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individually and on behalf of others similarly situated and aggrieved

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN BERNARDINO**

JEFFREY ROSCHER, individually and on  
behalf of all others similarly situated and  
aggrieved,

Plaintiff,

vs.

INTER-RAIL TRANSPORT, INC., a Florida  
Corporation; INTER-RAIL GROUP, INC., a  
Maryland Corporation; and DOES 1 through  
10, inclusive,

Defendants.

ELECTRONICALLY FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

1/17/2024 3:11 PM

By: Gilberto Villegas, DEPUTY

Case No. CIV/SB2403139

**CLASS ACTION AND PRIVATE  
ATTORNEYS GENERAL ACT ("PAGA")  
REPRESENTATIVE ACTION  
COMPLAINT**

- 1. FAILURE TO PAY WAGES**
- 2. FAILURE TO REIMBURSE BUSINESS EXPENSES**
- 3. FAILURE TO PROVIDE WAGE STATEMENTS**
- 4. FAILURE TO PAY FINAL WAGES**
- 5. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
- 6. VIOLATIONS OF THE UCL**
- 7. PAGA CIVIL PENALTIES FOR FAILURE TO PAY WAGES**
- 8. PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE**

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**NECESSARY BUSINESS EXPENSES**

**9. PAGA CIVIL PENALTIES FOR  
FAILURE TO PROVIDE WAGE  
STATEMENTS**

**10. PAGA CIVIL PENALTIES FOR  
FAILURE TO TIMELY PAY WAGES  
DUE AT SEPARATION FROM  
EMPLOYMENT**

**11. PAGA CIVIL PENALTIES FOR  
FAILURE TO AUTHORIZE AND  
PERMIT REST PERIODS**

**12. PAGA CIVIL PENALTIES FOR  
FAILURE TO MAINTAIN ACCURATE  
RECORDS**

**DEMAND FOR JURY TRIAL**

**NATURE OF CLAIM**

1. Plaintiff JEFFREY ROSCHER (“Plaintiff”) brings this class action on behalf of himself and a Class of all California non-exempt employees of Defendants INTER-RAIL TRANSPORT, INC., INTER-RAIL GROUP, INC. (collectively, “Inter-rail”), and Does 1 through 10 (“Defendants”) for Defendants’ unlawful employment practices.

2. Plaintiff, on behalf of himself and the Class, brings this action pursuant to California Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.7, 510, 558, 558.1, 1194, 1197, 1197.1, 1198, 1199(c), 2802, and 2804; Industrial Welfare Commission (“IWC”) Wage Order 9-2001; and Business and Professions Code sections 17200, *et seq.*, seeking unpaid wages, liquidated damages, equitable relief, prejudgment interest, reasonable attorneys’ fees and costs, and any other relief this Court deems proper.

3. Plaintiff also brings this Representative Action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all other aggrieved employees employed by Defendants in the State of California, for civil penalties pursuant to the PAGA for Defendants’ failure to: pay all wages, reimburse necessary business expenses, provide itemized wage statements, timely pay all wages due upon separation from employment, authorize and permit rest periods, and maintain accurate records.

4. Plaintiff gave written notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) on October 20, 2023 pursuant to Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of this notice. Plaintiff seeks civil penalties under the PAGA as a representative of the State of California and has standing as an aggrieved employee. Plaintiff seeks to represent all Defendants’ non-exempt employees in the State of California who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (from the date of the filing of this complaint until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

**PARTIES**

5. Plaintiff JEFFREY ROSCHER is a resident of Victorville, California. Plaintiff worked as a shuttle driver for Defendants in San Bernardino, California from September 16,

2022 through October 14, 2022. His main duty was driving new cars from trains to parking lots.

6. Defendant Inter-Rail Transport, Inc. was incorporated in Florida in 1990. Inter-Rail Transport, Inc. is the entity name which appears on Claimant's paystubs.

7. Defendant Inter-Rail Group, Inc. was incorporated in Maryland in 2001. Inter-Rail Group, Inc. appears as the name of the company on LinkedIn and on the company website. See "Inter-Rail Group, Inc.," <https://www.linkedin.com/company/inter-rail-group> (last visited January 17, 2024); see also "Inter-Rail Group, Inc.," <https://www.interrail-transport.com> (last visited January 17, 2024).

8. Defendants Inter-Rail Transport, Inc. and Inter-Rail Group, Inc. share the principal and mailing address of 115 Lawyers Row, Suite 3, Centreville, Maryland 21617. They are collectively referred to herein as "Inter-Rail" or "Defendants."

9. Inter-Rail provides auto terminal services to railroads and automobile manufacturers. Across the nation, Inter-Rail crews handle more than 3 million new vehicles sold annually in the United States. Inter-Rail offers its services 365 days per year and 24 hours per day. In addition to its core service of multi-level railcar loading and unloading, services include railcar pre-tripping, prepping, rail car repair, switching, vehicle processing, inspection, and inventory management. See "Inter-Rail Group Services," <https://www.interrail-transport.com/services/> (last visited January 17, 2024).

10. Does are persons or entities whose true names, identities, or capacities are unknown to Plaintiff. Plaintiff will amend to allege their true names and capacities when known. Plaintiff is informed and believes each Doe is Inter-Rail's agent, representative, parent, or subsidiary, is responsible in some manner for acts, practices and courses of conduct alleged, and harm suffered by Plaintiff and the Class was proximately caused by Inter-Rail and them.

11. Plaintiff alleges each of the Defendants, including the Doe defendants, acted in concert with the other Defendants, intended to and did participate in the conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

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12. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

### **JURISDICTION AND VENUE**

13. Venue is proper in San Bernardino County because Inter-Rail's liability to Plaintiff arose in San Bernardino County, *see* Code of Civil Procedure § 395.5, and because Inter-Rail has not established a principal place of business in California, allowing Plaintiff to sue in any county in the state. *See Easton v. Superior Court* (1970) 12 Cal. App. 3d at 246.

14. No federal jurisdiction exists to remove this action to federal court. No federal question is at issue under 28. U.S.C. section 1331, as the issues are based solely on California law. No diversity jurisdiction exists under 28. U.S.C. sections 1332(a) or 1332(d) because Class Members' individual amounts in controversy do not exceed \$75,000 and the class amount in controversy does not exceed \$5,000,000.

15. Further, as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d) as PAGA civil penalty actions are not subject to federal jurisdiction.

### **FACTUAL ALLEGATIONS**

16. At all relevant times, Plaintiff, the Class, and other aggrieved employees (collectively, "employees") were employed by Defendants in California, and Defendants conducted business in California.

17. At times, Defendants did not pay all wages they owed to employees: first, because employees had to wait to be let into the work premises by security staff before they could clock in; second, because after employees entered the work premises, they had to wait in line to clock in on the time clock; and third, because employees were not paid for time they spent on required training with Defendants, including time spent reading training policies and procedures.

18. At times, Defendants failed to reimburse employees for reasonable and necessary business-related expenses. For instance, Defendants required Plaintiff to use his personal cell phone for work throughout his entire shift to communicate with his coworkers

1 and supervisors, but did not reimburse his work-related cell phone expenses. Defendants also  
2 required Plaintiff to purchase a safety vest, but did not reimburse him for it. Finally,  
3 Defendants required Plaintiff to wear a uniform logo shirt, but only issued him one. Plaintiff  
4 had to clean this shirt regularly but was not reimbursed for laundry expenses. On information  
5 and belief, these practices were also applied to other employees by Defendants. Plaintiff did  
6 not earn at least twice the minimum wage; on information and belief, neither did other  
7 employees.

8 19. At times, Defendants failed to provide any wage statements to employees. For  
9 instance, Plaintiff was paid via direct deposit weekly but did not receive any wage statements,  
10 either via paper or electronically. On information and belief, other employees also did not  
11 receive wage statements at times.

12 20. At times, Defendants failed to pay final wages owed to employees at separation  
13 from employment. For instance, Plaintiff has not been paid his wages owed for the final week  
14 that he worked for Defendants. Plaintiff's final day worked was October 13, 2022, and he  
15 resigned on October 14, 2022. As such, he should have received his final pay within 72 hours,  
16 or by October 17, 2022, under Labor Code section 202. To the extent Defendants did not pay  
17 all wages at times, final wages were also underpaid.

18 21. At times, Defendants did not provide employees adequate rest periods under  
19 California law: first, because Defendants did not authorize and permit third rest periods on  
20 shifts over ten hours; second, because Defendants' written policy, which was enforced by  
21 management, forbid employees from leaving the premises during rest periods; and third,  
22 because Defendants did not provide adequate rest period premiums to employees when they  
23 did not receive a compliant rest period.

24 22. At times, Defendants failed to maintain accurate records for Plaintiff and other  
25 employees. For instance, Defendants failed to keep accurate records of when employees, like  
26 Plaintiff, began and ended each work period because time spent waiting to be let into the  
27 premises, waiting to clock in, and during training was not recorded. Defendants also failed to  
28

keep accurate records of the hours worked daily by these employees and their meal periods taken.

### **CLASS ACTION ALLEGATIONS**

23. Plaintiff seeks to represent and certify a Class of:

All Defendants' California non-exempt employees at any time during the four years before the filing of this Complaint through the date of trial.

24. Plaintiff seeks to certify a subclass of employees defined as:

#### **Pre-Shift Off-the-Clock Wages Subclass**

All Class Members who were under Defendants' control before clocking in for their shift.

25. Plaintiff seeks to certify a subclass of employees defined as:

#### **Training Wages Subclass**

All Class Members who attended trainings for Defendants.

26. Plaintiff seeks to certify a subclass of employees defined as:

#### **Expense Reimbursement Subclass**

All Class Members who incurred business-related expenses, including but not limited to cell phone, uniform, and uniform maintenance expenses.

27. Plaintiff seeks to certify a subclass of employees defined as:

#### **Wage Statement Provision Subclass**

All Class Members who did not receive one or more itemized wage statements due to them during the one year preceding the filing of this Complaint.

28. Plaintiff seeks to certify a subclass of employees defined as:

#### **Waiting Time Subclass**

All Class Members whose employment ended any time during the three years preceding the filing of this Complaint.

29. Plaintiff seeks to certify a subclass of employees defined as:

#### **Rest Period Subclass**

All Class Members who worked at least one shift of at least three and one-half hours.

30. Plaintiff seeks to certify a subclass of employees defined as:

#### **UCL Subclass**

All Class and Subclass Members who were subject to Defendants' unlawful or unfair business acts or practices.

1           31. Plaintiff reserves the right to amend or modify the Class or Subclass  
2 descriptions, including by division into further subclasses or limitation to particular issues.  
3 California Rule of Court 3.765(b).

4           32. **Commonality**: This action has been brought and may be maintained as a class  
5 action pursuant to Code of Civil Procedure section 382 because there is a well-defined  
6 common interest of many persons and it is impractical to bring them all before the court.

7           33. **Ascertainable Class**: The Class and Subclasses are ascertainable because they  
8 can be identified and located using Defendants' payroll and personnel records.

9           34. **Numerosity**: The potential members of the Class and Subclasses as defined are  
10 so numerous that joinder of all members would be unfeasible and impractical. The disposition  
11 of their claims through this class action will benefit the parties and this Court. The number of  
12 members of the Class and Subclasses is unknown to Plaintiff, but is estimated to be in excess  
13 of 100 individuals. The number and identity of members can be readily ascertained using  
14 Defendants' records.

15           35. **Typicality**: The claims of Plaintiff are typical of the claims of all members of  
16 the Class and Subclasses because all members of the Class and Subclasses sustained similar  
17 injuries and damages caused by Defendants' common course of conduct in violation of law.

18           36. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses,  
19 will fairly protect the interests of the Class and Subclass Members and has no interests  
20 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,  
21 skilled, and experienced in litigating large employment law class actions.

22           37. **Superiority**: A class action is superior to other available means for the fair and  
23 efficient adjudication of this controversy. Individual joinder of all Class Members is not  
24 practicable, and questions of law and fact common to the Class predominate over questions  
25 affecting only individual Class Members. A Class action will allow those similarly situated to  
26 litigate their claims in the most efficient and economical manner for the parties and the judicial  
27 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of  
28 this action that precludes its maintenance as a class action.

38. The predominating common questions of law and fact include:
- a. Whether Defendants have a policy and practice of failing to pay some wages for time under Defendants' control;
  - b. Whether Defendants have a policy or practice of failing to reimburse for some necessary business-related expenses, including cell phone, uniform, and uniform maintenance expenses;
  - c. Whether Defendants have a policy or practice of failing to provide wage statements;
  - d. Whether some Waiting Time Subclass Members are entitled to waiting time penalties under Section 203;
  - e. Whether Defendants have a compliant rest period policy, both as written and in practice;
  - f. Whether Defendants paid adequate rest period premiums for non-compliant rest periods;
  - g. Whether Defendants violated Sections 17200, *et seq.* of the Business and Professions Code; and
  - h. Whether the Class and Subclasses are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

##### **Failure to Pay Wages**

##### **(By Plaintiff and each Member of the Pre-Shift Off-the-Clock Wages and Training Wages Subclasses)**

39. Plaintiff incorporates the preceding paragraphs of this Complaint.

40. Labor Code section 1194, subdivision (a) provides: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

1           41. Labor Code section 510, subdivision (a) provides, in pertinent part: “Eight hours  
2 of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any  
3 work in excess of 40 hours in any one workweek and the first eight hours worked on the  
4 seventh day of work in any one workweek shall be compensated at the rate of no less than one  
5 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in  
6 one day shall be compensated at the rate of no less than twice the regular rate of pay for an  
7 employee. In addition, any work in excess of eight hours on any seventh day of a workweek  
8 shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

9           42. By failing to pay wages to Plaintiff and the Pre-Shift Off-the-Clock Wages and  
10 Training Wages Subclasses, or some of them, for time they spent under Defendants’ control  
11 but not clocked in, including pre-shift time and training time, Defendants violated Labor Code  
12 sections 510 and 1194.

13           43. Plaintiff and the Pre-Shift Off-the-Clock Wages and Training Wages Subclasses  
14 are entitled to recover these wages, with liquidated damages, and interest, attorneys’ fees, and  
15 costs. See Lab. Code §§ 1194.2, 1194, 218.6.

16                               **SECOND CAUSE OF ACTION**

17                               **Failure to Reimburse Necessary Business Expenses**

18                               **(By Plaintiff and each Member of the Expense Reimbursement Subclass)**

19           44. Plaintiff incorporates the preceding paragraphs of this Complaint.

20           45. Labor Code section 2802(a) provides: “An employer shall indemnify his or her  
21 employee for all necessary expenditures or losses incurred by the employee in direct  
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
23 the employer, even though unlawful, unless the employee, at the time of obeying the  
24 directions, believed them to be unlawful.”

25           46. Labor Code section 2802(b) provides: “All awards made by a court or by the  
26 Division of Labor Standards Enforcement for reimbursement of necessary expenditures under  
27 this section shall carry interest at the same rate as judgments in civil actions. Interest shall  
28 accrue from the date on which the employee incurred the necessary expenditure or loss.”

          47. Labor Code section 2802(c) provides: “For purposes of this section, the term

1 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited  
2 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

3 48. By failing to reimburse Plaintiff and the Expense Reimburse Subclass, or some  
4 of them, for necessary business-related expenses they incurred, including for personal cell  
5 phone, uniform, and uniform maintenance expenses, Defendants violated Labor Code sections  
6 2802 and 1198 and the "Uniforms and Equipment" section of Wage Order 9-2001. This right  
7 to reimbursement could not have been waived. See Lab. Code § 2804. Because Plaintiff and  
8 other employees did not earn at least twice the minimum wage, they could not have been  
9 required to provide and maintain hand tools and equipment customarily required by the trade  
10 or craft under Wage Order 9-2001.

11 49. Plaintiff and the Expense Reimbursement Subclass are entitled to recover these  
12 expense reimbursements, with interest, attorneys' fees and costs. See Lab. Code §§ 2802, subd.  
13 (b)-(c).

14 **THIRD CAUSE OF ACTION**  
15 **Failure to Provide Wage Statements**  
16 **(By Plaintiff and each Member of the Wage Statement Subclass)**

17 50. Plaintiff incorporates the preceding paragraphs of this Complaint.

18 51. Labor Code section 226, subdivision (a) provides, in pertinent part: "An  
19 employer, semimonthly or at the time of each payment of wages, shall furnish to their  
20 employee, either as a detachable part of the check, draft, or voucher paying the employee's  
21 wages, or separately if wages are paid by personal check or cash, an accurate itemized  
22 statement in writing showing" various pieces of employment information.

23 52. By knowingly and intentionally failing to provide Plaintiff and the Wage  
24 Statement Subclass, or some of them, with wage statements, Defendants violated Labor Code  
25 section 226, subdivision (a).

26 53. An employee suffering injury as a result of a knowing and intentional failure by  
27 an employer to comply with subdivision (a) is entitled to recover the greater of all actual  
28 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one  
hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to

1 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of  
2 costs and reasonable attorney's fees. Labor Code § 226, subd. (e).

3 54. Plaintiff and the members of the Wage Statement Subclass are entitled to  
4 recover the greater of actual damages or penalties not to exceed \$4,000 for each employee,  
5 along with interest, attorneys' fees and costs. See Labor Code § 226, subd. (e).

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Timely Pay Wages Due at Separation From Employment**  
8 **(By Plaintiff and each Member of the Waiting Time Subclass)**

9 55. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 56. An employer who discharges an employee must pay all compensation due to  
11 that employee immediately upon discharge. Labor Code § 201. An employer must pay all  
12 compensation due to an employee who quits within 72 hours. Labor Code § 202.

13 57. If an employer willfully fails to timely pay wages the employer must, as a  
14 penalty, continue to pay the subject employee's wages until paid or until an action is  
15 commenced. Labor Code § 203. Defendants failed to pay Plaintiff any final wages. Further,  
16 because Defendants failed to compensate Plaintiff and members of the Class, or some of them,  
17 for all hours subject to Defendants' control, Defendants failed to timely pay earned wages to  
18 former employees.

19 58. Defendants' willful failure to pay wages to Plaintiff and the Waiting Time  
20 Subclass Members, or some of them, violated Labor Code section 203 because Defendants  
21 knew these wages were due, but failed to pay them.

22 **FIFTH CAUSE OF ACTION**

23 **Failure to Authorize and Permit Rest Periods**  
24 **(By Plaintiff and each Member of the Rest Period Subclass)**

25 59. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 60. Labor Code section 1198 provides: "The maximum hours of work and the  
27 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
28 the standard conditions of labor for employees. The employment of any employee for longer  
hours than those fixed by the order or under conditions of labor prohibited by the order is  
unlawful."

61. “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.” Wage Order 9-2001, § 12, subd. (a).

62. “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Labor Code § 226.7, subd. (b).

63. “If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” Wage Order 9-2001, § 12, subd. (b); see also Labor Code § 226.7, subd. (c).

64. By failing to authorize and permit adequate rest periods, or pay adequate rest period premiums in lieu thereof, Defendants violated the applicable Wage Order and Labor Code sections 226.7 and 1198.

65. Plaintiff and the Rest Period Subclass are entitled to recover rest period premium wages, with interest, attorneys’ fees and costs.

**SIXTH CAUSE OF ACTION**  
**Violation of the Unfair Competition Law**  
**(By Plaintiff and each Member of the UCL Subclass)**

66. Plaintiff incorporates the preceding paragraphs of this Complaint.

67. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code sections 17200, *et seq.*, defines unfair competition to include any “unlawful,” “unfair,” or “fraudulent” business act or practice. Cal. Bus. & Prof. Code § 17200.

68. Defendants’ conduct as described above constitutes unlawful business practices because Defendants violated: the California Labor Code, including but not limited to Sections

1 510 and 1194 (wages), 201-203 (final wages), 226.7 (rest period premium wages), and 2802  
2 (reimbursement of business expenses); and sections of Wage Order 9-2001.

3 69. Defendants' conduct as described above constitutes unfair business practices  
4 because their denial of lawfully earned wages outweighs any utility of such practices.

5 70. As a result of Defendants' unlawful and unfair conduct, Plaintiff and members  
6 of the Class suffered injury in fact.

7 71. Plaintiff and members of the Class seek declaratory and injunctive relief,  
8 restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

9 72. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and  
10 members of the Class are entitled to recover reasonable attorneys' fees, costs, and expenses  
11 incurred in bringing this action.

12 73. This cause of action is brought as a cumulative remedy and is intended as an  
13 alternative remedy for restitution for Plaintiff, and each Subclass Member, of some of them, for  
14 the four (4) year period before the filing of this Complaint, and as the primary remedy during  
15 the fourth year before the filing of this Complaint. Business and Professions Code § 17205.

16 **SEVENTH CAUSE OF ACTION**  
17 **PAGA Civil Penalties for Failure to Pay Wages**  
18 **(By Plaintiff and each Aggrieved Employee)**

19 74. Plaintiff incorporates the preceding paragraphs of this Complaint.

20 75. "[A]ny provision of this code that provides for a civil penalty to be assessed and  
21 collected by the Labor and Workforce Development Agency or any of its departments,  
22 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an  
23 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of  
24 himself or herself and other current or former employees pursuant to the procedures specified  
25 in Section 2699.3." Labor Code § 2699(a).

26 76. "For all provisions of this code except those for which a civil penalty is  
27 specifically provided, there is established a civil penalty for a violation of these provisions [ ]  
28 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil  
penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the

1 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period  
2 for each subsequent violation.” Labor Code § 2699(f)(2).

3 77. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510,  
4 1194 and 1197.1 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

5 78. By failing to pay wages to Plaintiff and other aggrieved employees for time they  
6 spent under Defendants’ control but not clocked in, including pre-shift time and training time,  
7 Defendants violated Labor Code sections 510 and 1194.

8 79. Plaintiff will seek \$100 for the initial pay period an employee was underpaid,  
9 and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with  
10 the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of  
11 California.

12 **EIGHTH CAUSE OF ACTION**

13 **PAGA Civil Penalties for Failure to Reimburse Necessary Business Expenses**  
14 **(By Plaintiff and each Aggrieved Employee)**

15 80. Plaintiff incorporates the preceding paragraphs of this Complaint.

16 81. Section 2699.3(a) applies to any alleged violation of Labor Code section 2802  
17 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

18 82. By failing to reimburse Plaintiff and other aggrieved employees for their  
19 business-related expenses, including for personal cell phones, uniforms, and uniform  
20 maintenance expenses, Defendants willfully violated Labor Code section 2802.

21 83. Plaintiff will seek penalties of \$100 for the initial pay period an employee was  
22 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered  
23 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to  
24 the LWDA on behalf of the State of California.

25 **NINTH CAUSE OF ACTION**

26 **PAGA Civil Penalties for Failure to Provide Wage Statements**  
27 **(By Plaintiff and each Aggrieved Employee)**

28 84. Plaintiff incorporates the preceding paragraphs of this Complaint.

85. Defendants knowingly and intentionally failed to provide Plaintiff and other  
aggrieved employees with wage statements.



1 penalties provided to the LWDA on behalf of the State of California. The amount of the  
2 applicable penalty will be proven at trial.

3 **ELEVENTH CAUSE OF ACTION**  
4 **PAGA Civil Penalties for Failure to Authorize and Permit Rest Periods**  
5 **(By Plaintiff and each Aggrieved Employee)**

6 94. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 95. Section 2699.3(a) applies to any alleged violations of Labor Code sections  
8 226.7 and 1198 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

9 96. By failing to authorize and permit rest periods or pay premiums in lieu thereof,  
10 Defendants willfully violated Labor Code sections 226.7 and 1198 and the applicable Wage  
11 Order.

12 97. Plaintiff will seek penalties of \$100 for the initial pay period an employee  
13 suffered a violation, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds  
14 recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties  
15 provided to the LWDA on behalf of the State of California.

16 **TWELFTH CAUSE OF ACTION**  
17 **PAGA Civil Penalties for Failure to Maintain Accurate Records**  
18 **(By Plaintiff and each Aggrieved Employee)**

19 98. Plaintiff incorporates the preceding paragraphs of this Complaint.

20 99. Labor Code section 1174(d) requires every person, including the Employer,  
21 employing labor in the state to “[k]eep, at a central location in the state or at the plants or  
22 establishments at which employees are employed, payroll records showing the hours worked  
23 daily by and the wages paid to, and the number of piece-rate units earned by and any  
24 applicable piece rate paid to, employees employed at the respective plants or establishments.  
25 These records shall be kept in accordance with rules established for this purpose by the  
26 commission, but in any case shall be kept on file for not less than three years. An employer  
27 shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid  
28 on a piece-rate basis, piece-rate units earned.”

100. The “Records” section of Wage Order 9 provides: “Every employer shall keep  
accurate information with respect to each employee including the following: time records

1 showing when the employee begins and ends each work period. Meal periods, split shift  
2 intervals and total daily hours worked shall also be recorded.”

3 101. Section 2699.3(a) applies to any alleged violations of subdivisions (c) and (d) of  
4 section 1174, and to Labor Code section 1198 and allows for recovery of PAGA civil penalties.  
5 Labor Code § 2699.5.

6 102. Additionally, Labor Code section 1174.5 provides, “Any person employing  
7 labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or  
8 accurate and complete records required by subdivision (d) of Section 1174, or to allow any  
9 member of the commission or employees of the division to inspect records pursuant to  
10 subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars  
11 (\$500).”

12 103. By failing to maintain accurate records, Defendants violated Labor Code  
13 sections 1174 and 1198 and the applicable Wage Order.

14 104. Plaintiff will seek penalties of \$100 for the initial pay period an employee  
15 suffered a violation, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Plaintiff  
16 will also seek a \$500 civil penalty under Labor Code section 1174.5. Funds recovered will be  
17 distributed in accordance with the PAGA, with 75% of the civil penalties provided to the  
18 LWDA on behalf of the State of California.

19 **PRAYER FOR RELIEF**

20 Plaintiff prays for the following relief on behalf of himself and the Class against  
21 Defendants:

- 22 1. Class action certification;
- 23 2. Appointment of Plaintiff and Plaintiff’s counsel to represent the Class;
- 24 3. Provision of Class notice;
- 25 4. A declaratory judgment that Defendants knowingly and intentionally violated:
  - 26 a. Labor Code sections 510 and 1194 by failing to pay wages;
  - 27 b. Labor Code section 2802 by failing to reimburse necessary business-related
  - 28 expenses;

- c. Labor Code section 226 by failing to provide wage statements;
- d. Labor Code section 203 by failing to pay waiting time penalties;
- e. Labor Code sections 226.7 and 1198 by failing to authorize rest periods or pay premiums in lieu thereof; and,
- f. Business and Professions Code sections 17200, *et seq.* by engaging in unlawful or unfair business practices.

5. That Defendants be permanently enjoined from engaging in the unlawful or unfair acts and practices alleged;

6. An order requiring Defendants restore all amounts owed to Plaintiff and Class Members, according to proof, pursuant to Business and Professions Code section 17203;

7. For an award of unpaid wages, including minimum, regular, and overtime wages, and rest period premium wages, to the extent permissible by law to each affected person;

8. For an award of liquidated damages to the extent permissible by Labor Code section 1194.2;

9. For penalties incurred under Labor Code section 1197.1 for each underpaid employee per pay period for which the employee was underpaid;

10. For penalties permitted pursuant to the Labor Code, and Orders of the Industrial Welfare Commission including, but not limited to penalties under Labor Code section 226(e);

11. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code sections 218.6 and 1194;

12. For reimbursement of all necessary expenses incurred in direct consequence of the discharge of duties;

13. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and his counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;

14. For recovery of all civil penalties as permitted by Labor Code section 2699(f)(2), for violations of Labor Code sections 510, 1194, 2802, 226, 201-203, 226.7, 1198,

and 1174, according to proof;

15. For recovery of civil penalties permitted by Labor Code section 226.3, for violations of Labor Code 226, according to proof;

16. For recovery of civil penalties permitted by Labor Code section 256, for violations of Labor Code sections 201-203, according to proof;

17. For recovery of civil penalties permitted by Labor Code section 1174.5, for violations of Labor Code sections 1174, according to proof;

18. For all civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, pursuant to Labor Code § 2699(i), according to proof;

19. Compensatory damages according to proof;

20. Statutory damages as provided under the Labor Code;

21. Liquidated damages as provided under the Labor Code;

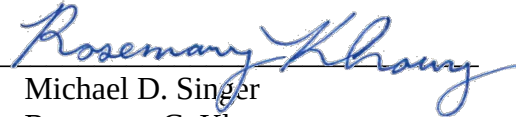
22. Pre-judgment interest on all sums collected;

23. For reasonable attorneys' fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code sections 218.5, 226, 226(h), and 1194, PAGA, and Code of Civil Procedure section 1021.5; and

24. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER

Dated: January 17, 2024

By:   
Michael D. Singer  
Rosemary C. Khoury  
Counsel for Plaintiff Jeffrey Roscher

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER

Dated: January 17, 2024

By:   
Michael D. Singer  
Rosemary C. Khoury  
Counsel for Plaintiff Jeffrey Roscher