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9 Attorneys for Plaintiff BRUCE BALLINGER
10 on behalf of the State of California,
11 and others similarly situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF RIVERSIDE**

14 BRUCE BALLINGER, on behalf of the State
15 of California, and others similarly situated
16 and aggrieved,

17 Plaintiff,

18 v.

19 US EXPRESS CARRIERS LLC, a Nevada
20 Limited Liability Company; and DOES 1-
21 100, inclusive,

22 Defendants.

Case No.: **CVRI 2306319**

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

1 Plaintiff, BRUCE BALLINGER, (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants US EXPRESS CARRIERS LLC, a Nevada Limited Liability
4 Company; and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”).
5 PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

15 3. Venue is proper in the County of Riverside pursuant to sections 395 and 395.5 of the
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
18 See also *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue
19 in a PAGA action is proper in any county where the defendants committed Labor Code violations
20 against some of its employees). Venue is also proper pursuant to section 393 of the California Code
21 of Civil Procedure because the cause, or some part of the cause, arose in the County of Riverside.

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 Arizona and a citizen of the State of Arizona.

25 5. PLAINTIFF worked for DEFENDANTS as a driver, truck driver and/or similar
26 title(s) and/or position(s), with routes initiated and completed in various counties throughout
27 California, including but not limited to, San Bernardino County, Los Angeles County and Riverside
28 County. PLAINTIFF was a non-exempt employee of DEFENDANTS but was misclassified as an

independent contractor.

6. Defendant US EXPRESS CARRIERS LLC is a Nevada Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, manage and/or staff its employees to work in counties throughout California, including but not limited to, San Bernardino County, Los Angeles County and Riverside County. DEFENDANTS, through its various locations, serve the transportation and/or logistics industry.

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

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

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)

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

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

22 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
24 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
25 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
26 policies and practices regardless of the location(s) where they worked. Among other things,
27 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
28 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control

1 over the day-to-day operations and employment matters, including the power to hire and fire, set
2 schedules, issue employee policies, and determine rates of compensation across its locations in
3 California; (3) DEFENDANTS utilize the same policies and procedures for all California
4 employees, including issuing the same employee handbooks and other form agreements; (4)
5 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
6 employment matters; and, (6) DEFENDANTS share employees.

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

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

27 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
28 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS

1 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
2 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
3 PLAINTIFF seeks relief in this Complaint.

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

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

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

16 **PAGA ALLEGATIONS**

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

20 All individuals who currently or formerly worked either directly or
21 via a staffing agency for any one or more of the DEFENDANTS at
22 any location in California at any time from one year plus 65 days from
23 the filing of the initial Complaint through the present ("PAGA
24 Period").

25 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
26 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
27 limitations period and suffered one or more of the Labor Code violations set forth herein.
28 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved

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

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

9 21. PLAINTIFF, on July 3, 2023, through counsel, gave written notice by online filing
10 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
11 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
12 in this Complaint (“PAGA Notice”).

13 22. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
14 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
15 Employees.

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

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

25 **FACTUAL ALLEGATIONS**

26 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
27 worked for DEFENDANTS in the State of California. At all relevant times, PLAINTIFF and the
28 Aggrieved Employees were non-exempt employees of DEFENDANTS that DEFENDANTS

1 willfully misclassified as independent contractors to evade California wage and hour laws. At all
2 times referenced herein, DEFENDANTS exercised control over PLAINTIFF and each of the
3 Aggrieved Employees and suffered and/or permitted them to work.

4 26. PLAINTIFF worked for DEFENDANTS as a driver, truck driver and/or similar
5 title(s) and/or position(s) until on or around March 28, 2023. DEFENDANTS provide
6 transportation/logistics services. PLAINTIFF completed routes for DEFENDANTS in various
7 counties throughout California, including but not limited to, San Bernardino County, Los Angeles
8 County, and Riverside County.

9 27. DEFENDANTS compensated PLAINTIFF on a per load and/or per mile basis
10 irrespective of the number of hours worked daily or weekly.

11 28. At all relevant times, PLAINTIFF and other Aggrieved Employees were non-exempt
12 employees of DEFENDANTS that DEFENDANTS willfully misclassified as independent
13 contractors to evade California wage and hour laws.

14 29. To qualify as an independent contractor under California law, (a) the worker must be
15 free from the employer's control and direction in the performance of the work, both under the
16 contract for the performance of the work and in fact; (b) the work performed must be outside the
17 usual course of the employer's business; and (c) the worker must not be customarily engaged in an
18 independently established trade, occupation, or business of the same nature as the work he
19 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
20 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.
21 The worker is presumed to be an employee unless the employer/hiring entity can show that all three
22 conditions are met.

23 30. Despite DEFENDANTS' efforts to evade California wage and hour laws by setting
24 up an alleged contractor scheme, the reality is that PLAINTIFF and the Aggrieved Employees are
25 and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
26 the Aggrieved Employees are/were not free from DEFENDANTS' control and direction in the
27 performance of work, both under the contract for the performance of the work and in fact; (b) the
28 work PLAINTIFF and the Aggrieved Employees perform/performed work is/was entirely within

1 the usual course of DEFENDANTS' business; and (c) PLAINTIFF and the Aggrieved Employees
2 are not/were not customarily engaged in an independently established trade, occupation, or business
3 of the same nature as the work they perform/performed for DEFENDANTS.

4 a. PLAINTIFF and Aggrieved Employees are/were not free from DEFENDANTS'
5 control and direction in the performance of work, both under the contract for the performance of the
6 work and in fact. DEFENDANTS control and direct PLAINTIFF's and other Aggrieved
7 Employees' work. First, DEFENDANTS scheduled pickup and delivery of PLAINTIFF's loads.
8 DEFENDANTS instructed PLAINTIFF on how to deliver loads. DEFENDANTS controlled the
9 assignments PLAINTIFF would receive, the amount PLAINTIFF was paid, and the locations
10 PLAINTIFF worked. For example, based on information and belief, DEFENDANTS determined
11 the rate per load, which was negotiated by DEFENDANTS and unchangeable by PLAINTIFF, and
12 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to affix DEFENDANTS'
13 company name on their vehicles and/or trailers. Based on information and belief, DEFENDANTS
14 supplied PLAINTIFF with a place to park his vehicle and/or the trailers and/or other equipment with
15 which to perform his assigned job duties. Based on information and belief, if PLAINTIFF was late
16 for his scheduled pickups or deliveries PLAINTIFF would be subject to disciplinary action by
17 DEFENDANTS, including but not limited to, a reduction in the number of routes assigned and/or
18 assignment of less desirable routes. DEFENDANTS hired PLAINTIFF without any set end date
19 for his services. PLAINTIFF's term of employment with DEFENDANTS was indefinite, and
20 PLAINTIFF could have been terminated by DEFENDANTS at will (which happened) or quit at any
21 time. DEFENDANTS required that PLAINTIFF report to a US Express Carriers Supervisor, who
22 kept tabs on PLAINTIFF and directed PLAINTIFF's work on an ongoing, day-to-day basis. Based
23 on information and belief, PLAINTIFF and other Aggrieved Employees were required to report to
24 DEFENDANTS on a daily basis and provide updates on the number of loads completed for the day.
25 As a result, DEFENDANTS controlled and directed PLAINTIFF's and continue to control and
26 direct other Aggrieved Employees' work.

27 b. The work PLAINTIFF and the Aggrieved Employees perform/performed work
28 is/was entirely within the usual course of the DEFENDANTS' business of providing

1 trucking/transportation services. DEFENDANTS are in the business of providing
2 trucking/transportation services, and PLAINTIFF and Aggrieved Employees work/worked in
3 various positions including but not limited to truck drivers in order to conduct DEFENDANTS'
4 business. The work that PLAINTIFF and the Aggrieved Employees perform/performed is/was
5 therefore not a distinct occupation or an incidental or tangential part of DEFENDANTS' operations,
6 but rather is/was central to DEFENDANTS' business.

7 c. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
8 an independently established trade, occupation, or business of the same nature as the work they
9 perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other
10 Aggrieved Employees to present themselves as workers for DEFENDANTS. PLAINTIFF and the
11 Aggrieved Employees do not/did not incur profits or losses; instead, DEFENDANTS
12 manage/managed the business operation, attract/attracted any investors and customers,
13 advertise/advertised to potential customers/clients and secure/secured customers/clients.
14 PLAINTIFF and the Aggrieved Employees do not/have not made any capital investment in any of
15 DEFENDANTS' facilities or advertising or DEFENDANTS' electronic systems. Moreover, as
16 explained above, DEFENDANTS required Aggrieved Employees to affix DEFENDANTS'
17 company name on their trucks/vehicles and/or use trailers and/or other equipment supplied by
18 DEFENDANTS identifying DEFENDANTS' company name, and Aggrieved Employees were
19 required to represent themselves as US Express Carriers when arriving at and/or checking in at their
20 various assignments. Nevertheless, DEFENDANTS unilaterally label PLAINTIFF and other
21 Aggrieved Employees as independent contractors and requires them to enter into contracts labeling
22 them as such, when they in fact, are not independent contractors.

23 31. Based on the work relationship described above, PLAINTIFF and the Aggrieved
24 Employees were at all relevant times DEFENDANTS' non-exempt employees – not independent
25 contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful pattern and/or
26 practice of misclassification.

27 32. DEFENDANTS willfully misclassified and continue to willfully misclassify
28 PLAINTIFF and the Aggrieved Employees as independent contractors in an attempt to evade

1 California labor laws that protect employees, including but not limited to, minimum and straight
2 time wage and sick pay laws, expense reimbursement requirements, and wage statement
3 requirements. Because DEFENDANTS improperly classified PLAINTIFF as an independent
4 contractor rather than as a non-exempt employee, PLAINTIFF was not properly and fully
5 compensated for all hours worked, as PLAINTIFF was not paid all owed minimum and straight time
6 wages for all hours worked. Also, based on information and belief, Aggrieved Employees were
7 required to use their personal cell phones, pay for data plan usage and/or internet and/or use their
8 personal vehicles for work purposes, pay for fuel costs, vehicle and/or equipment maintenance,
9 purchase, maintain, and/or repair tools and/or equipment and were charged fees for dispatch services
10 and/or other administrative services and/or for the use of tools and/or equipment required to perform
11 the job duties DEFENDANTS assigned to Aggrieved Employees. DEFENDANTS did not
12 reimburse Aggrieved Employees for these expenses. Based on information and belief Aggrieved
13 Employees were required to incur business related expenses that they were not reimbursed for,
14 including but not limited to, costs associated with being required to use their personal vehicles
15 and/or vehicle-related expenses incurred in the performance of their job duties, personal cell phones,
16 and purchase and/or maintain their own hand tools/equipment and/or uniforms and/or
17 protective/safety equipment. Additionally, DEFENDANTS failed to provide accurate, itemized
18 wage statements (and/or any wage statements at all) to PLAINTIFF and other Aggrieved
19 Employees.

20 33. As part of its misclassification scheme, DEFENDANTS have failed and continue to
21 fail to pay Aggrieved Employees all owed minimum wages and straight time wages and continue to
22 fail to reimburse Aggrieved Employees for business expenses and failed and continue to fail to
23 furnish accurate itemized wage statements to Aggrieved Employees.

24 34. **Unpaid Minimum and Straight Time Wages.** DEFENDANTS failed to
25 compensate PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the
26 underpayment of minimum and straight time wages. DEFENDANTS failed to compensate
27 PLAINTIFF and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS' willful
28 misclassification scheme as explained herein.

1 35. DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully
2 misclassify Aggrieved Employees as independent contractors to evade California's minimum wage
3 laws.

4 36. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all
5 hours worked, resulting in the underpayment of minimum and straight time wages.

6 37. For example, DEFENDANTS suffered and permitted PLAINTIFF and Aggrieved
7 Employees to work off the clock without the payment of wages, as DEFENDANTS failed to record
8 the total number of actual hours worked and failed to instruct PLAINTIFF and other Aggrieved
9 Employees to record their actual hours worked and further failed to provide any way for them to
10 record their actual hours worked. PLAINTIFF and other Aggrieved Employees were not
11 compensated for all time worked, including but not limited to, all time spent making pre-trip and
12 post-trip inspections, time spent fueling, cleaning/washing their vehicles, setting up, time spent
13 completing paperwork, loading, unloading, all waiting and/or standby time between jobs and tasks
14 and/or all time spent driving between delivery locations, all time spent confined to the sleeper berth
15 and/or immediate physical proximity to the vehicle, all time spent communicating with
16 DEFENDANTS, including but not limited to, time spent updating DEFENDANTS as to the status
17 of deliveries, time spent communicating with DEFENDANTS regarding deliveries and/or
18 scheduling and/or other work tasks and/or time spent returning equipment to DEFENDANTS'
19 facilities/yards.

20 38. For example, based on information and belief, at times, DEFENDANTS paid
21 PLAINTIFF and other Aggrieved Employees on a strictly piece-rate basis (e.g., per load/per
22 delivery/per mile/per trip/per day), at least during some pay periods, during the relevant time period.
23 However, as explained above, DEFENDANTS failed to separately compensate Aggrieved
24 Employees for all non-piece rate related activities/all non-productive time, including but not limited
25 to, all pre-trip and post-trip inspections, waiting time, fueling, cleaning, setting up, time spent
26 completing paperwork, loading, unloading, waiting between jobs and tasks, and/or performing work
27 duties that otherwise fall outside of the piece-rate pay criteria.

28 39. For example, PLAINTIFF was not compensated for any and/or all time spent

1 performing pre-trip and/or post-trip vehicle inspections; PLAINTIFF was not compensated for any
2 and/or all standby and/or waiting time between tasks, routes, assignments, deliveries and/or pickups;
3 PLAINTIFF was not compensated for any and/or all time spent clearing out, maintaining, repairing,
4 cleaning and/or washing his work vehicle; PLAINTIFF was not compensated for any and/or all time
5 spent logging onto and/or initiating and/or troubleshooting and/or logging off of DEFENDANTS'
6 vehicle onboarding system. For example, PLAINTIFF was not compensated at all for time spent
7 starting, booting and/or logging into the vehicle onboarding system, often resulting in at least fifteen
8 minutes of pre-shift off-the-clock work that was neither recorded nor compensated each day
9 PLAINTIFF worked for DEFENDANTS and the underpayment of minimum wages and straight
10 time wages owed to PLAINTIFF.

11 40. DEFENDANTS' failure to separately compensate Aggrieved Employees for their
12 non-productive time and/or failure to compensate them at the correct rates for all non-productive
13 time resulted in the failure to pay Aggrieved Employees for all hours worked and violations of
14 California wage and hour laws, including but not limited to, Labor Code sections 226.2 and/or 1197.
15 Based on information and belief, DEFENDANTS further failed to include this information on these
16 employees' wage statements required by Labor Code section 226.2.

17 41. Based on information and belief, at times, DEFENDANTS required Aggrieved
18 Employees to transport loads up to and frequently over a thousand miles and overnight. Based on
19 further information and belief, as explained above, DEFENDANTS have a policy and practice of
20 failing to compensate Aggrieved Employees at the correct rates for their non-driving and/or other
21 non-productive time, including but not limited to, time logged as "off duty" and/or "sleeper berth"
22 even though Aggrieved Employees were required to remain inside and/or tethered to the immediate
23 vicinity of the truck and/or sleeper berth when logged in as these designation during layovers,
24 standby time, waiting time and/or other non-driving and/or non-productive time.

25 42. For example, based on information and belief, DEFENDANTS required Aggrieved
26 Employees to remain inside and/or in immediate physical proximity to their work vehicles at all
27 times during their shifts as DEFENDANTS required Aggrieved Employees to remain responsible
28 for the security of DEFENDANTS' loads at all times during their shifts, even when their trucks

1 were stopped and/or during times when Aggrieved Employees were purportedly off duty.

2 43. For example, based on information and belief, DEFENDANTS required/require
3 Aggrieved Employees to remain responsible for the security of the load and/or require Aggrieved
4 Employees to be available and responsive to work communication devices (e.g., cell phones and/or
5 radios), at all times during their shifts – even when their trucks are stopped. Between the hours per
6 day Aggrieved Employees spent driving, performing non-driving work tasks and/or other time spent
7 under DEFENDANTS’ control while confined to the truck’s sleeper berth and/or immediate area
8 surrounding it and/or during which Aggrieved Employees are required to monitor and be responsive
9 to work communication devices, Aggrieved Employees were unable to use the time effectively for
10 their own purposes, resulting in DEFENDANTS’ failure to compensate Aggrieved Employees for
11 all time spent under DEFENDANTS’ control and the substantial underpayment of minimum wages
12 and straight time wages owed to Aggrieved Employees.

13 44. Based on information and belief, at times, Aggrieved Employees were required to
14 clock out for meal periods but to continue working during unpaid meal periods, resulting in the
15 underpayment of minimum wages and straight time wages owed to Aggrieved Employees.

16 45. For example, based on information and belief, PLAINTIFF was required to monitor
17 and be responsive to his radio, cell phone and/or other work-communication device during
18 purportedly off-duty, unpaid meal periods, resulting in the underpayment of minimum wages and
19 straight time wages owed to PLAINTIFF.

20 46. As such, PLAINTIFF and other Aggrieved Employees were not paid for all work
21 time. DEFENDANTS were and are required to pay PLAINTIFF and other Aggrieved Employees
22 minimum wages for all time worked. DEFENDANTS failed and continue to fail to ensure that
23 PLAINTIFF and other Aggrieved Employees receive the applicable minimum wage for all hours
24 worked. Instead, DEFENDANTS paid PLAINTIFF and other Aggrieved Employees per load/per
25 mile basis regardless of how many hours they worked, thereby depriving Aggrieved Employees of
26 all owed minimum wages, and all owed straight time wages.

27 47. Moreover, by charging PLAINTIFF and other Aggrieved Employees with fees for,
28 including but not limited to, dispatch services and/or other administrative services and/or

1 tools/equipment required to perform their jobs, DEFENDANTS deprived PLAINTIFF and other
2 Aggrieved Employees of allowed minimum wages for all hours worked.

3 48. For example, at times DEFENDANTS deducted fees and/or costs from
4 PLAINTIFF's paycheck, thereby depriving him of all owed wages. Based on further information
5 and belief, DEFENDANTS have a policy and practice of deducting percentages of the price of each
6 load transported to reduce load rates, resulting in unlawful deductions, unreimbursed business
7 expenses, and the underpayment of all wages owed, including but not limited to straight time wages,
8 owed to Aggrieved Employees.

9 49. **Meal Period Violations.** Aggrieved Employees working in non-truck-driving
10 positions consistently worked shifts of at least five and one-half hours or more, entitling them to at
11 least one meal period. However, Aggrieved Employees working in non-truck-driving positions
12 would not receive legally compliant thirty (30) minute first and second meal periods. Based on
13 information and belief, Aggrieved Employees working in non-truck-driving positions were
14 consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being
15 forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal
16 periods due to understaffing, the nature and constraints of their job duties and/or commentary from
17 supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

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

23 51. For example, based on information and belief, Aggrieved Employees not employed
24 as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered to their
25 workstations and/or were required to monitor work communication devices during purportedly off-
26 duty meal periods, and as such were not relieved of all duties and DEFENDANTS' control during
27 purported meal periods. Based on information and belief, DEFENDANTS did not pay legally
28 compliant meal period premiums and/or any and/or all meal period premiums for these missed

1 and/or otherwise legally noncompliant meal periods, in violation of California meal period
2 law. Based on information and belief, DEFENDANTS implemented policies and/or practices that
3 failed to relieve Aggrieved Employees working in non-truck-driving positions of all duties and
4 DEFENDANTS' control during unpaid meal periods.

5 52. Based on information and belief, DEFENDANTS required Aggrieved Employees
6 working in non-truck-driving positions to complete off-the-clock work prior to their scheduled shift
7 time which DEFENDANTS failed to take into account when scheduling meal periods for Aggrieved
8 Employees working in non-truck-driving positions. Based on information and belief, meal periods
9 were late, in part due to unaccounted pre-shift off-the-clock work.

10 53. Based on information and belief, despite DEFENDANTS' failure to provide lawful
11 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
12 times of Aggrieved Employees working in non-truck-driving positions meal periods and/or
13 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
14 periods despite having actual and/or constructive knowledge that Aggrieved Employees working in
15 non-truck-driving positions did not receive lawful meal periods.

16 54. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
17 working in non-truck-driving positions who worked shifts of more than ten hours did not receive a
18 second legally compliant thirty (30) minute second meal period.

19 55. Based on information and belief, DEFENDANTS failed to instruct Aggrieved
20 Employees working in non-truck-driving positions as to the timing and duty-free nature of meal
21 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
22 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

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

1 58.

2 57. Based on information and belief, DEFENDANTS had actual and/or constructive
3 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
4 were free of DEFENDANTS' control owed to Aggrieved Employees working in non-truck-driving
5 positions, in violation of California's meal period laws.

6 58. DEFENDANTS failed to pay Aggrieved Employees working in non-truck-driving
7 positions, an additional hour of wages at their respective regular rates of compensation for each
8 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
9 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
10 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
11 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
12 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

17 60. Aggrieved Employees working in non-truck-driving positions were not adequately
18 informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per
19 California law. Based on information and belief, DEFENDANTS had no policy in place nor
20 instruction as to the taking of duty-free rest periods.

21 61. Based on information and belief, DEFENDANTS did not have a have a compliant
22 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
23 practice.

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

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

6 64. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
7 lasting longer than ten hours.

8 65. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve Aggrieved Employees working in non-truck-driving positions of all
10 duties and DEFENDANTS' control during rest periods.

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

14 67. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
15 which PLAINTIFF and Aggrieved Employees working in non-truck-driving positions experienced
16 a missed/unlawful rest period in violation of California law. DEFENDANTS either failed to pay a
17 rest period premium at all for each workday a proper rest period was not provided and/or failed to
18 pay the proper rest period premium for failure to incorporate all non-discretionary remuneration,
19 including but not limited to, bonuses, shift differential pay, and/or other non-discretionary
20 compensation into the regular rate of compensation for purposes of calculating the owed rest period
21 premium.

22 68. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
23 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
24 with Labor Code section 226. DEFENDANTS either failed/fails to provide wage statements at all
25 or failed/fails to provide wage statements containing all statutorily required information pursuant to
26 Labor Code section 226.

27 69. To the extent wage statements were issued at all, the wage statements failed to
28 indicate the earned gross and net wages earned during the pay period, the correct applicable rates of

1 pay for all hours worked, and the total hours worked by PLAINTIFF and Aggrieved Employees (by
2 virtue of DEFENDANTS' willful misclassification scheme and payment based on a per load rate
3 regardless of the number of hours worked and/or other unlawful policies and practices described
4 above) which results in a violation of Labor Code section 226(a).

5 70. To the extent any wage statements were provided, the wage statements fail to indicate
6 the "total hours worked" by PLAINTIFF and other Aggrieved Employees.

7 71. Moreover, to the extent wage statements were provided, they fail to include all gross
8 and net wages earned, fail to include the number of piece-rate units earned and any applicable piece
9 rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to
10 include any applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate, in violation of Labor Code section 226(a).

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

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

21 74. As a result, to the extent DEFENDANTS provided wage statements to PLAINTIFF
22 and Aggrieved Employees, the wage statements were not accurate and did not include all of the
23 statutorily required information. As DEFENDANTS either failed to issue wage statements at all
24 and/or failed to provide wage statements containing all statutorily required information pursuant to
25 Labor Code section 226, DEFENDANTS violated Labor Code section 226.

26 75. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

3 76. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
5 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
6 include all wages owed as they were devoid of, including but not limited to, all owed minimum
7 wages, straight time wages, vacation pay, and all owed sick leave and/or paid time off wages at the
8 properly accrued rates.

9 77. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
10 upon discharge of employment. For example, at times, Aggrieved Employees experienced breaks in
11 their employment caused by DEFENDANTS whereby Aggrieved Employees would not be called
12 in for work for longer than a single pay period due to including but not limited to DEFENDANTS'
13 lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,
14 DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in
15 violation of including but not limited to Labor Code section 201-202.

16 78. These violations subject DEFENDANTS to civil penalties under Labor Code section
17 203, 210, and/or 256.

18 79. **Unreimbursed Business Expenses.** Based on information and belief,
19 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
20 direct consequence of the performance of their job duties without providing reimbursement, in
21 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
22 Employees were improperly required to provide and maintain work tools that are supposed to be the
23 responsibility of the employer.

24 80. Based on information and belief, DEFENDANTS shifted the costs of doing business
25 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
26 to, uniforms and/or use of PLAINTIFF's and other Aggrieved Employees' cellphone and data usage
27 and/or cost of internet, vehicle mileage and related expenses.

28 81. For example, based on information and belief, PLAINTIFF used his personal mobile

1 phone to receive and respond to work-related messages and/or phone calls. Based on information
2 and belief, other Aggrieved Employees used/use their personal mobile phones to communicate with
3 DEFENDANTS either via phone call and/or text message about scheduling and/or other work tasks.
4 However, DEFENDANTS failed to provide any and/or full reimbursement for these business
5 expenses.

6 82. Based on information and belief, Aggrieved Employees were also required to use
7 their personal vehicles and/or trucks and/or other tools and/or equipment to complete deliveries
8 and/or pickups for DEFENDANTS without reimbursement for these expenses including but not
9 limited to, for mileage, fuel, and other costs related to the use of a personal vehicle and/or personal
10 tools and/or equipment.

11 83. Based on information and belief, Aggrieved Employees were required to use their
12 personal cell phones, pay for data plan usage and/or internet and/or use their personal vehicles/trucks
13 for work purposes, pay for fuel costs and vehicle and/or equipment maintenance, supply their own
14 tools and/or equipment and were charged fees for toll roads, at weighing stations and/or for dispatch
15 and/or other administrative services and/or for the use of tools and/or equipment required to perform
16 the job duties DEFENDANTS assigned to Aggrieved Employees. DEFENDANTS did not
17 reimburse Aggrieved Employees for these business expenses. Based on information and belief
18 Aggrieved Employees were required to incur business related expenses that they were not
19 reimbursed for, including but not limited to, costs associated with being required to use their
20 personal vehicles, work-related fines and/or fees, personal cell phones, and purchase and/or maintain
21 their own hand tools/equipment and/or uniforms and/or protective/safety equipment.

22 84. Based on further information and belief, Aggrieved Employees were not reimbursed
23 at all and/or in full for costs of lodging and/or meals and/or other travel-related expenses Aggrieved
24 Employees incurred in carrying out their assigned job duties.

25 85. As a pattern and practice, DEFENDANTS regularly failed to reimburse and
26 indemnify PLAINTIFF and other Aggrieved Employees for these business expenses. Pursuant to
27 California Labor Code section 2802, PLAINTIFF and other Aggrieved Employees were entitled to
28 be reimbursed for all reasonable expenses associated with carrying out orders by their employer

1 and/or carrying out the duties assigned by their employers.

2 86. PLAINTIFF and other Aggrieved Employees were improperly required to pay for
3 business expenses that are supposed to be the responsibility of DEFENDANTS, including but not
4 limited to, cellphone/data plan charges, costs of uniforms and/or protective/safety equipment, costs
5 of lodging and/or meals, costs associated with having to use their personal vehicles, including but
6 not limited to mileage, and/or other tools and/or equipment for work related purposes.

7 87. Based on information and belief, DEFENDANTS regularly failed to reimburse and
8 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
9 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
10 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
11 assigned by DEFENDANTS.

12 88. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
13 for all reasonable expenses associated with carrying out their duties required that Aggrieved
14 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
15 2802.

16 89. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
17 engaged in these same herein described unlawful practices, which led to violations of the California
18 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
19 unlawful practices to all of its employees that it applied to PLAINTIFF.

20
21 **FIRST CAUSE OF ACTION**
22 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
23 **2698, *ET SEQ.***
24 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
25 **Defendants)**

26 90. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 **Willful Misclassification as an Independent Contractor**

28 91. California Labor Code section 226.8 makes it illegal to willfully misclassify an
employee as an independent contractor, providing: "[i]t is unlawful for any person or employer to
engage in any of the following activities: (1) Willful misclassification of an individual as an

1 independent contractor. (2) Charging an individual who has been willfully misclassified as an
2 independent contractor a fee, or making any deductions from compensation, for any purpose,
3 including for goods, materials, space rental, services, government licenses, repairs, equipment
4 maintenance, or fines arising from the individual's employment where any of the acts described in
5 this paragraph would have violated the law if the individual had not been misclassified." California
6 Labor Code section 226.8(a).

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

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

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

26 95. DEFENDANTS misclassify other Aggrieved Employees as independent contractors
27 to try to evade California labor laws that protect employees, including but not limited to, minimum
28 wage law for all Aggrieved Employees and overtime laws for non-truck-driver Aggrieved

1 Employees, wage and sick pay laws, workers' compensation laws, expense reimbursement
2 requirements, record-keeping requirements, wage statement requirements, and requirements as to
3 the timely payment of wages during and upon separation of employment among others described
4 herein.

5 **Failure to Keep Accurate Records**

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

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

16 98. DEFENDANTS' failure to keep "accurate and complete" payroll records for
17 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
18 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
19 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
20 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
21 period during which the referenced statutes and Wage Order provisions were violated.¹

22 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

23 99. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
24 Orders, section 7 require that employers keep the following information on file for each employee

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

1 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
2 and the corresponding number of hours worked by the employee at each hourly rate, when the
3 employee begins and ends each work period (including meal periods) and split intervals; total hours
4 worked by the employee; all deductions; gross wages earned; and net wages earned.

5 100. Section (b) of Labor Code section 226 further requires employers to "afford current
6 and former employees the right to inspect or receive a copy of records pertaining to their
7 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
8 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
9 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
10 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
11 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
12 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
13 the employer. Lab. Code section 226(f).

14 101. Personnel Records. In addition to their right to time and pay records, employees, and
15 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
16 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
17 section 432 further specifies that employers must furnish copies of all employment records bearing
18 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
19 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
20 from the date the employer receives a written request." An employer's failure to comply within this
21 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
22 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

23 102. Based on information and belief, DEFENDANTS fail to timely produce or make
24 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
25 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
26 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

27 **Meal Period Violations**

28 103. California law requires employers to provide employees a duty-free, uninterrupted

1 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
2 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
3 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
4 *Court* (2012) 53 Cal.4th 1004.

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

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

23 106. Employers must pay employees an additional hour of wages at the employees'
24 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
25 meal period, first meal period provided after five (5) hours, second meal period provided after 10
26 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
27 provide an employee a meal period in accordance with the applicable provision of this Order, the
28 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation

1 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

2 107. Aggrieved Employees that worked in a non-truck-driver position were entitled to
3 meal periods, yet DEFENDANTS have a consistent policy and/or practice of not providing lawful
4 meal periods to such non-truck-driver Aggrieved Employees and/or providing compensation in lieu
5 thereof. Based on information and belief, non-truck-driver Aggrieved Employees were regularly
6 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
7 being forced to take late meal periods, interrupted meal periods and/or work through part or all of
8 their meal periods due to DEFENDANTS’ misclassification scheme and/or the nature and
9 constraints of their job duties.

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

12 109. Aggrieved Employees that worked in a non-truck-driver position did not receive
13 legally compliant thirty (30) minute first meal breaks. Based on information and belief, non-truck-
14 driver Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute,
15 uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods,
16 and/or work through part or all their meal periods due to understaffing, the nature and constraints of
17 their job duties and/or commentary from supervisors pressuring them to take non-compliant meal
18 breaks or skip meal breaks completely.

19 110. Based on information and belief, non-truck-driver Aggrieved Employees were
20 consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their
21 meal periods interrupted, cut short, restricted to DEFENDANTS’ premises and/or otherwise on duty
22 due to commentary from supervisors, understaffing, the nature and constraints of their job duties,
23 and/or the need to meet DEFENDANTS’ goals and expectations.

24 111. For example, based on information and belief, Aggrieved Employees not employed
25 as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered to their
26 workstations and/or were required to monitor work communication devices during purportedly off-
27 duty meal periods, and as such were not relieved of all duties and DEFENDANTS’ control during
28 purported meal periods.

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

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

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

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

Rest Period Violations

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

1 applicable IWC Wage Order.

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

5 118. Non-truck-driver Aggrieved Employees were not adequately informed, authorized,
6 instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based
7 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
8 duty-free rest periods. Based on information and belief, DEFENDANTS did not have a have a
9 compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period
10 policy in practice. For example, based on information and belief, Aggrieved Employees not
11 employed as truck drivers and/or similar title(s) and/or position(s), were required to remain tethered
12 to their workstations and/or were required to monitor work communication devices during purported
13 rest periods, and as such were not relieved of all duties and DEFENDANTS' control during their
14 rest periods, in violation of California rest period law.

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

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

21 121. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve non-truck-driver Aggrieved Employees of all duties and
23 DEFENDANTS' control during rest periods.

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

27 123. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
28 which non-truck-driver Aggrieved Employees experienced a missed or otherwise unlawful rest

1 period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864,
2 872. DEFENDANTS failed to pay non-truck-driver Aggrieved Employees, an additional hour of
3 wages at their respective regular rates of pay for each workday a proper rest period was not provided.
4 DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest
5 period was not provided and/or failed to pay the proper rest period premium for failure to incorporate
6 all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay,
7 and/or other non-discretionary compensation into the regular rate of compensation for purposes of
8 calculating the owed rest period premium.

9 124. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
10 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
11 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

12 **Minimum wages, Straight time wages, and Overtime Wage Violations**

13 125. It is fundamental that an employer must pay its employees for all time worked.
14 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
15 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
16 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
17 Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an
18 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
19 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
20 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
21 section 224 only permits deductions from wages when the employer is required or empowered to
22 do so by state or federal law or when the deduction is expressly authorized in writing by the
23 employee for specified purposes that do not have the effect of reducing the agreed upon wage.

24 126. DEFENDANTS suffered and permitted PLAINTIFF and the Aggrieved Employees
25 to work off the clock without wages, including but not limited to pre-shift and post-shift off-the-
26 clock work as well as other off-the-clock work described above.

27 127. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
28 Aggrieved Employees for all hours worked.

1 128. Moreover, as explained above, DEFENDANTS had and continue to have a policy
2 and practice of unlawfully deducting wages from PLAINTIFF and Aggrieved Employees'
3 paychecks, such as, but not limited to, unlawful deductions for costs and/or fees and/or percentages
4 of the price of each load transported to reduce load rates, resulting in violations of California wage
5 and hour laws, including but not limited to, Labor Code sections 224 and 1197.

6 129. Moreover, as explained above, DEFENDANTS' failure to separately compensate
7 Aggrieved Employees for their rest periods and/or other non-productive time and/or failure to
8 compensate them at the correct rates for all non-productive time including rest periods resulted in
9 the failure to pay Aggrieved Employees for all hours worked and violations of California wage and
10 hour laws, including but not limited to, Labor Code sections 226.2 and 1197.

11 130. Based on information and belief, DEFENDANTS had actual or constructive
12 knowledge that its policy and practice of misclassifying non-exempt employees as independent
13 contractors, its unlawful deductions of wages, its policy and practice of payment according to
14 scheduled work time rather than actual work time, and/or other mandated off-the-clock work
15 resulted in the underpayment of minimum wages and straight time wages owed to PLAINTIFF and
16 other Aggrieved Employees. DEFENDANTS' unlawful policies and practices also lead to unpaid
17 overtime wages owed to Aggrieved Employees that worked in a non-truck-driver position. Such
18 non-truck-driver Aggrieved Employees were entitled to overtime wages equal to 1.5 times the
19 employee's regular rate of pay for all hours worked in excess of 40 hours per week or 8 hours per
20 day. *See* Labor Code 510 and the applicable Wage Order section 3. Such non-truck-driver Aggrieved
21 Employees were also entitled to overtime pay equal to double the regular hourly rate of pay for each
22 hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8)
23 hours on the seventh consecutive day of work in a work week. *Ibid.*

24 131. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
25 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
26 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
27 Wage Orders, section 20.

28 **Violation of Labor Code Section 226.2**

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

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

18 **Statutory Wage Violations**

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

1 Labor Code § 2699(f)-(g).

2 **Refusal to Make Payment**

3 135. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
4 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
5 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
6 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
7 meal/rest period not provided to non-truck-driver Aggrieved Employees or that was otherwise
8 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
9 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
10 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
11 the statute provisions were violated.²

12 **Business Expense Violations**

13 136. California law requires employers to indemnify their employees for all necessary
14 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
15 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
16 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
17 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
18 incurred by the employee enforcing the rights granted by this section."

19 137. Among other things, under California law, when employees must use their personal
20 cellphones for work-related purposes, the employer must reimburse them for a reasonable
21 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
22 Cal.App.4th 1137, 1140. California law also requires employers to reimburse employees for
23 automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas,
24 and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th
25 554. To show liability, an employee will only need to show that he or she was required to use their

26 _____
27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further,
2 “any contract or agreement, express or implied, made by any employee to waive the benefits of this
3 article or any part thereof, is null and void, and this article shall not deprive any employee or his
4 personal representative of any right or remedy to which he is entitled to under the laws of this State.”
5 *See* Cal. Lab. Code section 2804.

6 138. As described above, PLAINTIFF and other Aggrieved Employees were improperly
7 required to pay for business expenses that are legally the responsibility of the employer.

8 139. DEFENDANTS’ failure to provide PLAINTIFF and other Aggrieved Employees
9 with full reimbursement for all reasonable expenses associated with carrying out their duties
10 required that PLAINTIFF and Aggrieved Employees subsidize and/or carry the burden of business
11 expenses in violation of Labor Code section 2802.

12 140. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
13 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
14 DEFENDANTS’ orders and/or carrying out the duties assigned by DEFENDANTS.

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

19 **Wage Statement Violations**

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

1 143. As DEFENDANTS failed to provide non-truck-driver Aggrieved Employees with
2 meal and rest periods that complied with Labor Code section 226.7, to the extent wage statements
3 were issued by DEFENDANTS (if any), the wage statements failed and continue to fail to correctly
4 set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours
5 worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in
6 violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the
7 pay period and the corresponding number of hours worked at each hourly rate by the employee, in
8 violation of Labor Code section 226(a)(9).

9 144. Moreover, due to violations detailed above, including but not limited to,
10 DEFENDANTS' failure to pay straight time wages and minimum wages for all hours worked
11 including non-productive time when paid on a piece rate basis, and failure to pay all sick leave
12 wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by willfully
13 failing to furnish Aggrieved Employees with accurate, itemized wage statements that listed the gross
14 and net wages earned and the correct applicable rates of pay for all hours worked.

15 145. As explained above, to the extent any wage statements were issued at all, wage
16 statements issued by DEFENDANTS failed to list the "total hours worked" by PLAINTIFF and
17 Aggrieved Employees (by virtue of DEFENDANTS' willful misclassification scheme, payment
18 according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock
19 work policies and practices all described in greater detail *supra*), which results in a violation of
20 Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an
21 inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22
22 Cal.App.5th 1308, 1337). Additionally, to the extent any wage statements were provided,
23 DEFENDANTS failed to issue accurate wage statements in accordance with Labor Code section
24 226, by issuing wage statements that failed to list the total hours of compensable non-productive
25 time, and the total hours of rest and/or recovery periods, the rate of compensation for the non-
26 productive time and/or rest/recovery periods, and the gross wage earned for the non-productive time
27 and for the rest/recovery periods during the pay period for which the Aggrieved Employees were
28 paid on a piece rate basis, in violation of Labor Code section 226.2.

1 146. Based on information and belief, wage statements issued by DEFENDANTS failed
2 to list all applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

4 147. Based on information and belief, to the extent wage statements were provided, they
5 fail to include the number of piece-rate units earned and any applicable piece-rate, fail to include all
6 deductions, fail to include the inclusive dates of the pay period, fail to include any applicable hourly
7 rates in effect during the pay period and the corresponding number of hours worked at each hourly
8 rate. As such, DEFENDANTS violated Labor Code section 226(a)(3).

9 148. Separately, and independent from the above allegations, as explained above, to the
10 extent DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees the wage
11 statements failed to list the correct name and/or address of the legal entity that is the employer, in
12 violation of Labor Code section 226(a)(8).

13 149. DEFENDANTS' failure to issue wage statements at all and/or accurately list all
14 hours worked on all wage statements caused confusion to PLAINTIFF and caused and continues to
15 cause confusion to other Aggrieved Employees over whether they received all wages owed to them.

16 150. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
17 they could not easily determine whether they received all wages owed to them and whether they
18 were paid for all hours worked.

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

22 152. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
23 Aggrieved Employees with accurate, itemized wage statements.

24 153. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
25 Employees have suffered injury. The absence of accurate information on their wage statements has
26 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
27 mathematical computations to determine the amount of wages owed, and will cause difficulty and
28 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the

1 submission of inaccurate information about wages and amounts deducted from wages to state and
2 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
3 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
4 and pay records than if DEFENDANT had complied with its legal obligations.

5 154. Pursuant to California Labor Code section 226(e), PLAINTIFF and Aggrieved
6 Employees are entitled to recover fifty dollars per employee for the initial pay period in which a
7 Section 226 violation occurred and one hundred dollars per employee per violation for each
8 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

9 155. Pursuant to California Labor Code § 226(h), PLAINTIFF and Aggrieved Employees
10 are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
11 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
12 provide currently employed Aggrieved Employees with inaccurate wage statements in violation of
13 California Labor Code § 226(a). Currently employed Aggrieved Employees have no adequate legal
14 remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
15 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS'
16 compliance with California Labor Code § 226(a).

17 156. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
18 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
19 during which the statute provisions were violated. ³

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

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

26 158. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
27 Employees fully received the gratuities left for Aggrieved Employees by patrons, in that

28 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 DEFENDANTS and its agents would collect and/or take a portion of the gratuities for themselves,
2 in violation of Labor Code Section 351. Based on further information and belief, DEFENDANTS
3 also failed to keep accurate records of all tips received, in violation of Labor Code Section 353.
4 Based on information and belief, DEFENDANTS failed to pay gratuities paid by customers using
5 credit cards to Aggrieved Employees by the next regular payday following the credit card payment,
6 in violation of Labor Code section 351.

7 159. Based on information and belief, DEFENDANTS charged an additional service
8 charge to its customers/patrons. Based on information and belief, customers are led to believe that
9 the service charge will be paid to Aggrieved Employees. Instead, DEFENDANTS keep a majority
10 (if not the entirety) of the service charge, thereby depriving Aggrieved Employees of the service
11 charge/gratuity that is left by the patron/customer. *See O'Grady v Merchant Exchanges Production,*
12 *Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended
13 to the employees providing the service).

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

17 **Standard Conditions of Labor Violations**

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

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

27 162. Labor Code § 248.2 provides that all employers with 26 or more employees are
28 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental

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

6 **Sick Leave Violations.**

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

10 164. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
11 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
12 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
13 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
14 Aggrieved Employees' intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF
15 and other Aggrieved Employees would have used their paid sick leave at least prior to their
16 respective separations, for as on several occasions thereafter, he or she would have been entitled to
17 use the banked sick leave and earn appropriate compensation.

18 165. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
19 documenting the hours worked and paid sick days accrued by PLAINTIFF and other Aggrieved
20 Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees were
21 entitled to the maximum number of hours accruable.

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

27 167. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

28 168. Accordingly, the Aggrieved Employees are entitled to all appropriate relief under the

1 PAGA, the aforementioned code provisions including but not limited to Labor Code section 233
2 and 234, and seek injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by
3 law.

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

5 169. Based on information and belief, DEFENDANTS have and continue to have a
6 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
7 vacation/paid time off during their employment and/or failing to pay all vested, accrued paid time
8 off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including
9 non-discretionary compensation, including but not limited to, shift differentials) to Aggrieved
10 Employees upon separation of employment, in violation of California law, including but not limited
11 to, Labor Code section 227.3.

12 **Violation of Labor Code Section 208**

13 170. Labor Code Section 208 provides: Every employee who is discharged shall be paid
14 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
15 employer in the county where the employee has been performing labor. All payments shall be made
16 in the manner provided by law.

17 171. Based on information and belief, DEFENDANTS have a policy and practice of
18 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
19 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
20 office or agency of DEFENDANTS in the county where the work was performed, in violation of
21 Labor Code Section 208.

22 **Untimely Payment of Final Wages**

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

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

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

8 174. Based on information and belief, DEFENDANTS failed and continue to fail to timely
9 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
10 violation of Labor Code section 201-202. Moreover, final paychecks once provided to Aggrieved
11 Employees do not include all wages owed as they are devoid of, including but not limited to, all
12 owed minimum wages, straight time wages, vacation pay, and all owed sick leave and/or paid time
13 off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time
14 off paid at the final rate including non-discretionary compensation, including but not limited to, shift
15 differentials).

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

24 176. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
25 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
26 256.

27 **Unlawful Deductions**

28 177. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from PLAINTIFF and Aggrieved
3 Employees’ paychecks during the relevant period, by including but not limited to, deducting costs
4 of uniforms and/or other business costs and/or deducting wages for purported overpayments from
5 previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or
6 deducting percentages of the price of each load transported to reduce load rates from Aggrieved
7 Employees’ paychecks. Such a practice is in violation of including but not limited to, Labor Code
8 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.
9 Each violation results in a separate civil penalty, for each Aggrieved Employee, for each pay period
10 during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n
11 addition to, and entirely independent and apart from, any other penalty provided in this article, every
12 person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221,
13 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

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

15 *Unlawful Agreements*

16 178. Labor Code section 432.5 provides that “no employer...shall require any employee
17 or applicant for employment to agree, in writing, to any term or condition which is known by such
18 employer...to be prohibited by law.” DEFENDANTS required and continue to require PLAINTIFF
19 and Aggrieved Employees to agree in writing to unlawful conditions of employment including but
20 not limited to, unlawful independent contractor agreements, unlawful non-solicitation/non-compete
21 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
22 waivers of rights, unlawful forum selection clauses and/or unlawful choice of law
23 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
24 and/or continuing employment in violation of Labor Code section 432.5.

25 179. The California Labor Code places certain procedural and substantive limits on an
26 employers’ ability to conduct employee background checks and on how employers can use the
27 information they obtain through those background checks. Labor Code section 1024.5 states that
28 employers, except for financial institutions, may order a credit check only if the individual works

1 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
2 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
3 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
4 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
5 background check, including but not limited to identifying an appropriate reason for the background
6 check, a separate consent form with required disclosures and certain formatting requirements,
7 additional forms such as a summary of rights, a way by which to request a copy of the report, as
8 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

22 183. Based on further information and belief, DEFENDANTS knew that requiring
23 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
24 condition of obtaining and/or holding employment was unlawful.

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

27 *Unlawful Inquires into Criminal History*

28 185. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
3 convictions on its employment application, in violation of California law.

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

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

14 188. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
15 various unlawful provisions as a condition of employment.

16 Unlawful PAGA Waiver

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

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

26 191. Moreover, the California Supreme Court has ruled that a court cannot compel
27 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
28 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is

1 no individual component to a PAGA action because ‘every PAGA action ... is a representative
2 action on behalf of the state.’”)

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

8 **Violation of Labor Code section 976**

9 193. Labor Code section 976 provides that “No person shall publish or cause to be
10 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
11 offering employment as a salesman, broker or agent whether as an employee or independent
12 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
13 any person as to compensation or commissions which may be earned; or (b) falsely represents the
14 compensation or commissions which may be earned.”

15 194. Based on information and belief, DEFENDANTS have a policy and/or practice of
16 offering prospective employees, including Aggrieved Employees, a higher compensation and
17 commission that is misleading as it falsely represents the compensation or commission that will be
18 earned during employment, as the actual compensation or commission earned is lower than that
19 which is offered to induce employment or continued employment. Such a practice or policy is in
20 violation of Labor Code section 976.

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

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

27 196. Under the provisions of PAGA and the above mentioned Labor Code sections,
28 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,

1 226.2, 226.7, 226.8, 245-248.5, 256, 351, 353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5,
2 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712,
3 and 3715 and all applicable Wage Orders as well as all interpretations of these laws by California
4 Courts and administrative bodies, as well as any other law that is enforceable through PAGA,
5 DEFENDANTS are liable for the following penalties:

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

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: November 22, 2023

CROSNER LEGAL, PC

By: 

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