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Superior Court of California,
County of Alameda

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FRANCISCO GONGORA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

FRANCISCO GONGORA, individually, and
on behalf of other members of the general
public similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

DC LOGISTICS, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **23CV049652**

**CLASS ACTION COMPLAINT FOR
DAMAGES & ENFORCEMENT UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

- 1. Failure to Timely Pay Earned Wages in Violation of Labor Code Sections 204 and 210;**
- 2. Failure to Pay Minimum Wages in Violation of Labor Code Sections 1197 and 1194;**
- 3. Failure to Pay Overtime Compensation in Violation of Labor Code Sections 510 and 1194;**
- 4. Failure to Provide Meal Periods in Violation of Labor Code Section 226.7;**
- 5. Failure to Provide Rest Periods in Violation of Labor Code Section 226.7;**
- 6. Failure to Provide Accurate Wage Statements in Violation of Labor Code Section 226;**
- 7. Waiting Time Penalties in Violation of Labor Code Sections 201 and 203;**
- 8. Failure to Reimburse Business Expenses in Violation of Labor Code Section 2802;**
- 9. Violations of the Private Attorneys General Act of 2004, Labor Code Section 2698, et seq.; and**
- 10. Unfair Business Practices in Violation of Business and Professions Code Section 17200 et seq.**

1 Plaintiff FRANCISCO GONGORA (“Plaintiff”), by his undersigned attorneys,
2 individually, and on behalf of other members of the general public similarly situated, and on
3 behalf of other aggrieved employees pursuant to the California Private Attorneys General Act
4 (“PAGA”), alleges as follows:

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6 **JURISDICTION AND VENUE**

7 1. The Superior Court of the State of California, for the County of Alameda, has
8 jurisdiction over this case due to the fact that many of the alleged violations of (a) California
9 Labor Code (i.e. Lab. Code § 200 et seq.), (b) California Business and Professions Code section
10 17200 et seq. and (c) related common law occurred in the County of Alameda.

11 2. Venue is proper in the Superior Court of the State of California, for the County of
12 Alameda pursuant to Code of Civil Procedure sections 395 and 395.5 because at least some of
13 the acts complained herein occurred in the County of Alameda, including but not limited to,
14 2968 Alvarado Street, Unit A, San Leandro, CA 94577.

15
16 **PARTIES**

17 3. Plaintiff, Francisco Gongora (“Plaintiff” herein), is, and at all relevant times was,
18 a resident of the State of California, County of Alameda.

19 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant DC
20 Logistics, LLC (“DC Logistics”) is, and at all relevant times was, a limited liability company
21 organized and existing under the laws of the state of Delaware, registered and qualified to do
22 business in the state of California, with its principal place of business located at 4685 Pier
23 Enterprise Way, Jurupa Valley, California 91752.

24 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
25 as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
26 Plaintiff will amend this Complaint to allege the true names and capacities of said defendants
27 when ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the
28 fictitiously named defendants is responsible in some manner for the occurrences herein alleged,

1 and that Plaintiff's damages as herein alleged were proximately caused by said defendants. (DC
2 Logistics, LLC and DOES 1 through 50 shall collectively herein be referred to as "Defendants").

3 6. Unless otherwise alleged in this Complaint, Plaintiff is informed and believes, and
4 based thereon alleges, that each of the Defendants sued herein was, at all relevant times hereto,
5 the employer, owner, principal, franchisee, proxy, agent, employee, supervisor, representative,
6 manager, managing agent, joint employer, and/or alter ego of the remaining Defendants, and was
7 acting, at least in part, within the course and scope of such employment and agency, with express
8 and implied permission, consent, and knowledge. The above Defendants, managing agents, and
9 supervisors aided, abetted, condoned, permitted, willfully ignored, approved, authorized, and/or
10 ratified the unlawful acts described herein, and each and every one of the acts and omissions
11 alleged herein were performed by, and/or are attributable to all Defendants.

12
13 **CLASS ACTION ALLEGATIONS**

14 7. Class Period. The acts complained of herein have occurred, are presently
15 occurring, and are expected to continue occurring, within the time period from four (4) years
16 preceding the filing of the Complaint herein, up to and through the time of trial for this matter.

17 8. Class Definition. The Class that Plaintiff represents is comprised of the following
18 categories:

19 a. All individuals that worked for DC Logistics in the State of California
20 during the Class Period that were not paid all overtime wages dully owed.

21 b. All individuals that worked for DC Logistics in the State of California
22 during the Class Period that were not provided legally compliant meal and rest periods.

23 c. All individuals that worked for DC Logistics in the State of California
24 during the Class Period that were not reimbursed business expenses that were legally owed.

25 d. All individuals that worked for DC Logistics in the State of California
26 during the Class Period that were not provided accurate itemized wage statements.

27 e. All individuals that worked for DC Logistics in the State of California
28 during the Class Period that were not paid all wages.

1 9. Pursuant to Code of Civil Procedure section 382, this action qualifies as a class
2 action because there is a well-defined community of interest in the litigation, and the proposed
3 Class is easily ascertainable.

4 10. Plaintiff reserves the right under the California Rules of Court, Rule 1855,
5 subdivision (b), to amend or modify the class description with greater specificity or further
6 division into subclasses or limitation to particular issues.

7 11. Numerosity. Plaintiff is informed, believes, and thereon alleges that the potential
8 membership in the Class is so numerous that joinder of all members is impractical. Moreover,
9 the disposition of the claims of the Class in a single action will provide substantial benefits to all
10 parties and the Court. While the exact number of Class members is presently unknown to
11 Plaintiff, Plaintiff estimates membership in the Class to exceed 100. The exact number and
12 specific identities of the members of the Class may be readily ascertained through inspection of
13 Defendants' business records.

14 12. Commonality. There are numerous questions of law or fact common to Plaintiff
15 and the Class members. These questions include, but are not limited to, the following:

- 16 a. Whether Defendants failed to provide the Class with overtime wages dully owed;
- 17 b. Whether Defendants failed to provide the Class with legally compliant meal
- 18 periods;
- 19 c. Whether Defendants failed to provide the Class with legally compliant rest
- 20 periods;
- 21 d. Whether Defendants have engaged in a common course of failing to provide to
- 22 furnish the Class with accurate itemized wage statements;
- 23 e. Whether Defendants have engaged in a common course of failing to provide
- 24 business expense reimbursement to the Class as legally required;
- 25 f. Whether Defendants failed to Pay the Class all wages.
- 26 g. The nature and extent of class-wide injury and the measure of compensation for
- 27 such injury

1 13. Typicality. The claims of the representative Plaintiff is typical of the claims of the
2 Class. Plaintiff was an employee of Defendant and is a member of the proposed Class. Plaintiff's
3 claims, like the claims of the Class, arise out of the same common course of conduct by
4 Defendants and is based on the same legal and remedial theories.

5 14. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
6 Plaintiff has retained competent and capable attorneys who are experienced in class action
7 litigation, including employment law. Plaintiff and his counsel are committed to prosecuting this
8 action vigorously on behalf of the Class and have the financial resources to do so. Neither
9 Plaintiff nor his counsel have interests that are contrary to or that conflict with those of the
10 proposed Class.

11 15. Predominance. Defendants have engaged in a common course of wage and hour
12 violations toward Plaintiff and members of the Class in that Defendants willfully failed to
13 provide legally compliant duty-free meal periods, failed to provide legally compliant duty-free
14 rest periods, failed to provide all wages, failed to provide accurate itemized wage statements,
15 failed to provide all wages due at the time of separation, and failed to provide the reimbursement
16 of ordinary business expenses. The common issues arising from this conduct that affect Plaintiff
17 and members of the Class predominate over any individual issues. Adjudication of these
18 common issues in a single action has important and desirable advantages of judicial economy.

19 16. Superiority. A class action is superior to other available means for the fair and
20 efficient adjudication of this controversy since individual joinder of all members of the Class is
21 impracticable. Class action treatment will permit a large number of similarly situated persons to
22 prosecute their common claims in a single form simultaneously, efficiently, and without the
23 unnecessary duplication of effort and expense that numerous individual actions would engender.
24 Furthermore, the cost to the court system of adjudication of such individualized litigation would
25 be substantial. Individualized litigation could also present the potential for inconsistent or
26 contradictory judgments.

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23. When Plaintiff and other hourly employees were taking a meal and/or rest period, they were often interrupted by trucks arriving at the facility. When a truck would arrive at the facility, Defendants' hourly employees were expected to immediately begin to help unload and/or attend to the trucks as they arrived, even when they were taking a meal and/or rest period.

1 As a result, Plaintiff and other non-exempt hourly employees regularly failed to take full, timely,
2 off-duty meal and rest periods. Defendants' non-exempt hourly employees did not receive
3 premium compensation for their late, short, interrupted, or missed meal and/or rest periods.
4 Plaintiff and other non-exempt hourly employees were not required to sign any form of a meal
5 period waiver. Further, Plaintiff, the aggrieved employees, and the putative class members failed
6 to receive all owed minimum, regular, and/or overtime pay for the work they completed during
7 their meal and/or rest periods.

8 24. Plaintiff and Defendants' other non-exempt hourly employees also regularly
9 incurred business expenses that went unreimbursed. Plaintiff and other hourly employees were
10 required to buy steel-toed work boots with their own money. Good quality work boots would
11 cost the employees a substantial amount of money and would have to be re-purchased every few
12 months due to wear and tear.

13 25. Plaintiff and other non-exempt hourly employees were also required to use their
14 personal cell phones for work every day, including receiving calls from supervisors and taking
15 pictures of arriving trucks to note any damage. The hourly employees were expected to pay the
16 entirety of their personal cell phone costs.

17 26. Plaintiff and other hourly employees additionally had to use their personal
18 vehicles for work when trucks would break down. The employees would be forced to pick up
19 other employees from the broken down truck, drop them off at a mechanic shop, and return back
20 to Defendants' facility using their personal vehicles. These non-exempt hourly employees were
21 expected to pay the entirety of the costs for their cars, including gas.

22 27. Despite regularly incurring all of these business expenses, Defendants failed to
23 reimburse their non-exempt hourly employees. When Plaintiff, the aggrieved employees, and the
24 putative class members requested reimbursement, Defendants would refuse to do so.

25 28. Defendant DC Logistics, Inc., as a transportation logistics company, employs
26 non-exempt hourly workers who are subject to Industrial Welfare Commission ("IWC") Wage
27 Order No. 9-2001, which governs non-exempt hourly employees in the transportation industry,
28 and Labor Code section 515.

1 **FIRST CAUSE OF ACTION**

2 (Failure to Timely Pay Earned Wages in Violation of Labor Code Sections 204 and 210
3 by against Defendants and DOES 1-50)

4 29. Plaintiff alleges and incorporates herein by this reference each and every
5 allegation set forth in all previous paragraphs of this Complaint.

6 30. Labor Code section 204 provides, in pertinent part:

7 All wages, other than those mentioned in Section 201, 202, 204.1,
8 or 204.2, earned by any person in any employment are due and
9 payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays. Labor performed
11 between the 1st and 15th days, inclusive, of any calendar month
12 shall be paid for between the 16th and the 26th day of the month
13 during which the labor was performed, and labor performed between
14 the 16th and the last day, inclusive, of any calendar month, shall be
15 paid for between the 1st and 10th day of the following month. ...
16 Notwithstanding any other provision of this section, all wages
17 earned for labor in excess of the normal work period shall be paid
18 no later than the payday for the next regular payroll period.

19 31. Labor Code section 210 provides, in pertinent part:

20 ...every person who fails to pay the wages of each employee as
21 provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and
22 1197.5, shall be subject to a civil penalty as follows: (a) For any
23 initial violation, one hundred dollars (\$100) for each failure to pay
24 each employee. (b) For each subsequent violation, or any willful or
25 intentional violation, two hundred dollars (\$200) for each failure to
26 pay each employee, plus 25 percent of the amount unlawfully
27 withheld.

28 32. As set forth herein, Plaintiff and the putative class members regularly worked
more than eight (8) hours in a day, and more than forty (40) hours in a week. However, Plaintiff
and the putative class members did not receive overtime pay at the applicable overtime rate(s)
for all of their overtime hours worked. Rather, Plaintiff and the putative class members were
only paid at their standard hourly rate. Further, Plaintiff and the putative class members regularly
had their meal and/or rest periods interrupted with work, and they would fail to receive pay for
the work they were expected to complete during their meal periods while off-the-clock.

33. At all relevant times herein, Defendants had a pattern and practice of failing to
pay Plaintiff and the putative class members for all wages earned on the regular payday for each
pay period in which these amounts first became due and payable, as required by Labor Code

1 section 204. Plaintiff and the putative class members are entitled to, and thereby request, the
2 unpaid balance of the full amount of wages earned and currently owed.

3 34. Pursuant to Labor Code section 218, Plaintiff and the putative class members are
4 entitled to, and thereby request, the unpaid balance of the full amount of wages earned and
5 currently owed.

6 35. Pursuant to Labor Code section 218.6, Plaintiff and the putative class members
7 request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid
8 wages from the date such wages were due.

9 36. Pursuant to Labor Code section 210, Plaintiff and the putative class members are
10 entitled to, and thereby request, penalties of \$100.00 for the initial violation, and \$200.00 for
11 each subsequent violation, plus twenty-five percent (25%) of the amount unlawfully withheld.

12 37. Plaintiff and the putative class members have incurred and will continue to incur
13 expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code section
14 218.5, Plaintiff and the class members requests an award of reasonable attorney's fees and costs.

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16 **SECOND CAUSE OF ACTION**

17 (Failure to Pay Minimum Wages in Violation of Labor Code Sections 1197 and 1194
18 against Defendants and DOES 1-50)

19 38. Plaintiff alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of this Complaint.

21 39. Labor Code section 1197 provides, in pertinent part: "The minimum wage for
22 employees fixed by the commission or by any state or local law, is the minimum wage to be paid
23 to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

24 40. At all relevant times herein, Defendants had a pattern and practice of failing to
25 pay Plaintiff and the putative class members minimum wages as required by Labor Code section
26 1197. As alleged herein, Plaintiff and the putative class members regularly had their meal
27 periods interrupted with work, and they would fail to receive pay for the work they complete
28 during their meal periods while off-the-clock. As a result, Defendants failed to pay Plaintiff and
the putative class members minimum wages for all hours worked.

41. Labor Code section 1194, subdivision (a) states:

...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to an employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

42. Labor Code section 1194.2, subdivision (a) states

...to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

43. Labor Code section 1197.1, subdivision (a) states

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

44. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to and thereby request the unpaid balance of the full amount of minimum wages owed for all work performed during the relevant time period, in an amount to be determined at trial.

45. Pursuant to Labor Code sections 218.6 and 1194, subdivision (a), Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

46. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code sections 218.5 and 1194, subdivision (a), Plaintiff and the class members request an award of reasonable attorney's fees and costs.

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1 **THIRD CAUSE OF ACTION**

2 (Failure to Pay Overtime Compensation in Violation of Labor Code Sections 510 and 1194
3 against Defendants and DOES 1-50)

4 47. Plaintiff alleges and incorporates herein by this reference each and every
5 allegation set forth in all previous paragraphs of this Complaint.

6 48. IWC Wage Order No. 9-2001, which regulates the wages, hours, and working
7 conditions of transportation employees, was applicable and controlled Plaintiff's employment
8 with Defendants.

9 49. At all relevant times herein, Plaintiff and the putative class members were non-
10 exempt employees, were paid an hourly rate, and were not primarily engaged in duties that meet
11 any of the tests for exemption.

12 50. Labor Code section 510, subdivision (a) states:

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

23 51. As alleged herein, Plaintiff and the putative class members regularly worked more
24 than eight (8) hours in a workday and more than forty (40) hours in a workweek. However,
25 Plaintiff and the putative class members failed to receive overtime pay at the applicable overtime
26 rate for all of their overtime hours worked. Rather, Plaintiff and the putative class members were
27 only ever paid at their standard hourly rate.

28 52. Defendants had a pattern and practice of failing to compensate Plaintiff and the
putative class members for all overtime hours worked with premium overtime pay as required
under the aforementioned labor regulations, pay which remains outstanding as of the date of this
Complaint.

53. Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement
to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

overtime compensation applicable to an employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

54. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to and thereby request one and one-half times and/or double their regular rate of pay for overtime work performed, in an amount to be determined at trial.

55. Pursuant to Labor Code sections 218.6 and 1194, subdivision (a), Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

56. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code sections 218.5 and 1194, subdivision (a), Plaintiff and the class members request an award of reasonable attorney's fees and costs.

FOURTH CAUSE OF ACTION

(Failure to Provide Meal Periods in Violation of Labor Code Sections 226.7 and 512 against Defendants and DOES 1-50)

57. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

58. Defendants had a pattern and practice of failing to provide Plaintiff and the putative class members with thirty (30) minute "duty free" meal periods as required by Labor Code sections 226.7 and 512, and Section 10 of IWC Wage Order No. 9-2001.

59. Labor Code section 512, subdivision (a) states:

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

consent of the employer and the employee only if the first meal period was not waived.

60. Pursuant to Section 11 of IWC Wage Order No. 9-2001, in order for an “on duty” meal period to be permissible, the nature of the work done by Plaintiff and the putative class members must have prevented them from being relieved of all duties relating to their work for such employers and Plaintiff and the putative class members must consent in writing to the “on duty” meal period.

61. As alleged herein above, Plaintiff and the putative class members regularly did not receive a second meal period when working in excess of ten (10) and/or twelve (12) hours. Plaintiff and the putative class members also did not receive their first meal period prior to their 5th hour of work.

62. When Plaintiff and the putative class members would be able to take a meal period, they were often interrupted by trucks arriving at the facility, upon which they were expected to immediately begin to help unload and/or attend to. As a result, Plaintiff and the putative class members regularly failed to take full, timely, off-duty meal periods. Plaintiff and the putative class members did not receive premium compensation for their late, short, interrupted, or missed meal periods.

63. Plaintiff and the putative class members did not consent in writing to an “on duty meal period”. Furthermore, the nature of the work that the putative class members did was not such that they were prevented from being relieved of all duties. Despite said requirements of IWC Wage Order No. 9-2001 and Labor Code sections 512 and 226.7, Plaintiff and the putative class members were not provided with full, timely, uninterrupted meal periods and were not relieved of all duties during their workdays during the Employment Period. Neither did Plaintiff or the putative class members receive appropriate premium compensation in lieu of receiving required meal periods.

64. There is no applicable exemption that would permit Defendants to fail or refuse to provide Plaintiff and the putative class members with the required meal periods.

65. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to, and thereby requests one hour of pay at their regular rate of pay for each workday that a meal period was not provided consistent with applicable law, in an amount to be determined at trial.

66. Pursuant to Labor Code section 218.6, Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

67. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code section 218.5, Plaintiff and the class members request an award of reasonable attorney's fees and costs.

FIFTH CAUSE OF ACTION

(Failure to Provide Rest Periods in Violation of Labor Code Section 226.7
against Defendants and DOES 1-50)

68. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

69. Section 12 of IWC Wage Order No. 9-2001, provides, in pertinent part:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

70. At all relevant times hereto, Defendants had a pattern and practice of failing to comply with Section 12 of IWC Wage Order No. 9-2001, by failing to authorize and permit Plaintiff and the putative class members to take required rest periods. As alleged herein above,

Defendants failed to provide Plaintiff and the putative class members with full, timely, off-duty rest periods or premium compensation in lieu thereof.

71. When Plaintiff and the putative class members were taking a rest period, they were often interrupted by trucks arriving at the facility. When a truck would arrive at the facility, Plaintiff and the putative class members were expected to immediately begin to help unload and/or attend to the trucks as they arrived, even when they were taking a rest period. As a result, Plaintiff and the putative class members regularly failed to take full, timely, off-duty rest periods. Plaintiff and the putative class members did not receive premium compensation for their late, short, interrupted, or missed rest periods.

72. Defendants further violated this Wage Order and Labor Code section 226.7 by failing to pay Plaintiff and the putative class members who were not authorized or permitted to take rest periods as required under these orders, an additional one hour of compensation at their regular rate of pay for each day they were not authorized or permitted to take a required rest period. Neither did Plaintiff or the putative class members receive appropriate premium compensation in lieu of receiving required rest periods.

73. Under the aforementioned Wage Order, statutes and regulations, Plaintiff, the aggrieved employees, and the putative class members are entitled to, and hereby request one hour of pay at their regular rate of pay for each workday that a rest period was not provided consistent with applicable law, in an amount to be determined at trial.

74. Pursuant to Labor Code section 218.6, Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

75. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code section 218.5, Plaintiff and the class members request an award of reasonable attorney's fees and costs.

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1 **SIXTH CAUSE OF ACTION**

2 (Failure to Provide Accurate Wage Statements in Violation of Labor Code Section 226
3 against Defendants and DOES 1-50)

4 76. Plaintiff alleges and incorporates herein by this reference each and every
5 allegation set forth in all previous paragraphs of this Complaint.

6 77. In violation of Labor Code section 226, subdivision (a), Defendants had a pattern
7 and practice of failing to provide Plaintiff and the putative class members with accurate itemized
8 written statements showing each of the following: gross wages earned, total hours worked by the
9 employee, all deductions, net wages earned, inclusive dates of the period for which the employee
10 is paid, last four digits of the social security number or employee identification number, address
11 of the legal entity that is the employer, and all applicable rates of pay. These itemized wage
12 statements are required to be kept on file by the employer for at least three years at the place of
13 employment. (Lab. Code § 226, subd. (a).)

14 78. As alleged herein above, Plaintiff and the putative class members regularly
15 worked more than eight (8) hours in a day, and more than forty (40) hours in a week. However,
16 Plaintiff and the putative class members did not receive overtime pay at the applicable overtime
17 rate for all of their overtime hours worked. Rather, Plaintiff and the putative class members were
18 only ever paid at their standard hourly rate. Further, Plaintiff and the putative class members
19 regularly had their meal periods interrupted with work, and did not receive pay for the work they
20 completed during their meal and/or rest periods. Hence, the wage statements provided to Plaintiff
21 and the putative class members were inaccurate as they failed to account for all overtime pay, all
22 regular pay, and all hours worked.

23 79. As a result of Defendants' willful failure to provide Plaintiff and the putative class
24 members with accurate wage statements as required by Labor Code section 226, subdivision (a),
25 Plaintiff and the putative class members were deprived of documentation helpful for verifying
26 and calculating the amount of wages owed. Thus, Plaintiff and the putative class members have
27 been damaged because they will be required to expend more time and expense in proving their
28 claims for unpaid wages, unpaid overtime compensation, and calculating the premium payments
owed for meal and rest period violations.

1 80. Pursuant to Labor Code section 226, subdivision (e), Plaintiff, the aggrieved
2 employees, and the putative class members are entitled to, and request penalties of \$50.00 for the
3 initial violation and \$100.00 for each subsequent violation, not exceeding an aggregate penalty of
4 \$4,000.00.

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6 **SEVENTH CAUSE OF ACTION**

7 (Waiting Time Penalties in Violation of Labor Code Sections 201 and 203
8 against Defendants and DOES 1-50)

8 81. Plaintiff alleges and incorporates herein by this reference each and every
9 allegation set forth in all previous paragraphs of this Complaint.

10 82. Plaintiff is informed and believes and based thereon alleges that Defendants knew
11 California law required Plaintiff and the putative class members be paid wages for all hours
12 worked at their hourly rate of pay, that they be paid an overtime premium for all overtime hours
13 worked, and that they be paid an additional hour of pay for each day that a meal and/or rest
14 period was not provided. Despite having the financial ability to pay, Defendants intentionally
15 refused to pay Plaintiff and the putative class members their lawfully earned compensation.

16 83. Defendants willfully failed to pay Plaintiff and the putative class members all
17 wages due, without abatement or reduction, upon the respective termination of their employment
18 as required by Labor Code section 201. As alleged herein above, payment for Plaintiff and the
19 putative class members' unpaid regular and overtime wages as described herein above remains
20 outstanding to the date of this Complaint.

21 84. Labor Code section 203 states that an employee's wage shall continue as a penalty
22 at the same rate until paid or for a period of up to thirty days from the time they were due,
23 whichever period is shorter.

24 85. Pursuant to Labor Code section 203, Plaintiff and the putative class members are
25 entitled to, and request waiting time penalties according to proof at time of trial but believed to
26 be in excess of the jurisdiction of this Court.

27 86. Plaintiff and the putative class members further seek an award of reasonable
28 attorney's fees and costs, consistent with Labor Code section 218.5.

1
2 **EIGHTH CAUSE OF ACTION**

3 (Failure to Reimburse Business Expenditures in Violation of Labor Code Section 2802
4 against Defendants and DOES 1-50)

5 87. Plaintiff alleges and incorporates herein by this reference each and every
6 allegation set forth in all previous paragraphs of this Complaint.

7 88. At all times herein, Labor Code section 2802, subdivision (a) required Defendants
8 to “indemnify his or her employee for all necessary expenditures or losses incurred by the
9 employee in direct consequence of the discharge of [the employee’s] duties, or of [the
10 employee’s] obedience to the directions of the employer...”

11 89. As alleged herein above, in violation of Labor Code section 2802, Plaintiff and
12 the putative class members were required to pay expenses incurred in the discharge of their
13 duties for Defendants, including steel-toed boots, personal cell phone use, and personal vehicle
14 use. These expenses are, and were, necessarily incurred by Plaintiff and the putative class
15 members in the discharge of their duties and in carrying out Defendants’ principal business.
16 During Plaintiff’s and the putative class members’ employment, Defendants had a policy and
17 practice of not reimbursing them for expenses incurred in carrying out their business.

18 90. As a proximate result of Defendants’ conduct, Plaintiff and the putative class
19 members have suffered monetary loss and been deprived of their property in the form of
20 unreimbursed expenses in an amount according to proof.

21 91. Therefore, Plaintiff and the putative class members are entitled to recover the
22 costs of the business expenses as well as attorneys’ fees, costs, and interest pursuant to Labor
23 Code sections 218.5, 218.6, and 2802, subdivision (c), for pursuit of this action.

24 **NINTH CAUSE OF ACTION**

25 (Violations of the Private Attorneys General Act of 2004, Labor Code Section 2698, et seq.
26 Against Defendants and DOES 1-50)

27 92. Plaintiff alleges and incorporates herein by this reference each and every
28 allegation set forth in all previous paragraphs of this Complaint.

1 93. The California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
2 section 2698, et seq., permits an “aggrieved employee” to bring a lawsuit on behalf of himself
3 and other current and former employees to address an employer’s violations of the California
4 Labor Code.

5 94. Labor Code section 2699, subdivision (f) states in pertinent part:

6 For all provisions of this code except those for which a civil penalty is
7 specifically provided, there is established a civil penalty for a violation of
8 these provisions, as follows: ...

9 (2) If, at the time of the alleged violation, the person employs one or
10 more employees, the civil penalty is one hundred dollars (\$100) for each
aggrieved employee per pay period for the initial violation and two
hundred dollars (\$200) for each aggrieved employee per pay period for
each subsequent violation.

11 95. Here, and as set forth herein above, Defendants violated Labor Code sections 201,
12 203, 204, 210, 226, 226.7, 510, 1194, 1197, and 2802 by failing to pay for all wages, overtime,
13 premium compensation, and business expenses owed to aggrieved employees.

14 96. Plaintiff is an aggrieved employee in that he did not receive all wages owed to
15 him as described herein, including regular pay, overtime compensation, premium compensation
16 in lieu of receiving duty-free rest and meal periods, and reimbursement of business expenses.

17 97. Plaintiff has complied with the PAGA notice provision set forth in Labor Code
18 section 2699.3, subdivision (a). On August 25, 2023, Plaintiff submitted a letter online to the
19 Labor and Workforce Development Agency (“LWDA”) and sent the letter via certified mail to
20 Defendant. A true and correct copy of this letter is attached hereto as Exhibit A and incorporated
21 herein by reference. As of this date, the LWDA, pursuant to Labor Code section 2699.3,
22 subdivision (a), has not yet notified the parties whether it intends to investigate the allegations
23 and whether the LWDA will take the required statutory action. Plaintiff waited the requisite
24 minimum sixty-five (65) days without receiving a response from the LWDA of its intent to
25 investigate before commencing this PAGA action.

26 98. To the extent that any violation alleged herein does not carry penalties under
27 Labor Code section 2699, subdivision (a), Plaintiff seeks penalties pursuant to Labor Code
28 section 2699, subdivision (f), for Plaintiff and other aggrieved employees he seeks to represent

1 for each pay period in which he or she was aggrieved, in the amounts established by Labor Code
2 section 2699, subdivision (f).

3 99. Plaintiff and other aggrieved employees seek penalties based upon the factual
4 allegations of this Complaint, on behalf of themselves, all other aggrieved employees, and the
5 State as provided by Labor Code section 2699, subdivision (i).

6 100. Defendants are liable to Plaintiff, other aggrieved employees, and the State for the
7 civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
8 award of attorneys' fees and costs, as set forth below.

9
10 **TENTH CAUSE OF ACTION**

11 (Unfair Business Practices in Violation of Business and Professions Code Section 17200 et seq.
12 against Defendants and DOES 1-50)

13 101. Plaintiff alleges and incorporates herein by this reference each and every
14 allegation set forth in all previous paragraphs of this Complaint.

15 102. Defendants' acts constitute a continuing and ongoing unlawful, unfair, and
16 fraudulent activity prohibited by the Unfair Competition Law ("UCL") and justify the issuance
17 of an injunction, restitution, and other equitable relief pursuant to Business and Professions Code
18 section 17203.

19 103. Labor Code section 90.5, subdivision (a) states that it is the public policy of
20 California to vigorously enforce minimum labor standards to ensure employees are not required
21 to work under substandard and unlawful conditions, and to protect employers who comply with
22 the law from those who attempt to gain competitive advantage at the expense of their workers by
23 failing to comply with minimum labor standards.

24 104. Labor Code section 1198 renders unlawful any violation or any Labor Code or
25 Wage Order provisions. As set forth herein, Defendants violated a number of Labor Code
26 sections and various provisions IWC Wage Order No. 9-2001.

27 105. By violating the aforementioned statutes and regulations, including, but not
28 limited to, Labor Code sections 201, 203, 204, 210, 226, 226.7, 510, 1194, 2698, and 2802 and
sections of IWC Wage Order No. 9-2001, as alleged above, the acts of Defendants constitute

1 unfair and unlawful business practice pursuant to Labor Code section 1198, and within the
2 meaning of Business and Professions Code section 17200 et seq., including, but not limited to,
3 (i) the failure to pay earned wages, (ii) failure to pay earned overtime wages, (iii) failure to
4 timely pay all earned wages upon discharge, (iv) failure to provide meal periods, or premium
5 compensation in lieu thereof, (v) failure to provide rest periods, or premium compensation in lieu
6 thereof, (vi) failure to issue accurate wage statements, and (vii) failure to reimburse business
7 expenses incurred.

8 106. Defendants' violations of sections of the Labor Code as alleged above constitute
9 an unfair business practice because these were done repeatedly over a significant period of time
10 and in a systematic manner to the detriment of Plaintiff, the aggrieved employees, and the
11 putative class members. All of the foregoing harmed Plaintiff, the aggrieved employees, and the
12 putative class members and continues to harm them.

13 107. Defendants' course of conduct, act, and practice in violation of the California
14 laws mentioned herein above constitutes separate and independent unfair business practices and
15 violations of Business and Professions Code section 17200 et seq.

16 108. Pursuant to Business and Professions Code section 17200 et seq., Plaintiff, the
17 aggrieved employees, and the putative class members seek restitution of all unlawfully withheld
18 earned wages, and equitable relief in the form of disgorged profits from Defendants' unlawful
19 acts, for a period beginning from four (4) years prior to the filing of this action until judgment,
20 all in an amount according to proof at time of trial.

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22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
24 follows:

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(Failure to Timely Pay Earned Wages)

1. For compensatory, consequential, general, and special damages for all unpaid wages, subject to proof;
2. For civil penalties in an amount according to proof at trial, and consistent with Labor Code section 210;
3. For interest on all due and unpaid wages pursuant to Labor Code section 218.6;
4. For attorney's fees and costs pursuant to Labor Code section 218.5;
5. For costs of suit incurred herein; and
6. For such other relief that the Court may deem just and proper.

UNDER THE SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages)

1. For compensatory, consequential, general, and special damages for all unpaid wages, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code sections 218.6 and 1194, subdivision (a);
3. For liquidated damages pursuant to Labor Code section 1194.2, subdivision (a);
4. For attorney's fees and costs pursuant to Labor Code section 218.5;
5. For costs of suit incurred herein; and
6. For such other relief that the Court may deem just and proper.

UNDER THE THIRD CAUSE OF ACTION

(Failure to Pay Overtime Compensation)

1. For compensatory, consequential, general, and special damages for all unpaid overtime wages, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code sections 218.6 and 1194, subdivision (a);

3. For attorney's fees and costs pursuant to Labor Code sections 218.5 and 1194, subdivision (a);
4. For costs of suit incurred herein; and
5. For such other and further relief that the Court may deem just and proper.

UNDER THE FOURTH CAUSE OF ACTION

(Failure to Provide Meal Periods)

1. For one (1) hour of premium pay for each missed meal period that was not provided, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code section 218.6;
3. For attorney's fees and costs pursuant to Labor Code section 218.5;
4. For costs of suit incurred herein; and
5. For such other and further relief that the Court may deem just and proper.

UNDER THE FIFTH CAUSE OF ACTION

(Failure to Provide Rest Periods)

1. For one (1) hour of premium pay for each missed rest period that was not provided, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code section 218.6;
3. For attorney's fees and costs pursuant to Labor Code section 218.5;
4. For costs of suit incurred herein; and
5. For such other and further relief that the Court may deem just and proper.

UNDER THE SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements)

1. For the assessment of actual damages or a statutory penalty in an amount not to exceed Four Thousand Dollars (\$4,000), subject to proof and consistent with Labor Code section 226, subdivision (e);

2. For attorney's fees and costs pursuant to Labor Code section 226, subdivision (e);
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

UNDER THE SEVENTH CAUSE OF ACTION

(Waiting Time Penalties)

1. For waiting time penalties pursuant to Labor Code section 203;
2. For attorney's fees and costs pursuant to Labor Code section 218.5;
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

UNDER THE EIGHTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses)

1. For reimbursement for all expenditures permitted under Labor Code section 2802, including all available penalties;
2. For interest on all unpaid and owed reimbursement of expenditures pursuant to Labor Code section 2802, subdivision (b);
3. For attorney's fees and costs pursuant to Labor Code section 2802, subdivision (c);
4. For costs of suit incurred; and
5. For such further relief that the Court determines to be just and proper.

UNDER THE NINTH CAUSE OF ACTION

(Violations of the Private Attorneys General Act of 2004)

1. For civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, et seq.;
2. For reasonable attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g).

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