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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SOLANO**

12 RITO MURILLO and ANGELICA JIMENEZ,
13 on behalf of themselves and all others similarly
14 situated,

15 Plaintiffs,

16 v.

17 YANDELL TRUCKAWAY, LLC, a California
18 limited liability company; and YANDELL
19 TRUCKAWAY, INC., a California
incorporated company; and DOES 1-50,
inclusive.

20 Defendants.

FILED/ENDORSED
Clerk of the Superior Court

FEB 15 2024

By A. Amaral
DEPUTY CLERK

CASE NO.: CU23-05569

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (8) UNFAIR COMPETITION; and
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiffs Rito Murillo and Angelica Jimenez (collectively, “Plaintiffs”), on behalf of
2 themselves and all other similarly situated non-exempt employees, allege and complain of Defendants
3 Yandell Truckaway, LLC. and Yandell Truckaway, Inc. (“Defendants”) and DOES 1 to 50
4 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendants are providers of transportation and trucking services intended for the wine,
7 food, and beverage industry. The company offers transportation, warehousing, logistics, and value-
8 added services.

9 2. Plaintiffs bring this class and PAGA representative action lawsuit against Defendants
10 for alleged violations of the California Labor Code and Business and Professions Code.

11 3. As set forth below, Plaintiffs allege that Defendants failed to pay for all minimum,
12 overtime, and double-time hours worked due to its unlawful policy/practice, including but not limited
13 to rounding. Moreover, Plaintiffs allege that Defendants’ meal and rest period policies and practices
14 failed to allow and permit non-exempt hourly employees to take all compliant and timely meal and
15 rest periods or pay premium wages at the “regular rate of pay” in lieu thereof.

16 4. Plaintiffs further allege that Defendants failed to provide non-exempt employees with
17 accurate written itemized wage statements in violation of Labor Code § 226(a). In addition,
18 Defendants uniformly issued wage statements that incorrectly identified the employer's name in
19 violation of Labor Code § 226(a)(8), failed to reimburse business expenses, and failed to timely pay
20 all final wages upon separation of employment in violation of Labor Code §§ 201-203.

21 5. Based on these alleged Labor Code violations, Plaintiffs now bring this class and
22 PAGA representative action and representative action to recover unpaid wages, restitution, penalties,
23 and other related relief for themselves and all other similarly situated non-exempt employees.

24 **JURISDICTION AND VENUE**

25 6. Plaintiffs, on behalf of themselves and all others similarly situated employees hereby
26 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
27 201-204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1194, 1197.1, 1199,
28 2802, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to

1 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
2 17200, *et seq.*

3 7. This class action is brought pursuant to the California Code of Civil Procedure § 382.

4 8. This Court has jurisdiction over Defendants' violations of the California Labor Code
5 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
6 minimum.

7 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
8 §§ 395(a) and 395.5, Defendants operate in California within the County of Solano, and Defendants
9 are within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

11 10. At all relevant times herein, Plaintiffs, who are over 18, were and currently are
12 California residents residing in the State of California.

13 11. Plaintiffs are informed and believe and thereon allege that Defendants are authorized
14 to do business within the County of Solano and is and/or was the legal employer of Plaintiffs and the
15 Class Members during the applicable statutory periods. Plaintiffs were victims of Defendants'
16 policies and/or practices complained of herein and have been deprived of the rights guaranteed to her
17 by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510,
18 512, 516, 1194, 1197.1, 1199, 2802, and the California Business and Professions Code § 17200 *et*
19 *seq.*, and applicable Wage Orders.

20 12. Plaintiffs are informed and believe, and based thereon alleges, that during the four years
21 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
22 do) business in the State of California, County of Solano.

23 13. Plaintiffs don't know the true names or capacities, whether individual, partner, or
24 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
25 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
26 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed,
27 and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners,
28 or corporate, were responsible in some manner for the acts and omissions alleged herein, and

1 proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices
2 alleged herein.

3 14. Plaintiffs are informed, and believe, and thereon alleges, that at all times mentioned
4 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
6 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
7 them, were the agents, servants, and employees of each and every one of the other Defendants, as
8 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
9 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
10 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

11 15. At all times mentioned herein, Defendants, and each of them, were members of and
12 engaged in a joint venture, partnership, and common enterprise and acting within the course and
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
14 Plaintiffs alleges that all Defendants were joint employers for all purposes of Plaintiffs and all
15 members of the Classes.

16 **COMMON FACTUAL ALLEGATIONS**

17 16. Defendants are providers of transportation and trucking services intended for the wine,
18 food, and beverage industry. The company offers transportation, warehousing, logistics, and value-
19 added services.

20 17. Plaintiff Murillo was employed by Defendants as a non-exempt hourly employee with
21 the title of “Truck driver” beginning on November 20, 2019, until his separation from employment
22 on or about October 19, 2023.”

23 18. Plaintiff Jimenez was employed by Defendants as a non-exempt hourly employee with
24 the title of “Dispatcher” beginning on February 8, 2021, until her separation from employment on or
25 about September 22, 2023.

26 19. Plaintiffs and other non-exempt employees (including shop supervisor, customer
27 service, freight manager, warehouse worker, and all other non-exempt positions) were responsible
28 for all aspects of Defendants’ business in California. However, in these roles, Plaintiffs and other

1 non-exempt employees were often not afforded all protections and rights conferred under the
2 California Labor Code and applicable Wage Orders.

3 20. At all relevant times, Plaintiffs and other non-exempt employees regularly worked
4 various shifts, many of which were in excess of 8 hours in a workday and 40 hours in a workweek.
5 Plaintiffs allege that other non-exempt employees were also subjected to the same policies,
6 procedures, practices, working conditions, and corresponding wage and hour violations to which he
7 was subjected during his employment.

8 21. First, at all relevant times, Defendants had a consistent practice/policy of unevenly
9 rounding non-exempt hourly employees' time entries to the nearest 15-minute interval. As a result of
10 this practice, over a period of time, Plaintiff Jimenez and non-drivers are not compensated for all the
11 hours that they work and all of the overtime hours they work, in violation of Cal. Labor Code §§ 204,
12 510, 1194, 1197.1, 1199, and applicable Wage Orders.

13 22. California courts have held that rounding time policies can be lawful "if the rounding
14 policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a
15 period of time, in failure to compensate the employees properly for all the time they have actually
16 worked. *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48;
17 see DLSE Manual, *supra*, §§ 47.1, 47.2)."

18 23. Here, Defendants' rounding time policy/practice is not neutral on its face or in its
19 application as non-exempt hourly employees are subject to discipline, including termination for being
20 tardy in reporting to work or returning from a meal period. Moreover, because Defendants can easily
21 track the time worked by aggrieved employees to the minute, the policy exists not for the convenience
22 or benefit of the employees trying to report their time on timecards or otherwise but for Defendants'
23 benefit. As a result, the policy is not neutral on its face, and over a period of time, Plaintiffs and other
24 aggrieved employees were not properly paid for all hours worked in violation of Labor Code §§ 204,
25 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

26 24. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
27 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
28 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,

1 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
2 is underpaid [and] (2) [f]or each subsequent violation for the same specific offense, two hundred
3 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
4 underpaid regardless of whether the initial violation is intentionally committed.

5 25. Labor Code § 510 requires an employer to compensate an employee who works more
6 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
7 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
8 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
9 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
10 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
11 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
12 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
13 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

14 26. By their policy of requiring non-exempt non-driver employees to work in excess of
15 eight (8) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at
16 the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions of
17 Labor Code § 510 and the applicable Wage Orders.

18 27. Moreover, at all relevant times, Plaintiff Jimenez and other non-exempt non-driver
19 employees were denied compliant and timely 30-minute off-duty meal periods as mandated by
20 California law. Due to Defendants' uniform meal period policies/practices and work demands,
21 Plaintiffs and other non-exempt non-driver employees often could not take timely and uninterrupted
22 net 30-minute first meal periods before the end of the fifth hour of work.

23 28. Further, when Plaintiff Jimenez and other non-exempt non-driver employees worked
24 more than 10.0 hours in a shift, they were not allowed and permitted to take a mandated second meal
25 period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage
26 Orders. Indeed, Plaintiff Jimenez's and other non-exempt employees' meal periods were often
27 interrupted and lasted fewer than 30 minutes due to Defendants' meal period policies/procedures,
28 operational requirements, and work demands.

1 29. In addition, for each missed or non-compliant meal period, Defendants failed and
2 continues to fail to maintain a mechanism by which non-exempt non-driver employees were paid
3 meal period premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC*
4 (2021) 11 5th 858 and Labor Code § 226.7.

5 30. Accordingly, due to Defendants’ uniform meal period practices, non-exempt non-
6 driver employees were also regularly denied legally compliant meal periods in violation of Labor
7 Code §§ 226.7, 510, 516, and applicable Wage Orders.

8 31. Next, at all relevant times, Plaintiff Jimenez and other non-exempt non-driver
9 employees were not provided with all 10-minute rest periods for every four hours worked, or a major
10 fraction thereof, due to Defendants’ uniform rest period policies/practices, operational requirements,
11 and work demands. As a result, Plaintiffs and other non-exempt employees were and are often unable
12 to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This
13 includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess
14 of 10.0 hours in a workday.

15 32. By not relieving all non-exempt employees of all duties during rest periods,
16 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
17 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve
18 employees of all duties and relinquish control over how employees spend their time.”] (Emphasis
19 added). In *Augustus*, the California Supreme Court expressly rejected the employer’s assertion that it
20 could provide an on-duty rest period to employees who worked as security guards and further
21 explained: “that employers [must] relinquish any control over how employees spend their break time
22 and relieve their employees of all duties.” *Id.* at 273. Each time non-exempt non-driver employees
23 could not take a compliant rest period, Defendants failed and continue to fail to adequately pay rest
24 period premium payments at the “regular rate of pay” as required by Labor Code § 226.7.

25 33. Accordingly, due to Defendants’ uniform rest period policies/practices, non-exempt
26 non-driver employees were regularly denied legally compliant rest breaks in violation of Labor Code
27 §§ 226.7, 512, and applicable Wage Orders.

1 34. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
2 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
3 and Defendants' failure to adequately pay for all overtime to non-drivers, and meal and rest period
4 premiums at the "regular rate of pay," to non-drivers, Defendants issued wage statements which failed
5 to identify the gross wages earned accurately, the total hours worked, the net wages earned, and the
6 correct corresponding number of hours worked at each hourly rate, in violation of Labor Code §
7 226(a)(1, 2, 5, and 9).

8 35. In addition, Defendants uniformly issued wage statements to aggrieved employees that
9 incorrectly identifies the employer's name in violation of Labor Code § 226(a)(8).

10 36. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
11 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
12 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
13 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
14 deduction statement or fails to keep the required in subdivision (a) of Section 226."

15 37. Thus, for the violations of Labor Code section 226 described above, Plaintiffs and
16 other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants'
17 violations of Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor
18 Code § 226(a), Plaintiffs and other non-exempt employees would be entitled to recover penalties
19 under Labor Code § 226(e).

20 38. Moreover, because Defendants failed to pay all minimum wages to plaintiffs and the
21 class, and overtime, and meal and rest period premiums at the "regular rate of pay," to the non-driver
22 class, Defendants also failed and continue to fail to pay Plaintiffs and other non-exempt employees
23 all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.
24 Thus, non-exempt employees would be entitled to recover waiting time penalties under Labor Code
25 §§ 201-203.

26 39. Finally, at all relevant times, Defendants required Plaintiffs and other non-exempt
27 employees to incur necessary business expenses but did not reimburse non-exempt employees
28 adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. *See Cochran*

1 v. *Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required
2 to make work-related calls on a personal cell phone, then he or she is incurring an expense for the
3 purposes of section 2802. It does not matter whether the phone bill is paid for by a third person or at
4 all...To show liability under section 2802, an employee need only show that he or she was required
5 to use a personal cell phone to make work-related calls, and he or she was not reimbursed"].

6 40. Here, Defendants uniformly failed to reimburse non-exempt employees for a
7 reasonable portion of their cell phone bill and other necessary costs incurred in discharging their
8 duties for those non-exempt employees. Accordingly, due to Defendants' uniform failure to
9 adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802
10 and applicable Wage Orders.

11 **CLASS ACTION ALLEGATIONS**

12 41. Plaintiffs bring this action on behalf of themselves and the following Classes pursuant
13 to § 382 of the Code of Civil Procedure:

14 All non-exempt employees who work or worked for Defendants in
15 California during the four years immediately preceding the filing of the
Complaint through the date of trial. (the "Class");

16 All non-exempt hourly non-driver employees who work or worked for
17 Defendants in California during the four years immediately preceding the
filing of the Complaint through the date of trial. (the "Non-Driver Class");

18 All non-exempt hourly non-driver employees who worked for Defendants
19 in California and worked overtime hours during at least one shift during the
20 four years immediately preceding the filing of the Complaint through the
date of trial. (the "Overtime Subclass");

21 All employees who work or worked for Defendants in California during the
22 one year immediately preceding the filing of the Complaint through the date
23 of trial. (the "Wage Statement Subclass")

24 All employees who work or worked for Defendants in California and who
25 left their employment during the three years immediately preceding the
filing of the Complaint through the date of trial. ("the Waiting Time Penalty
26 Subclass")
(collectively "the Classes")

27 42. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
28 joinder of all members would be unfeasible and not practicable. The membership of the Classes is

unknown to Plaintiffs at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

43. **Common Questions of Law and Fact Predominate/Well-Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants rounding policy/practice failed to pay all Class Members for all minimum wages;

2. Whether Defendants provided legally compliant meal and rest periods or proper compensation at the "regular rate of pay" in lieu thereof to members of the Non-Driver Class;

3. Whether Defendants allowed and permitted the Non-Driver Class to take legally compliant meal periods or pay premium wages at the "regular rate of pay" in lieu thereof;

4. Whether Defendants allowed and permitted Non-Driver Class to take legally compliant rest periods or pay premium wages at the "regular rate of pay" in lieu thereof;

5. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

6. Whether Defendants issued wage statements that incorrectly identify the employer's name in violation of Labor Code § 226(a)(8);

7. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful; and

8. Whether Defendants failed to reimburse Class Members for all necessary business expenses in violation of Labor Code §§ 2802-2804.

44. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as without limitation, Defendants' failure to pay for all hours worked, Defendants' failure to provide all compliant meal and rest periods

1 or premiums at the “regular rate of pay” in lieu thereof, Defendants’ failure to provide accurate
2 itemized wage statements, Defendants’ failure to timely pay wages, Defendants’ failure to reimburse
3 for all necessary business expenses, and Defendants’ failure to pay for all wages due upon separation
4 of employment. As such, the common questions predominate over individual questions concerning
5 each class member’s showing as to his or her eligibility for recovery or the amount of his or her
6 damages.

7 45. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
8 Plaintiffs was employed by Defendants as a non-exempt employee in California during the statute(s)
9 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
10 Plaintiffs, like the members of the Non-Driver Classes, were deprived of overtime wages, were
11 deprived of meal and rest period premium wages, were subject to Defendants’ uniform meal and rest
12 period policies/practices, and the Class were not provided accurate itemized wage statements, was
13 not reimbursed for all necessary business expenses, and was not timely paid all wages owed upon
14 separation of employment.

15 46. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps
16 to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs’
17 attorneys are ready, willing, and able to fully and adequately represent the members of the Classes.
18 Plaintiffs’ attorneys have prosecuted and are actively litigating several wage-and-hour class actions
19 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
20 members of the Classes.

21 47. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
22 important public interest in establishing minimum working conditions and standards in California.
23 These laws and labor standards protect the average working employee from exploitation by
24 employers who have the responsibility to follow the laws and who may seek to take advantage of
25 superior economic and bargaining power in setting onerous terms and conditions of employment. The
26 nature of this action and the format of laws available to Plaintiffs and members of the Classes make
27 the class action format a particularly efficient and appropriate procedure to redress the violations
28 alleged herein. If each employee were required to file an individual lawsuit, Defendants would

1 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
2 limited resources of each individual Plaintiffs with their vastly superior financial and legal resources.

3 48. Moreover, requiring each member of the Classes to pursue an individual remedy would
4 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
5 against their former and/or current employer for real and justifiable fear of retaliation and permanent
6 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
7 the individual class members, even if possible, would create a substantial risk of inconsistent or
8 varying verdicts or adjudications with respect to the individual class members against Defendants
9 herein and which would establish potentially incompatible standards of conduct for Defendants;
10 and/or legal determinations with respect to individual class members which would, as a practical
11 matter, be dispositive of the interest of the other class members not parties to adjudications or which
12 would substantially impair or impede the ability of the class members to protect their interests.
13 Further, the claims of the individual members of the class are not sufficiently large to warrant
14 vigorous individual prosecution, considering all of the concomitant costs and expenses attending
15 thereto. As such, the Classes identified in Paragraph 38 are maintainable as Classes under § 382 of
16 the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **MINIMUM WAGE VIOLATIONS**

19 **(THE CLASS AGAINST ALL DEFENDANTS)**

20 49. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

21 50. Section 4 of the applicable Wage Order(s) and Labor Code §§ 1197 and 1182.12
22 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
23 state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the
24 legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together
25 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
26 wages and interest accrued thereon.

27 51. At all relevant times herein, Defendants failed to conform their pay practices to the
28 requirements of the law. This unlawful conduct includes, but is not limited to, Defendants' uniform

1 and unlawful rounding policy/practice. Accordingly, Plaintiffs and members of the Classes were not
2 compensated for all hours worked, including all hours they were subject to the control of Defendants
3 and/or suffered or permitted to work under the Labor Code and applicable Wage Orders.

4 52. Labor Code § 1198 makes the employment of an employee unlawful under conditions
5 that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that
6 an employer who has failed to pay its employees the legal minimum wage is liable to pay those
7 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
8 to the wages due and interest thereon.

9 53. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
10 Plaintiffs and the Classes have sustained economic damages, including but not limited to unpaid
11 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
12 economic and statutory damages and penalties and other appropriate relief as a result of Defendants'
13 violations of the Labor Code and applicable Wage Orders.

14 54. Defendants' practice and uniform administration of corporate policy regarding illegal
15 employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and members
16 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
17 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
18 Code §§ 204, 210, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY ALL OVERTIME WAGES**

21 **(OVERTIME SUBCLASS AGAINST ALL DEFENDANTS)**

22 55. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 56. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
24 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
25 hours worked and provide a private right of action for the failure to pay all overtime compensation
26 for overtime work performed.

27 57. At all times relevant herein, Defendants were required to properly pay Plaintiff
28 Jimenez and members of the Overtime Subclass for all overtime hours worked pursuant to California

1 Labor Code § 1194 and the applicable Wage Orders.

2
3 58. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
4 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
5 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
6 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
7 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
8 the workweek. Defendants caused Plaintiff Jimenez to work overtime and hours but did not
9 compensate Plaintiffs or members of the Overtime Subclass at one and one-half times their “regular
10 rate of pay” for such hours.

11 59. Defendants failed to conform their pay practices to the requirements of the law. At all
12 relevant times herein, Defendants failed to conform their pay practices to the requirements of the law.
13 This unlawful conduct includes but is not limited to the Defendants’ time rounding policy/practice
14 and Defendants’ failure to properly pay for all hours worked, including all overtime hours at the
15 proper overtime rate.

16 60. The foregoing policies and practices are unlawful and create an entitlement to recovery
17 by Plaintiff Jimenez and the members of the Overtime Subclass in a civil action for the unpaid amount
18 of overtime wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit
19 according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code
20 of Civil Procedure § 1021.5.

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **(NON-DRIVER CLASS AGAINST ALL DEFENDANTS)**

24 61. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

25 62. Plaintiffs are informed and believe, and based thereon alleges, that Defendants failed
26 in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
27 Jimenez and members of the Non-Driver Class, with all required meal periods in accordance with the
28 mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the

1 Common Allegations section of this Complaint.

2
3 63. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
4 the "regular rate of pay" to Plaintiff Jimenez and Non-Driver Class members at their respective
5 regular rates of pay for each violation, per California Labor Code § 226.7.

6 64. As a result, Defendants are responsible for paying premium compensation for meal
7 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
8 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

9 **FOURTH CAUSE OF ACTION**

10 **REST PERIOD VIOLATIONS**

11 **(NON-DRIVER CLASS AGAINST ALL DEFENDANTS)**

12 65. Plaintiffs re-alleges and incorporates by reference all previous paragraphs.

13 66. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516
14 establishes the right of non-exempt employees to be provided with a rest period of at least ten (10)
15 minutes for each four (4) hour period worked or major fraction thereof.

16 67. Due to their unlawful rest period policy/practices and operational requirements/work
17 demands, Defendants did not authorize and permit Plaintiff Jimenez and members of the Non-Driver
18 Class to take all rest periods to which they were legally entitled.

19 68. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
20 the "regular rate of pay" to Plaintiff Jimenez and Non-Driver Class members at their respective
21 regular rates of pay for each violation, per California Labor Code § 226.7.

22 69. The foregoing violations create an entitlement to recovery by Plaintiff Jimenez and
23 members of the Non-Driver Class in a civil action for the unpaid amount of rest period premiums
24 owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable
25 Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

26 **FIFTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

28 **(THE CLASS AGAINST ALL DEFENDANTS)**

1 70. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

2 71. Labor Code 226(a) states in pertinent part the following:

3 “(a) An employer, semimonthly or at the time of each payment of wages,
4 shall furnish to his or her employee, either as a detachable part of the check,
5 draft, or voucher paying the employee’s wages, or separately if wages are
6 paid by personal check or cash, an accurate itemized statement in writing
7 showing (1) gross wages earned, (2) total hours worked by the employee,
8 (3) the number of piece-rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis, (4) all deductions, provided that all
10 deductions made on written orders of the employee may be aggregated and
11 shown as one item, (5) net wages earned, (6) the inclusive dates of the
12 period for which the employee is paid, (7) the name of the employee and
13 only the last four digits of his or her social security number or an employee
14 identification number other than a social security number, (8) the name and
15 address of the legal entity that is the employer, and (9) all applicable hourly
16 rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee.”

18 72. As set forth above, during the Class Period, Defendants issued and continue to issue
19 wage statements to its employees, including Plaintiffs and members of the Wage Statement Subclass,
20 which are inadequate under Labor Code Section § 226(a).

21 73. As a result of Defendants failure to pay Plaintiffs and the Wage Statement Subclass
22 for all overtime wages and missed meal and rest period premiums at the appropriate legal rate (for
23 the Non-Driver Class), Defendants failed to include required information on Plaintiffs and the Wage
24 Statement Subclass’ wage statements, including, but not limited to, the gross wages earned, the net
25 wages earned in violation of Labor Code section 226(a), (1,2,5,6 and 9).

26 74. In addition, Defendants uniformly issued wage statements to non-exempt employees
27 that incorrectly identifies the employer's name in violation of Labor Code § 226(a)(8).

28 75. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
 and intentional.

 76. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiffs
 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
 Code, Plaintiffs and members of the Wage Statement Subclass are each entitled to recover an initial
 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty

1 of \$4,000 per Plaintiffs and per every member of the Wage Statement Subclass from Defendants
2 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

3 **SIXTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

5 **(THE CLASS AGAINST ALL DEFENDANTS)**

6 77. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 78. The actionable period for this cause of action is three years before filing this Complaint
8 through the present and ongoing until the violation is corrected or the class is certified.

9 79. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
10 to Plaintiffs and the Waiting Time Subclass during the actionable period for this cause of action at or
11 around the time their employment is terminated or ended.

12 80. Labor Code § 203 provides that if an employer willfully fails to pay compensation
13 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, the
14 employer is liable for penalties for continued compensation up to thirty (30) workdays.

15 81. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
16 including all minimum and overtime wages, and their meal and rest period premiums at the "regular
17 rate of pay" before or upon termination or separation from employment with Defendants as required
18 by Labor Code §§ 201 and 202.

19 82. Consequently, Defendants are liable to the Waiting Time Subclass for waiting time
20 penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Time Subclass pursuant
21 to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon
22 termination entitles an employee to recover waiting time penalties).

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

25 **(THE CLASS AGAINST ALL DEFENDANTS)**

26 83. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

27 84. Labor Code 2802(a) states in pertinent part the following: "(a) An employer shall
28 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in

1 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
2 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful.”

4 85. As set forth above, Plaintiffs and Class members must be compensated for all
5 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
6 personal cell phone bills incurred in discharging their duties. (See *Cochran v. Schwan’s Home*
7 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal
8 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.
9 Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
10 reimbursement owed is a reasonable percentage of their cell phone bills.”); *Ritchie v. Blue Shield of*
11 *California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement
12 claim and adopting the logic of *Cochran*).

13 86. At all relevant times, by failing to reimburse Plaintiffs and the Class for all necessary
14 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
15 applicable Wage Orders.

16 **EIGHT CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(THE CLASS AGAINST ALL DEFENDANTS)**

19 87. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20 88. Defendants have engaged and continue to engage in unfair and/or unlawful business
21 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
22 failing to pay for all hours worked, including overtime wages, by failing to provide all legally required
23 meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing
24 to provide accurate wage statements, by failing to reimburse for all necessary business expenses
25 adequately, and by failing to pay all earned wages at the time of separation from employment.

26 89. Defendants’ utilization of these unfair and/or unlawful business practices deprived
27 Plaintiffs and continues to deprive members of the Classes of compensation to which they are legally
28 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over

1 Defendants' competitors who have been and/or are currently employing workers and attempting to
2 do so in honest compliance with applicable wage and hour laws.

3 90. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
4 herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full restitution of
5 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
6 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

7 91. The acts complained of herein occurred within the last four years immediately
8 preceding the filing of the Complaint in this action.

9 92. Plaintiffs were compelled to retain the services of counsel to file this court action to
10 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
11 Defendants' current hourly non-exempt employees, and to enforce important rights affecting the
12 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
13 which he is entitled to recover under Code of Civil Procedure § 1021.5.

14 **NINTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **(THE CLASS AGAINST ALL DEFENDANTS)**

17 93. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

18 94. Defendants have committed several Labor Code violations against Plaintiffs and
19 other similarly aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of Labor
20 Code § 2698 *et seq.*, acting on behalf of themselves and other similarly aggrieved employees, bring
21 this PAGA representative action against Defendants to recover the civil penalties due to Plaintiffs,
22 other similarly aggrieved employees, and the State of California according to proof pursuant to Labor
23 Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200
24 for each subsequent violation per employee per pay period for those violations of the Labor Code for
25 which no civil penalty is specifically provided based on the following Labor Code violations:

26 a. Failing to pay all overtime and sick wages to Plaintiffs and other similarly Aggrieved
27 Employees at the appropriate legal rate to members;

28 b. Failing to provide Plaintiffs and other similarly situated Aggrieved Employees with

1 all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194, and 1198;

2 c. Failing to authorize and permit Plaintiffs and other similarly situated aggrieved
3 employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and
4 516.

5 d. Failing to furnish Plaintiffs and other similarly situated employees with complete,
6 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

7 e. Failing to reimburse Plaintiff and other aggrieved employees with all necessary
8 business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders; and

9 f. Failing to pay Plaintiff and similarly aggrieved employees for all minimum wages for
10 all hours worked or for which they were subject to the employer's control.

11 95. On or about November 22, 2023, Plaintiffs notified Defendants Yandell Truckaway,
12 LLC and Yandell Truckaway, Inc. and the California Labor and Workforce Development Agency
13 (“LWDA”) via email of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with
14 respect to violations of the California Labor Code identified in Paragraph 97.

15 96. Plaintiffs have exhausted their administrative requirements for bringing a claim under
16 the Private Attorneys General Act with respect to these violations.

17 97. Plaintiffs were compelled to retain the services of counsel to file this court action to
18 protect their interests and the interests of similarly aggrieved employees and to assess and collect the
19 civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys’ fees and costs, which
20 they are entitled to receive under California Labor Code § 2699.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs pray for judgment for themselves and all others on whose behalf
23 this suit is brought against Defendants, as follows:

- 24 1. For an order certifying the proposed Classes;
- 25 2. For an order appointing Plaintiffs as representatives of the Classes;
- 26 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
- 27 4. Upon the First and Second Cause of Action for compensatory, consequential,
28 general, and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194,

1 1197, 1197.1, and 1198 and reasonable attorneys' fees and costs;

2 5. Upon the Third Cause of Action, for compensatory, consequential, general, and
3 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, and 1198
4 and reasonable attorneys' fees and costs;

5 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
6 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

7 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

9 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
10 reasonable costs and attorney's fees;

11 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
12 Labor Code §§ 201-203;

13 10. Upon the Seventh Cause of Action, for unreimbursed expenses, interest, and
14 attorney's fees and costs pursuant to Labor Code § 2802;

15 11. Upon the Eight Cause of Action, for restitution to Plaintiffs and members of the
16 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
17 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

18 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
19 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
20 (a) and (f) including, but not limited to (1) \$100.00 for each initial violation and \$200 for each
21 subsequent violation per employee per pay period for those violations of the Labor Code for which
22 no civil penalty is specifically provided under the Labor Code;

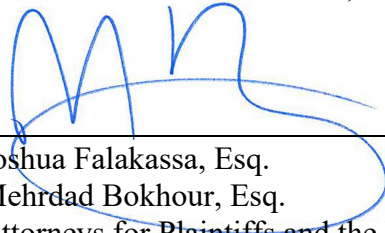
23 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
24 § 218.6 and Civil Code §§ 3287 and 3289;

25 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
26 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

27 15. For such other relief that the Court may deem just and proper.
28

1 Dated: February 14, 2024

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

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4 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiffs and the Putative Classes

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