

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiffs,
BENJAMIN DOUGLAS, JOSE CHAVEZ,
LOUIS GALLEGOS AND ALAN CHILDS,
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

BENJAMIN DOUGLAS, JOSE
CHAVEZ, LOUIS GALLEGOS AND
ALAN CHILDS, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HUNTAWAY MIDSTREAM WEST,
LLC. a California limited liability
company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 23STCV31910

FIRST AMENDED COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 9);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. *Labor Code* §§ 1194, 1197, 1197.1, 1198; IWC Wage Order No. 9);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. *Labor Code* § 226.7; IWC Wage Order No. 9);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226);**
- 6. FAILURE TO MAINTAIN ACCURATE RECORDS (Cal. *Labor Code* §1174(d));**
- 7. FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION (Cal. *Labor Code* §§201-203);**
- 8. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* §2802);**
- 9. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5); and**

FILED
Superior Court of California
County of Los Angeles
02/20/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 **10. UNFAIR COMPETITION (Cal. Bus. & Prof.**
2 **Code §§17200 et seq.**
3 **11. PRIVATE ATTORNEY GENERAL ACT**
4 **(PAGA)**

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6
7 **DEMAND FOR A JURY TRIAL**
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10 All allegations in this Amended Complaint are based upon information and belief ex-
11 cept for those allegations which pertain to the Plaintiffs named herein and their counsel. Each
12 allegation has evidentiary support or is likely to have evidentiary support after a reasonable op-
13 portunity for further investigation and discovery.

14 BENJAMIN DOUGLAS, JOSE CHAVEZ, LOUIS GALLEGOS and ALAN CHILDS
15 (“Plaintiffs”) allege the following:

16 1. This is a class action brought under California law by individuals who were
17 employed by Huntaway Midstream West, LLC. (along with DOES 1 through 100, collectively
18 “Defendant”). Plaintiffs bring this action on behalf of themselves and others similarly situated
19 to recover wages from Defendant due to Defendant’s systematic failure to pay overtime/double
20 time, failure to pay minimum wages, failure to provide meal and rest breaks (or pay the
21 statutory compensation due), failure to maintain records and to provide accurate itemized wage
22 statements, failure to maintain accurate records, failure to pay wages on termination and/or
23 resignation, failure to reimburse business expenses, and failure to allow inspection of
24 employment records.

25 2. Plaintiffs have worked as employees for Defendant’s trucking and hauling
26 company in Pico Rivera, California. While working, Plaintiffs and members of the Class have
27 been forced to endure stressful and illegal workplace conditions created by Defendant’s efforts
28 to maximize profits and tightly control labor costs.

1 3. Plaintiffs, like their co-workers whom Defendant also employed during the
2 applicable limitations period, spend their workdays as Fuel Truck Drivers and other nonexempt
3 hourly employees, under illegal and highly regimented circumstances. That regimen results
4 from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
5 accomplishes by not paying for all labor costs, failing to pay overtime/double time, failing to
6 pay minimum wages, failing to provide meal and rest breaks (or pay the statutory compensation
7 due), failing to maintain records and to provide accurate itemized wage statements, failing to
8 maintain accurate records, failing to pay wages on termination and/or resignation, failing to
9 reimburse business expenses, unlawfully deducting wages, failing to allow inspection of
10 employment records and by using other unlawful stratagems to ensure that labor costs remain
11 artificially low.

12 4. Plaintiffs brings this class action to recover, among other things, wages and
13 penalties from unpaid wages earned and due, including but not limited to, premium
14 overtime/double time wages, minimum wages, late and missed meal/rest break wages, wages
15 due to discharged or quitting employees, penalties for failure to maintain required records and
16 to provide accurate itemized wage statements, to maintain accurate records, to pay wages on
17 termination and/or resignation, to reimburse business expenses and failure to allow inspection
18 of employment records and interest, attorneys' fees, costs.

19 5. Plaintiffs seek compensatory, statutory, declaratory, and injunctive relief for
20 themselves and all members of the class, to compensate these workers for the unpaid wages and
21 to protect current and future workers of Defendant from being subjected to similar wage theft
22 and otherwise unlawful working conditions.

23 6. Plaintiffs also bring an action seeking relief for Defendant's violations of
24 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
25 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
26 business practices, as well as injunctive relief.

27 //

28 //

7. Plaintiffs have sent a letter to the Labor and Workforce Development Agency in compliance with the Private Attorneys General Act of 2004 (“PAGA”) and intend to amend this Amended Complaint to assert PAGA claims after the PAGA exhaustion period has passed.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this Amended Complaint under Code of Civil Procedure

§410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiffs Benjamin Douglas, Jose Chavez, Louis Gallegos and Alan Childs bring this Amended Complaint on their own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Los Angeles and because Defendant owned and operates their businesses in the County of Los Angeles.

THE PARTIES

PLAINTIFFS

10. At all times relevant hereto, Plaintiff Benjamin Douglas (“Douglas”) was:

- (a) An individual over age 18 and a resident of Norwalk, California;
- (b) Employed as a Fuel Truck Driver for Defendant Huntaway Midstream West, LLC (“Huntaway” or “Defendant”) in Pico Rivera, California;
- (c) Did not receive overtime/double time as required by *Labor Code* §§ 510, 511, 558, 1194, 1198 and the applicable Wage Orders;
- (d) Did not receive minimum wage compensation as required by *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;

- 1 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
2 applicable Wage Orders;
3 (g) Did not receive accurate itemized wage statements as mandated by
4 *Labor Code* §226;
5 (h) Was not paid wages on termination and/or resignation in violation of
6 *Labor Code* §§201-203;
7 (i) Did not have accurate records maintained on his behalf as mandated by
8 *Labor Code* §1174;
9 (j) Did not receive reimbursement for business expenses as mandated by
10 *Labor Code* § 2802; and
11 (k) Was not allowed to inspect his employment records in violation of Cal.
12 *Labor Code* §1198.5.

13 11. At all times relevant hereto, Plaintiff Jose Chavez (“Chavez”) was:

- 14 (a) An individual over age 18 and a resident of Bakersfield, California;
15 (b) Employed as a Fuel Truck Driver for Defendant in Pico Rivera,
16 California;
17 (c) Did not receive overtime/double time as required by *Labor Code* §§ 510,
18 511, 558, 1194, 1198 and the applicable Wage Orders;
19 (d) Did not receive minimum wage compensation as required by *Labor*
20 *Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
21 (e) Did not receive the meal periods required by *Labor Code* §266.7 and the
22 applicable Wage Orders;
23 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
24 applicable Wage Orders;
25 (g) Did not receive accurate itemized wage statements as mandated by
26 *Labor Code* §226;
27 (h) Was not paid wages on termination and/or resignation in violation of
28 *Labor Code* §§201-203;

- 1 (i) Did not have accurate records maintained on his behalf as mandated by
2 *Labor Code* §1174;
3 (j) Did not receive reimbursement for business expenses as mandated by
4 *Labor Code* § 2802; and
5 (k) Was not allowed to inspect his employment records in violation of Cal.
6 *Labor Code* §1198.5.

7 12. At all times relevant hereto, Plaintiff Louis Gallegos (“Gallegos”) was:

- 8 (a) An individual over age 18 and a resident of Altadena, California;
9 (b) Employed as a Fuel Truck Driver for Defendant in Pico Rivera,
10 California;
11 (c) Did not receive overtime/double time as required by *Labor Code* §§ 510,
12 511, 558, 1194, 1198 and the applicable Wage Orders;
13 (d) Did not receive minimum wage compensation as required by *Labor*
14 *Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
15
16 (e) Did not receive the meal periods required by *Labor Code* §266.7 and the
17 applicable Wage Orders;
18 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
19 applicable Wage Orders;
20 (g) Did not receive accurate itemized wage statements as mandated by
21 *Labor Code* §226;
22 (h) Was not paid wages on termination and/or resignation in violation of
23 *Labor Code* §§201-203;
24 (i) Did not have accurate records maintained on his behalf as mandated by
25 *Labor Code* §1174;
26 (j) Did not receive reimbursement for business expenses as mandated by
27 *Labor Code* § 2802; and
28

1 (k) Was not allowed to inspect his employment records in violation of Cal.
2 *Labor Code* §1198.5.

3 13. At all times relevant hereto, Plaintiff Alan Childs (“Childs”) (collectively with
4 Douglas, Chavez and Gallegos “Plaintiffs”) was:

- 5 (a) An individual over age 18 and a resident of Moreno Valley, California;
6 (b) Employed as a Fuel Truck Driver for Defendant in Pico Rivera,
7 California;
8 (c) Did not receive overtime/double time as required by *Labor Code* §§ 510,
9 511, 558, 1194, 1198 and the applicable Wage Orders;
10 (d) Did not receive minimum wage compensation as required by *Labor*
11 *Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
12 (e) Did not receive the meal periods required by *Labor Code* §266.7 and the
13 applicable Wage Orders;
14 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
15 applicable Wage Orders;
16 (g) Did not receive accurate itemized wage statements as mandated by
17 *Labor Code* §226;
18 (h) Was not paid wages on termination and/or resignation in violation of
19 *Labor Code* §§201-203;
20 (i) Did not have accurate records maintained on his behalf as mandated by
21 *Labor Code* §1174;
22 (j) Did not receive reimbursement for business expenses as mandated by
23 *Labor Code* § 2802; and
24 (k) Was not allowed to inspect his employment records in violation of Cal.
25 *Labor Code* §1198.5.

26 **DEFENDANT**

27 14. Plaintiffs is informed and believes, and based on that information and belief,
28 alleges, Defendant Huntaway is, and at all times mentioned herein was:

- 1 (a) A California limited liability company, with a principal place of business
2 at 8520 Fishman Road, Pico Rivera, California 90660. Huntaway has
3 been authorized to do business and has been doing business in the
4 County of Los Angeles;
- 5 (b) The former employer of Plaintiffs and the current and former employer
6 of the putative Class members;
- 7 (c) Paid Plaintiffs and all Class Members on an hourly basis;
- 8 (d) Failed to pay Plaintiffs and all putative Class members premium
9 overtime/double time wages;
- 10 (e) Failed to Plaintiffs and all putative Class members minimum wages;
- 11 (f) Failed to provide Plaintiffs and all putative Class members with meal
12 and rest periods, failed to provide Plaintiffs and all putative Class
13 Members with accurate itemized wage statements;
- 14 (g) Did not properly pay wages on termination and/or resignation;
- 15 (h) Failed to maintain accurate records:
- 16 (i) Failed to reimburse business expenses; and
- 17 (j) Failed to allow inspection of personnel records. Each of these was a
18 violation of the *Labor Code*.

19 15. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
21 to Plaintiffs, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
22 *Civil Procedure* § 474. Plaintiffs will seek leave to amend their Amended Complaint to allege
23 the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

24 16. Plaintiffs is informed and believes, and based on that information and belief
25 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
26 reside in or are authorized to do, or are otherwise doing, business in the State of California.
27 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
28 conduct business in the County of Los Angeles. Each of the Defendants DOES 1 through 100

1 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
2 alter ego and/or representative of one or more of the other Defendants named herein, and acting
3 with permission, authorization, and/or ratification and consent of the other Defendants.

4 17. Plaintiffs is informed and believes, and based on that information and belief
5 alleges, that the Defendants named in this Amended Complaint, including DOES 1 through
6 100, inclusive, are responsible in some manner for one or more of the events and happenings
7 that proximately caused the injuries and damages hereinafter alleged.

8 18. Plaintiffs is informed and believes, and based on that information and belief
9 alleges, that Defendants named in this Amended Complaint, including DOES 1 through 100,
10 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of
11 each of the other Defendants and that each Defendant was acting within the course and scope of
12 his, hers or its authority as the agent, servant and/or employee of each of the other Defendants.
13 Consequently, all of the Defendants are jointly and severally liable to the Plaintiffs, and the
14 Class, for the damages sustained as a proximate result of their conduct.

15 19. Plaintiffs is informed and believes, and based on that information and belief
16 alleges, that the Defendant named in this Amended Complaint, including DOES 1 through 100,
17 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
18 themselves and entered into a combination and systemized campaign of activity to *inter alia*
19 damage Plaintiffs, and the Class, and to otherwise consciously and/or recklessly act in
20 derogation of the rights of Plaintiffs and the Class, and the trust reposed by Plaintiffs, and the
21 Class, the acts being negligently and/or intentionally inflicted. Their conspiracy, and
22 Defendant's concerted actions, were such that, to Plaintiffs's information and belief, and to all
23 appearances, Defendant, represented a unified body so that the actions of one Defendant were
24 accomplished in concert with, and with the knowledge, ratification, authorization and approval
25 of each of the other Defendants.

26 **CLASS ALLEGATIONS**

27 **A. The Definition of the Class**

28 20. The Class ("the Class") is defined as follows:

- 1 (a) "All current and former employees of Defendant in California who were
2 paid hourly at any time during the period commencing on the date that is
3 four (4) years prior to the filing of this Amended Complaint and continuing
4 through the present date (the "Class Period")."
- 5 (b) "All persons who were employees of Defendant in California who were paid
6 hourly and left the employ of Defendant at any time during the period
7 commencing on the date that is within one (1) year prior to the filing of this
8 Amended Complaint and continuing through the present date (the "Class
9 Period")."

10 21. Plaintiffs reserve their rights under Rule 3.765 of the California Rules of Court
11 to amend or modify the Class description with greater specificity or further division into
12 subclasses or limitation to particular issues.

13 22. Plaintiffs will file notice with the Labor and Workforce Development Agency
14 and obtain authorization under the Private Attorney General Act. They will amend this
15 Amended Complaint after the statutory time period has elapsed.

16 **B. Maintenance of the Action**

17 23. Plaintiffs bring this action individually and on behalf of themselves and as
18 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
19 and 17204 and *Code of Civil Procedure* § 382.

20 **C. The Class Requisites**

21 24. At all material times, Plaintiffs were members of the Class.

22 25. The Class action meets the statutory prerequisites for maintaining a class action
23 under Code of Civil Procedure § 382 in that:

- 24 (a) The persons who comprise the Class are so numerous that the joinder of all
25 those persons is impracticable and the disposition of their claims as a Class
26 will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Amended Complaint are common to the Class and
3 will apply uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiffs are typical of the claims of each
5 Class member. Plaintiffs, like all Class members, have sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiffs, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendant;
- 10 (d) The representative Plaintiffs have, and will continue to, fairly and
11 adequately represent and protect the interests of the Class and have
12 retained counsel who are competent and experienced in class action
13 litigation. There are no material conflicts between the claims of the
14 representative Plaintiffs and the Class members that would make class
15 certification inappropriate. Counsel for the Class will vigorously assert the
16 claims of all Class members.

17 26. The persons who comprise the Class are so numerous that joining all of them is
18 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
19 Plaintiffs' claims are typical of the claims of the Class that Plaintiffs seek to represent.
20 Plaintiffs will fairly and adequately protect the interests of the Class they seek to represent.
21 Plaintiffs do not have any interests that are antagonistic to the Class they seek to represent.
22 Counsel for Plaintiffs are experienced, qualified and generally able to conduct complex class
23 action litigation.

24 27. The Court should permit the action to be maintained as a class action under
25 *Code of Civil Procedure* § 382 because:

- 26 (a) The questions of law and fact common to the Class predominate over any
27 question affecting only individual members:
28

- 1 (b) A class action is superior to any other available method for fairly and
2 efficiently adjudicating the claims of the Class;
- 3 (c) The Class members are so numerous that it is impractical to bring all of
4 them before the Court;
- 5 (d) Plaintiffs and other Class members will not be able to obtain effective and
6 economic legal redress unless the action is maintained as a class action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the statutory violations, and in obtaining adequate
9 compensation for the damages and injuries for which Defendants are
10 responsible in an amount sufficient to adequately compensate the Class
11 members;
- 12 (f) Without Class certification, the prosecution of separate actions by
13 individual Class members would create a risk of:
- 14 i. Inconsistent or varying adjudications for individual Class members
15 that would establish incompatible standards of conduct for
16 Defendants; and/or,
- 17 ii. Adjudication for individual Class members that would, as a
18 practical matter, dispose of other non-party members' interests, or
19 that would substantially impair or impede the non-parties' ability
20 to protect their interests, by, for example, potentially exhausting
21 the funds available from Defendant, and
- 22 (g) Defendant has acted or refused to act on grounds generally applicable to
23 the Classes, making final injunctive relief appropriate for the Class, as a
24 whole.

25 28. Plaintiffs contemplate eventually issuing notice to the proposed Class Members
26 that would set forth the subject and nature of the action. The Defendant's own business records
27 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
28

1 any further notices may be required, Plaintiffs would contemplate using additional media
2 and/or mailing.

3 **GENERAL ALLEGATIONS**

4 29. At all times material hereto, Huntaway has been, and is, a trucking and hauling
5 company.

6 30. Plaintiffs and members of the Class were employed as Fuel Truck Drivers and
7 other nonexempt hourly employees in California by Defendant at various times during the
8 Class Period.

9 **THE CONDUCT**

10 31. Plaintiffs seek relief from Defendant's uniform policies and practices of denying
11 Plaintiffs and members of the Class wages and compensation owed under California law.

12 32. Starting on or about July 6, 2022 and continuing through November 8, 2023,
13 Defendant employed Plaintiff Douglas as a Fuel Truck Driver in Pico Rivera, California. While
14 employed by Defendant, Plaintiff Douglas was paid \$47.00 per hour.

15 33. Starting in or about February 2023 and continuing through November 14, 2023,
16 Defendant employed Plaintiff Chavez as a Fuel Truck Driver in Pico Rivera, California. While
17 employed by Defendant, Plaintiff Douglas was paid \$37.00 per hour.

18 34. Starting in or about July 2023 and continuing through November 2023,
19 Defendant employed Plaintiff Gallegos as a Fuel Truck Driver in Pico Rivera, California.
20 While employed by Defendant, Plaintiff Gallegos was paid \$45.00 per hour.

21 35. Starting on or about July 5, 2021 and continuing through November 14, 2023,
22 Defendant employed Plaintiff Childs as a Fuel Truck Driver in Pico Rivera, California. While
23 employed by Defendant, Plaintiff Childs was paid \$47.00 per hour.

24 36. The employment by Defendant of the Class Members, and each them, is
25 governed by Industrial Welfare Commission Wage Order 9, which covers those persons
26 employed in the Transportation Industry.

1 37. On December 29, 2023, Plaintiff sent correspondence via certified mail to
2 Defendant Huntaway Midstream West, LLC advising of his and the class member
3 representation pursuant to the provisions of California Labor Code section 2699, *et seq.*

4 **FAILURE TO PAY MINIMUM WAGES**

5 38. Employers must compensate non-exempt employees for “off-the-clock” work
6 (before punching in or after punching out on a time clock) if the employers knew or should
7 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
8 (2000) 22 Cal. 4th 575, 585.

9 39. Defendant required Plaintiff Chavez and the Class to regularly perform
10 compensable tasks pre-shift off-the-clock for which they did not receive any compensation.
11 Specifically, as part of the Class members’ employment, Defendant required Plaintiff Chavez
12 to drive to a truck stop in Travers, CA, which is 1.25 hours north of his home in Bakersfield, to
13 pick up his truck. If the truck is not there when Plaintiff Chavez arrives, which is the case at
14 least half of the time since it is late, Plaintiff Chavez is required to sit around and wait for it.
15 Plaintiff Chavez is not permitted to leave; he must stand nearby and wait for the truck to arrive.
16 Only after the truck arrives, was Plaintiff Chavez and members of the Class, finally able clock
17 in for their shifts. As a result, and because they improperly treated such pre-shift stand by time
18 as non-compensable, Defendant failed to compensate Plaintiff Chavez and the Class for such
19 time.

20 40. Plaintiff Douglas observed Defendant telling employees that they were not
21 allowed to clock in until the truck arrived. Further, on some occasions Defendant required
22 Plaintiffs to show up for their shifts early, but they were not allowed to clock in until the start
23 time of their shifts.

24 41. Under California law, non-exempt employees as defined by the applicable Wage
25 Order are entitled to minimum wages. Plaintiffs and members of the Class were not paid
26 minimum wages.

27 **FAILURE TO PAY OVERTIME/DOUBLE TIME**
28

1 42. At all times during the relevant time period, Plaintiffs and Class members
2 routinely worked schedules such that they were due pay at overtime/double time rates.
3 Plaintiffs' typical shifts were 12 or more hours. During this period, it was the practice and
4 policy of Defendant to not pay employees overtime/double time. Monies for unpaid
5 overtime/double time remain due and owing.

6 43. Under California law, non-exempt employees as defined by Wage Order 9, are
7 entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
8 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.
9 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
10 requisite rest and/or meal periods are not provided.

11 **MISSED MEAL BREAKS**

12 44. Plaintiffs and the Class were routinely not provided meal breaks, breaks were
13 offered late and/or interrupted. Further, Plaintiffs were restricted from leaving the truck
14 unattended during their meal breaks.

15 45. Defendant had an unlawful policy and procedure of automatically deducting
16 ("auto-deduct") 30 minutes for meal periods from employees' daily hours even if employees
17 did not receive their meals periods. This auto-deduct policy was unlawful and did not account
18 for whether meal periods were actually provided, whether employees were able to take their
19 meal periods at all, whether they took meal periods of less than 30 minutes and whether they
20 were free from interruption for the full 30 minutes. As a result of this policy, Defendant failed
21 to compensate these employees with at least minimum wage rate for all time worked when their
22 daily hours were automatically reduced even though employees did not receive a meal period,
23 their meal periods were cut short and/or interrupted.

24 46. Defendant's policies and procedures were applied to all non-exempt employees
25 in California and resulted in non-exempt employees working time which was not compensated
26 by any wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders.
27 As a result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of
28

1 their California non-exempt employees whose daily hours were automatically reduced even
2 though they did not take meals periods, the meal periods were shortened and/or interrupted.

3 **REST BREAKS ROUTINELY NOT AFFORDED**

4 47. Plaintiffs were not afforded rest breaks and/or their rest breaks were interrupted.

5 **LACK OF EXPENSE REIMBURSEMENT**

6 48. Plaintiffs and Class Members incurred out-of-pocket expenses relating to their
7 work such as cell phone and personal vehicle use, but were not reimbursed therefor. Plaintiff
8 and Class members were required to use their personal cell phones to clock in for their shifts.

9 **FAILURE TO MAINTAIN ACCURATE RECORDS**

10 49. Pursuant to Labor Code section 1174.5, any person employing labor who
11 willfully fails to maintain accurate and complete records required by Labor Code section
12 1174(d) is subject to a penalty. On information and belief, Defendant intentionally failed to
13 maintain accurate records regarding Plaintiffs and members of the Class, including the
14 applicable rates of pay and total wages earned for the payroll period. Defendant auto-deducted
15 Plaintiffs' meal periods despite Plaintiffs not taking meal breaks.

16 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

17 50. Defendant failed to allow Plaintiffs and Class members to timely inspect their
18 records and payroll files.

19 51. As a result of Defendant's failure to pay employees at required overtime/double
20 time rates, minimum wages, premium pay for missed meal/rest breaks, the wage statements
21 issued to the employees did not comply with *Labor Code* §226 and California Industrial
22 Welfare Commission ("IWC") Wage Order 9 in that they did not accurately reflect all wages
23 earned and due and owing.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME/DOUBLE TIME**

26 **(Labor Code §§510, 558, 1194.3 and Wage Order 9 By Plaintiffs Against Defendant and**
27 **Does 1-100)**

1 52. Plaintiffs and the Class reallege and incorporate by reference all of the
2 allegations set forth in this Amended Complaint.

3 53. During Plaintiffs entire employment with Defendant, pursuant to Cal. Lab. Code
4 §§510, 1194, and 1198, and IWC Wage Order No. 9, Defendant was required to compensate
5 Plaintiffs with premium pay for all overtime/double time work performed in their positions, for
6 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the
7 first eight (8) hours on the seventh (7th) consecutive day of any work week.

8 54. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
9 who had not been paid overtime/double time compensation could recover the unpaid balance of
10 the full amount of overtime/double time wages due, including interest thereon, together with
11 reasonable attorneys' fees and costs of suit.

12 55. Pursuant to IWC Wage Order No 9-2001, § 3, "Employment beyond eight (8)
13 hours in any workday is permissible provided the employee is compensated for such overtime
14 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
15 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
16 workday...

17 56. California Labor Code section 558 provides in pertinent part:

18 (a) Any employer or other person acting on behalf of an employer who
19 violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the
21 Industrial Welfare Commission shall be subject to a civil penalty as
22 follows:

23 (1) For any initial violation, fifty dollars (\$50) for each underpaid
24 employee for each pay period for which the employee was underpaid in
25 addition to an amount sufficient to recover underpaid wages.

26 (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was
28 underpaid in addition to an amount sufficient to recover underpaid
 wages.

 (3) Wages recovered pursuant to this section shall be paid to the affected
 employee...

1 (c) The civil penalties provided for in this section are in addition to any
2 other civil or criminal penalty provided by law.

3 57. Throughout Plaintiffs' employment, Plaintiffs worked overtime/double time
4 hours on a daily basis and were not paid overtime/double time pay on a regular basis.

5 58. Throughout Plaintiffs' employment, Defendant failed and refused to pay and
6 properly calculate overtime/double time compensation to Plaintiffs and Class members as
7 required by law.

8 59. The foregoing overtime/double time compensation is owed and unpaid. As a
9 direct and proximate result of Defendant's failure and refusal to pay overtime/double time,
10 Plaintiffs and Class members suffered damages in an amount to be proven at trial.

11 60. Pursuant to Cal. Lab. Code §1194(a), Plaintiffs, who retained the services of
12 legal counsel in order to enforce Plaintiffs' rights to overtime/double time pay, are entitled to
13 recover Plaintiffs' attorneys' fees, costs and interest.

14 **SECOND CAUSE OF ACTION**

15 **FOR FAILURE TO PAY MINIMUM WAGES**

16 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 9 By Plaintiffs Against**
17 **Defendant)**

18 61. Plaintiffs and the Class reallege and incorporate by reference all of the
19 allegations set forth in this Amended Complaint.

20 62. Labor Code § 1197 states the California requirement that employees must be
21 paid at least the minimum wage fixed by the Commission, and any payment of less than the
22 minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving
23 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
24 the full amount of this minimum wage." IWC Wage Order 9-2001 also obligates employers to
25 pay each employee minimum wages for all hours worked. These minimum wage standards
26 apply to each hour employees worked for which they were not paid.

27 63. During the four years preceding the filing of this lawsuit, Defendant was
28 required to compensate Plaintiffs and members of the Class at the minimum wage, but failed
to carry out its duties and responsibilities as an employer imposed under the laws and

1 regulations of the State of California by failing to pay Plaintiffs a minimum wage as required
2 by the Cal. Lab. Code and/or IWC Wage Order No. 9. Specifically, Defendant committed the
3 following acts:

- 4 a. failing to pay overtime time;
- 5 b. failing to pay minimum wages;
- 6 c. failing to provide meal breaks as required by law;
- 7 d. failing to provide rest breaks as required by law;
- 8 e. failing to maintain records and provide accurate itemized wage
9 statements;
- 10 f. failing to accurately record the time worked;
- 11 g. failing to pay wages on resignation or termination;
- 12 h. failing to reimburse business expenses;
- 13 i. failing to provide employment records; and
- 14 j. all other reasons to be discovered.

15 64. Labor Code § 1194 provides, in part, that any employee receiving less than the
16 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
17 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

18 65. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
19 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor
20 Code § 1194. Where an employee, such as Plaintiffs and the other Class members, are not paid
21 for all hours worked under Labor Code § 1194, the employee may recover minimum wages
22 for the time associated with the overtime for which they received no compensation. See *Sillah*
23 *v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
24 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
25 showed they were paid less than minimum wage); accord *Andrade v. Arby's Rest. Grp., Inc.*,
26 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

27 66. Defendant required Plaintiffs and the Class to regularly perform compensable
28 tasks pre-shift off-the-clock for which they did not receive any compensation. Specifically, as

1 part of the Class members' employment, Defendant required Plaintiff Chavez to drive to a
2 truck stop in Travers, CA, which is 1.25 hours north of his home in Bakersfield, to pick up his
3 truck. If the truck is not there when Plaintiff Chavez arrives, which is the case at least half of
4 the time since it is late, Plaintiff Chavez is required to sit around and wait for it. Plaintiff
5 Chavez is not permitted to leave; he must stand nearby and wait for the truck to arrive. Only
6 after the truck arrives, was Plaintiff Chavez and the Class, finally able clock in for their shifts.
7 As a result, and because they improperly treated such pre-shift stand by time as non-
8 compensable, Defendant failed to compensate Plaintiff Chavez and the Class for such time.

9 67. On some occasions Defendant required Plaintiffs to show up for their shifts
10 early, but they were not allowed to clock in until the start time of his shift.

11 68. Further, Defendant had an unlawful policy and procedure of automatically
12 deducting ("auto-deduct") 30 minutes for meal periods from employees' daily hours even if
13 employees did not receive their meals periods. This auto-deduct policy was unlawful and did
14 not account for whether meal periods were actually provided, whether employees were able to
15 take their meal periods at all, whether they took meal periods of less than 30 minutes and
16 whether they were free from interruption for the full 30 minutes. As a result of this policy,
17 Defendant failed to compensate these employees with at least minimum wage rate for all time
18 worked when their daily hours were automatically reduced even though employees did not
19 receive a meal period, their meal periods were cut short and/or interrupted.

20 69. Plaintiffs and the other Class Members suffered and continue to suffer losses
21 related to the use and enjoyment of compensation due and owing to them as a direct result of
22 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
23 proof at trial and within the jurisdictional limitations of this Court.

24 70. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiffs and
25 the Class are entitled to recover the unpaid balances of the minimum wages Defendant owes
26 them, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according
27 to proof.

28 **THIRD CAUSE OF ACTION**

1 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

2 **(Failure to Provide Timely Off-Duty Meal Periods in Violation of IWC Wage Order No.**
3 **9; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and Does 1 through 100)**

4 71. Plaintiffs and the Class reallege and incorporate by reference all of the
5 allegations set forth in this Amended Complaint.

6 72. California Labor Code §226.7(a) prohibits an employer from requiring an
7 employee to work during any meal period mandated by an applicable Industrial Wage Order.
8 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
9 employee to work during a meal or rest break or recovery period mandated pursuant to an
10 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
11 Commission..."

12 73. California Labor Code §1198 makes unlawful the employment of an employee
13 under conditions the IWC prohibits.

14 74. IWC Order No. 9-2001(11)(A) provides, in relevant part: "No employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not
16 less than 30-minutes, except that when a work period of not more than six (6) hours will
17 complete the day's work the meal period may be waived by mutual consent of the employer and
18 the employee."

19 75. IWC Order No. 9-2001 (11)(c) further provides, in relevant part: "Unless the
20 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
21 considered an 'on duty' meal period and counted as time worked."

22 76. Section 512(a) of the California Labor Code provides, in relevant part, that:

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

1 be waived by mutual consent of the employer and the employee only if the first
2 meal period was not waived.

3 77. The Labor Code and Wage Order provisions cited above require California
4 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
5 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
6 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
7 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
8 the fifth hour of their shifts.

9 78. Defendant had an unlawful policy and procedure of automatically deducting
10 ("auto-deduct") 30 minutes for meal periods from employees' daily hours even if employees
11 did not receive their meals periods. This auto-deduct policy was unlawful and did not account
12 for whether meal periods were actually provided, whether employees were able to take their
13 meal periods at all, whether they took meal periods of less than 30 minutes and whether they
14 were free from interruption for the full 30 minutes. As a result of this policy, Defendant failed
15 to compensate these employees with at least minimum wage rate for all time worked when
16 their daily hours were automatically reduced even though employees did not receive a meal
17 period, their meal periods were cut short and/or interrupted.

18 79. Plaintiffs were routinely not afforded meal periods, meal periods were offered
19 late and/or interrupted.

20 80. Defendant has a policy or practice of failing to ensure that Plaintiffs and
21 members of the class take the meal periods and record their meal breaks as required by
22 California Labor Code §226.7 and IWC Wage Order No. 9-2001 §11.

23 81. By their actions in failing to afford Plaintiffs and Class Members meal periods,
24 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount
25 of one additional hour of pay at the employee's regular rate of compensation for each work
26 period during each day in which Defendant failed to provide employees with statutory timely
27 off-duty meal periods.

28 82. Defendant also has a policy or practice of failing to pay each of their employees
who was not provided with a meal period as required an additional one hour of compensation

1 at each employee's regular rate of pay. As a result, Defendant failed to provide Plaintiffs and
2 Class members compliant meal periods in violation of California Labor Code sections 226.7,
3 512, and 516.

4 83. Cal. Labor Code § 218 authorizes Plaintiffs and the members of the Class to
5 bring a private right of action to recover wages due based on the deprivation of timely meal
6 periods under Cal. Labor Code § 226.7(b).

7 84. As a direct and proximate result of Defendant's unlawful conduct as alleged
8 herein, Plaintiffs and members of the Class have sustained economic damages, including but
9 not limited to unpaid wages and lost interest, in an amount to be established at trial, and are
10 entitled to recover economic and statutory damages, attorneys' fees and penalties and other
11 appropriate relief due to Defendant's violations of the California Labor Code and the applicable
12 IWC Wage Orders.

13 **FOURTH CAUSE OF ACTION**

14 **FOR FAILURE TO PROVIDE REST PERIODS**

15 **(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiffs Against Defendant and**
16 **Does 1 through 100)**

17 85. Plaintiffs and the Class reallege and incorporate by reference all of the
18 allegations set forth in this Amended Complaint.

19 86. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
20 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
21 per four hours of work, or major fraction thereof.

22 87. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
23 fails to provide an employee with rest periods in accordance with those provisions, the
24 employer shall pay the employee one hour of pay at the employee's regular rate of
25 compensation for each workday that the rest periods were not so provided.

26 88. Defendant has intentionally and improperly denied rest periods to Plaintiffs and
27 the Class in violation of Labor Code § 226.7 and the applicable Wage Order.
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1 89. At all times relevant hereto, Plaintiffs and members of the Class have worked 8
2 or more hours daily.

3 90. At all times relevant hereto, Defendant failed to provide rest periods as required
4 by Labor Code § 226.7 and the applicable Wage Order. Plaintiffs and Class members rest
5 breaks were interrupted.

6 91. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiffs
7 and the Class, Plaintiffs and the Class have suffered, and will continue to suffer, damages in
8 amounts which are presently unknown to Plaintiffs and the Class, but which exceed the
9 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

10 **FIFTH CAUSE OF ACTION**

11 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

12 **ITEMIZED STATEMENTS**

13 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

14 92. Plaintiffs and the Class reallege and incorporate by reference all of the
15 allegations set forth in this Amended Complaint.

16 93. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employers
17 of Plaintiffs and the Class.

18 94. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 9-
19 2001 section 7, Defendant is required to maintain and provide accurate records relating to
20 employee compensation including all formulas and production records used to calculate wages
21 due.

22 95. Defendant is further required to provide semimonthly or at the time of each
23 payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
24 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
25 employee is being paid; (5) the name of the employee; and (6) the name and address of the
26 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

27 96. Section 226(e) provides that an employee is entitled to recover \$50 for the
28 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay

1 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
2 periods in which the employer knowingly and intentionally failed to provide accurate itemized
3 statements to the employee causing the employee to suffer injury.

4 97. Notwithstanding these provisions. Defendant has engaged in a uniform practice
5 of refusing to maintain and provide the accurate records and wage statements required by
6 California law.

7 98. Throughout the Class Period, Defendant intentionally and knowingly provided
8 Plaintiffs and other members of the Class with weekly itemized wage statements containing
9 inaccurate information regarding the wages earned by Plaintiffs and members of the Class in
10 that the payments owed to Plaintiffs and the members of the Class for overtime/double time
11 compensation, minimum wages, untimely or missed meal and rest periods, were not included in
12 gross wages earned by Plaintiffs and members of the Class. Further, Defendant failed to furnish
13 Plaintiffs and the Class, upon payment of wages, itemized statements accurately showing the
14 number of hours worked and the rates paid.

15 99. As a result, Plaintiffs and members of the Class have been injured by having
16 been deprived of the true facts pertaining to their compensation and employment.

17 100. Plaintiffs and members of the Class were damaged by these failures because,
18 among other things, the failures led them to believe that they were not entitled to
19 overtime/double time compensation, minimum wages, to be paid for meal and rest periods not
20 provided, even though they were so entitled and these failures hindered them from
21 determining the amounts of wages owed to them.

22 101. Plaintiffs and members of the Class are entitled to the amounts provided in
23 Labor Code §226(e), plus attorneys' fees and costs.

24 102. As result, Plaintiffs seek recovery of the penalties authorized by Labor Code
25 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
26 provided by law for Defendant's improper conduct.

27 **SIXTH CAUSE OF ACTION**

28 **FAILURE TO MAINTAIN ACCURATE RECORDS**

1 **(Labor Code §1174(d) By Plaintiffs Against Defendant and Does 1 through 100)**

2 103. Plaintiffs and the Class reallege and incorporate by reference all of the
3 allegations set forth in this Amended Complaint.

4 104. Labor Code section 1174(d) requires that employers, including Defendant,
5 maintain accurate records showing the hours worked daily by its employees and to whom
6 wages were paid.

7 105. Additionally, the “Records” section of the applicable IWC Wage Order
8 obligates the employer, including Defendant, to keep accurate information with respect to each
9 one of their employees including, but not limited to, the total wages paid each payroll period,
10 and time records showing when the employee begins and ends each work period, meal
11 periods, split shift intervals, the total daily hours worked, the total hours worked in the payroll
12 period, and the applicable rates of pay.

13 106. Pursuant to Labor Code section 1174.5, any person employing labor who
14 willfully fails to maintain accurate and complete records required by Labor Code section
15 1174(d) is subject to a penalty. On information and belief, Defendant intentionally failed to
16 maintain accurate records regarding Plaintiffs and members of the Class, including the
17 applicable rates of pay and total wages earned for the payroll period.

18 107. Defendant auto-deducted Plaintiffs’ meal periods despite Plaintiffs not taking
19 meal breaks.

20 108. As a direct result of Defendant’s violations alleged herein, Plaintiffs and
21 members of the Class have suffered and continue to suffer substantial losses related to
22 Defendant’s auto-deduct policy regarding meal periods.

23 109. Plaintiffs seeks all available remedies for Defendant’s violations including, but
24 not limited to penalties, and costs to the extent permitted by law.

25 **SEVENTH CAUSE OF ACTION**

26 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

27 **(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)**

1 110. Plaintiffs and the Class reallege and incorporate by reference all of the
2 allegations set forth in this Amended Complaint.

3 111. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
4 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
5 from employment, unpaid wages are due and payable within 72 hours of resignation.

6 112. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
7 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
8 paid, not to exceed thirty days.

9 113. Plaintiffs and/or members of the Class were discharged and/or resigned from
10 Defendant's employ and Defendant willfully failed to pay Plaintiffs and the Class wages due
11 them.

12 114. Under Labor Code § 203(a), Plaintiffs and the Class are entitled to one day's
13 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

14 **EIGHTH CAUSE OF ACTION**

15 **REIMBURSEMENT OF BUSINESS EXPENSES**

16 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

17 115. Plaintiffs and the Class reallege and incorporate by reference all of the
18 allegations set forth in this Amended Complaint.

19 116. Labor Code §2802 requires employers to indemnify employees for all necessary
20 expenditures incurred by employees in the discharge of their duties.

21 117. At all times relevant herein, Defendant was aware that Plaintiffs and members of
22 the Class were incurring out-of-pocket expenses for business purposes, but failed to indemnify
23 Plaintiffs and members of the Class for all their business-related expenses, in accordance with
24 Labor Code §2802. Plaintiffs and members of the Class used their personal cell phones to clock
25 in for their shifts, and Defendant did not reimburse them therefor. Further, Plaintiffs were
26 required by Defendant to use their personal cell phones and vehicles for work-related matters.
27 Defendant exclusively contacted Plaintiffs on their personal cell phones.

28

118. Defendant maintained a practice of not reimbursing Plaintiffs and Class Members for their work-related expenses that they incurred for work-related purposes.

119. As a result of Defendant's conduct, Plaintiffs and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties.

120. Pursuant to Labor Code §2802, Plaintiffs and Class Members are entitled to recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

NINTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Cal. Labor Code § 1198.5; IWC Wage Order No. 9 By Plaintiffs against Defendant and Does 1 through 100)

121. Plaintiffs and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

122. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,..... later than 30 calendar days from the date the employer receives the request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified I

1 this section... the current or former employee may recover a penalty of seven
2 hundred fifty dollars (\$750) from the employer.

3 (1) A current or former employee may also bring an action for injunctive relief
4 to obtain compliance with this section, and may recover costs and reasonable
5 attorney's fees in such an action.

6 123. Additionally, pursuant to Wage Order 9, at section 7 re: Records, employers are
7 required to keep accurate payroll records on each employee, and such records must be made
8 readily available for inspection by the employee upon reasonable request. The employer must
9 also maintain accurate production records.

10 124. On or about December 29, 2023 through their counsel, Plaintiffs issued a written
11 request to Defendant for copies of their personnel records.

12 125. Under California Labor Code Sections 226, 432 and 1198.5, such records were
13 to include all records relating to Plaintiffs' hours worked, wage statements and compensation.
14 Plaintiffs' counsel and Defendant did not enter into an agreement to enlarge the time for
15 Defendant's compliance, and Defendant has failed and refused to permit Plaintiffs copies of
16 their records.

17 126. As a direct result and consequence of Defendant's failure and refusal to permit
18 Plaintiffs full access to their records, Plaintiffs seek injunctive relief in the form of an order or
19 decree mandating Defendant's compliance. Plaintiffs have suffered and will suffer harm as a
20 result of Defendant's ongoing refusal to comply. Plaintiffs also seek recovery of the statutory
21 penalty of \$750 based upon Defendant's violation of § 1198.5.

22 **TENTH CAUSE OF ACTION**

23 **FOR UNFAIR COMPETITION**

24 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1
25 through 100)**

26 127. Plaintiffs and the Class reallege and incorporate by reference all of the
27 allegations set forth in this Amended Complaint.
28

1 128. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
2 Plaintiffs and the Class. Defendant is also a "person" as that term is defined in Business &
3 Professions Code §17021.

4 129. The Business & Professions Code defines unfair competition as any unlawful,
5 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
6 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
7 overtime/double time compensation; (2) pay minimum wages; (3) pay for meal periods not
8 provided, (4) pay for rest periods not provided; (5) pay wages due to discharged or quitting
9 employees, (6) furnish Plaintiffs and the Class with accurate itemized wage statements, as
10 mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (7)
11 maintain accurate records, (8) reimburse business expenses and (9) allow inspection of
12 employment records, all in violation of Business & Professions Code §§ 17200 et seq.

13 130. By and through the unfair and unlawful business practices described herein,
14 Defendant has obtained valuable property, money and services from the Plaintiffs and the Class
15 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment
16 of Plaintiffs and the Class.

17 131. All the acts described herein are violations of, among other things, the Labor
18 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
19 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
20 thereby constitute unfair and unlawful business practices in violation of Business & Professions
21 Code §§ 17200 et seq.

22 132. Plaintiffs and the Class are entitled to, and do, seek such relief as may be
23 necessary to restore to them the money and property which Defendant has acquired, or of
24 which Plaintiffs and the Class have been deprived by means of the above-described unfair and
25 unlawful business practices.

26 133. Plaintiffs and the Class are further entitled to, and do, seek a declaration that the
27 above-described business practices are unfair and unlawful and that injunctive relief should be
28

1 issued restraining Defendant from engaging in any of the above described unfair and unlawful
2 business practices in the future.

3 134. Plaintiffs and the Class have no plain, speedy, and/or adequate remedy at law to
4 redress the injuries which they have suffered as a consequence of the unfair and unlawful
5 business practices of Defendant. As a result of the unfair and unlawful business practices
6 described above, Plaintiffs and the Class have suffered and will continue to suffer irreparable
7 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
8 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
9 Plaintiffs and the Class.

10 **NINTH CAUSE OF ACTION**

11 **(Damages Pursuant to Private Attorney General Act Against Employers)**

12 135. Plaintiff and the Class reallege and incorporate by reference all of the allegations
13 set forth in this First amended Amended Complaint.

14 136. Plaintiff bring this action on her own behalf and on behalf of all current and
15 former employees of Defendants who were employed in California for the previous four years
16 seeking to recover unpaid wages, including but not limited to unpaid overtime, meal period
17 violations, and rest periods violations as set forth in this pleading.

18 137. On December 29, 2023 Plaintiff, pursuant to California Labor Code §§2699, et
19 seq., by and through Plaintiff's attorneys, uploaded a Private Attorney General Act ("PAGA")
20 claim to the State of California Labor and Workforce Development Agency ("LWDA") and
21 sent a letter via Certified Mail Return Receipt Requested to the defendant.

22 138. More than 65 days have passed since the above letter, and Plaintiff's counsel has
23 not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA
24 claims.

25 139. Plaintiff has, therefore complied with the administrative exhaustion
26 requirements of PAGA.

27 140. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount
28 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in their favor and against Defendant as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiffs and Class Members, according to proof;

2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiffs and Class Members, according to proof;

3. For one (1) hour of pay at the regular rate of compensation for Plaintiffs and Class Members for each workday that a meal and/or rest period was not provided;

4. For payment of unpaid wages in accordance with California labor and employment law;

5. For an award of consequential damages in Plaintiffs and Class Members' favor and against Defendant, in an amount to be proven at trial;

6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

7. For payment to Plaintiffs and Class Members of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;

8. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

9. For compensatory damages in the amount of Plaintiffs and Class Members' out of pocket expenses and/or reimbursement of monies incurred while performing Defendant's business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

10. For prejudgment interest accrued on all due and unpaid overtime/double time and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;

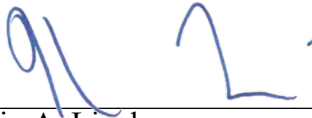
11. For statutory penalties pursuant to Cal. *Lab. Code* §§ 558, 203, 210, 226.7, according to proof;
12. For statutory penalties pursuant to Cal. *Lab. Code* §§ 2699, *et seq.*;
13. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, Cal. *Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or Cal. Code of Civ. Proc. §1021.5;
14. For an award of restitution of wages to Plaintiffs and Class Members in an amount equal to the amount of wages owed and unpaid, according to proof;
15. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;
16. For other injunctive relief ordering Defendant to notify Plaintiffs and Class Members that they have not been paid the proper amounts in accordance with California law;
17. For injunctive relief requiring Defendant to comply with Labor Code 1198.5(b)(1);
18. For punitive and exemplary damages in a sum to be determined at trial;
19. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs Benjamin Douglas, Jose Chavez, Louis Gallegos and Alan Childs hereby respectfully requests a trial by jury for all claims and issues raised in their Amended Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: February 20, 2023

By: 

Kevin A. Lipeles
Attorneys for Plaintiffs
Benjamin Douglas, Jose Chavez,
Louis Gallegos
And Alan Childs

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is Lipeles Law Group APC, 880 Apollo Street, Suite 336, El Segundo, CA 90245. On the date below, I served the foregoing document(s) described as:

FIRST AMENDED COMPLAINT

By sending a true copy thereof to the address listed below:

SEE ATTACHED SERVICE LIST

- ☐ **By Messenger Service.** I served the documents by providing them to a professional messenger service for personal service.
- ☐ **By Overnight Delivery.** I deposited a sealed envelope containing a true and correct copy of the documents listed above for overnight delivery and with the postage fully prepaid.
- ☐ **By E-Mail or Electronic Transmission.** I caused the documents to be sent to the persons at the email address listed above in a PDF file, and the transmission appeared to be successful.
- ☒ **By United States Mail.** I deposited a sealed envelope containing a true and correct copy of the documents listed above with the United States Postal Service with the postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at El Segundo, California.
- ☐ **By Fax Transmission.** I faxed the documents to the persons at the fax number listed above, and the transmission appeared to be successful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 5, 2024 at El Segundo, California.

/s/Nancy Rodriguez
Nancy Rodriguez

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SERVICE LIST

Huntaway Midstream West, LLC
8520 Fishman Rd
Pico Rivera, CA 90660-2501