follows:

8 **I. INTRODUCTION**

9 1. Plaintiff brings this class and representative action on behalf of himself as an individual, on
10 behalf of a set of two subclasses defined as (1) all current and former hourly employee drivers of
11 Defendant and (2) all current and former hourly drivers who were allegedly misclassified as
12 independent contractors, within the State of California and at any time during the period beginning four
13 (4) years prior to the filing of the Complaint through the present (“Class Period”), and on behalf of all
14 Aggrieved Persons as defined above who worked for APRIL FREIGHT at any time in California during
15 the period beginning one year prior to the filing of the Complaint less 65 days through the present
16 (“PAGA Period”).

17 2. This is also an enforcement action under the Labor Code Private Attorneys General Act of
18 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other
19 available relief on behalf of Plaintiff, the State of California, and other current and former Aggrieved
20 Persons who work or worked for Defendant APRIL FREIGHT in California as hourly drivers or
21 misclassified independent contractors of Defendant and, and against whom one or more violations of
22 any provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and
23 days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed,
24 as set forth in this complaint (“Aggrieved Persons”), at any time between one year and sixty-five (65)
25 days prior to the filing of this complaint (i.e., September 4, 2022) until judgment (the “PAGA Period”).
26 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

27 3. APRIL FREIGHT are a drayage trucking company delivering cargo from ports to customers
28 throughout California. APRIL FREIGHT has both employee drivers and engaged owner operators

(collectively, “Drivers”) to perform the same work.

4. As more fully set forth herein, Defendants intentionally misclassified employees as independent contractors. Upon information and belief, Defendants’ policy and practice is to deny Drivers earned wages, including some premium pay, to their Drivers working for Defendants in California. Additionally, upon information and belief, Defendants require their employees to work off-the-clock including, but not limited to, 10-minute rest breaks, performing pre- and post-trip inspections, wait time, fueling, and other truck maintenance related tasks. Likewise, upon information and belief, Plaintiffs estimates their waiting time in these instances was several minutes. These off-the-clock waiting periods exist for the sole benefit of Defendants and occurred frequently and regularly. Upon information and belief, this illegal practice has been in effect by Defendants for years, but Defendants continue to require their Drivers to endure these off-the-clock waiting periods.

5. Moreover, Defendants fail to timely compensate employees for all wages earned during every pay period and upon separation and fail to properly and accurately calculate minimum wages and report wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of himself and other Drivers of Defendants to recover unpaid wages including premium pay, penalties, interest, injunctive relief, damages, and reasonable attorneys’ fees and costs.

6. Defendants’ deliberate failure to pay their Drivers their earned wages and unreimbursed business expenses violates the California Labor Code and California’s Unfair Competition Law, codified under California’s Business & Professions Code.

7. Defendants fail to provide Drivers timely, accurate wage statements that reflect their total number of hours worked. Furthermore, as to the independent contractor driver subclass, upon information and belief, Defendant does not provide them with wage statements.

8. Plaintiff brings a class action under the California Code of Civil Procedure section 382 against all Defendants on behalf of all Drivers of Defendants in California for unpaid minimum wages, failing to pay all wages owed every pay period and upon separation, failing to provide timely and accurate wage statements, waiting time penalties, and other related penalties and damages under the California Labor Code and California Business & Professions Code.

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10. As more fully set forth herein, Defendants violated various sections of the California Labor Code and also intentionally misclassified drivers as independent contractors; failed to pay minimum wages, including but not limited to all nonproductive time for rest breaks and pre- and post-trip inspections; failed to pay all wages owed upon separation, specifically wages including, but not limited to, minimum wages; failed to pay all wages owed every pay period and upon separation; failed to reimburse all necessary business-related expenses; failed to issue timely and accurate wage statements to their drivers; failed to maintain required records; and violated California's Unfair Competition Law, Business and Professions Code, sections 17200; *et seq.*

Subclass A: All current and former hourly, nonexempt employees of Defendant, within the State of California at any time beginning four (4) years prior to the filing of the Complaint through the present (the “Class Period”).

III. JURISDICTION AND VENUE

¹ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

Code of Civil Procedure section 395.5, because this is a class action, the acts and/or omissions complained of took place, in whole or in part within the venue of this Court, and/or one or more Defendants reside within the venue of this court.

13. A substantial amount of Plaintiff HECTOR GALVEZ'S work for Defendants took place within Los Angeles County. All of this work that took place within Los Angeles County that Plaintiff HECTOR GALVEZ performed involved the acts and/or omissions complained of in this Complaint, including, but not limited to, Defendants' failure to authorize and permit legally compliant meal periods and rest breaks and pay for all hours worked. See *Owens v. Paraco, Inc.* (1958) 160 Cal.App.2d 824, 825–826 (holding that venue in a wage and hour case was proper in the county where the plaintiff performed the work even though the defendant's principal place of business was elsewhere).

14. Plaintiff alleges that more than two-thirds of all members of the proposed Class in the aggregate are citizens of California, so federal jurisdiction under the Class Action Fairness Act does not exist. Further, Plaintiffs allege that the proposed Class is estimated to be 100% California residents, as that is how the Class is defined.

IV. PARTIES

15. Plaintiff HECTOR GALVEZ ("GALVEZ") was at all relevant times a citizen of the State of California. GALVEZ was first employed by Defendants as a driver whom Defendants misclassified as an independent contractor from April 2018 through approximately April 2022, which is during the Class Period as alleged herein. GALVEZ was then employed by Defendant as an employee driver from approximately April 2022 through approximately April 18, 2023, which is also during the Class Period as alleged herein.

16. Defendant APRIL FREIGHT, INC. ("APRIL FREIGHT") is a California Corporation licensed to do and doing business in the State of California. At all times relevant during the Class Period, Defendant had and has a registered agent for service of process at 623 Turnbull Canyon Road, City of Industry, California 91745. Defendant APRIL FREIGHT is and has been at various relevant times a California Corporation engaged in the transportation industry. APRIL FREIGHT maintains an office in the City of Industry, California and has conducted and transacted business at all times relevant to this lawsuit in, among other places, the County of Los Angeles in the State of California.

1 17. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in
2 the conduct alleged herein of Doe Defendants sued as Does 1-10, inclusive, but is informed and
3 believes that Doe Defendants are legally responsible for the conduct alleged herein and therefore sues
4 Doe Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to allege
5 both the true names and capacities of Doe Defendants when ascertained. Plaintiff is informed and
6 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
7 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
8 venturers of their co-Defendants and were, as such, acting within the course and scope of said agency,
9 employment, partnership, joint venture, conspiracy, or enterprise, and with the express and/or implied
10 permission, knowledge, consent, authorization and ratification of their co-defendants; however, each of
11 these allegations are deemed “alternative” theories whenever not doing so would result in a
12 contradiction with other allegations. Plaintiff is informed and believes that each Defendant acted in all
13 respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
14 plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally
15 attributable to each of the other Defendant.

16 **V. FACTS COMMON TO ALL CAUSES OF ACTION**

17 18. Defendants are a drayage trucking company delivering cargo from ports to customers
18 throughout California. APRIL FREIGHT both employs employee drivers and engages owner operators
19 (collectively, “Drivers”) to perform the same work under its contracts.

20 19. According to APRIL FREIGHT’S website, APRIL FREIGHT maintains its corporate
21 operations headquarters, including their Human Resources, Training Center, and Customer Support
22 Center in City of Industry, California. Upon information and belief, Defendant APRIL FREIGHT
23 maintains a single, centralized Human Resources (“HR”) department at its operations headquarters in
24 City of Industry, California, which is responsible for conducting APRIL FREIGHT’S recruiting and
25 hiring of new direct-hire employees and independent contractors, as well as communicating and
26 implementing APRIL FREIGHT’S company-wide policies, including timekeeping policies, to
27 employees throughout California. In particular, Plaintiff and Class Members, on information and
28 belief, received the same standardized documents and/or written policies upon hire. Upon information

1 and belief, the use of standardized documents and/or written policies, including new hire documents,
2 indicate that Defendants dictated policies at the corporate-level and implemented them company-wide,
3 regardless of their employees' assigned locations or positions. On information and belief, all
4 transactions regarding hiring, terminations, promotions, pay increases, and employee transfers, etc.,
5 relating to Defendants' California employees were submitted to and processed by Defendant APRIL
6 FREIGHT'S HR department in City of Industry, California.

7 20. Upon information and belief, APRIL FREIGHT'S corporate records, business records, data,
8 and other information related to APRIL FREIGHT, including, in particular, HR records pertaining to
9 APRIL FREIGHT'S California employees, are also maintained at its operations headquarters in City of
10 Industry, California.

11 21. At all times during the Class Period, Defendants employed Plaintiff and other Class Members
12 as truck drivers in providing Defendants' services and engaged Plaintiff and other Class Members as
13 independent contractors.

14 22. Plaintiff HECTOR GALVEZ worked for Defendants as an independent contractor from
15 April 2018 through approximately April 2022 and as an employee driver from approximately April
16 2022 through approximately April 18, 2023 when his employment was terminated.

17 23. From April 2018 through approximately April 2022, Plaintiff and other Class Members were
18 misclassified as independent contractors and, therefore, employed by Defendants as hourly-paid
19 nonexempt employees in the position of driver in California during the Class Period.

20 24. Defendants engaged Plaintiff and the Class as "independent contractors," even though the
21 work performed and conditions of employment were that of an "employee." The conditions and
22 requirements of employment with Defendants, include but are not limited to:

- 23 a. Defendants provide and provided Plaintiffs and other Class Members with fuel;
- 24 b. Defendants require Plaintiffs and other Class Members to maintain their trucks and other
25 equipment in good, safe operating condition and appearance;
- 26 c. Defendants restricted Plaintiffs and other Class Members from hiring "improperly
27 licensed, unlicensed, or disqualified employees" to perform services for Defendants;
- 28 d. Defendants required drivers to provide Defendants the names of any persons Plaintiffs

- 1 and other Class Members hired to perform services for Defendants;
- 2 e. Defendants impose and imposed specific criteria and eligibility requirements on
- 3 Plaintiffs and other Class Members with respect to their eligibility to work for
- 4 Defendants;
- 5 f. Defendants direct and control the way the drivers perform their work, including
- 6 controlling their schedule, when and where they deliver cargo, and how they perform
- 7 their work;
- 8 g. Plaintiffs and other Class Members incurred business related expenses that Defendants
- 9 did not reimburse, including but not limited to, cellular phone service;
- 10 h. The services Plaintiffs and other drivers perform were and are a regular part of APRIL
- 11 FREIGHT, INC.'s business;
- 12 i. Plaintiffs and other drivers did not and do not incur a profit or loss *per se* on the
- 13 deliveries;
- 14 j. Plaintiffs and other drivers had and have no significant opportunity for profit or loss
- 15 other than working more hours;
- 16 k. Plaintiffs and other drivers are not skilled workers with substantial control over
- 17 operational details;
- 18 l. Plaintiffs and other drivers took and take all necessary instructions from Defendants,
- 19 given the nature of the trucking business;
- 20 m. Plaintiffs and other drivers did not and do not have their own customers;
- 21 n. Plaintiffs did not have the mandatory U.S. Department of Transportation (DOT)
- 22 operating authority or other necessary permits and/or licenses to independently engage in
- 23 the transport of cargo;
- 24 o. Defendants require and required Plaintiffs to maintain the cleanliness of the truck and to
- 25 conduct to pre- and post-trip inspections;
- 26 p. Plaintiffs and other drivers were subject to discipline by Defendants for incurring traffic
- 27 violations; and
- 28 q. Defendants can discipline and terminate Plaintiffs and other drivers without cause at any

1 time.

2 25. Defendants exercised that same dominion and control over every driver that Defendants
3 employed during the Class Period.

4 26. At all times during the Class Period, Defendants failed to pay Class Members for all hours
5 worked. Thus, Defendants did not and do not pay Plaintiff and Class Members minimum wage in
6 accordance with California law.

7 27. At all times during the Class Period, Plaintiff and Class Members were assigned to and
8 required and permitted to work without pay for their nonproductive time, while performing tasks
9 including, but not limited to: 10-minute rest breaks, performing pre- and post-trip inspections, wait
10 time, fueling, and other truck maintenance related tasks. Plaintiffs and Class Members were not
11 compensated for this work.

12 28. At all times during the Class Period, Defendants failed to reimburse Plaintiff and Class
13 Members for the business expenses they incurred, such as for cell phone service.

14 29. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages
15 including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the
16 Class for failing to pay minimum wages nonproductive time in the form of rest breaks and pre- and
17 post-trip inspections, failing to reimburse all necessary business-related expenses, failing to pay all
18 wages owed upon separation, failure to provide timely and accurate wage statements, and unfair
19 competition.

20 30. Plaintiff is a member of and seeks to be the representative for each Class of similarly situated
21 employees who all have been exposed to, have suffered, and/or were permitted to work under,
22 Defendants' unlawful employment practices as alleged herein.

23 **VI. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

24 31. Plaintiff is a member of and seeks to be the representative for the Class of similarly situated
25 employees and independent contractor drivers who all have been exposed to, have suffered, and/or were
26 permitted to work under APRIL FREIGHT'S unlawful employment practices as alleged herein.

27 32. Plaintiff brings his first through eighth causes of action on behalf of himself and the
28

1 following Classes^{2,3} of persons:

2 Subclass A: All current and former hourly, nonexempt employees of APRIL
3 FREIGHT, INC. within the State of California at any time during the Class
4 Period.

5 Subclass B: All current and former hourly drivers who were allegedly
6 misclassified as independent contractors working for APRIL FREIGHT,
INC. within the State of California at any time during the Class Period.

7 33. Plaintiff reserves the right to amend or otherwise alter the Class definition presented to the
8 Court at the appropriate time, or to propose or eliminate subclasses, in response to facts learned through
9 discovery, legal arguments advanced by Defendants, or otherwise.

10 34. This action has been brought and may be properly maintained as a class action pursuant to
11 the provisions of California Code of Civil Procedure section 382 (hereinafter “section 382”) and other
12 applicable law.

13 35. **Numerosity of the Class:** Pursuant to section 382, Class Members are so numerous that
14 their individual joinder is impracticable. Plaintiff estimates, on information and belief, that there are at
15 least 100 current and former similarly situated employee Class Members of Defendants employed as
16 drivers in California during the Class Period. The precise number of Class Members and their
17 addresses are known to Plaintiff or will be known to Plaintiff through discovery. Class Members may
18 be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

19 36. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant to section
20 382, common questions of law and fact exist as to all Class Members. These questions predominate
21 over any questions affecting only individual Class Members. These common legal and factual
22 questions include:

23 a. Whether Defendants willfully misclassified employee drivers as “independent
24 contractors,” in violation of California Labor Code section 226.8(a)(1);

25 b. Whether Plaintiff and each Class Member were not paid minimum wage for each hour

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27 ² All references to “the Class” herein refer to Subclass A and Subclass B collectively.

28 ³ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

1 worked or part thereof during which they were required to perform acts at the direction
2 and for the benefit of Defendants;

- 3 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and Class
4 Members who worked as drivers in California for the total hours worked during the
5 Class Period;
- 6 d. Whether Defendants violated California Labor Code section 2802 by failing to
7 reimburse Plaintiff and Class Members for all necessary business-related expenses they
8 incurred;
- 9 e. Whether Defendants engaged in unfair practices and violated California Business and
10 Professions Code, sections 17200; *et seq.* by failing to reimburse Plaintiff and Class
11 Members with all necessary, business-related expenses;
- 12 f. Whether Defendants maintained accurate time records of all hours worked, including all
13 nonproductive time during the Class Period in accordance with IWC Wage Order No. 9-
14 2001(7);
- 15 g. Whether Defendants violated California Labor Code section 226(a) by failing to issue
16 wage statements entirely or else issuing inaccurate itemized wage statements to Plaintiff
17 and Class Members that failed to include all hours worked among wages earned
18 throughout the Class Period;
- 19 h. Whether Defendants violated California Labor Code section 226 by failing to issuing
20 timely, accurate itemized wage statements to Plaintiff and Class Members that
21 accurately state the total hours worked, to the detriment of Plaintiff and the Class;
- 22 i. Whether Defendants violated California Labor Code sections 218.5, 204, 1197, and 1198
23 by failing to compensate Plaintiff and Class Members for those acts Defendants required
24 Plaintiff and Class Members to perform for the benefit of Defendants; and
- 25 j. The nature and extent of classwide injury and measure of damages for the injury.

26 37. **Typicality:** Plaintiff's claims are typical of the members of each Subclass he seeks to
27 represent. Plaintiff's claims are typical of the claims of the members of each Subclass he seeks to
28 represent because Plaintiff, as a driver of Defendants, was exposed and subjected to the same unlawful

1 business practices as other drivers employed or engaged by Defendants during the Class Period.

2 Plaintiff and the members of the Class he seeks to represent sustained the same types of damages and
3 losses.

4 38. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because
5 his interests do not conflict with the interests of the members of the Class Plaintiff seeks to represent.
6 Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff
7 intends to prosecute this action vigorously. The interests of Class Members will be fairly and
8 adequately protected by Plaintiff and his counsel.

9 39. **Superiority and Substantial Benefit:** The class action is superior to other available means
10 for the fair and efficient adjudication of Plaintiff's and Class Members' claims. The damages suffered
11 by each individual Class Member may be limited. Damages of such magnitude are small given the
12 burden and expense of individual prosecution of the complex and extensive litigation necessitated by
13 Defendants' conduct. Further, it would be virtually impossible for Class Members to redress the
14 wrongs done to them on an individual basis. Even if Class Members themselves could afford such
15 individual litigation, the court system could not. Individualized litigation increases the delay and
16 expense to all parties and the court system, due to the complex legal and factual issues of the case. By
17 contrast, the class action device presents far fewer management difficulties, and provides the benefits of
18 single adjudication, economy of scale, and comprehensive supervision by a single court.

19 40. The Subclasses should also be certified because:

- 20 a. The prosecution of separate actions by individual Class Members would create a risk of
21 inconsistent or varying adjudications for individual Class Members, which would
22 establish incompatible standards of conduct for Defendants;
- 23 b. The prosecution of separate actions by individual Class Members would create a risk of
24 adjudication with respect to them, which would, as a practical matter, be dispositive of
25 the interests of the other Class Members not parties to the adjudications, or substantially
26 impair or impede their ability to protect their interests; and
- 27 c. Defendants have acted or refused to act on grounds generally applicable to the Class,
28 and/or the general public, thereby making appropriate final and injunctive relief with

respect to the Class as a whole.

VII. FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages

Violation of California Labor Code §§ 510, 1194, 1194.2, and 1197; Wage Order No. 9-2001, § 4

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

41. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

42. California Labor Code section 510 provides in pertinent part, “Eight hours of labor constitutes a day’s work.”

43. California Labor Code section 1197 provides in pertinent part that “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

44. California Labor Code section 1194(a) provides, “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.”

45. California Labor Code section 1194.2 provides in pertinent part, “In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

46. Pursuant to IWC Wage Order No. 9-2001, “hours worked” includes “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.”

47. Pursuant to California Labor Code section 1182.12(b)(1) and IWC Wage Order No. 9-2001(4), Plaintiff and Class Members who worked for an employer who employs at least 26 employees, were entitled to receive not less than twelve dollars (\$12) per hour through December 31, 2019, then thirteen dollars (\$13) per hour through December 31, 2020, fourteen dollars (\$14) per hour through December 31, 2021, then fifteen dollars (\$15.00) per hour through December 31, 2022, and then

1 regardless of employer size, fifteen dollars and fifty cents (\$15.50) per hour beginning January 1, 2023
2 and thereafter..

3 48. At all times relevant during the Class Period, under the provisions of Wage Order No. 9-
4 2001, Plaintiff and each Class Member should have received not less than the minimum wage in a sum
5 according to proof for the time worked, but were not compensated.

6 49. For all hours that Plaintiff and Class Members worked, they are entitled to not less than the
7 California minimum wage and, pursuant to California Labor Code section 1194.2(a) liquidated
8 damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to California
9 Labor Code section 1194, Plaintiff and Class Members are also entitled to their attorneys' fees, costs,
10 and interest according to proof.

11 50. At all times relevant during the Class Period, Defendants willfully failed and refused, and
12 continues to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

13 51. Defendants' unlawful conduct alleged herein occurred in the course of employment of
14 Plaintiff and all other similarly situated drivers, and Defendants have done so continuously throughout
15 the filing of this Complaint.

16 52. As a direct and proximate result of Defendants' violation of California Labor Code sections
17 510 and 1197, Plaintiff and Class Members have suffered irreparable harm and money damages
18 entitling them to damages, injunctive relief, or restitution. Plaintiff, on behalf of himself and all others
19 similarly situated, seeks damages and all other relief allowable including all wages due while working
20 as Defendants' drivers, attorneys' fees, liquidated damages, prejudgment interest, and as to those
21 employees no longer employed by Defendants, waiting time penalties pursuant to California Labor
22 Code section 200, *et seq.*

23 53. Plaintiff and Class Members are entitled to back pay, pre-judgment interest, liquidated
24 damages, statutory penalties, and attorneys' fees and costs. Plaintiff and former Class Members are
25 entitled to waiting time penalties pursuant to California Labor Code section 1194.

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1 **VIII. SECOND CAUSE OF ACTION**

2 **Failure to Pay All Wages Owed Every Pay Period**

3 **in Violation of Cal. Labor Code § 204**

4 **(Brought by Plaintiffs on Behalf of All Aggrieved Persons Against All Defendants)**

5 54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as
6 if fully set forth herein.

7 55. California Labor Code section 204 establishes the fundamental right of all employees in the
8 State of California to be paid wages in a timely fashion for their work. At all times relevant during the
9 liability period, Defendant failed to pay Plaintiff and the Class the full amount of all owed wages when
10 due as required by California Labor Code section 204. At all relevant times herein, Labor Code section
11 204 provides that all wages earned by any person in any employment between the 1st and the 15th days,
12 inclusive, of any calendar month, other than those wages due upon termination of an employee, are due
13 and payable between the 16th and the 26th day of the month during which the labor was performed.
14 Labor Code section 204 further provides that all wages earned by any person in any employment
15 between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon
16 termination of an employee, are due and payable between the 1st and the 10th day of the following
17 month.

18 56. At all relevant times herein, Labor Code section 204 provides that all wages earned for labor
19 in excess of the normal work period shall be paid no later than the payday for the next regular payroll
20 period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the
21 requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or
22 semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of
23 the payroll period.

24 57. During the relevant time period, Defendants willfully failed to pay Plaintiff and other
25 similarly situated employees all wages earned each pay period. For example, Plaintiff is informed,
26 believes, and thereon alleges, that at all times relevant during the liability period, Defendant maintained
27 a policy or practice of not paying Plaintiff and other similarly situated employees: (i) minimum wages
28 for all hours worked; (ii) overtime wages for all overtime hours worked; and (iii) premium wages for all

missed meal periods and rest breaks.

58. As a result of Defendant's unlawful conduct, Plaintiff and members of the Class have suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendant's records or indirectly based on information from Defendant's records

IX. THIRD CAUSE OF ACTION

Failure to Pay All Wages Due at Separation

in Violation of California Labor Code § 203

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

59. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

60. California Labor Code sections 201 and 202 require Defendants to pay all compensation due and owing to former drivers at or around the time employment is terminated. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the employer is liable for penalties in the form of continued compensation of up to thirty (30) work days.

61. At all times relevant during the Class Period, Plaintiff and Class Members were employees of Defendant covered by California Labor Code section 203.

62. Plaintiff and Class Members were not paid for all of their work time, primarily for nonproductive time and work performed off the clock, (e.g., rest breaks and pre- and post-trip inspections).

63. Defendants willfully failed to pay Plaintiff and former Class Members for their uncompensated hours upon their termination or separation from employment with Defendants as required by California Labor Code sections 201 and 202. As a result, Defendants are liable to Plaintiff and other former Class Members for waiting time penalties amounting to thirty (30) days' wages for Plaintiff and each such Class Member pursuant to California Labor Code section 203.

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(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

65. California Labor Code section 226(a) provides in pertinent part, “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, 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, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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”

66. California Labor Code section 226(e) provides that an employee is entitled to recover fifty dollars (\$50) for the initial pay period in which a violation of section 226 occurs and one hundred dollars (\$100) for each subsequent pay period, as well as an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

67. Plaintiff is informed, believes, and thereon alleges that at all times relevant, Defendants knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to furnish Plaintiff and each Class Member with timely and accurate itemized statements showing the gross wages earned by each of them, as required by California Labor Code section 226(a), in that the

1 payments owed to Plaintiff and Class Members for unpaid minimum wages, including in the form of
2 rest breaks in drivers' nonproductive time, were not included in gross wages earned by Plaintiff and the
3 Class. Defendants provide and have provided Plaintiff and other Class Members with noncompliant
4 settlement histories that are missing several items that must appear on wage statements.

5 68. Defendants' failure to provide Plaintiff and Class Members with accurate itemized wage
6 statements during the Class Period has caused Plaintiff and Class Members to incur economic damages
7 in that they were not aware that they were owed and not paid compensation for all nonproductive time
8 including 10-minute rest breaks, wait-time, performing pre- and post-trip inspections, fueling, and other
9 truck maintenance-related tasks. Plaintiff and Class Members were not compensated for this work, and
10 for all other hours worked without pay. In addition, Defendants did not record all hours worked and all
11 nonproductive time of Plaintiff and other Class Members, which masked their underpayment of wages
12 to Plaintiff and the Class.

13 69. As a result of Defendants' failure to issue accurate itemized wage statements to Plaintiff and
14 Class Members in violation of California Labor Code section 226(a), Plaintiff and Class Members are
15 each entitled to recover penalties pursuant to section 226(e) of the California Labor Code.

16 **XI. FIFTH CAUSE OF ACTION**

17 **Failure to Reimburse All Necessary Business-Related Expenses**

18 **in Violation of California Labor Code § 2802**

19 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

20 70. Plaintiff re-alleges and incorporates all preceding paragraphs as if set forth fully herein.

21 71. California Labor Code section 2802 provides that "An employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
24 unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful."

25 72. During the applicable statutory period, Plaintiff and Class Members incurred necessary
26 expenditures and losses in direct consequence of the discharge of their employment duties and their
27 obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members
28 for these expenditures or losses. Such expenses include, but are not limited to, cellular phone service.

73. Defendants have failed to fully reimburse Plaintiff and Class Members for necessary business-related expenses and losses.

74. Plaintiff and Class Members are entitled to recover their necessary unreimbursed business-related expenses and losses incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California, pursuant to California Labor Code section 2802.

XII. SIXTH CAUSE OF ACTION

Failure to Maintain Records

**in Violation of Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7
(Brought by Plaintiffs on Behalf of Themselves and All Aggrieved Persons Against All Defendants)**

75. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

76. During the PAGA Period, as part of Defendants' illegal payroll policies and practices to deprive Plaintiff and Aggrieved Persons of all wages earned and due, Defendants knowingly and intentionally failed to maintain records as required under California Labor Code sections 226 and 1174, and IWC Wage Order No. 9-2001, section 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

77. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Aggrieved Persons have been damaged in an amount according to proof at trial, and are entitled to all available civil penalties under PAGA.

XIII. SEVENTH CAUSE OF ACTION

**Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200; *et seq.*
(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

78. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

79. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any

1 unlawful, unfair, or fraudulent business practices.

2 80. Through their action alleged herein, Defendants have engaged in unfair competition within
3 the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or
4 fraudulent business practices under the UCL.

5 81. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
6 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to,
7 failure to pay Class Members wages and compensation they earned through labor provided, and failing
8 to otherwise compensate or reimburse Class Members, as alleged herein. Defendants' fraudulent
9 conduct includes, but is not limited to, issuing wage statements—in the form of settlement histories—
10 containing false and/or misleading information about the time Class Members worked and the amount
11 of wages or compensation due and failing to pay Class Members for all unreimbursed business
12 expenses and all minimum wages owed.

13 82. Plaintiff has standing to assert this claim because he has suffered injury in fact and have lost
14 money as a result of Defendants' conduct.

15 83. Plaintiff and the Class seek restitutionary disgorgement from Defendants, and an injunction
16 prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

17 **XIV. EIGHTH CAUSE OF ACTION**

18 **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**

19 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**

20 **(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)**

21 84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as
22 if fully set forth herein.

23 85. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage
24 Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and
25 Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable
26 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action
27 brought on behalf of themselves and other current or former employees pursuant to procedures outlined
28 in California Labor Code section 2699.3.

1 86. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person who
2 was employed by the alleged violator and against whom one or more of the alleged violations was
3 committed.”

4 87. Plaintiff and other current and former employees of Defendants are “aggrieved employees”
5 as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees
6 and one or more of the alleged violations were committed against them.

7 88. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
8 Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
9 section 2699.5, after the following requirements have been met:

- 10 a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing
11 to the LWDA and by certified mail to the employer of the specific provisions of the
12 California Labor Code alleged to have been violated, including the facts and theories to
13 support the alleged violations;
- 14 b. The Employee’s Notice filed with the LWDA is accompanied by a seventy-five-dollar
15 (\$75) filing fee; and
- 16 c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved
17 employees by certified mail that it does not intend to investigate the alleged violation
18 within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon
19 receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five
20 (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved
21 employees may commence a civil action pursuant to California Labor Code section 2699
22 to recover civil penalties in addition to any other penalties to which the employees may
23 be entitled.

24 89. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including
25 Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those
26 listed in section 2699.5 after the following requirements have been met:

- 27 a. The aggrieved employees shall give written notice by online filing (“Employee’s
28 Notice”) to the LWDA and by certified mail to the employer of the specific provisions of

1 the California Labor Code alleged to have been violated, including the facts and theories
2 to support the alleged violations;

3 b. The Employee's Notice filed with the LWDA is accompanied by a seventy-five-dollar
4 (\$75) filing fee; and

5 c. The employer may cure the alleged violation within thirty-three (33) calendar days of the
6 postmark date of the Employee's Notice. The employer shall give written notice by
7 certified mail within that period of time to the aggrieved employees or representatives
8 and the agency if the alleged violation is cured, including a description of actions taken,
9 and no civil action pursuant to Section 2699 may commence. If the alleged violation is
10 not cured within the 33-day period, the employees may commence a civil action
11 pursuant to Section 2699.

12 90. On July 7, 2023, Plaintiff provided written notice by online filing to the LWDA and by
13 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have
14 been violated, including facts and theories to support the alleged violations, in accordance with
15 California Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75
16 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated July
17 7, 2023 is attached hereto as "**Exhibit 1.**"

18 91. As of the filing date of the initial complaint, over sixty-five (65) days have passed since
19 Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to
20 investigate Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations
21 set forth in this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under
22 California Labor Code section 2699.3(a) and (c) to recover civil penalties against all Defendants, in
23 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a),
24 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

25 92. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf of
26 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
27 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
28 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for

1 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
2 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition to an amount
4 sufficient to recover underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties
5 provided for in this section are in addition to any other civil or criminal penalty provided by law.”

6 93. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
7 employer(s) who violated Plaintiff’s and other non-party aggrieved employees’ rights by violating
8 various sections of the California Labor Code as set forth above.

9 94. As set forth below, Defendants have violated numerous provisions of both the Labor Code
10 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- 11 a. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
12 Defendants’ failure to compensate Plaintiff and other Class Members with overtime
13 wages for all hours worked in excess of eight (8) in one day or forty (40) in one week
14 and double time for all hours worked in excess of twelve (12) hours, as set forth above;
- 15 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the
16 applicable IWC Wage Order(s) for Defendants’ failure to compensate Plaintiff and other
17 Class Members with at least minimum wages for all hours worked as set forth above;
- 18 c. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
19 Order(s) for Defendants’ failure to provide Plaintiff and other Class Members with meal
20 periods and/or rest breaks, as set forth above;
- 21 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)
22 for failure to provide accurate and complete wage statements to Plaintiff and other Class
23 Members as set forth above;
- 24 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage
25 Order(s) for failure to maintain payroll records. California Labor Code section 1198
26 provides that the maximum hours of work and the standard conditions of labor shall be
27 those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage
28 Order(s). Section 1198 further provides that “[t]he employment of any employees for

1 longer hours than those fixed by the order or under conditions of labor prohibited by the
2 order is unlawful.” Pursuant to the applicable IWC Wage Order(s), employers are
3 required to keep accurate time records showing when the employee begins and ends each
4 work period and meal period. During the relevant time period, Defendants failed, on a
5 companywide basis, to keep records of meal period start and stop times for Plaintiffs and
6 other non-party aggrieved employees in violation of section 1198. California Labor
7 Code section 1174(d) provides that “[e]very person employing labor in this state shall . .
8 . [k]eep a record showing the names and addresses of all employees employed and the
9 ages of all minors” and “[k]eep, at a central location in the state or at the plants or
10 establishments at which employees are employed, payroll records showing the hours
11 worked daily by and the wages paid to, and the number of piece-rate units earned by and
12 any applicable piece rate paid to, employees employed at the respective plants or
13 establishments” During the relevant time period, and in violation of Labor Code
14 section 1174(d), Defendants willfully failed to maintain accurate payroll records for
15 Plaintiffs and other non-party aggrieved employees showing the daily hours they
16 actually worked and the wages paid thereto as a result of failing to record the off-the-
17 clock hours that they worked;

- 18 f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
19 upon termination as set forth above;
- 20 g. Violations of Labor Code section 2802 for failure to reimburse all necessary, business-
21 related expenses incurred during employment as set forth above;
- 22 h. Violations of Labor Code section 204 for failure to pay all earned wages during
23 employment as set forth above;
- 24 i. Plaintiff and other non-party aggrieved employees are therefore entitled to recover
25 penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section
26 2699(f)-(g); and
- 27 j. Any and all additional applicable civil penalties and sums as provided by the California
28 Labor Code and/or other relevant statutes.

95. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as private attorney generals, seeks assessment and collection of civil penalties for himself, all other non-party aggrieved employees, and the State of California against all Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

96. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and twenty-five percent (25%) to all aggrieved employees.

97. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XV. PRAYER

98. WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf of the general public, prays for judgment against Defendants as follows:

- a. An order that this action may proceed and be maintained as a class action;
- b. For all unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;
- c. For continuation wages under California Labor Code section 203;
- d. For statutory penalties under California Labor Code section 226(e);
- e. An order requiring Defendants to comply with California Labor Code section 226(a) with respect to all currently employed Class Members;
- f. For reimbursement of business expenses under California Labor Code section 2802;
- g. For all available civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 558, 1174.5, 1197.1 and for violations of California Labor Code sections 201, 202, 203, 204, 226, 510, 1194, 1197, 1198, and 2802;
- h. For restitutionary disgorgement pursuant to the UCL;
- i. An order enjoining Defendants from further unfair and unlawful business practices in violation of Business & Professions Code sections 17200; *et seq.*;

- j. Prejudgment interest at the maximum legal rate;
- k. Reasonable attorneys' fees;
- l. General, special and consequential damages, to the extent allowed by law;
- m. Costs of suit; and
- n. Such other relief as the Court may deem just and proper.

Dated: November 8, 2023

SHEGERIAN & ASSOCIATES, INC.

By:



Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

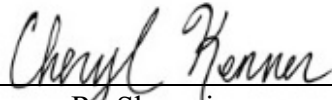
Attorneys for Plaintiff, HECTOR GALVEZ,
and all others similarly situated and aggrieved

1 **XVI. DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury for himself and Class Members on all claims so triable.

3
4 Dated: November 8, 2023

SHEGERIAN & ASSOCIATES, INC.

5
6 By: 
7 Carney R. Shegerian
8 Anthony Nguyen
9 Cheryl A. Kenner

10 Attorneys for Plaintiff, HECTOR GALVEZ,
11 and all others similarly situated and aggrieved

EXHIBIT 1

July 7, 2023

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

April Freight, Inc.
Attn: Human Resources
623 Turnbull Canyon Road
City of Industry, CA 91745

April Freight, Inc.
Attn: Legal Department
P.O. Box 2206
Walnut, CA 91788

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR
CODE SECTION 2698, *ET SEQ.***

To: California Labor and Workforce Development Agency; April Freight, Inc.

From: Hector Galvez, on behalf of himself and all other current and former drivers for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by driver Hector Galvez (“Mr. Galvez”) to seek compensation and all other available relief, including civil penalties on his own behalf and on behalf of all those similarly aggrieved (collectively, with Mr. Galvez, “Claimants”) who have been injured by April Freight, Inc.’s (“April Freight”) violations of the California Labor Code. Mr. Galvez, on behalf of himself and all other similarly aggrieved current and former drivers—whether classified as employees or misclassified as independent contractors—of April Freight, intend to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Claimant is Mr. Galvez, on behalf of himself and all other similarly situated current and former drivers of April Freight—whether classified as an employee driver or independent contractor driver—who are or were engaged in providing transportation-related driving services to April Freight. April Freight is a drayage trucking company delivering cargo from ports to

145 S Spring Street, Suite 400
Los Angeles, California 90012

11520 San Vicente Boulevard
Los Angeles, California 90049

6205 Lusk Boulevard, Suite 200
San Diego, California 92121

650 California Street, Suite 4-137
San Francisco, California 94108

90 Broad Street, Suite 804
New York, New York 10004

3764 Elizabeth Street
Riverside, California 92506

customers throughout California. As part of their employment with April Freight, Claimants were assigned to and required to suffer and permitted to work without pay, while performing tasks including, but not limited to: conducting pre- and post-trip inspections; fueling the truck; communicating with dispatch via text or cellphone to receive loads/routes; driving the truck with an empty container to the port (Los Angeles or Long Beach); loading the container with cargo; driving the truck to the customer's address; delivering the cargo to the customer(s); going back to the port to obtain another load; dropping off the next load(s) to the customer(s); driving back to the company yard to park the truck and empty container at the yard.

During his employment, April Freight intentionally misclassified employees as independent contractors, including Mr. Galvez, in violation of Labor Code section 226.8(a)(1). April Freight failed to provide Mr. Galvez and those similarly situated with meal periods and rest breaks or premium pay in lieu thereof. As a consequence, April Freight has failed to comply with Labor Code sections 226.7 and 512, and section 11 of Industrial Welfare Commission ("IWC") Wage Order Nos. 9-2001, and any other applicable IWC Wage Orders. In addition, April Freight failed to pay all minimum and overtime wages to Mr. Galvez for all hours worked and other drivers in violation of Labor Code sections 1194 and 1197, and section 4 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders, and also failed to provide accurate, timely itemized pay statement accounting records to Mr. Galvez and other drivers in violation of Labor Code section 226(a). With regard to those no longer employed by April Freight, including Mr. Galvez, April Freight violated Labor Code sections 201–203 by failing to pay all wages due upon separation. Mr. Galvez is informed and believes that such violations are ongoing, systematic, and continuous. He intends to bring an action against April Freight under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

¹ Without limitation, Mr. Galvez, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Theories of Labor Code Violations and Remedies:

Although April Freight misclassified Claimant Mr. Galvez as an independent contractor, he should have been classified as an employee/company driver of April Freight. Mr. Galvez worked for April Freight from approximately April 2018 through approximately April 18, 2023. Mr. Galvez began working for April Freight as an independent contractor driver, but a few years later, April Freight converted his status to employee driver in April 2022. At the time of his separation, Mr. Galvez was earning \$32.31 per hour. While Mr. Galvez has not been classified as an independent contractor driver within the statute of limitations for PAGA, he has standing to seek PAGA penalties on behalf of any drivers whom April Freight has misclassified within the past year. (*Huff v. Securitas Security Services*, 23 Cal.App.5th 745 (2018).) For the avoidance of doubt, Mr. Galvez is seeking PAGA penalties on behalf of both employee drivers and independent contractor drivers, stemming from his time working for April Freight.

Here, the position of driver, whether employee or independent contractor, essentially requires drivers to perform tasks including, but not limited to: conducting pre- and post-trip inspections; fueling the truck; communicating with dispatch via text or cellphone to receive loads/routes; driving the truck with an empty container to the port (Los Angeles or Long Beach); loading the container with cargo; driving the truck to the customer's address; delivering the cargo to the customer(s); going back to the port to obtain another load; dropping off the next load(s) to the customer(s); driving back to the company yard to park the truck and empty container at the yard. Drivers drive exclusively local, short haul routes in California. For a period of at least four (4) years prior to July 2023, but for our purposes here, one (1) year, April Freight has misclassified drivers as independent contractors instead of nonexempt employees and, as such, has violated a multitude of Labor Codes as a result. Additionally, April Freight has failed and continues to fail to pay drivers all overtime wages owed, yet regularly requires and has required drivers to work in excess of eight (8) hours per workday and/or forty (40) hours per workweek without adequate pay under Labor Code section 1194.

It is unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (Cal. Lab. Code § 226.8(a)(1).) . . . “‘Willful misclassification’ means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (Cal. Lab. Code § 226.8(i)(4).) Accordingly, by willfully misclassifying its drivers as independent contractors, past and present, including Mr. Galvez, April Freight has violated Labor Code section 226.8.

If a person or employer willfully misclassifies an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than \$5,000 and not more than \$15,000 for each violation, in addition to any other penalties or fines permitted by law. (Cal. Lab. Code section 226.8(b).)

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, April Freight was required to compensate Claimants at a rate of 1.5 times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. April Freight has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that would have been eligible for overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, April Freight failed to provide Mr. Galvez and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 9-2001, section 3.

Pursuant to IWC Wage Order No. 9-2001, employers are required to keep accurate time records showing when employees begin and end each work period and meal period. During the relevant time period, April Freight had a company-wide policy and engaged in a company-wide practice of failing to record actual hours worked, thereby failing to keep accurate records of work period and meal period start and stop times for Claimants, in violation of section 1198. Because April Freight failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on Claimants' wage statements, Claimants have been prevented from verifying—solely from information on the wage statements themselves—that they were paid correctly and in full. Instead, Claimants have had to refer to other sources beyond their wage statements and reconstruct time records to determine whether in fact they were paid correctly and the extent to which they were underpaid, thereby causing them injury. Accordingly, Claimants are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)–(g).

Claimants Mr. Galvez and the class and group of aggrieved persons he seeks to represent, were at all times entitled to timely, uninterrupted, off-duty, unpaid meal periods or premium pay in lieu thereof. April Freight treated its drivers as independent contractors, so it did not have a meal period policy, written or verbal, that authorized and permitted Claimants to take complaint rest breaks. April Freight failed to authorize and permit any meal periods at all for Mr. Galvez and all others similarly situated as required by Labor Code sections 512 and 226.7 and section 11 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. Claimants did not clock out to take a meal period. April Freight failed to compensate its drivers with premium pay for these noncompliant meal periods as required by Labor Code section 226.7. Furthermore, since April Freight required Mr. Galvez and others similarly situated to work during their meal periods in violation of Labor Code section 512, Claimants seek wages of one additional hour of pay as required by Labor Code section 226.7(b) as well as all available penalties as set forth in section 20 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders, and Labor Code sections 558 and 2699(a) or (f).

Claimants were at all times entitled to take uninterrupted, off-duty, paid rest breaks. April Freight misclassified its drivers as independent contractors, so it did not have a rest break policy, written or verbal, authorizing and permitting Claimants to take rest breaks. Thus, April Freight failed to authorize and permit Claimants to take rest breaks as required by Labor Code section 226.7 and section 12 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. Further, April Freight failed to compensate its drivers with premium pay for these noncompliant rest breaks as required by Labor Code section 226.7. As a result, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 226.7, 558, and section 20 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. Furthermore, since April Freight required its employees to work during rest periods in violation of Labor Code section 226.7(b), Claimants seek as all available penalties set forth in Labor Code section 2699(a) or (f). As to the independent contractor drivers, they are also owed minimum wage for that non-productive time spent working during their rest breaks—which was not separately paid—so April Freight also owes them minimum wages for those rest breaks, whether or not drivers received compliant rest breaks.

Also, Claimants were at all times entitled to payment of minimum wages. April Freight has failed to pay Claimants minimum wages for all hours worked as required by Labor Code sections 1194 and 1194.2 and section 4 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. For instance, due to demanding delivery timeframes and heavy workloads, Claimants were not permitted to take off-duty meal periods and rest breaks. Claimants did not clock out to take a meal period or otherwise record them. Claimants were too busy and not authorized to take rest periods. These policies and practices caused Claimants to remain on duty during meal periods and rest breaks, and therefore, constitute a failure on April Freight's part to provide compliant meal periods and rest breaks. With that, April Freight's corresponding failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes April Freight's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 1182.12, 1194, and 1197. April Freight's failure to pay Claimants' meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail above, also constitutes a failure to pay minimum wages to Claimants. Next, Claimants worked a substantial amount of non-productive time for which he was not compensated. Claimants spent a significant amount of compensable time working and performing tasks such as pre- and post-trip inspections, fueling, wait-time, and other truck maintenance-related tasks. Claimants' non-productive time was never recorded, not subsequently added, and, therefore, not compensated. Accordingly, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders.

By failing to pay all minimum wages and premium pay for noncompliant meal periods and rest breaks, April Freight has correspondingly failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204 and upon separation in violation of Labor Code sections 201–203. April Freight didn't rectify each of its failings every pay period when Mr. Galvez separated from April Freight by paying Mr. Galvez all of his unpaid wages. In short, April

Freight's uniform failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes April Freight failure to pay Claimants minimum wages and all wages owed every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 1182.12, 1194, and 1197.

April Freight's uniform failure to pay Mr. Galvez and other drivers minimum wages and uniform failure to authorize and permit them to take meal periods and rest breaks were not rectified by paying them an additional one-hour's wage per day at their regular rate of pay, or alternatively, premium compensation, if applicable, pursuant to Labor Code section 1194. April Freight's failure to provide such compensation in lieu of compliant meal periods and rest breaks constitutes two ways, among others, in which April Freight failed to pay Claimants minimum wages, all wages owed every pay period, all wages owed upon separation, which violates Labor Code sections 201–203, 204, and 204(b), and as such, entitles Claimants to recover penalties as set forth in Labor Code section 210 and/or section 1194, *et seq.*

Claimants were at all times entitled to receive timely and accurate wage statements from April Freight pursuant to Labor Code section 226. April Freight never issued Claimants misclassified as independent contractors any wage statements or even at least satisfactory, compliant settlement histories/statements. As for the wage statements April Freight issued to employees, including Mr. Galvez when he was properly classified as an employee, the wage statements were inaccurate and noncompliant for multiple reasons including, but not limited to: (1) failing to pay Claimants their meal period and rest break premiums for all noncompliant meal periods and rest breaks; (2) failing to pay Claimants all minimum and overtime and premium wages owed; (3) failing to reflect the correct number of total hours worked every pay period to account for Claimants' non-productive time, which, as a consequence, resulted in (4) failing to reflect the accurate amount of gross wages owed. Since these wage statements were inaccurate and remain as such, they are also untimely. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by April Freight for all necessary, business-related expenses they incurred in executing their duties for April Freight. California Labor Code section 2802 provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." April Freight has failed to fully reimburse all necessary business-related expenses and losses Mr. Galvez and other drivers incurred, including but not limited to monthly cell phone service costs, the service of which was required for Claimants to perform their job. Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802 for these and any other losses or unreimbursed necessary, business-related expenses.

April Freight's uniform failure to pay overtime and minimum wages, failure to authorize and permit off-duty rest breaks or pay Claimants premium compensation in lieu thereof, and failure

to furnish timely and accurate wage statements violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, and 1197, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, et seq., and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Mr. Galvez seeks the remedies set forth in the above-referenced Labor Code sections for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Galvez, acting in the public interest as private attorneys general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against April Freight for violations of California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.7, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in black ink, reading "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner