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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN JOAQUIN**

13 RYAN BARBOUR and ADAM BARBOUR,
14 solely as representatives of the Labor &
15 Workforce Development Agency and the
16 Aggrieved Employees,

17 Plaintiffs,

18 v.

19 STG CARTAGE, LLC., a Delaware limited
20 liability company, and DOES 1-10, inclusive,

21 Defendant.

CASE NO: STK-CV-UOE-2023-0011819

**PLAINTIFFS' PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) PAGA PENALTIES FOR DEFENDANT'S
WILLFUL MISCLASSIFICATION IN
VIOLATION OF LABOR CODE SECTION
226.8 AND 2698, ET SEQ.;**

**(2) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5)**

1 Plaintiffs Ryan Barbour and Adam Barbour (“Plaintiffs”), solely on behalf of the LWDA
2 under the Labor Code Private Attorneys General Act of 2004, section 2699, *et seq.* (“PAGA”), and
3 on behalf of all other Aggrieved Employees (as defined below), complain of Defendant STG
4 Cartage, LLC (“Defendant” or “STG”), and allege the following:

5 INTRODUCTION

6 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
7 behalf of the State of California and the other Aggrieved Employees against Defendant for (1) its
8 willful misclassification of the Aggrieved Employees as independent contractors; and (2) PAGA
9 and Labor Code section 226.8 penalties. As a result of the foregoing, Defendant has violated
10 California statutory laws as described below.

11 2. The other Aggrieved Employees are defined as follows: All individuals who are or
12 were California residents, who worked for STG Cartage, LLC as drivers and whose pay was
13 reported on an IRS Form 1099 basis during the PAGA Period. The PAGA Period is from one year
14 prior to the submission of Plaintiff Ryan Barbour’s August 29, 2023 PAGA letter to the LWDA to
15 the present. Defendant’s violations of California’s wage and hour laws and unfair competition
16 laws, as described more fully below, have been ongoing throughout the PAGA Period.

17 VENUE AND JURISDICTION

18 3. Venue is proper in this county under section 395.5 of the California Code of Civil
19 Procedure. Many of the Aggrieved Employees were employed by Defendant out of Defendant’s
20 yard in French Camp, California in San Joaquin County and/or performed work for Defendant in
21 San Joaquin County during the PAGA Period. Defendant is a trucking company based in
22 Commerce, California. Many of the acts alleged herein including Defendant’s willful
23 misclassification of its drivers occurred in San Joaquin County. Venue is therefore proper in San
24 Joaquin County.

25 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
26 dollars of business by providing trucking services in California. Thus, Defendant has obtained the
27 benefits of the laws of the State of California. In addition, Plaintiffs assert no claims arising under
28 federal law. Rather, Plaintiffs bring causes of action based solely on, and arising from, California

1 law. Thus, jurisdiction is proper in San Joaquin County Superior Court.

2 **THE PARTIES**

3 5. Plaintiffs are California residents and, from July 2022 to April 2023 were
4 misclassified as independent contractors but were actually employees of Defendant tasked with
5 driving a truck for Defendant as part of Defendant's trucking company business. From at least one
6 year prior to the filing of Plaintiff Ryan Barbour's August 29, 2023 LWDA notice through the
7 present, and on-going, Defendant's drivers in California, including Plaintiffs during their
8 employment, were willfully misclassified as independent contractors; were not paid all minimum
9 wages owed; were not provided accurate and/or complete and/or any wage statements; did not
10 receive reimbursement for their business expenses; and did not receive all of their wages due upon
11 termination of employment.

12 6. Plaintiffs represent the state of California and the following group of aggrieved
13 employees defined as:

14 All individuals who are or were California residents, who worked for STG Cartage, LLC as
15 drivers and whose pay was reported on an IRS Form 1099 basis during the PAGA Period
(hereinafter referred to as "Aggrieved Employees").

16 7. Defendant is a Delaware limited liability company with its principal place of
17 business in Commerce, California. Defendant is a trucking company based in Commerce,
18 California. Despite its willful misclassification of Plaintiffs and the Aggrieved Employees,
19 Defendant was and is the employer of Plaintiffs and the Aggrieved Employees for all relevant time
20 periods. In fact, Defendant employed Plaintiffs and the Aggrieved Employees as drivers in
21 California at various times during the PAGA Period. Defendant employed approximately 150
22 drivers in California during the PAGA Period, who were all willfully misclassified as independent
23 contractors.

24 **FACTUAL ALLEGATIONS**

25 8. Defendant operates and, at all times during the PAGA Period, has done and does
26 business in California by providing trucking services in California. Defendant, in the course of
27
28

1 operating its business in California during the PAGA Period, hired Plaintiffs and the Aggrieved
2 Employees, even though they were misclassified and classified incorrectly as truck drivers.¹ The
3 terms of Plaintiffs, and purportedly all other Aggrieved Employees, and Defendant's employment
4 are detailed in the STG Cartage, LLC Independent Contractor Operating Agreement (California)
5 (the "IC Agreement").

6 9. The California Supreme Court in *Dynamex Operations West, Inc., v. Superior*
7 *Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018) set forth the standard for determining whether an
8 individual performing work is an independent contractor or an employee, as follows:

9 We find merit in the concerns noted above regarding the disadvantages, particularly in
10 the wage and hour context, inherent in relying upon a multifactor, all the circumstances
11 standard for distinguishing between employees and independent contractors. As a
12 consequence, we conclude it is appropriate, and most consistent with the history and
13 purpose of the suffer or permit to work standard in California's wage orders, to interpret
14 that standard as: (1) placing the burden on the hiring entity to establish that the worker
15 is an independent contractor who was not intended to be included within the wage
16 order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to
17 establish *each* of the three factors embodied in the ABC test — namely (A) that the
18 worker is free from the control and direction of the hiring entity in connection with the
19 performance of the work, both under the contract for the performance of the work and
20 in fact; *and* (B) that the worker performs work that is outside the usual course of the
21 hiring entity's business; *and* (C) that the worker is customarily engaged in an
22 independently established trade, occupation, or business of the same nature as the work
23 performed. (citations omitted).

24 10. This so-called "ABC test" has since been codified by the Legislature as Labor Code
25 Section 2775. Section 2775 applies retroactively to the situation of any misclassification prior to
26 January 1, 2020. *See Vasquez v. Jan-Pro Franchising, Inc.*, 2021 WL 127201, *4 (Cal. Jan. 14,
27 2021) (no reason to depart from well- established rule that legislative measures are retroactive).
28 Under the ABC Test, Defendant has the burden of establishing that Plaintiffs and the Aggrieved
Employees are independent contractors and not intended to be included within the wage order's
coverage. Further, Defendant must establish that Plaintiffs and the Aggrieved Employees meet all
three factors of the ABC Test, which as discussed below, they cannot meet.

¹ Notably on June 13, 2022, more than 250 STG port truck drivers in Southern California were ruled company employees by the Region 21 office in Los Angeles of the National Labor Relations Board even though drivers had signed independent owner contracts and owned their trucks: <https://landline.media/xpo-stg-southern-california-port-truck-drivers-get-right-to-unionize/>.

1 11. Prong A. Plaintiffs and the Aggrieved Employees Were Subject to
2 Defendant's Direction and Control: Defendant cannot demonstrate that Plaintiffs and the
3 Aggrieved Employees were free from the direction and control of the Defendant. At all times,
4 Defendant retained and retains the right to control the method and manner of how Plaintiffs and
5 Aggrieved Employees perform their job duties and retained and retains all necessary control over
6 Plaintiffs and the Aggrieved Employees during their employment. Among other things, Plaintiffs
7 and Aggrieved Employees are required to follow detailed requirements imposed on them by
8 Defendant governing their interaction with dispatch, managers, customers and their deliveries.
9 Defendant retained all necessary control over Plaintiffs and the other drivers' work and trucks;²
10 Defendant controlled the drivers' rates,³ schedules, and routes; Defendant's drivers did not operate
11 distinct businesses, but were integrated into Defendant's business and were required to dedicate all
12 of their working time to Defendant's business; Defendant closely monitored the work of their
13 drivers;⁴ their jobs did not require substantial skill; Plaintiffs' and Aggrieved Employees' trucks
14 included Defendant's logo and insignia;⁵ although Defendant paid the drivers on a per-load, in fact
15 this payment plan resembled a pay arrangement similar to trucker employee's per load pay
16 arrangement; insurance was provided by Defendant to Plaintiffs and Aggrieved Employees which
17 Plaintiffs and Aggrieved Employees had to pay for; and drivers often stayed and drove for
18 Defendant for years.

19 12. In particular, in the logistics industry, a company controls the manner and means of
20 a driver's work where it arranges the customers, determines pricing, controls which assignments a
21

22 ² "Contractor agrees that any driver utilized by Contractor will comply with Carrier's policies and procedures." (See
23 IC Agreement, section 5.A (page 6); "Contractor acknowledges and agrees that subcontracting the services is
24 prohibited, and such prohibition extends to the use of subcontractors, sub-haulers, and/or agents." See IC Agreement,
section 5.C (page 6); "Carrier will have the exclusive possession, control, and use of the Vehicle, and will assume
completely responsibility for the operation of the Vehicle for the duration of the Contract." See IC Agreement, section
4.B (page 5).

25 ³ "Carrier will pay Contractor's fees at the rates set forth in Schedule B." See IC Agreement, section 2.A (page 2).

26 ⁴ Carrier has implemented an intermodal operating system that includes a mobile communication module. This
27 application is intended to automate dispatching and information updates and other operational tasks between driver
and Carrier's systems through [driver's personal] cell phone data transfer." See IC Agreement, section 6.A.9.a (page
10); "Contractor agrees to install an electronic logging device in the Vehicle and use an electronic logging device to
track its hours of service records." See IC Agreement, section 7 (page 11).

28 ⁵ "Such identification will be affixed to the Vehicle while it is being used to perform services arranged by Carrier
under this Contract." See IC Agreement, section 14 (page 13).

1 driver is given, assigns additional drivers to work with driver, controls the delivery schedules, and
2 closely monitors its drivers. *See Garcia v. Seacon Logix, Inc.*, 238 Cal.App.4th 1476, 1485-86
3 (2015); *Ruiz v. Affinity Logistics Corp.*, 754 F. 3d 1093, 1101-03 (9th Cir. 2014). In both *Garcia*
4 and *Ruiz*, trucking companies were found to have controlled the manner and means of work where
5 they provided the customers and determined the prices to be charged, retained discretion over
6 which assignments to give drivers and whether the drivers could decline. *See Garcia* at 1485; *Ruiz*
7 at 1101. Here, Defendant likewise controlled the work as it provided the customers and determined
8 the prices to be charged. In *Ruiz*, where the driver could even hire additional helpers or drivers, the
9 court found that the company still controlled the work because it required the hiring and retained
10 discretion over who could be hired. *Id.* at 1102-03.

11 13. In *Garcia* and *Ruiz*, the courts found further evidence of control where the company
12 maintained regular contact with its drivers and monitored them while they were on the road. *See*
13 *Garcia* at 1485; *Ruiz* at 1102. Here, Defendant similarly maintained regular contact with Plaintiffs
14 and the Aggrieved Employees. By controlling the assignments, mandatory delivery schedules,
15 hiring or contracting power, and then monitoring drivers once they were on the road, Defendant
16 retained control over the means and manner of its drivers work throughout the process.

17 14. Plaintiffs and the Aggrieved Employees were even paid on a payroll timeline akin
18 to an employee.⁶ Defendant maintained regular paydays and paid its drivers a “percentage of the
19 load.” It is a regular custom for trucking companies in California to pay their drivers a “percentage
20 of the load.”

21 15. In sum, Defendant retained and retains the right to control the method and manner
22 of how Plaintiffs and Aggrieved Employees performed their job duties, and retained and retains all
23 necessary control over Plaintiffs and the Aggrieved Employees during their employment. As
24 noted, Plaintiffs and Aggrieved Employees are required to follow detailed requirements imposed
25 on them by Defendant governing their interaction with managers, dispatchers, customers and their
26

27 ⁶ “Carrier will pay Contractor’s fees at the rates set forth in Schedule B.” See IC Agreement, section 2.A (page 2);
28 “Payment to Contractor will be made by Carrier within fifteen (15) days after Contractor has submitted to Carrier all
paperwork required by Applicable Law...” See IC Agreement, section 2.C (page 2).

1 deliveries. Further, Defendant sets drivers' rates, and directs when and where to make their
2 deliveries. As a result, Plaintiffs and Aggrieved Employees were and are employees of Defendant.
3 *See, e.g. Labor Code sections 2775 and 226.8; see also Ayala v. Antelope Valley Newspapers, Inc.*
4 (2014) 59 Cal.App.4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d 1093 (9th Cir. 2014)
5 (employer's right to control detail of drivers' work support finding of employer-employee
6 relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d 381 (9th Cir. 2014)
7 (drivers were employees as a matter of law where FedEx controlled times drivers work and
8 controlled aspects of when packages would be delivered); *See, also, Taylor v. Shippers Transport*
9 *Express, Inc.*, 2014 W.L. 7499046 (C.D. Cal. 2014) (finding employee status for drivers as a
10 matter of law); and *Villapando v. Excel Direct, Inc.*, 2015 W.L. 15179486 (N.D. Cal. 2015)
11 (granting summary judgment to Plaintiffs on Defendants' defense that the drivers at issue were
12 independent contractors)

13 16. Therefore, under prong A of the ABC test, Plaintiffs and the Aggrieved
14 Employees were misclassified as independent contractors. Based upon the case law cited above
15 and Sections 2775 and 226.8 of the Labor Code, Plaintiffs and the aggrieved employees were
16 subject to Defendant's control and were thus employees of Defendant.

17 17. Prong B. Plaintiffs and the Aggrieved Employees Performed Work Within the
18 Usual Course of the Defendant's Business: As described by the Court in *Dynamex*, the work
19 performed within the course of the defendants business is described thusly, "Workers whose roles
20 are most clearly comparable to those of employees include individuals whose services are provided
21 within the usual course of the business of the entity for which the work is performed and thus who
22 would ordinarily be viewed by others as working in the hiring entity's business and not as working,
23 instead, in the worker's own independent business." *Dynamex Operations W. v. Superior Court*,
24 *supra*, 4 Cal. 5th at 959. By way of example, the Supreme Court held that:

25 Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a
26 bathroom on its premises or hires an outside electrician to install a new electrical line,
27 the services of the plumber or electrician are not part of the store's usual course of
28 business and the store would not reasonably be seen as having suffered or permitted the
plumber or electrician to provide services to it as an employee. [citations] On the other
hand, when a clothing manufacturing company hires work-at-home seamstresses to make
dresses from cloth and patterns supplied by the company that will thereafter be sold by

1 the company [citations], or when a bakery hires cake decorators to work on a regular
2 basis on its custom-designed cakes (*cf.*, *e.g.*, *Dole v. Snell* (10th Cir. 1989) 875 F.2d
3 802, 811), the workers are part of the hiring entity's usual business operation and the
4 hiring business can reasonably be viewed as having suffered or permitted the workers to
5 provide services as employees. In the latter settings, the workers' role within the hiring
6 entity's usual business operations is more like that of an employee than that of an
7 independent contractor. *Id.* at 959-960.

8 18. Here, Defendant cannot establish that Plaintiffs and the Aggrieved Employees
9 perform work outside the Defendant's normal course of business. To the contrary, Plaintiffs and the
10 Aggrieved Employees were performing work completely within Defendant's normal course of
11 business, since Defendant is in the business of providing transportation and delivery logistics
12 services, Plaintiffs and the Aggrieved Employees drove trucks for Defendant and made deliveries
13 to Defendant's customers, and Plaintiffs and the Aggrieved Employees were not permitted to make
14 deliveries for other trucking companies.

15 19. For this additional reason, under prong B of the ABC test, Plaintiffs and the
16 Aggrieved Employees were misclassified erroneously as independent contractors. Based upon
17 the case law cited above and Section 2775 of the Labor Code, Plaintiffs and the aggrieved
18 employees were working within Defendant's business and were thus employees.

19 20. Prong C. Plaintiffs and the Aggrieved Employees Were Not Customarily
20 Engaged in an Independently Established Trade, Occupation, Or Business of the Same Nature as
21 the Work Performed: As with the A and B prongs of the ABC Test, Defendant cannot establish
22 that Plaintiffs and the Aggrieved Employees are or were employees customarily engaged in an
23 independent occupation, or business. As the Supreme Court in *Dynamex* held:

24 As a matter of common usage, the term "independent contractor," when applied to an
25 individual worker, ordinarily has been understood to refer to an individual who
26 *independently* has made the decision to go into business for himself or herself.
27 [citations] Such an individual generally takes the usual steps to establish and promote
28 his or her independent business—for example, through incorporation, licensure,
advertisements, routine offerings to provide the services of the independent business to
the public or to a number of potential customers, and the like. When a worker has not
independently decided to engage in an independently established business but instead is
simply designated an independent contractor by the unilateral action of a hiring entity,
there is a substantial risk that the hiring business is attempting to evade the demands of
an applicable wage order through misclassification. A company that labels as
independent contractors a class of workers who are not engaged in an independently

1 established business in order to enable the company to obtain the economic advantages
2 that flow from avoiding the financial obligations that a wage order imposes on
3 employers unquestionably violates the fundamental purposes of the wage order. The
4 fact that a company has not prohibited or prevented a worker from engaging in such a
5 business is not sufficient to establish that the worker has independently made the
6 decision to go into business for himself or herself. *Dynamex Operations W. v. Superior*
7 *Court*, supra, 4 Cal. 5th at 962.

8 21. Here, Defendant's drivers, including Plaintiffs and the Aggrieved Employees, are
9 not and were not customarily considered part of an independently established business. Indeed,
10 many, if not all, of the drivers among the Aggrieved Employees worked full-time for Defendant
11 and did not work for any other trucking companies. Moreover, few, if any of the Aggrieved
12 Employees held themselves out to the world as operating independent trucking companies.

13 22. Thus, under the three prongs of the ABC test, Plaintiffs and the Aggrieved
14 Employees are clearly "employees" and not "independent contractors." *Dynamex Operations West,*
15 *Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-958; *See, also Ayala v. Antelope Valley*
16 *Newspapers, Inc.* (2014) 59 Cal. App. 4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d
17 1093 (9th Cir. 2014) (employer's right to control detail of drivers' work support finding of
18 employer-employee relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d
19 381 (9th Cir. 2014) (driver were employees as a matter of law where FedEx controlled times
20 drivers worked and controlled aspects of when packages would be delivered).

21 23. Since Defendant cannot meet any part of the ABC test, it is clear that Defendant
22 intentionally and willfully misclassified Plaintiffs and Aggrieved Employees as independent
23 contractors in violation of Labor Code Sections 226.8(a) and 2775. This misclassification was also
24 part of a pattern and practice that applied to all of the members of the Aggrieved Employees, and
25 not just to Plaintiffs, thereby triggering the heightened penalty amounts in Section 226.8 (which
26 are recoverable through a PAGA representative action).

27 24. California Labor Code §226.2 governs compensation paid to piece-rate employees,
28 like Plaintiffs and the Aggrieved Employees. It states, in the relevant part:

This section shall apply for employees who are compensated on a piece-rate
basis for any work performed during a pay period. This section shall not be construed to
limit or alter minimum wage or overtime compensation requirements, or the obligation

1 to compensate employees for all hours worked under any other statute or local
2 ordinance. For the purposes of this section, “applicable minimum wage” means the
3 highest of the federal, state, or local minimum wage that is applicable to the
4 employment, and “other nonproductive time” means time under the employer’s control,
exclusive of rest and recovery periods, that is not directly related to the activity being
compensated on a piece-rate basis.

(a) For employees compensated on a piece-rate basis during a pay period, the
following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other
nonproductive time separate from any piece-rate compensation.

(2) The itemized statement required by subdivision (a) of Section 226 shall, in
addition to the other items specified in that subdivision, separately state the
following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of
compensation, and the gross wages paid for those periods during the pay
period.

(B) Except for employers paying compensation for other nonproductive time
in accordance with paragraph (7), the total hours of other nonproductive
time, as determined under paragraph (5), the rate of compensation, and the
gross wages paid for that time during the pay period.

25. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta*
v. Osmose, Inc. (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a
piece- rate basis, such as Plaintiffs and the Aggrieved Employees, must be compensated for all the
hours that they work, including non-productive time, such as pre and post trip inspections and
detention time under two hours. *See also Cardenas v. McLane FoodServices, Inc.* 796 F.Supp.2d
1246, 1252 (C.D. Cal. 2011) (piece-rate pay system that did not separately and hourly pay truck
drivers for non-driving tasks violates California law requiring compensation for each hour
worked); *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 49 (2013) (favorably citing
and adopting *Cardenas*); *Ridgeway v. Wal-Mart Stores, Inc.*, 2015 WL 3451966 (N.D. Cal. 2015)
(granting summary judgment to plaintiffs on their claim that Wal-Mart’s piece-rate mileage pay
system of compensation applicable to truck drivers violated California law by not having separate
and hourly pay for time spent on inspections, fueling, washing, weighing, paperwork and
layovers).

26. However, due to Defendant’s misclassification of Plaintiffs and the Aggrieved
employees as independent contractors, Defendant failed to pay its drivers separately and hourly for
cleaning time, fueling time, loading and unloading time, pre- and post-trip inspection time,

1 detention time up to two hours, and paperwork time (the “Non-Driving Tasks”) in violation of
2 Labor Code §§ 1194 and 226.2. Instead, drivers were compensated on a piece-rate “per load” flat
3 rate basis where they were paid per load that they transported for Defendant. Plaintiffs and their
4 fellow current and former truck drivers routinely spent several hours per day conducting pre- and
5 post-trip inspections, fueling, completing paperwork, loading and unloading, and waiting.⁷

6 27. As to Plaintiffs and all Aggrieved Employees, Defendant also failed to provide
7 accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226
8 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
9 statement in writing showing:

- 10 (1) gross wages earned;
- 11 (2) total hours worked by the employee;
- 12 (3) the number of piece-rate units earned and any applicable piece rate if the employee
13 is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders of the employee
15 may be aggregated and shown as one item;
- 16 (5) net wages earned;
- 17 (6) the inclusive dates of the period for which the employee is paid;
- 18 (7) the name of the employee and only the last four digits of his or her social security
19 number or an employee identification number other than a social security number;
- 20 (8) the name and address of the legal entity that is the employer...;
- 21 (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee...

23 Similarly, Labor Code § 226(e) provides:

24 (1) An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with subdivision (a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
27 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
28 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
an award of costs and reasonable attorney’s fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly

⁷ Notably, Respondent’s IC Agreement contemplates that given Claimant’s independent contractor status, Claimant was not paid all wages owed. “In the event of a Reclassification Decision finding Contractor to be an employee for purposes of any law regulating wages or expense reimbursement. . . Carrier will owe to Contractor an amount per hour equivalent to 120% of the highest minimum wage rate applicable in the locality in which the work was performed for all “compensable” time.” See IC Agreement, section 4.A.4.i.1 (page 4).

1 and easily determine from the wage statement alone one or more of the following:

2 (i) The amount of the gross wages or net wages paid to the employee during
3 the pay period or any of the other information required to be provided on the
4 itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
5 subdivision (a).

6 (ii) Which deductions the employer made from gross wages to determine the
7 net wages paid to the employee during the pay period. Nothing in this
8 subdivision alters the ability of the employer to aggregate deductions consistent
9 with the requirements of item (4) of subdivision (a).

10 (iii) The name and address of the employer and, if the employer is a farm
11 labor contractor, as defined in subdivision (b) of Section 1682, the name and
12 address of the legal entity that secured the services of the employer during the
13 pay period.

14 (iv) The name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a social
16 security number.

17 28. Defendant's failure to provide Plaintiffs and their current and former fellow truck
18 drivers with complete wage statements, constitutes a violation of Labor Code §§ 226(a) and 226.2.
19 Specifically, the wage statements did not and do not include total hours worked and did not and do
20 not include all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate in violation of Labor Code Section 226(a) and 226.2.
22 Additionally, the wage statements did not and do not include all time spent on Non-Driving Tasks
23 in violation of Labor Code Sections 226(a) and 226.2. Courts in California have held, in the
24 summary judgment context, even before the passage of Labor Code Section 226.2, that drivers'
25 hours must be reported on their paystubs, even in cases where drivers are paid on a piece-rate
26 basis. *See, Cicairos v. Summit Logistics*, 133 Cal. App. 4th 949, 960-61 (2005).

27 29. In addition to violating Labor Code § 226(a), Defendant also knowingly and
28 intentionally failed to provide Plaintiffs and the Aggrieved Employees with accurate itemized
wage statements in violation of Labor Code § 226(e). Defendant undeniably knew that they were
not providing Plaintiffs and the other Aggrieved Employees with compliant wage statements
required by California law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6,
2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because
the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees
paid on commission" even though it believed that employees paid solely on commission or

1 commission and salary “are exempt and therefore we do not record hours on a wage statement.”).

2 30. For the purpose of establishing a claim for PAGA penalties based on Labor Code
3 Section 226, Plaintiffs need not establish any “injury” other than showing that the paystubs lacked
4 the hours worked required by Labor Code section 226(a)(2). *See McKenzie v. Fed. Express Corp.*,
5 765 F. Supp.2 d 1222 (C.D. 2011); *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773 (2017)
6 (plaintiffs seeking PAGA penalties for § 226(a) violations do not have to establish “injury” or
7 “knowing and intentional” elements of § 226(e)). *See, e.g., Raines v. Coastal Pac. Food.*
8 *Distribs.*, 23 Cal. App. 5th 667 (2018); *see also, Gunther v. Alaska Airlines, Inc.*, 72 Cal.
9 App. 5th 334 (2021).

10 31. It is possible that Plaintiffs and the Aggrieved Employees could recover the
11 stepped-up penalties set forth in Labor Code section 226.3 since Defendant did not provide wage
12 statements at all. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a)
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
15 for each violation in a subsequent citation, for which the employer fails to provide the employee a
16 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” *See*
17 *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) 2015 WL 1137151, at *7 [“the weight of
18 authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza*
19 *v. PetSmart, Inc.*, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely
20 provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).

21 32. As a result of Defendant’s misclassification of Plaintiffs and the Aggrieved
22 Employees as independent contractors, and as a result of their failure to pay Plaintiffs and all
23 Aggrieved Employees for all hours worked, including Non-Driving Tasks, Defendant violated
24 Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages
25 of an employee who is discharged or who quits, the wages of the employee shall continue as a
26 penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487,
27 492.

28 33. Due to Defendant’s faulty policies described above, Plaintiffs and all Aggrieved

1 Employees whose employment with Defendant concluded were not compensated for each and every
2 hour worked or at the appropriate rate. Additionally, Defendant has failed to pay all Aggrieved
3 Employees for all Non-Driving Tasks, whose sums were certain, at the time of termination or
4 within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30)
5 days thereafter.

6 34. Plaintiffs and the Aggrieved Employees regularly incurred expenses during the
7 course of their employment, such as phone usage as well as fuel and other truck-related expenses,
8 including gas and insurance expenses.

9 35. Cal. Labor Code §2802 (a) provides that:

10 An employer shall indemnify his or her employee for all necessary expenditures or losses
11 incurred by the employee in direct consequence of the discharge of his or her duties, or of
12 his or her obedience to the directions of the employer, even though unlawful, unless the
employee, at the time of obeying the directions, believed them to be unlawful.

13 36. Defendant required that its truck drivers in California to use their personal cell
14 phones for work purposes without offering any reasonable reimbursement to drivers for their data
15 usage, wear and tear and other expenses associated with maintaining their devices. Defendant
16 requires and required its truck drivers to download a mobile application.⁸ Defendant never
17 provided cell phones to its drivers, and Defendant did not provide devices to its drivers that could
18 utilize the mobile application. As a result, Plaintiffs and other current and former drivers employed
19 by Defendant incurred personal cell phone related expenses, but were not reimbursed a reasonable
20 portion of their personal cell phone bills in clear violation of Section 2802 of the California Labor
21 Code. *See, Cochran v. Schwan 's Home Services, Inc.*, Case No. B247160 (Cal.App.Ct. (2nd Dist)
22 Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for work
23 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
24 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement

25
26 ⁸ “Contractor acknowledges that in order to receive Trips offered by Carrier, Contractor agrees to download the mobile
27 application (including downloading updates), during the terms of the Contract, on Contractor’s cell phone or other
28 wireless communication device with ongoing data transmission that is compatible with Carrier’s mobile application
and operating system. Contractor is responsible for all costs of obtaining the cell phone or wireless communication
device and maintaining it in good working order with connectivity to the internet and Carrier’s mobile application and
operating systems.” See IC Agreement, section 6.A.9.a (page 10).

owed is a reasonable percentage of their cell phone bills”). After all, the purpose of 2802 is to “prevent employers from passing along their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562. In addition, Defendant did not reimburse Plaintiffs and the Aggrieved Employees for their gas mileage expenses incurred in connection with fueling their trucks, which was substantial.⁹ Lastly, insurance was provided to Plaintiffs and Aggrieved Employees through Defendant, however, Plaintiffs and Aggrieved Employees had to pay for such insurance.¹⁰

37. The administrative prerequisites of PAGA were satisfied after 66 days elapsed from August 29, 2023 (i.e., 66 days have lapsed since Plaintiff Ryan Barbour’s mailing of the PAGA notice with no further communication from the LWDA to Plaintiffs’ counsel). Plaintiffs have paid the \$75.00 fee and have otherwise satisfied the administrative prerequisites of PAGA. Plaintiffs have fulfilled all administrative prerequisites to the filing and pursuit of the PAGA penalty claims on behalf of the Aggrieved Employees.

FIRST CAUSE OF ACTION
PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF
DEFENDANT’S DRIVERS
[Cal. Labor Code §§ 2698 *et seq.* 2775 and 226.8(a)(1) and 226.8(b) or 226.8(c)]
On behalf of the LWDA and all Aggrieved Employees against Defendant

38. Plaintiffs, on behalf of the LWDA and all other Aggrieved Employees, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

39. The Aggrieved Employees are and were employed by Defendant during the applicable statutory period and suffered the Labor Code violation alleged herein. At all times relevant hereto, Aggrieved Employees were employees for purposes of the California Labor Code, although they were willfully misclassified as independent contractors.

⁹ “Except as otherwise provided in Article 6(B), Contractor is responsible for all costs arising from the performance of the contracted services, including but not limited to costs relating to the operating and maintenance of the Vehicle as well as the following: . . . Fuels, Tires, Parts, and Supplies.” See IC Agreement, section 6.A.3 (page 8).

¹⁰ Notably, Respondent’s IC Agreement contemplates that given Claimant’s independent contractor status, Claimant was not reimbursed for all expenses incurred. “In the event of a Reclassification Decision finding Contractor to be an employee for purposes of any law regulating wages or expense reimbursement. . . Carrier will owe to Contractor the amount that would have been owed under any Applicable Law requiring Carrier to reimburse Contractor for business expenses incurred as an “employee” of Carrier. See IC Agreement, section 4.A.4.i.2 (page 4).

1 40. In violation of the Labor Code provisions cited herein and in willful violation of
2 California law and public policy, Defendant intentionally misclassified the Aggrieved Employees
3 as independent contractors in violation of Labor Code § 226.8(a). This was part of a pattern as
4 practice of willful misclassification of all, or virtually all, of Defendant's drivers thereby triggering
5 heightened penalties under sections 226.8(b) and (c).

6 41. The administrative prerequisites of PAGA will be satisfied after 66 days have
7 elapsed from August 29, 2023 (i.e., 65 days elapsed Plaintiff Ryan Barbour's mailing of the PAGA
8 notice with no further communication from the LWDA to Plaintiffs' counsel). The actionable
9 period is one year prior to the sending of the August 29, 2023 LWDA letter through the present.
10 Plaintiffs have paid the \$75.00 fee and have otherwise satisfied the administrative prerequisites of
11 PAGA, as amended.

12 42. Plaintiffs by this action seek to recover, on behalf of the LWDA and all other
13 current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
14 specified in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a
15 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
16 *Court*, 46 Cal. 4th 969(2009).

17 **SECOND CAUSE OF ACTION**
18 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
19 **PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN**
20 **MISCLASSIFICATION**
21 **(Labor Code §§ 2698-2699.5)**
22 **On behalf of the LWDA and all Aggrieved Employees against Defendant**

23 43. Plaintiffs, on behalf of the LWDA and all other Aggrieved Employees, re-allege
24 and incorporate by reference each and every allegation set forth in the preceding paragraphs.

25 44. Those individuals who were employed by Defendant within the last year are,
26 "aggrieved employees" under PAGA as they were employed by Defendant during the applicable
27 statutory period and suffered the Labor Code violations alleged herein; specifically, violations of
28 §§ 201, 202, 203, 226(a) and (e), 226.2, 226.3, 226.8, 2775, and 2802. Plaintiffs were employed by
Defendant during the one year preceding the submission of a PAGA letter to the LDWA on or
around August 29, 2023. As such, they seek to recover, on behalf of the LWDA and all other

1 current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

2 45. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, other than the
3 misclassification penalties in section 226.6 in the first cause of action , and the section 226.3
4 penalties, the aggrieved employees and the LWDA are entitled to penalties in an amount to be
5 shown at the time of trial subject to the following formula:

6 \$100 for the initial violation per employee per pay period; and

7 \$200 for each subsequent violation per employee per pay period.

8 These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to
9 the Aggrieved Employees. See Labor Code section 2699(i).

10 46. In addition, as set forth above, Defendant failed to provide Plaintiffs and all
11 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
12 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
13 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
14 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a
16 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

17 47. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section
18 226 claim, the Aggrieved Employees for the Section 226 claim are entitled to \$250 for each initial
19 pay period with a violation and \$1,000 for each subsequent pay period with a violation. See *Raines*
20 *v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675 (2018) (finding that
21 Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also *Magadia v. Wal-*
22 *Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code
23 § 226.3 penalties are applicable as the appropriate measure of civil penalties under PAGA” for the
24 violation of Labor Code § 226(a).

25 48. Further, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that
26 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
27 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; see also *Willner v. Manpower*
28 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all

[plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

49. Plaintiffs seek to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969.

50. Pursuant to Labor Code § 2699.3 (a), on August 29, 2023, Plaintiffs gave written notice by certified mail to Defendant, and to the Labor and Workforce Development Agency (“LWDA”) of their claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiffs fulfilled all administrative prerequisites to the pursuit of their PAGA claim on behalf of the LWDA and all other current and former aggrieved employees of Defendant.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of the LWDA and Aggrieved Employees, pray for judgment against Defendant as follows:

1. On the First Cause of Action:

a. That the Court find that Defendant violated California Labor Code §§ 226.8(a)(1) by willfully misclassifying the Aggrieved Employees as independent contractors.

b. That the Court additionally find that Defendant engaged in a pattern or practice of willful misclassification of Plaintiffs and the Aggrieved Employees.

c. That the Aggrieved Employees be awarded penalties, upon a finding of a pattern or practice, as specified in Labor Code § 226.8(c) in, but certainly not less than those set forth in section 226.8(b).

d. That the Court award attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

2. On the Second Cause of Action:

a. A civil penalty against Defendant in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for the LWDA and for Aggrieved Employees during all of the pay periods in the one year preceding the filing of this Complaint through the present and on-going until the violations are corrected or this subclass is certified;

b. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section 226 claim, the LWDA and the Aggrieved Employees are entitled to \$250 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a violation. See *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675 (2018) (finding that Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties under PAGA” for the violation of Labor Code § 226(a).

c. An award of reasonable attorney’s fees against Defendant as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

d. An award of all costs incurred by the undersigned counsel for Plaintiffs in connection with the LWDA’s and Aggrieved Employees’ PAGA claim against Defendant, as provided for in Labor Code § 2699(g)(1);

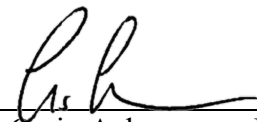
12. All other relief as this Court deems proper.

Dated: November 8, 2023

Respectfully,

ACKERMANN & TILAJEF, P.C.

By:



Craig Ackermann, Esq.

Avi Kreitenberg, Esq.

*Attorneys for Plaintiffs on behalf of the LWDA
and the Aggrieved Employees*