

Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
Ryan Tish (SBN 274284)
Ryan.Tish@capstonelawyers.com
Alexander Wallin (SBN 320420)
Alexander.Wallin@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

Attorneys for Plaintiff Amador Ramirez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

AMADOR RAMIREZ, as an
aggrieved employee pursuant to the
Private Attorneys General Act
("PAGA"), on behalf of the State of
California and other non-party
Aggrieved Employees,

Plaintiff,

vs.

M. O. DION & SONS, INC., a
California corporation; AMBER
RESOURCES, LLC, a California
limited liability company; AMBER
PETROLEUM PRODUCTS, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: C23-02723

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Amador Ramirez, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on August 21, 2023, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants M. O. DION & SONS, INC.
3 and AMBER PETROLEUM PRODUCTS, INC. filed Statement of Information forms with the
4 California Secretary of State designating a California principal place of business in San
5 Ramon, County of Contra Costa, in accordance with California Corporations Code section
6 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants
7 employ persons in this county, and thus a substantial portion of the transactions and
8 occurrences related to this action occurred in this county.

9 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
10 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
11 attorneys general their current or former employers for various civil penalties for violations of
12 various provisions in the California Labor Code.

13 **THE PARTIES**

14 6. Plaintiff Amador Ramirez is a resident of San Diego, in San Diego County,
15 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
16 approximately August 2020 to September 2022. Plaintiff worked for Defendants as a Fuel
17 Delivery Driver, Commercial Driver, and Night Wet Hose Driver at their worksite located at
18 71111 Mission Gorge Road in San Diego, California. Plaintiff typically worked eight (8)
19 hours or more per day, and five (5) days per week. At the time Plaintiff’s employment with
20 Defendants ended, he was compensated approximately \$30.00 per hour. Plaintiff’s job duties
21 included, without limitation, delivering fuel product to customer sites, pumping fuel product
22 into customer vehicle fleets and bulk storage tanks, and completing paperwork.

23 7. On information and belief, Defendants required some employees, including
24 Plaintiff, to execute arbitration agreements at the time of their hire or during their
25 employment. On further information and belief, Defendants’ arbitration agreements were and
26 are both procedurally and substantively unconscionable. Specifically, Defendants presented
27 employees with an “Employee Acknowledgment and Agreement” and an “Employment-At-
28 Will and Mutual Agreement to Arbitrate Claims” (“Arbitration Agreements”) which had to be

1 reviewed and acknowledged immediately. Specifically, the Arbitration Agreements were
2 among several documents presented to employees for signature during the orientation process,
3 including Incident Reporting Procedure and Safety Contract; Internet Usage, Access,
4 Restrictions and Monitoring Policy; Confidential Information, Trade Secrets, and Covenants not
5 to Compete After Termination of Employment Agreement; and On-Duty Meal Period Waiver.
6 Also, employees did not have a meaningful opportunity to negotiate the terms of the
7 Arbitration Agreements. Rather, they were provided to Defendants' employees for them to
8 sign on a take-it or leave-it basis, along with other onboarding documents. Further,
9 Defendants did not set forth in the agreements or otherwise provide employees with the rules
10 which will govern the arbitration, instead forcing employees to seek this information out on
11 their own.

12 8. M.O. DION & SONS, INC. was and is, upon information and belief, a
13 California corporation, and at all times hereinafter mentioned, an employer whose employees
14 are engaged throughout this county, the State of California.

15 9. AMBER RESOURCES, LLC was and is, upon information and belief, a
16 California limited liability company, and at all times hereinafter mentioned, an employer
17 whose employees are engaged throughout this county, the State of California.

18 10. AMBER PETROLEUM PRODUCTS, INC. was and is, upon information and
19 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
20 employees are engaged throughout this county, the State of California.

21 11. Plaintiff is unaware of the true names or capacities of the Defendants sued
22 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
23 amend the complaint and serve such fictitiously named Defendants once their names and
24 capacities become known.

25 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
26 were the partners, agents, owners, or managers of M. O. DION & SONS, INC.; AMBER
27 RESOURCES, LLC; and AMBER PETROLEUM PRODUCTS, INC., at all relevant times.

28 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, M. O. DION &
2 SONS, INC.; AMBER RESOURCES, LLC; AMBER PETROLEUM PRODUCTS, INC.
3 and/or DOES 1 through 10 (collectively, “Defendants” or “MODS”), each acting as the agent,
4 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
5 Defendants and was acting within the course and scope of such agency, employment, joint
6 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
7 and all Defendants were in accordance with, and represent, the official policy of Defendants.

8 14. At all relevant times, Defendants, and each of them, ratified each and every act
9 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
10 and abetted the acts and omissions of each and all the other Defendants in proximately causing
11 the damages herein alleged.

12 15. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 16. Under California law, Defendants are jointly and severally liable as employers
16 for the violations alleged herein because they have each exercised sufficient control over the
17 wages, hours, working conditions, and employment status of Plaintiff and other non-party
18 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
19 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
20 of employment, determined their rate of pay, and maintained their employment records.
21 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
22 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
23 common-law employment relationship. As joint employers of Plaintiff and other non-party
24 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
25 available to Plaintiff and other non-party Aggrieved Employees under the law.

26 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
27 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
28 non-party Aggrieved Employees because Defendants have:

- 1 (a) jointly exercised meaningful control over the work performed by
2 Plaintiff and other non-party Aggrieved Employees;
- 3 (b) jointly exercised meaningful control over Plaintiff's and other non-party
4 Aggrieved Employees' wages, hours, and working conditions, including
5 the quantity, quality standards, speed, scheduling, and operative details
6 of the tasks performed by Plaintiff and other non-party Aggrieved
7 Employees;
- 8 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
9 perform work which is an integral part of Defendants' businesses; and
- 10 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
11 Employees as a matter of economic reality in that Plaintiff and other
12 non-party Aggrieved Employees were dependent on Defendants, who
13 shared the power to set the wages of Plaintiff and other non-party
14 Aggrieved Employees and determined their working conditions, and
15 who jointly reaped the benefits from the underpayment of their wages
16 and noncompliance with other statutory provisions governing their
17 employment.

18 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
19 there has existed a unity of interest and ownership between Defendants such that any
20 individuality and separateness between the entities has ceased.

21 19. M. O. DION & SONS, INC.; AMBER RESOURCES, LLC; AMBER
22 PETROLEUM PRODUCTS, INC.; and/or DOES 1 through 10 are therefore alter egos of each
23 other.

24 20. Adherence to the fiction of the separate existence of Defendants would permit
25 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
26 from liability for the wrongful acts committed by them under the name MODS.

27 21. Plaintiff further alleges, upon information and belief, that the Defendants M. O.
28 DION & SONS, INC.; AMBER RESOURCES, LLC; and AMBER PETROLEUM

PRODUCTS, INC. are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/>), M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC. have the same principal address and mailing address, "416 S. BELL AVENUE AMES, IA 50010";
- (b) According to their most recent "Statement of Information" forms filed with the California Secretary of State, M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC. have the same Address of California Office of Corporation, "6001 BOLLINGER CANYON ROAD SAN RAMON, CA94583.";
- (c) According to their most recent "Statement of Information" forms filed with the California Secretary of State, M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC. share the same officers and/or directors, including, but not limited to:
 - i. Kevin E. Lucke, who serves as Chief Executive Officer for M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC.;
 - ii. Kari H. Endries, who serves as Secretary for M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC.;
 - iii. Wayne P. Borduin, who serves as Chief Financial Officer for M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC.; and
 - iv. Natalie Merrill and Kevin E. Lucke, who serve as Directors for M. O. DION & SONS, INC. and AMBER PETROLEUM PRODUCTS, INC.;
- (d) According to M. O. DION & SONS, INC.'s "Certificate of Merger"

forms filed with the California Secretary of State, AMBER RESOURCES, LLC and AMBER PETROLEUM PRODUCTS, INC. merged into M. O. DION & SONS, INC.;

(e) According to the California Secretary of State's website, M. O. DION & SONS, INC.; AMBER RESOURCES, LLC; AMBER PETROLEUM PRODUCTS, INC. share the same agent for service of process, CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE; and

(f) On information and belief, M. O. DION & SONS, INC.; AMBER RESOURCES, LLC; AMBER PETROLEUM PRODUCTS, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants are a leading full-service petroleum distributor in Southern California, with at least four (4) distribution facilities in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Ames, Iowa, or Long Beach, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

23. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures

1 in several documents provided at an employee's time of hire.

2 24. Upon information and belief, Defendants maintain a centralized Payroll
3 department at their corporate headquarters in Ames, Iowa, or Long Beach, California, which
4 processes payroll for all non-exempt, hourly paid employees working for Defendants at their
5 various locations in California, including Plaintiff and other non-party Aggrieved Employees.
6 Based upon information and belief, Defendants issue the same formatted wage statements to
7 all non-exempt, hourly paid employees in California, irrespective of their work locations.
8 Upon information and belief, Defendants process payroll for departing employees in the same
9 manner throughout the State of California, regardless of the manner in which each employee's
10 employment ends.

11 25. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

13 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
15 and advisors knowledgeable about California labor and wage law, employment and personnel
16 practices, and about the requirements of California law.

17 27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
18 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
19 were not recorded.

20 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive certain wages for overtime compensation and that they were not receiving certain
23 wages for overtime compensation.

24 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
27 meal and rest period premiums, that included as eligible income all remuneration required by
28 law, including but not limited to, all income derived from incentive pay, nondiscretionary

1 bonuses, shift differential pay, and/or other forms of compensation, but failed to include all
2 forms of remuneration in calculating the regular rate of pay for Plaintiff and other non-party
3 Aggrieved Employees.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive at least minimum wages for compensation and that they were not receiving at least
7 minimum wages for work that was required to be done off-the-clock. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
9 least minimum wages for work done off-the-clock.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
13 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
14 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
15 other non-party Aggrieved Employees were not provided with all meal periods or payment of
16 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
17 uninterrupted, thirty (30) minute meal period.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
21 payment of one (1) additional hour of pay at their regular rates of pay when they were not
22 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
23 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
24 provided with payment of one (1) additional hour of pay at their regular rates of pay when
25 they were not authorized and permitted to take a compliant rest period.

26 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive complete and accurate wage statements in accordance with California law. In

1 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
2 were not provided complete and accurate wage statements.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
6 and intentionally failed to do so.

7 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of wages during their employment. In violation of the California Labor Code,
10 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
11 including, but not limited to, overtime wages, minimum wages, meal and rest period
12 premiums, and/or sick leave pay, within permissible time periods.

13 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 timely payment of all wages earned upon termination of employment. In violation of the
16 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
17 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
18 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

19 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income,
22 all income derived from incentive pay, nondiscretionary bonuses, shift differential pay, and/or
23 other forms of compensation, but failed to include all forms of remuneration in calculating the
24 regular rate of pay for sick leave pay.

25 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive reimbursement for all business-related expenses and costs they incurred during the
28 course and scope of their employment and that they did not receive reimbursement of

1 applicable business-related expenses and costs incurred.

2 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that Defendants had a duty to provide
4 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
5 of their employment with Defendants as required by the California Wage Theft Prevention
6 Act, but failed to do so.

7 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew of should have known that they had a duty to provide Plaintiff
9 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
10 life, safety, and health in the workplace, but failed to do so.

11 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to compensate
13 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
14 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
15 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
16 that they were properly denied wages, all in order to increase Defendants' profits.

17 42. At all times herein set forth, PAGA provides that any provision of law under
18 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
19 assessed and collected by the LWDA for violations of the California Labor Code and
20 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
21 civil action brought on behalf of themselves and other current or former employees pursuant
22 to procedures outlined in California Labor Code section 2699.3.

23 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
24 person who was employed by the alleged violator and against whom one or more of the
25 alleged violations was committed."

26 44. Plaintiff and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
28 or former employees and one or more of the alleged violations were committed against them.

1 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
3 following requirements have been met:

- 4 (a) The aggrieved employee shall give written notice by online filing
5 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
6 to the employer of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to support
8 the alleged violations.
- 9 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within sixty (60) calendar
15 days of the postmark date of the Employee’s Notice. Upon receipt of
16 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
17 five (65) calendar days of the postmark date of the Employee’s Notice,
18 the aggrieved employee may commence a civil action pursuant to
19 California Labor Code section 2699 to recover civil penalties in addition
20 to any other penalties to which the employee may be entitled.

21 46. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
22 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
23 provision other than those listed in Section 2699.5 after the following requirements have been
24 met:

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing to the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

47. On August 21, 2023, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-976752-23. On August 22, 2023, Plaintiff filed an amended written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, supplementing and/or clarifying the facts and theories to support the alleged violations set forth in his original LWDA notice, in accordance with California Labor Code section 2699.3. A true and correct copies of Plaintiff's written notices to the LWDA and Defendants are attached hereto as "Exhibit 1."

48. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the written notices described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

1 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,
4 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

5 50. Labor Code section 558(a) provides “[a]ny employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provision regulating hours and days of work in any order of the Industrial Welfare
8 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
9 dollars (\$50) for each underpaid employee for each pay period for which the employee was
10 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee was underpaid” Labor
12 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
13 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
14 as a private attorney general, seeks assessment and collection of civil penalties under Labor
15 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
16 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
17 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
18 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
19 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
20 applicable IWC Wage Order.

21 51. Defendants, at all times relevant to this complaint, were employers or persons
22 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
23 Employees’ rights by violating various sections of the California Labor Code as set forth
24 above.

25 52. As set forth below, Defendants have violated numerous provisions of both the
26 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
27 Order.

28 53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),

1 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
2 private attorney general, seeks assessment and collection of civil penalties for himself, all
3 other non-party Aggrieved Employees, and the State of California against Defendants for
4 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,
5 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

6 **FIRST CAUSE OF ACTION**

7 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

8 **(Against all Defendants)**

9 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 55. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
12 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
13 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
14 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
15 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
16 Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516, 1182.12,
17 6401, and 6403.

18 56. Defendants’ conduct, as alleged herein, violates numerous sections of the
19 California Labor Code, including, but not limited to, the following:

- 20 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
21 Wage Order for Defendants’ failure to compensate Plaintiff and other
22 non-party Aggrieved Employees with all required overtime pay, as set
23 forth below;
- 24 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
25 applicable IWC Wage Order for Defendants’ failure to include all forms
26 of remuneration in the regular rate of pay as required by law for
27 purposes of paying overtime wages and/or meal and rest period
28 premiums to Plaintiff and other non-party Aggrieved Employees, as set

1 forth below;

2 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
3 the applicable IWC Wage Order for Defendants' failure to compensate
4 Plaintiff and other non-party Aggrieved Employees with at least
5 minimum wages for all hours worked, as set forth below;

6 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
7 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
8 and other non-party Aggrieved Employees with meal periods, as set
9 forth below;

10 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to authorize and
12 permit Plaintiff and other non-party Aggrieved Employees to take rest
13 periods, as set forth below;

14 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
15 IWC Wage Order for failure to provide accurate and complete wage
16 statements to Plaintiff and other non-party Aggrieved Employees, as set
17 forth below;

18 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
19 IWC Wage Order for failure to maintain payroll records, as set forth
20 below;

21 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
22 during employment, as set forth below;

23 (i) Violation of Labor Code section 201 and 202 for failure to pay all
24 earned wages upon termination, as set forth below;

25 (j) Violation of Labor Code sections 246 and 248.6 for failure to properly
26 calculate the sick leave paid to Plaintiff and other non-party Aggrieved
27 Employees, as set forth below;

28 (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff

1 and other non-party Aggrieved Employees for all business expenses
2 necessarily incurred, as set forth below;

3 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
4 provide written notice of information material to Plaintiff's and other
5 non-party Aggrieved Employees' employment with Defendants, as set
6 forth below; and

7 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
8 Plaintiff and other non-party Aggrieved Employees with safety devices
9 and safeguards for the workplace, as set forth below.

10 **FAILURE TO PAY OVERTIME**

11 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

12 57. Labor Code section 1198 makes it illegal to employ an employee under
13 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
14 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
15 shall be the ... standard conditions of labor for employees. The employment of any employee
16 ... under conditions of labor prohibited by the order is unlawful."

17 58. California Labor Code section 1198 and the applicable IWC Wage Order
18 provide that it is unlawful to employ persons without compensating them at a rate of pay
19 either time-and-one-half or two-times that person's regular rate of pay, depending on the
20 number of hours worked by the person on a daily or weekly basis.

21 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
22 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
23 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
24 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
25 (40) hours in a workweek.

26 60. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
28 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

1 An employee's regular rate of pay includes all remuneration for employment paid to, or on
2 behalf of, the employee, including nondiscretionary bonuses, shift differential pay, and
3 incentive pay.

4 61. California Labor Code section 510 codifies the right to overtime compensation
5 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
6 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
7 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
8 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
9 in a day on the seventh (7th) day of work.

10 62. During the relevant time period, Defendants willfully failed to pay all overtime
11 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
12 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
13 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
14 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
15 not recorded.

16 63. First, Defendants had, and continue to have, a company-wide policy and/or
17 practice requiring Plaintiff and other non-party Aggrieved Employees to perform various
18 work-related tasks while off-the-clock before their shifts. For example, before he clocked in
19 for his shifts, Plaintiff was sometimes required to assist managers and other employees with
20 re-organizing trucks at Defendants' work yard. Thus, Defendants failed to track this time
21 spent working before shifts, and Plaintiff and other non-party Aggrieved Employees received
22 no compensation for this time.

23 64. Second, during the relevant time period, Defendants had, and continue to have,
24 a company-wide policy and/or practice of scheduling and dispatching their fuel delivery
25 drivers to complete time-sensitive fuel delivery appointments, which included traveling to
26 various customer jobsites, as well as delivering and pumping fuel products into customers'
27 truck fleets, without building in sufficient time to allow for 30-minute meal periods. Further,
28 Defendants sometimes required Plaintiff and other non-party Aggrieved Employees to drive

1 their trucks to commercial fuel stations and re-fuel Defendants' containers with fuel products
2 to be delivered to their customers, pump and fuel truck fleets of over 30 customer vehicles,
3 and/or wait for customers to allow them into their jobsites, without accounting for their meal
4 periods, which prevented Plaintiff and other non-party Aggrieved Employees from taking all
5 uninterrupted 30-minute meal periods, and forced them to work off-the-clock during their
6 meal periods to complete their assigned deliveries. As stated, deliveries could take longer
7 than the time Defendants allotted for them, such that Plaintiff and other non-party Aggrieved
8 Employees were unable to take compliant meal periods. In conjunction with varying delivery
9 durations, travel time between client sites could take longer than anticipated due to traffic
10 conditions, which further impeded Plaintiff and other non-party Aggrieved Employees from
11 taking compliant meal periods.

12 65. Additionally, upon information and belief, Defendants had no mechanism in
13 place to permit Plaintiff and other non-party Aggrieved Employees to take meal periods when
14 the schedule was thrown off because one or more of their deliveries took longer than the
15 scheduled time, or if travel time between deliveries was extended by traffic conditions.
16 Defendants' company-wide policy and/or practice of allotting too little time for employees to
17 actually complete their deliveries, while still requiring that they be on time for their next
18 delivery, has prevented Plaintiff and other non-party Aggrieved Employees from being
19 relieved of their duties to take uninterrupted 30-minute meal periods.

20 66. Defendants also had a company-wide practice and/or policy of failing to
21 schedule meal periods, which further caused Plaintiff and other non-party Aggrieved
22 Employees to not be relieved of their duties for compliant meal periods. For example,
23 Plaintiff worked through his meal periods approximately twice per month due to Defendants'
24 scheduling practices and in order to meet Defendants' customer service and delivery time
25 frame expectations. Thus, Defendants effectively maintained control over Plaintiff and other
26 non-party Aggrieved Employees during unpaid meal periods.

27 67. Third, Defendants required Plaintiff and other non-party Aggrieved Employees
28 to use their mobile devices, including cellular phones, to communicate with managers, and in

1 particular, dispatch employees, at all times, including during unpaid meal periods. Defendants
2 expected that Plaintiff and other non-party Aggrieved Employees promptly respond to calls
3 and text messages at all times to discuss work-related matters. For example, Defendants'
4 management contacted Plaintiff on his cellular phone at least twice per week to discuss the
5 status of his deliveries and changes to his delivery route while he was off-the-clock during his
6 unpaid meal periods, but did not compensate him for this time. Defendants knew or should
7 have known that Plaintiff and other non-party Aggrieved Employees were required to respond
8 to phone communications while off-the-clock in order to meet Defendants' expectations, but
9 failed to compensate them for this time worked.

10 68. Fourth, on information and belief, because Defendants frowned upon
11 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
12 other non-party Aggrieved Employees to clock out for meal periods, even when they did not
13 receive a compliant meal period, in order to strictly limit meal penalties that Defendants
14 would otherwise owe. For example, Plaintiff's dispatcher pressured him to clock out for meal
15 periods even though his dispatcher was aware Plaintiff was not actually taking a meal period.
16 Thus, Defendants did not record all hours worked during meal periods, and Plaintiff and other
17 non-party Aggrieved Employees performed work during meal periods for which they were not
18 paid.

19 69. Defendants knew or should have known that, as a result of these company-wide
20 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
21 their assigned duties off-the-clock before their shifts and during meal periods, and were
22 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
23 other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or forty
24 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
25 pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime
26 wages for all of the overtime hours they actually worked.

27 70. Moreover, in addition to an hourly wage, Defendants paid Plaintiff and other
28 non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, shift differential

1 pay, and/or other forms of remuneration. However, in violation of the California Labor Code,
2 on information and belief, Defendants failed to incorporate all compensation, including
3 incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of
4 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
5 overtime wage rate. Therefore, during times when Plaintiff and other non-party Aggrieved
6 Employees worked overtime and received these other forms of pay, Defendants failed to pay
7 all overtime wages by paying a lower overtime rate than required.

8 71. For example, Defendants paid Plaintiff and other non-party Aggrieved
9 Employees nondiscretionary retention bonuses which were listed on Plaintiff's and other non-
10 party Aggrieved Employees' wage statements as "DRBON." During pay periods that Plaintiff
11 and other non-party Aggrieved Employees were paid overtime wages, Defendants did not
12 incorporate the nondiscretionary bonuses into Plaintiff's and other non-party Aggrieved
13 Employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for
14 overtime hours worked. Specifically, Defendants paid Plaintiff and other non-party Aggrieved
15 Employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
16 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
17 paid has resulted in an underpayment of overtime wages to Plaintiff and other non-party
18 Aggrieved Employees on a company-wide basis.

19 72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 the balance of overtime compensation as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

25 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

26 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
28 to be paid to employees, and the payment of a wage less than the minimum so fixed is

1 unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as “the time
2 during which an employee is subject to the control of an employer, and includes all the time
3 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code
4 Regs. tit. 8, § 11090(2)(H) (defining “Hours Worked”).

5 74. First, as set forth above, Defendants had a company-wide policy and/or practice
6 requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related
7 tasks while off-the-clock before their shifts, including assisting managers and other employees
8 with re-organizing trucks in the work yard. Defendants failed to track this time Plaintiff and
9 other non-party Aggrieved Employees spent working off-the-clock, and Plaintiff and other
10 non-party Aggrieved Employees received no compensation for this time.

11 75. Second, as also stated above, due to Defendants’ policies and/or practices of
12 assigning and scheduling delivery appointments while allowing insufficient time to complete
13 their appointments, failing to schedule meal periods, and requiring employees to respond to
14 calls at all times, Plaintiff and other non-party Aggrieved Employees were impeded from
15 taking all uninterrupted meal periods to which they were entitled and were required to work
16 off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise
17 not relieved of all duties during unpaid meal periods. Moreover, as stated, on information and
18 belief, in order to limit meal penalties that Defendants would otherwise owe, Defendants
19 pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods to
20 reflect compliant meal periods. Thus, Defendants systematically failed to pay Plaintiff and
21 other non-party Aggrieved Employees for actual hours worked during unpaid meal periods
22 because these hours were not always correctly recorded.

23 76. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
24 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
25 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
26 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
27 1194, 1197, and 1198.

28 77. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees

1 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
2 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

6 78. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
8 non-party Aggrieved Employees' employment by Defendants.

9 79. At all relevant times herein set forth, California Labor Code section 512(a)
10 provides that an employer may not require, cause, or permit an employee to work for a period
11 of more than five (5) hours per day without providing the employee with a meal period of not
12 less than thirty (30) minutes, except that if the total work period per day of the employee is
13 not more than six (6) hours, the meal period may be waived by mutual consent of both the
14 employer and the employee. Under California law, first meal periods must start after no more
15 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

16 80. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

19 81. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
20 and the applicable IWC Wage Order also require employers to provide a second meal period
21 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
22 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
23 total hours worked is no more than twelve (12) hours, the second meal period may be waived
24 by mutual consent of the employer and the employee only if the first meal period was not
25 waived.

26 82. Under California law, an employer cannot evade meal period requirements via
27 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
28 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be

1 provided with the opportunity to eat his or her meal while performing the duties required and
2 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
3 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
4 (2019).

5 83. First, during the relevant time period, as stated, Defendants had, and continue
6 to have, a company-wide policy and/or practice of scheduling their fuel delivery drivers to
7 meet specific delivery windows, in such a way that prevented Plaintiff and other non-party
8 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
9 entitled. Further, as also stated, Defendants had a company-wide practice and/or policy of
10 failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved
11 Employees to not be relieved of their duties for compliant meal periods. As a result, Plaintiff
12 and other non-party Aggrieved Employees had to work through all or part of their meal
13 periods, had their meal periods interrupted, and/or had to wait extended periods of time before
14 taking meal periods. For example, Plaintiff took his meal periods late, after having worked in
15 excess of five (5) hours into his shift, in order to complete his assigned fuel deliveries.

16 84. Second, as stated, Defendants had a policy and/or practice of requiring that
17 Plaintiff and other non-party Aggrieved Employees respond to calls from supervisors on their
18 mobile devices at all times, even during unpaid meal periods. Thus, Plaintiff's meal periods
19 were cut short by managers and dispatch employees approximately twice per week to discuss
20 deliveries and related matters.

21 85. Third, as stated, on information and belief, because Defendants frowned upon
22 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
23 other non-party Aggrieved Employees to clock out for meal periods, regardless of whether
24 they had received a compliant meal period or not, in order to strictly limit the meal penalties
25 that would need to be paid by Defendants. For example, Plaintiff was required to record that
26 he had received compliant meal periods on shifts when he had not, in fact, received these
27 timely, uninterrupted meal periods.

28 86. Fourth, during the relevant time period, Plaintiff and other non-party Aggrieved

1 Employees worked shifts in excess of ten (10) hours without receiving an uninterrupted
2 second 30-minute meal period. For example, during his employment, Plaintiff worked shifts
3 in excess of ten (10) or more hours per day, but was not always provided a second 30-minute
4 meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
5 period waivers on days that they were entitled to meal periods and were not relieved of all
6 duties.

7 87. Fifth, during the relevant time period, Defendants maintained and implemented
8 an improper company-wide on-duty meal period policy. Defendants' "On-Duty Meal Period
9 Waiver" states, in relevant part, "The Employee and [Defendants] . . . agree that the nature of
10 the Employee's work prevents the Employee from being relieved of all duty during the
11 Employee's meal period. The Employee hereby voluntarily agrees to an on-duty meal period
12 that shall be paid for by the Employer. This agreement signifies that Employee is waiving
13 Employee's right to an off-duty meal period as permitted by law." Under California law, an
14 on-duty meal period agreement does not absolve employers of the duty to provide timely, 30-
15 minute meal periods.¹ Defendants' on-duty meal policy failed to inform Plaintiff and other
16 non-party Aggrieved Employees that they are entitled to a 30-minute on-duty meal period and
17 that on-duty meal periods must be timely, and therefore is facially invalid. In addition, as set
18 forth above, Defendants failed to pay Plaintiff and other non-party Aggrieved Employees for
19 the on-duty meal periods that they required employees to take.

20 88. To the extent that Defendants' "On-Duty Meal Period Waiver" functioned as a
21 blanket meal period waiver for off-duty meal periods, it is invalid as it does not specify that
22 employees are able to waive their meal periods when they work shifts of more than five (5)
23

24 ¹ Employers must provide employees a timely 30-minute meal period even though that
25 meal period may be on-duty instead of off-duty. See *L'Chaim*, 38 Cal. App. 5th at 149 ("If an
26 employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on
27 a portion of that time, the off-duty period is converted to an on-duty period—no matter how
28 small the portion of the period that work intruded upon—and the employee is paid for the
entire period. There is no suggestion that once work interrupts an employee's meal period, the
period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal
period is not the functional equivalent of no meal period at all. On-duty meal periods are an
intermediate category requiring more of employees than off-duty meal periods but less of
employees than their normal work.").

1 hours, only when they do not work more than six (6) hours in a day, or that they are able to
2 waive their second meal periods when working shifts of more than 10 hours, only if they work
3 no more than 12 hours and their first meal period was taken. Defendants, on information and
4 belief, do not have any policies with respect to providing Plaintiff and other non-party
5 Aggrieved Employees with compliant meal periods, pursuant to IWC Wage Order No. 9-2001.

6 89. At all times mentioned herein, Defendants knew or should have known that as a
7 result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually
8 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
9 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
10 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

11 90. Furthermore, Defendants engaged in a company-wide practice and/or policy of
12 not paying all meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
14 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
15 to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees
16 premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff
17 and other non-party Aggrieved Employees the correct rate of pay for premiums because
18 Defendant systematically failed to include all forms of compensation, such as incentive pay,
19 nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, in the
20 regular rate of pay. Therefore, during times when Plaintiff and other non-party Aggrieved
21 Employees received meal period premiums and these other forms of pay, Defendants failed to
22 pay full meal period premiums by paying a lower rate than required.

23 91. Defendants' conduct violates the applicable IWC Wage Order, and California
24 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
25 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
26 558 and/or 2699(a), (f), and (g).

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28 //

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

92. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

93. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

94. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

95. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

96. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide policies and practices, including scheduling and dispatching their fuel delivery drivers to complete time-sensitive fuel delivery appointments, prevented Plaintiff

1 and other non-party Aggrieved Employees from being able to take rest periods. Defendants
2 also failed to schedule rest periods, which, coupled with Defendants' requirement that
3 employees respond to communications from management and dispatchers on their mobile
4 devices at all times further led to Plaintiff and other non-party Aggrieved Employees not
5 being authorized and permitted to take rest periods.

6 97. As a result of Defendants' practices and policies, Plaintiff and other non-party
7 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
8 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
9 were entitled. For example, Plaintiff often had to forego his rest periods throughout his
10 employment in order to meet Defendants' expectations for his assigned deliveries and
11 Defendants' failure to schedule rest periods for employees.

12 98. Defendants have also engaged in a systematic, company-wide practice and/or
13 policy of not paying rest period premiums owed when rest periods are not authorized and
14 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
15 Employees have not received premium pay for all missed rest periods. Alternatively, to the
16 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
17 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
18 other non-party Aggrieved Employees at the correct rate of pay for premiums because
19 Defendants failed to include all forms of compensation, such as incentive pay,
20 nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, in the
21 regular rate of pay. Accordingly, Defendants failed to authorize and permit all compliant rest
22 periods and failed to pay the full rest period premiums due.

23 99. Defendants' conduct violates the applicable IWC Wage Order and California
24 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
25 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
26 558 and/or 2699(a), (f), and (g).

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28 //

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

100. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

101. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

102. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

103. Furthermore, because Defendants did not calculate Plaintiff's and other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the

1 correct amount of gross wages in compliance with section 226(a)(1) and did not list the
2 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
3 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
4 of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation
5 of section 226(a)(9).

6 104. The wage statement deficiencies also include, among other things, failing to list
7 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
8 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
9 for which aggrieved employees were paid; failing to list the name of the employee and only
10 the last four digits of his or her social security number or an employee identification number
11 other than a social security number; failing to list the name and address of the legal entity that
12 is the employer; and/or failing to state all hours worked as a result of not recording or stating
13 the hours worked off-the-clock.

14 105. California Labor Code section 1174(d) provides that “[e]very person employing
15 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
16 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
17 plants or establishments at which employees are employed, payroll records showing the hours
18 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
19 applicable piece rate paid to, employees employed at the respective plants or
20 establishments” Labor Code section 1174.5 provides that employers are subject to a
21 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
22 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
23 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
24 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
25 result of failing to record the off-the-clock hours that they worked.

26 106. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
28 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants engaged in company-wide practices and/or policies of failing to record
6 actual hours worked, and thereby failed to keep accurate records of work period and meal
7 period start and end times for Plaintiff and other non-party Aggrieved Employees in violation
8 of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and other
9 non-party Aggrieved Employees with second 30-minute meal periods to which they were
10 entitled, Defendants kept no records of meal start and end times for second meal periods.

11 107. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
12 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
13 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

14 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

15 **VIOLATION OF LABOR CODE SECTION 204**

16 108. At all relevant times herein set forth, California Labor Code section 204
17 requires that all wages earned by any person in any employment between the 1st and the 15th
18 days, inclusive, of any calendar month, other than those wages due upon termination of an
19 employee, are due and payable between the 16th and the 26th day of the month during which
20 the labor was performed. Labor Code section 204 further provides that all wages earned by
21 any person in any employment between the 16th and the last day, inclusive, of any calendar
22 month, other than those wages due upon termination of an employee, are due and payable
23 between the 1st and the 10th day of the following month.

24 109. At all relevant times herein, California Labor Code section 204 also requires
25 that all wages earned for labor in excess of the normal work period shall be paid no later than
26 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
27 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
28 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not

1 more than seven (7) calendar days following the close of the payroll period.

2 110. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 other non-party Aggrieved Employees all wages due to them within any time period specified
4 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
5 wages, meal and rest period premiums, and/or sick leave pay.

6 111. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
7 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY WAGES UPON TERMINATION**

9 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

10 112. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
11 that if an employer discharges an employee, the wages earned and unpaid at the time of
12 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
13 her employment, his or her wages shall become due and payable not later than seventy-two
14 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
15 his or her intention to quit, in which case the employee is entitled to his or her wages at the
16 time of quitting.

17 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and
18 other non-party Aggrieved Employees who are no longer employed by Defendants the earned
19 and unpaid wages set forth above, including but not limited to, overtime wages, minimum
20 wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge,
21 or within seventy-two (72) hours of their leaving Defendants' employ.

22 114. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
23 who are no longer employed by Defendants their wages earned and unpaid at the time of
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
25 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
26 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
27 2699(a), (f), and (g).

28 //

**FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY AND
PROVIDE WRITTEN NOTICE OF PAID SICK LEAVE
VIOLATION OF LABOR CODE SECTIONS 246 AND 248.6**

115. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

116. At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Effective through December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days and that an "employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee's itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee's payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave." Further, Labor Code section 248.6(b)(3)(A), provides each hour of COVID-19 supplemental

1 paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the
2 same manner as the regular rate of pay for the workweek in which the employee uses paid sick
3 time, whether or not the employee actually works overtime in that workweek[;]” or 2)
4 “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by
5 the employee’s total nonovertime hours worked in the full pay periods occurring within the
6 prior 90 days of employment; provided that, for nonexempt employees paid by piece rate,
7 commission or other method that uses all hours to determine the regular rate of pay, total
8 wages, not including overtime premium pay, shall be divided by all hours, to determine the
9 correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

10 117. During the relevant time period, Defendants did not pay Plaintiff and other non-
11 party Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an
12 hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive
13 pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration.
14 However, in violation of the California Labor Code, Defendants failed to incorporate all
15 remunerations, including incentive pay, nondiscretionary bonuses, and/or commissions into
16 the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate.
17 Therefore, during times when Plaintiff and other non-party Aggrieved Employees took sick
18 leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by
19 paying a lower sick leave rate than required. Specifically, Defendants paid Plaintiff and other
20 non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their
21 regular rate of pay.

22 118. Moreover, during the relevant time period, on information and belief,
23 Defendants have failed to provide Plaintiff and/or other non-party Aggrieved Employees
24 written notice on wage statements and/or other separate written statements that listed the
25 amount of paid sick leave (or equivalent paid leave or paid time off) available to them.
26 Defendants also failed, on a company-wide basis, to provide Plaintiff and/or other non-party
27 Aggrieved Employees with written notice on all wage statements that listed the amount of
28 COVID-19 supplemental paid sick leave used by them.

119. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code sections 246(l) and/or 248.6(b)(3)(A). Moreover, Defendants' systematic failure to provide written notice of sick leave benefits (including COVID-19 supplemental paid sick leave benefits) to Plaintiff and/or other non-party Aggrieved Employees is in violation of Labor Code sections 246(i) and 248.6(d).

120. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

121. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001 provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

122. During the relevant time period, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff spent approximately \$60 per year on headlamps and approximately \$80 per year on steel-toed boots, because Defendants failed to provide him with the necessary supplies and equipment which were required for him to complete his

1 assigned duties. Although Defendants required Plaintiff and other non-party Aggrieved
2 Employees to purchase supplies and equipment to carry out their work-related responsibilities,
3 Defendants failed to reimburse them for all of their out-of-pocket costs.

4 123. Defendants could have provided Plaintiff and other non-party Aggrieved
5 Employees with the actual supplies and equipment for use on the job, or Defendants could
6 have reimbursed employees for their supply and equipment expenses. Instead, Defendants
7 passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees.

8 124. Defendants' company-wide policy and/or practice of not reimbursing
9 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
10 and other non-party Aggrieved Employees violates California Labor Code section 2802.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
14 **EMPLOYMENT**

15 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

16 125. California's Wage Theft Prevention Act was enacted to ensure that employers
17 provide employees with basic information material to their employment relationship at the
18 time of hiring, and to ensure that employees are given written and timely notice of any
19 changes to basic information material to their employment. Codified at California Labor
20 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
21 employer must provide written notice to employees containing basic and material payroll
22 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
23 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
24 overtime, the regular payday designated by the employer, and any allowances claims as part
25 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
26 (C).

27 126. At all relevant times, on information and belief, Defendants failed, on a
28 company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved

1 Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
2 (C). Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with
3 written notice of basic information regarding their employment with Defendants is in violation
4 of California Labor Code section 2810.5

5 127. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

8 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

9 128. At all relevant times herein, California Labor Code section 6401 provides that
10 employers must furnish and use safety devices and safeguards, and adopt and use practices,
11 means, methods, operations, and processes which are reasonably adequate to render the
12 employment and place of employment safe and healthy. California Labor Code Section 6401
13 further provides that an employer must do everything reasonably necessary to protect the life,
14 safety and health of its employees.

15 129. During the relevant period, Defendants failed to provide Plaintiff and other
16 non-party Aggrieved Employees with personal protective equipment, such as steel-toed boots
17 and headlamps, to keep them safe in the workplace. Despite the fact that Defendants required
18 Plaintiff and other non-party Aggrieved Employees to wear certain personal protective
19 equipment, including steel-toed boots and headlamps, while engaged in their work-related
20 duties, Defendants failed to provide such reasonably necessary equipment to Plaintiff and
21 other non-party Aggrieved Employees to keep them safe.

22 130. Defendants' failure to provide Plaintiff and other non-party Aggrieved
23 Employees with safety devices and safeguards for the workplace violates Labor Code sections
24 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
25 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 **REQUEST FOR JURY TRIAL**

27 Plaintiff requests a trial by jury.

28 //

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
3 judgment against Defendants, jointly and severally, as follows:

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
6 amount.

7 **As to the First Cause of Action**

8 2. That the Court declare, adjudge and decree that Defendants violated the
9 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
10 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
11 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
12 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
13 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
14 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
15 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
17 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
18 termination); 246 and 248.6 (by failing to properly calculate sick leave pay and provide
19 written notice of paid sick leave); 2802 (by failing to reimburse business expenses); 2810.5
20 (by failing to provide written notice of information material to employment); and 6401 and
21 6403 (by failing to provide safety devices and safeguards);

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
23 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
24 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
25 1198, 2802, 2810.5, 6401, and 6403;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d),

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1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;
5. For pre-judgment and post-judgment interest as provided by law; and
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: October 26, 2023

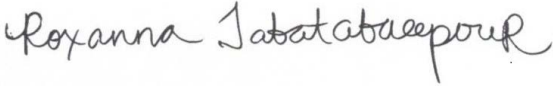
Respectfully submitted,
Capstone Law APC

By: _____
Roxanna Tabatabaeepour
Ryan Tish
Alexander Wallin
Attorneys for Plaintiff Amador Ramirez

Exhibit A



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

August 22, 2023

VIA ONLINE SUBMISSION

Division of Occupational Safety and Health
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Amador Ramirez v. M. O. Dion & Sons, Inc., et al.*
LWDA Case No. LWDA-CM-976752-23 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Amador Ramirez in connection with his claims under the California Labor Code. Mr. Ramirez was an employee of M. O. DION & SONS, INC.; AMBER RESOURCES, LLC; and/or AMBER PETROLEUM PRODUCTS, INC. For the purpose of this letter, Mr. Ramirez collectively refers to these entities as “MODS.” We previously provided notice of Mr. Ramirez’s claims to the California Labor and Workforce Development Agency (“LWDA”) on August 21, 2023, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Ramirez’s prior LWDA notice and adds an additional claim.

The employers may be contacted directly at the addresses below:

M. O. DION & SONS, INC.
416 S. BELL AVENUE
AMES, IA 50010

AMBER RESOURCES, LLC
1542 W 16TH STREET
LONG BEACH, CA 90813

AMBER PETROLEUM PRODUCTS, INC.
416 S. BELL AVENUE
AMES, IA 50010

Mr. Ramirez intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Ramirez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MODS as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MODS employed Mr. Ramirez as an hourly paid, non-exempt employee from approximately August 2020 to September 2022. Mr. Ramirez worked for MODS as a Fuel Delivery Driver, Commercial Driver, and Night Wet Hose Driver based out of its worksite located at 7111 Mission Gorge Road in San Diego, California. During his employment, Mr. Ramirez typically worked eight (8) or more hours per day and five (5) days per week. At the time his employment ended, Mr. Ramirez was compensated approximately \$30.00 per hour. Mr. Ramirez's primary job duties included, without limitation, delivering fuel product to customer sites, pumping fuel product into customer vehicle fleets and bulk storage tanks, and completing paperwork.

MODS committed one or more of the following Labor Code violations against Mr. Ramirez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, MODS failed to provide Mr. Ramirez and other aggrieved employees with personal protective equipment, such as steel-toed boots and headlamps, to keep them safe in the workplace. Despite the fact that MODS required Mr. Ramirez and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots and headlamps, while engaged in their work-related duties, MODS failed to provide such reasonably necessary equipment to Mr. Ramirez and other aggrieved employees to keep them safe. Thus, MODS's failure to provide Mr. Ramirez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.

MODS's failure to provide Mr. Ramirez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Ramirez and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Ramirez, acting in the public interest as a private attorney general,

¹ These facts, theories, and claims are based on Mr. Ramirez's experience and counsel's review of those records currently available relating to Mr. Ramirez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Ramirez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against MODS for violations of California Labor Code sections 6401 and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Ramirez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in dark ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: M. O. DION & SONS, INC. (via U.S. Certified Mail); AMBER RESOURCES, LLC (via U.S. Certified Mail); AMBER PETROLEUM PRODUCTS, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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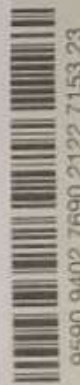
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416 S. BELL AVENUE
AMES, IA 50010

M. O. DION & SONS, INC.
416 S. BELL AVENUE
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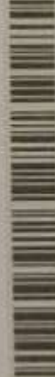
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2. Article Number (Transfer from service label)

7022 2410 0000 2405 9402

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below: ☐ Yes ☐ No

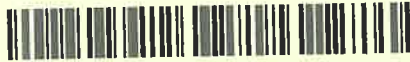
- Service Type ☐ Priority Mail Express® ☐ Registered Mail™
- ☐ Adult Signature ☐ Registered Mail Restricted Delivery
- ☒ Certified Mail® ☐ Signature Confirmation™
- ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery
- ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Registered Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

AMBER RESOURCES, LLC
1542 W 16TH STREET
LONG BEACH, CA 90813



9590 9402 7690 2122 7153 30

2. Article Number (Transfer from service label)

7022 2410 0000 2405 9419

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Dandra Thomas

- ☐ Agent
- ☐ Addressee

Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

D. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**AMBER PETROLEUM
PRODUCTS, INC.**
416 S. BELL AVENUE
AMES, IA 50010



9590 9402 7690 2122 7153 47

2. Article Number (Transfer from service label)

7022 2410 0000 2405 9402

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *Brooke Heichter*

- ☐ Agent
- ☐ Addressee

3. Received by (Printed Name)

Brooke Heichter

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

M. O. DION & SONS, INC.
416 S. BELL AVENUE
AMES, IA 50010



9590 9402 7690 2122 7153 23

2. Article Number (Transfer from service label)

7022 2410 0000 2405 9396

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Brooke Reichter*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Brooke Reichter

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery