

FILED
Superior Court of California
County of Los Angeles

02/20/2024

David W. Slayton, Executive Officer / Clerk of Court

By: C. Gomez Deputy

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

DANIEL LARIOS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

KAVAC LOGISTICS LLC, a California
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 22STCV39937

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Collection of Due and Unpaid Wages per California Labor Code § 229;
- (9) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (10) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff DANIEL LARIOS (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of Los Angeles. Defendants employed Plaintiff within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff DANIEL LARIOS is an individual residing in the State of California, County of Los Angeles.

6. Defendant KAVAC LOGISTICS LLC, at all times herein mentioned, is and was, upon information and belief, a California limited liability company, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

1 7. At all relevant times, Defendant KAVAC LOGISTICS LLC was the “employer”
2 of Plaintiff within the meaning of all applicable laws and statutes.

3 8. At all times herein relevant, Defendants KAVAC LOGISTICS LLC and DOES 1
4 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
5 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
6 of the other, and at all times relevant hereto were acting within the course and scope of their
7 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
8 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein
9 were duly committed with the ratification, knowledge, permission, encouragement,
10 authorization, and consent of each defendant designated herein.

11 9. The true names and capacities, whether corporate, associate, individual or
12 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
13 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
14 information and belief alleges, that each of the Defendants designated as a DOE is legally
15 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
16 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
17 Plaintiff will seek leave of court to amend this Complaint to show the true names and
18 capacities when the same have been ascertained.

19 10. Defendants KAVAC LOGISTICS LLC and DOES 1 through 100 will hereinafter
20 collectively be referred to as “Defendants.”

21 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
22 affected the working conditions, wages, working hours, and conditions of employment of
23 Plaintiff and the other class members so as to make each of said Defendants employers and
24 employers liable under the statutory provisions set forth herein.

25 **CLASS ACTION ALLEGATIONS**

26 12. Plaintiff brings this action individually and on behalf of all other members of the
27 general public similarly situated, and, thus, seeks class certification under Code of Civil
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Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from April 1, 2020, through January 25, 2024 or the date the number of workweeks increases ten percent (10%) above 15,900, whichever date is earlier.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time. However, the class is estimated to be greater than six hundred (600) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily

1 expended for the prosecution of this action for the substantial benefit of
2 each class member.

3 d. Superiority: A class action is superior to other available methods for the
4 fair and efficient adjudication of this litigation because individual joinder
5 of all class members is impractical.

6 e. Public Policy Considerations: Certification of this lawsuit as a class
7 action will advance public policy objectives. Employers of this great
8 state violate employment and labor laws every day. Current employees
9 are often afraid to assert their rights out of fear of direct or indirect
10 retaliation. However, class actions provide the class members who are
11 not named in the complaint anonymity that allows for the vindication of
12 their rights.

13 16. There are common questions of law and fact as to the class members that
14 predominate over questions affecting only individual members. The following common
15 questions of law or fact, among others, exist as to the members of the class:

16 a. Whether Defendants' failure to pay wages, without abatement or
17 reduction, in accordance with the Labor Code, was willful;

18 b. Whether Defendants failed to pay their hourly-paid or non-exempt
19 employees within the State of California for all hours worked and missed
20 meal periods and rest breaks in violation of the law;

21 c. Whether Defendants required Plaintiff and the other class members to
22 work over eight (8) hours per day and/or over forty (40) hours per week
23 and failed to pay the legally required overtime compensation to Plaintiff
24 and the other class members;

25 d. Whether Defendants properly calculated the regular rate for Plaintiff and
26 the other class members who worked overtime and earned incentive pay;

27 e. Whether Defendants properly calculated the regular rate for Plaintiff and
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- 1 the other class members who earned sick leave pay and incentive pay;
- 2 f. Whether Defendants deprived Plaintiff and the other class members of
- 3 meal and/or rest periods or required Plaintiff and the other class
- 4 members to work during meal and/or rest periods without compensation;
- 5 g. Whether Defendants failed to pay minimum wages to Plaintiff and the
- 6 other class members for all hours worked;
- 7 h. Whether Defendants failed to pay all wages due to Plaintiff and the other
- 8 class members within the required time upon their discharge or
- 9 resignation;
- 10 i. Whether Defendants failed to timely pay all wages due to Plaintiff and
- 11 the other class members during their employment;
- 12 j. Whether Defendants complied with wage reporting as required by the
- 13 Labor Code, including, *inter alia*, section 226;
- 14 k. Whether Defendants failed to reimburse Plaintiff and the other class
- 15 members for necessary business-related expenses and costs;
- 16 l. Whether Defendants' conduct was willful or reckless;
- 17 m. Whether Defendants engaged in unfair business practices in violation of
- 18 Business & Professions Code section 17200, *et seq.*;
- 19 n. The appropriate amount of damages, restitution, and/or monetary
- 20 penalties resulting from Defendants' violation of the law; and
- 21 o. Whether Plaintiff and the other class members are entitled to
- 22 compensatory damages pursuant to the Labor Code.

23 **GENERAL ALLEGATIONS**

24 17. During the relevant time period set forth herein, Defendants employed Plaintiff

25 and other persons as hourly-paid or non-exempt employees within the State of California.

26 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-

27 exempt employee during the relevant time period in the State of California, County of Los

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1 Angeles.

2 19. Defendants had the authority to hire and terminate Plaintiff and the other class
3 members; to set work rules and conditions governing Plaintiff's and the other class members'
4 employment; and to supervise their daily employment activities.

5 20. Defendants exercised sufficient authority over the terms and conditions of
6 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
7 and the other class members.

8 21. Defendants directly hired and paid wages and benefits to Plaintiff and the other
9 class members.

10 22. Defendants continue to employ hourly-paid or non-exempt employees within the
11 State of California.

12 23. Plaintiff and the other class members worked over eight (8) hours in a day,
13 and/or forty (40) hours in a week during their employment with Defendants.

14 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
16 non-exempt employees within the State of California. This scheme involved, *inter alia*, failing
17 to pay them for all hours worked, sick leave, missed meal periods, and missed rest breaks in
18 violation of the law.

19 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to receive
21 certain wages for overtime compensation and that Plaintiff and the other class members were
22 not receiving wages for overtime compensation.

23 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 failed to provide Plaintiff and the other class members the required rest and meal periods
25 during the relevant time period as required under the Industrial Welfare Commission Wage
26 Orders and thus they are entitled to any and all applicable penalties.

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1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all timely and complete meal periods or payment of one additional hour of pay at Plaintiff's
4 and the other class members' regular rates of pay when a meal period was missed, late or
5 interrupted, and that Plaintiff and the other class members did not receive all timely and proper
6 meal periods or payment of one additional hour of pay at their regular rates of pay when a meal
7 period was missed.

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and other class members were entitled to receive all
10 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff's
11 and the other class members' regular rates of pay when a rest period was missed, late or
12 interrupted, and that Plaintiff and the other class members did not receive all rest periods or
13 payment of one additional hour of pay at their regular rates of pay when a rest period was
14 missed.

15 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 at least minimum wages for compensation and that Plaintiff and the other class members were
18 not receiving at least minimum wages for all hours worked.

19 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to receive
21 the wages owed to them upon discharge or resignation, including overtime and minimum
22 wages and meal and rest period premiums, and that Plaintiff and the other class members did
23 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

24 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 complete and accurate wage statements in accordance with the law, but, in fact, Plaintiff and
27 the other class members did not receive complete and accurate wage statements from
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1 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
2 hours worked by Plaintiff and the other class members.

3 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to
5 reimbursement for necessary business-related expenses.

6 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Defendants had to keep complete and accurate payroll records
8 for Plaintiff and the other class members in accordance with the law, but, in fact, did not keep
9 complete and accurate payroll records for Plaintiff and the other class members.

10 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that they had a duty to compensate Plaintiff and the other class
12 members pursuant to the law, and that Defendants had the financial ability to pay such
13 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
14 represented to Plaintiff and the other class members that they were properly denied wages, all
15 in order to increase Defendants' profits.

16 35. During the relevant time period set forth herein, Defendants failed to pay
17 overtime wages to Plaintiff and the other class members for all hours worked. Plaintiff and the
18 other class members were required to work more than eight (8) hours per day and/or forty (40)
19 hours per week without overtime compensation.

20 36. During the relevant time period set forth herein, Defendants failed to properly
21 calculate and pay sick leave to Plaintiff and the other class members.

22 37. During the relevant time period set forth herein, Defendants failed to provide the
23 requisite uninterrupted and timely meal and rest periods to Plaintiff and the other class
24 members.

25 38. During the relevant time period set forth herein, Defendants failed to pay
26 Plaintiff and the other class members at least minimum wages for all hours worked.

27 39. During the relevant time period set forth herein, Defendants failed to pay
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1 Plaintiff and the other class members the wages owed to them upon discharge or resignation.

2 40. During the relevant time period set forth herein, Defendants failed to provide
3 complete or accurate wage statements to Plaintiff and the other class members.

4 41. During the relevant time period set forth herein, Defendants failed to reimburse
5 Plaintiff and the other class members for necessary business-related expenses.

6 42. During the relevant time period set forth herein, Defendants failed to keep
7 complete or accurate payroll records for Plaintiff and the other class members.

8 43. During the relevant time period set forth herein, Defendants failed to properly
9 compensate Plaintiff and the other class members pursuant to the law in order to increase
10 Defendants' profits.

11 44. During the relevant time period, Defendants failed to properly implement an
12 Alternative Workweek Schedule ("AWS") resulting in Plaintiff and the other class members
13 working in excess of eight (8) hours in a day without receiving proper compensation in
14 violation of the AWS.

15 45. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall
16 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
17 [or her] under this article."

18 **FIRST CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 510 and 1198)**

20 **(Against KAVAC LOGISTICS LLC and DOES 1 through 100)**

21 46. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
22 through 45, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 47. Labor Code section 1198 and the applicable Industrial Welfare Commission
25 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them
26 at a rate of pay either time-and-one-half or two-times that person's regular rate of pay,
27 depending on the number of hours worked by the person on a daily or weekly basis.

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1 48. The applicable IWC Wage Order provides that Defendants are and were
2 required to pay Plaintiff and the other class members employed by Defendants, who work(ed)
3 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
4 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
5 (40) hours in a workweek.

6 49. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and the other class members overtime compensation at a rate of two
8 times their regular rates of pay for all hours worked in excess of twelve (12) hours in a day.

9 50. Labor Code section 510 codifies the right to overtime compensation at one-and-
10 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
11 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
12 and overtime compensation at twice the regular hourly rate for hours worked in excess of
13 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

14 51. During the relevant time period set forth herein, Plaintiff and the other class
15 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
16 week.

17 52. During the relevant time period set forth herein, Defendants intentionally and
18 willfully failed to pay overtime wages owed to Plaintiff and the other class members.

19 53. Defendants' failure to pay Plaintiff and the other class members the unpaid
20 balance of overtime compensation, as required by the laws, violates the provisions of Labor
21 Code sections 510 and 1198, and is therefore unlawful.

22 54. Pursuant to Labor Code section 1194, Plaintiff and the other class members are
23 entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys'
24 fees.

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1 60. During the relevant time period set forth herein, Plaintiff and the other class
2 members who were scheduled to work for a period of time no longer than six (6) hours, and
3 who did not waive their legally mandated meal periods by mutual consent, were required to
4 work for periods longer than five (5) hours without an uninterrupted meal period of not less
5 than thirty (30) minutes and/or without a rest period.

6 61. During the relevant time period set forth herein, Plaintiff and the other class
7 members who were scheduled to work for a period of time no longer than twelve (12) hours,
8 and who did not waive their legally mandated meal periods by mutual consent, were required
9 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
10 than thirty (30) minutes and/or without a rest period.

11 62. During the relevant time period set forth herein, Plaintiff and the other class
12 members who were scheduled to work for a period of time in excess of six (6) hours were
13 required to work for periods longer than five (5) hours without an uninterrupted meal period of
14 not less than thirty (30) minutes and/or without a rest period.

15 63. During the relevant time period set forth herein, Plaintiff and the other class
16 members who were scheduled to work for a period of time in excess of twelve (12) hours were
17 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
18 not less than thirty (30) minutes and/or without a rest period.

19 64. During the relevant time period set forth herein, Defendants intentionally and
20 willfully required Plaintiff and the other class members to work during meal periods and failed
21 to compensate Plaintiff and the other class members the full meal period premium for work
22 performed during meal periods.

23 65. During the relevant time period set forth herein, Defendants failed to pay
24 Plaintiff and the other class members the full meal period premium due pursuant to Labor
25 Code section 226.7.

26 66. Defendants' conduct violates applicable IWC Wage Order and Labor Code
27 sections 226.7 and 512(a).
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67. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular rates of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against KAVAC LOGISTICS LLC and DOES 1 through 100)

68. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 67, and each and every part thereof with the same force and effect as though fully set forth herein.

69. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

70. During the relevant time period set forth herein, Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC Wage Order.

71. During the relevant time period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

72. During the relevant time period set forth herein, Defendants required Plaintiff and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

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73. During the relevant time period set forth herein, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

74. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to Labor Code section 226.7.

75. Defendants' conduct violates applicable IWC Wage Orders and Labor Code section 226.7.

76. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular rates of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against KAVAC LOGISTICS LLC and DOES 1 through 100)

77. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 76, and each and every part thereof with the same force and effect as though fully set forth herein.

78. During the relevant time period set forth herein, Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

79. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and the other class members as required, pursuant to Labor Code sections 1194 and 1197.

80. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff and other class members are entitled to recover the unpaid balance of their minimum

1 wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon.

3 81. Pursuant to Labor Code section 1194.2, Plaintiff and the other class members
4 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
5 and interest thereon.

6 **FIFTH CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 201 and 202)**

8 **(Against KAVAC LOGISTICS LLC and DOES 1 through 100)**

9 82. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 81, and each and every part thereof with the same force and effect as though fully set
11 forth herein.

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

19 84. During the relevant time period set forth herein, Defendants intentionally and
20 willfully failed to pay Plaintiff and the other class members who are no longer employed by
21 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
22 Defendants' employ.

23 85. Defendants' failure to pay Plaintiff and the other class members who are no
24 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
25 of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

26 86. Labor Code section 203 provides that if an employer willfully fails to pay wages
27 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
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as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

87. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against KAVAC LOGISTICS LLC and DOES 1 through 100)

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. During the relevant time period set forth herein, Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing: (a) gross wages earned; (b) total hours worked by the employee; (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (d) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (e) net wages earned; (f) the inclusive dates of the period for which the employee is paid; (g) the name of the employee and his or her Social Security number; (h) the name and address of the legal entity that is the employer; and (i) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

90. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include,

1 but are not limited to, the failure to include the total number of hours worked by Plaintiff and
2 the other class members.

3 91. As a result of Defendants' violation of Labor Code section 226(a), Plaintiff and
4 the other class members have suffered injury and damage to their statutorily protected rights.

5 92. More specifically, Plaintiff and the other class members have been injured by
6 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
7 denied both their legal right to receive, and their protected interest in receiving, accurate and
8 itemized wage statements pursuant to Labor Code section 226(a).

9 93. Plaintiff and the other class members are entitled to recover from Defendants the
10 greater of their actual damages caused by Defendants' failure to comply with Labor Code
11 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

12 94. Plaintiff and the other class members are also entitled to injunctive relief to
13 ensure compliance with this section, pursuant to Labor Code section 226(g).

14 **SEVENTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 2800 and 2802)**

16 **(Against KAVAC LOGISTICS LLC and DOES 1 through 100)**

17 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 94, and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 96. During the relevant time period set forth herein, Labor Code sections 2800 and
21 2802 provide that an employer must reimburse its employee for all necessary expenditures
22 incurred by the employee in direct consequence of the discharge of his or her job duties or in
23 direct consequence of his or her obedience to the directions of the employer.

24 97. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
25 other class members for all necessary business-related expenses and costs.

26 98. Pursuant to Labor Code sections 2800 and 2802, Plaintiff and the other class
27 members are entitled to recover from Defendants their business-related expenses and costs
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1 incurred during the course and scope of their employment, plus interest accrued from the date on
2 which the employee incurred the necessary expenditures at the same rate as judgments in civil
3 actions in the State of California.

4 **EIGHTH CAUSE OF ACTION**

5 **(Collection of Due and Unpaid Wages per Labor Code § 229)**

6 **(Against KAVAC LOGISTICS LLC and DOES 1 through 100)**

7 99. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 98, and each and every part thereof, with the same force and effect as though fully set
9 forth herein.

10 **Failure to Pay Minimum Wage**

11 100. During the relevant time period set forth herein, Labor Code sections 1194, 1197,
12 and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser
13 wage than the minimum so fixed, is unlawful.

14 101. During the relevant time period set forth herein, Defendants failed to pay
15 minimum wages to Plaintiff and the other class members as required, pursuant to Labor Code
16 sections 1194, 1197, and 1197.1.

17 102. Defendants' failure to pay Plaintiff and the other class members the minimum
18 wage as required violates Labor Code sections 1194, 1197, and 1197.1. Pursuant to those
19 sections, Plaintiff and the other class members are entitled to recover the unpaid balance of their
20 minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
21 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

22 **Failure to Pay Overtime**

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

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1 104. Specifically, the applicable IWC Wage Order provides that Defendants are and
2 were required to pay Plaintiff and the other class members employed by Defendants, and
3 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
4 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
5 forty (40) hours in a workweek.

6 105. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and the other class members overtime compensation at a rate of two
8 times their regular rates of pay for all hours worked in excess of twelve (12) hours in a day.

9 106. Labor Code section 510 codifies the right to overtime compensation at one-and-
10 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
11 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
12 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
13 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

14 107. During the relevant time period set forth herein, Plaintiff and the other class
15 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
16 week.

17 108. During the relevant time period set forth herein, Defendants intentionally and
18 willfully failed to pay overtime wages owed to Plaintiff and the other class members as required
19 by the law.

20 109. Defendants' failure to pay Plaintiff and the other class members the unpaid
21 balance of overtime compensation, as required by the laws, violates the provisions of Labor
22 Code sections 510 and 1198, and is therefore unlawful.

23 110. Pursuant to Labor Code section 1194, Plaintiff and the other class members are
24 entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

25 **Failure to Pay Meal Premiums**

26 111. During the relevant time period set forth herein, Labor Code section 226.7
27 provides that no employer shall require an employee to work during any meal or rest period
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1 mandated by an applicable order of the IWC Wage Order.

2 112. During the relevant time period set forth herein, the applicable IWC Wage Order
3 and Labor Code section 512(a) provide that an employer may not require, cause or permit an
4 employee to work for a work period of more than five (5) hours per day without providing the
5 employee with a meal period of not less than thirty (30) minutes, except that if the total work
6 period per day of the employee is no more than six (6) hours, the meal period may be waived by
7 mutual consent of both the employer and employee.

8 113. During the relevant time period set forth herein, the applicable IWC Wage Order
9 and Labor Code section 512(a) further provide that an employer may not require, cause, or
10 permit an employee to work for a work period of more than ten (10) hours per day without
11 providing the employee with a second uninterrupted meal period of not less than thirty (30)
12 minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal
13 period may be waived by mutual consent of the employer and the employee only if the first meal
14 period was not waived.

15 114. During the relevant time period set forth herein, Plaintiff and the other class
16 members who were scheduled to work for a period of time no longer than six (6) hours, and who
17 did not waive their legally-mandated meal periods by mutual consent, were required to work for
18 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
19 (30) minutes and/or without a rest period.

20 115. During the relevant time period set forth herein, Plaintiff and the other class
21 members who were scheduled to work for a period of time no longer than twelve (12) hours, and
22 who did not waive their legally-mandated meal periods by mutual consent, were required to
23 work for periods longer than ten (10) hours without an uninterrupted meal period of not less than
24 thirty (30) minutes and/or without a rest period.

25 116. During the relevant time period set forth herein, Plaintiff and the other class
26 members who were scheduled to work for a period of time in excess of six (6) hours were
27 required to work for periods longer than five (5) hours without an uninterrupted meal period of
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not less than thirty (30) minutes and/or without a rest period.

117. During the relevant time period set forth herein, Plaintiff and the other class members who were scheduled to work for a period of time in excess of twelve (12) hours were required to work for periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

118. During the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

119. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to Labor Code section 226.7.

120. Defendants' conduct violates applicable IWC Wage Order and Labor Code sections 226.7 and 512(a).

121. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided.

Failure to Pay Rest Premiums

122. During the relevant time period set forth herein, Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC Wage Order.

123. During the relevant time period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three

1 and one-half (3 ½) hours.

2 124. During the relevant time period set forth herein, Defendants required Plaintiff and
3 the other class members to work four (4) or more hours without authorizing or permitting a ten
4 (10) minute rest period per each four (4) hour period worked.

5 125. During the relevant time period set forth herein, Defendants willfully required
6 Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and
7 the other class members the full rest period premium for work performed during rest periods.

8 126. During the relevant time period set forth herein, Defendants failed to pay Plaintiff
9 and the other class members the full rest period premium due pursuant to Labor Code section
10 226.7.

11 127. Defendants' conduct violates applicable IWC Wage Orders and Labor Code
12 section 226.7.

13 128. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b),
14 Plaintiff and the other class members are entitled to recover from Defendants one additional hour
15 of pay at the employee's regular rate of compensation for each workday that the rest period was
16 not provided.

17 129. Plaintiff and the other class members seek these due and unpaid wages pursuant
18 to Labor Code section 229, which includes minimum wage, overtime wages and premium wages.

19 **NINTH CAUSE OF ACTION**

20 **(Violation of California Labor Code § 2698, *et seq.*)**

21 **(Against KAVAC LOGISTICS LLC and DOES 1 through 100)**

22 130. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 129, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 131. The Private Attorneys General Act of 2004 ("PAGA") expressly establishes that
26 any provision of the Labor Code which provides for a civil penalty to be assessed and collected
27 by the California Labor and Workforce Development Agency ("LWDA"), or any of its
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1 departments, divisions, commissions, boards, agencies, or employees for a violation of the
2 Labor Code, may be recovered through a civil action brought by an aggrieved employee on
3 behalf of himself or herself, and other current or former employees.

4 132. On December 21, 2023, Plaintiff provided written notice to the LWDA and
5 Defendants of the specific provisions of the Labor Code he contends were violated and the
6 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by
7 reference is a copy of the written notice to the LWDA. Plaintiff believes that on or about
8 February 26, 2024, the sixty-five (65) day notice period will expire, and the LWDA will not
9 take any action to investigate or prosecute this matter. Thus, Plaintiff exhausted the statutory
10 time period to bring this action.

11 133. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
12 employees” as defined by Labor Code section 2699(c) in that they are of all current and former
13 hourly-paid or non-exempt employees of Defendants within the State of California at any time
14 during the period from June 28, 2022, through January 25, 2024 or the date the number of
15 workweeks increases ten percent (10%) above 15,900, whichever date is earlier, and one or
16 more of the alleged violations was committed against them.

17 **Failure to Pay Minimum and Overtime Wages**

18 134. At all times relevant herein, Defendants were required to compensate their non-
19 exempt employees minimum wages for all hours worked and overtime wages for all hours
20 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
21 mandate of Labor Code sections 510, 1194, 1197, and 1198.

22 135. As a policy and practice, Defendants routinely required Plaintiff and the other
23 aggrieved current and former employees to work off-the-clock and failed to compensate
24 Plaintiff and the other aggrieved current and former employees for all hours worked, resulting
25 in a failure to pay all minimum wages and overtime wages, where applicable.

26 136. As a policy and practice, Defendants failed to include non-discretionary
27 incentive pay and shift differentials in Plaintiff and the other aggrieved current and former
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employees' regular rate of pay for purposes of calculating overtime compensation and sick leave pay, resulting in a failure to pay overtime wages and sick leave pay at the proper rate, where applicable.

137. Defendants failed to properly implement an AWS resulting in Plaintiff and the other aggrieved current and former employees to routinely work in excess of eight (8) hours in a day without receiving proper compensation in violation of the AWS.

Failure to Provide Meal Periods and Rest Breaks

138. In accordance with the mandates of Labor Code sections 226.7 and 512, Defendants were required to authorize and permit their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or major fraction thereof and were further required to provide their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

139. As a policy and practice, Defendants failed to provide Plaintiff and the other aggrieved current and former employees with legally mandated meal periods and rest breaks and failed to pay proper compensation for this failure.

140. As a policy and practice, Defendants failed to include non-discretionary incentive pay and shift differentials in Plaintiff and the other aggrieved current and former employees' regular rate of pay for purposes of meal and rest period premium payments.

Failure to Timely Pay Wages During Employment

141. At all times relevant herein, Defendants were required to pay their employees within a specified time period pursuant to the mandate of Labor Code section 204.

142. As a policy and practice, Defendants failed to pay Plaintiff and the other aggrieved current and former employees all wages due and owing to them within the required time period.

Failure to Timely Pay Wages Upon Termination

143. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201

1 to 204.

2 144. As a result of Defendants' Labor Code violations alleged above, Defendants
3 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to
4 Labor Code sections 201 to 204 and accordingly owe waiting time penalties pursuant to Labor
5 Code section 203.

6 **Failure to Provide Complete and Accurate Wage Statements**

7 145. At all times relevant herein, Defendants were required to keep accurate records
8 regarding their California employees pursuant to the mandate of Labor Code sections 226,
9 1174, and 1776.

10 146. As a result of Defendants' various Labor Code violations, Defendants failed to
11 keep accurate records regarding Plaintiff and the other aggrieved current and former
12 employees. For example, Defendants failed in their affirmative obligation to keep accurate
13 records regarding Plaintiff and the other aggrieved current and former employees' gross wages
14 earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates
15 and the number of hours worked at each hourly rate.

16 **Failure to Reimburse Business Expenses**

17 147. At all times relevant herein, Defendants were required to reimburse its
18 employees for any and all necessary expenditures or losses incurred by the employees in direct
19 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
20 sections 2800 and 2802.

21 148. As a policy and practice, Defendants failed to reimburse Plaintiff and the other
22 aggrieved current and former employees for all business expenses incurred and owing them
23 within the required time period.

24 **Penalties**

25 149. Pursuant to Labor Code section 2699, Plaintiff, individually, and on behalf of
26 the other current and former aggrieved employees, requests and is entitled to recover from
27 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but
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not limited to:

- a. Penalties under Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code § 17200, *et seq.*)

(Against KAVAC LOGISTICS LLC and DOES 1 through 100)

150. Plaintiff incorporates by reference the allegations contained in paragraphs 1

1 through 149, and each and every part thereof with the same force and effect as though fully set
2 forth herein.

3 151. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
4 unlawful and harmful to Plaintiff, other class members, the general public, and Defendants'
5 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
6 interest within the meaning of Code of Civil Procedure section 1021.5.

7 152. Defendants' activities as alleged herein are violations of the law, and constitute
8 unlawful business acts and practices in violation of Business & Professions Code section
9 17200, *et seq.*

10 153. A violation of Business & Professions Code section 17200, *et seq.* may be
11 predicated on the violation of any state or federal law. In this instant case, Defendants' policy
12 and practice of requiring Plaintiff and the other class members to work overtime hours without
13 paying them proper compensation violates Labor Code sections 510 and 1198. Additionally,
14 Defendants' policy and practice of requiring Plaintiff and the other class members to work
15 through their meal and rest periods without paying them proper compensation violates Labor
16 Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely
17 pay wages to Plaintiff and the other class members violates Labor Code sections 201 and 202.
18 Defendants also violated Labor Code sections 226(a), 1194, 1197, 2800, and 2802.

19 154. As a result of the herein described violations of the law, Defendants unlawfully
20 gained an unfair advantage over other businesses.

21 155. Plaintiff and the other class members have been personally injured by
22 Defendants' unlawful business acts and practices as alleged herein, including but not
23 necessarily limited to the loss of money and/or property.

24 156. Pursuant to Business & Professions Code section 17200, *et seq.*, Plaintiff and
25 the other class members are entitled to restitution of the wages withheld and retained by
26 Defendants during a period that commences four years prior to the filing of this Complaint; an
27 award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and other
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1 applicable laws; and an award of costs.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, individually, and on behalf of other members of the general public similarly
4 situated, requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
7 public similarly situated, prays for relief and judgment against Defendants, jointly and
8 severally, as follows:

9 **Class Certification**

- 10 1. That this action be certified as a class action;
- 11 2. That Plaintiff be appointed as representative of the Class;
- 12 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 13 4. That Defendants provide to Class Counsel immediately the names and most
14 current contact information (address, e-mail, and telephone numbers) of all class members.

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

- 16 5. That the Court declare, adjudge, and decree that Defendants violated Labor
17 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
18 overtime wages due to Plaintiff and the other class members;

- 19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;

- 21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due;

- 23 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 Labor Code section 1194; and

- 25 9. For such other and further relief as the Court may deem just and proper.

26 **As to the Second Cause of Action**

- 27 10. That the Court declare, adjudge, and decree that Defendants violated Labor
28 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide

all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge, and decree that Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and the

1 other class members;

2 24. For general unpaid wages and such general and special damages as may be
3 appropriate;

4 25. For pre-judgment interest on any unpaid compensation from the date such
5 amounts were due;

6 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 Labor Code section 1194(a);

8 27. For liquidated damages pursuant to Labor Code section 1194.2; and

9 28. For such other and further relief as the Court may deem just and proper.

10 **As to the Fifth Cause of Action**

11 29. That the Court declare, adjudge, and decree that Defendants violated Labor
12 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time
13 of termination of the employment of Plaintiff and the other class members no longer employed
14 by Defendants;

15 30. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 31. For statutory wage penalties pursuant to Labor Code section 203 for the other
18 class members who have left Defendants' employ;

19 32. For pre-judgment interest on any unpaid compensation from the date such
20 amounts were due; and

21 33. For such other and further relief as the Court may deem just and proper.

22 **As to the Sixth Cause of Action**

23 34. That the Court declare, adjudge, and decree that Defendants violated the record
24 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
25 Plaintiff and the other class members, and willfully failed to provide accurate itemized wage
26 statements thereto;

27 35. For actual, consequential, and incidental losses and damages, according to
28

1 proof;

2 36. For statutory penalties pursuant to Labor Code section 226(e);

3 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
4 Code section 226(g); and

5 38. For such other and further relief as the Court may deem just and proper.

6 **As to the Seventh Cause of Action**

7 39. That the Court declare, adjudge, and decree that Defendants violated Labor
8 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
9 members for all necessary business-related expenses as required by Labor Code sections 2800
10 and 2802;

11 40. For actual, consequential, and incidental losses and damages, according to
12 proof;

13 41. For the imposition of civil penalties and/or statutory penalties;

14 42. For punitive damages and/or exemplary damages according to proof at trial;

15 43. For reasonable attorneys' fees and costs of suit incurred herein; and

16 44. For such other and further relief as the Court may deem just and proper.

17 **As to the Eighth Cause of Action**

18 45. That the Court declare, adjudge, and decree that Defendants violated Labor
19 Code sections 226.7, 510, 1194, and 1198 and applicable IWC Wage Orders by willfully
20 failing to pay all wages due and owing to Plaintiff and the other class members;

21 46. For general unpaid wages at minimum wage rates or overtime wage rates, and
22 such general and special damages as may be appropriate;

23 47. For premium wages pursuant to Labor Code section 226.7(b);

24 48. For pre-judgment interest on any unpaid overtime compensation commencing
25 from the date such amounts were due;

26 49. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
27 Labor Code sections 218.5 and 1194; and
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50. For such other and further relief as the court may deem just and proper.

As to the Ninth Cause of Action

51. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802;

52. Upon this Cause of Action, for costs and attorneys' fees pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute; and

53. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

54. That the Court declare, adjudge, and decree that Defendants violated Business & Professions Code section 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, and failing to pay Plaintiff and the other class members' wages timely as required by Labor Code sections 201 and 202;

55. For restitution of unpaid wages to Plaintiff and the other class members and all pre-judgment interest from the day such amounts were due and payable;

56. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of Business & Professions Code section 17200, *et seq.*;

57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code of Civil Procedure section 1021.5;

58. For injunctive relief to ensure compliance with this section, pursuant to Business & Professions Code section 17200, *et seq.*; and

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1 59. For such other and further relief as the Court may deem just and proper.
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3 Dated: February 20, 2024

JUSTICE LAW CORPORATION

4
5 By: _____

6 Douglas Han
7 Shunt Tatavos-Gharajeh
8 Halina E. Szymanski
9 *Attorneys for Plaintiff*
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EXHIBIT 1

December 21, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Kavac Logistics LLC

Dear Representative:

We have been retained to represent Daniel Larios against Kavac Logistics LLC (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, for violations of California wage-and-hour laws (collectively referred to as "KAVAC LOGISTICS").

Mr. Larios is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Larios may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

KAVAC LOGISTICS is a California limited liability company headquartered at 9350 Rayo Avenue South Gate, California 90280.

KAVAC LOGISTICS employed Mr. Larios as an hourly-paid, non-exempt Delivery Driver until in or around November 2020 in the State of California. KAVAC LOGISTICS directly controlled the wages, hours, and/or working conditions of Mr. Larios and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Larios may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of KAVAC LOGISTICS within the State of California.

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KAVAC LOGISTICS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum wages and overtime wages and for noncompliant meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Larios has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at KAVAC LOGISTICS, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

KAVAC LOGISTICS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 223, 224, 226(a), 226.3, 226.7, 229, 510, 512(a), 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission ("IWC") Wage Orders.

During the relevant time period, KAVAC LOGISTICS also failed to properly implement an Alternative Workweek Schedule ("AWS"). KAVAC LOGISTICS failed to provide the affected work unit or units with a proposal of the AWS in writing, designating the number of days in the workweek and the number of hours in the work shift. KAVAC LOGISTICS also failed to properly hold a pre-election meeting with the affected employees a minimum of 14 days prior to the election to discuss the effects of the proposed AWS. Further, KAVAC LOGISTICS failed to hold a secret ballot election during regular working hours at the employees' work site where at least two-thirds of the affected employees voted in favor of the AWS prior to its adoption.

During the relevant time period, Mr. Larios and other aggrieved employees routinely worked in excess of 8 hours in a day without receiving proper compensation in violation of the AWS.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than 8 hours in one day and/or over 40 hours in one week without paying the premium overtime rates.

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During the relevant time period, Mr. Larios and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. KAVAC LOGISTICS required Mr. Larios and other aggrieved employees to don and doff their uniforms before clocking in and after clocking out respectively to ensure all their time was spent working. KAVAC LOGISTICS' policies also generally discouraged overtime work since Mr. Larios and other aggrieved employees were required to obtain prior authorization to work overtime hours with the threat of termination attached. As a result, because KAVAC LOGISTICS would regularly assign Mr. Larios and other aggrieved employees large number of deliveries to complete, they had no choice but to work additional hours off-the-clock without reporting them to avoid disciplinary action. KAVAC LOGISTICS also expected Mr. Larios and other aggrieved employees to prepare their vehicles, unload supplies, and attend safety meetings before clocking in. Similarly, after clocking out, KAVAC LOGISTICS required Mr. Larios and other aggrieved employees to complete all deliveries, conduct post-trip inspections, document damages, and get gas for their vehicles. This resulted in several instances of off-the-clock work. Thus, Mr. Larios and other aggrieved employees were entitled to receive certain wages for minimum and overtime compensation, but they were not paid for all hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee 1 additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, KAVAC LOGISTICS frequently prevented employees from receiving compliant meal and rest breaks. Firstly, Mr. Larios and other aggrieved employees felt pressured to work through their rest breaks due to the large number of deliveries KAVAC LOGISTICS would assign them each shift. Secondly, supervisors would actively discourage Mr. Larios and other aggrieved employees from taking their rest breaks to prioritize completing all their deliveries within their scheduled shift times. Thirdly, the large volume of deliveries KAVAC LOGISTICS regularly assigned coupled with supervisory interference prevented Mr. Larios and other aggrieved employees from taking full and timely meal breaks. Fourthly, supervisors would instruct Mr. Larios and other aggrieved employees to clock out for full and timely meal breaks and continue working to conceal instances of noncompliant breaks. By extension, even when Mr. Larios and other aggrieved employees were locked out of their work app, they were still expected to organize and arrange packages. KAVAC LOGISTICS also failed to maintain lawful written rest break policies. Finally, despite these facts, KAVAC LOGISTICS failed to compensate Mr. Larios and other aggrieved employees all the premium wages they were owed. In fact, KAVAC LOGISTICS failed to include non-discretionary incentive compensation in Mr. Larios and other aggrieved employees' regular rate of pay for purposes of premium wages.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. But the wages shall not continue for more than 30 days.

During the relevant time period, KAVAC LOGISTICS failed to pay Mr. Larios and other aggrieved employees all wages, including as a result of uncompensated off-the-clock work, unpaid overtime wages, and unpaid premium wages for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code sections 201 through 203. Therefore, KAVAC LOGISTICS is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. California Labor Code section 204 also requires that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. In addition, California Labor Code section 204 requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

During the relevant time period, KAVAC LOGISTICS failed to pay Mr. Larios and other aggrieved employees all wages due to them, including as a result of uncompensated off-the-clock work, unpaid overtime wages, and unpaid premium wages owed for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code section 204.

During the relevant time period, KAVAC LOGISTICS also failed to include non-discretionary incentive pay and shift differentials in Mr. Larios and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Mr. Larios and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

During the relevant time period, KAVAC LOGISTICS failed to pay Mr. Larios and other aggrieved employees paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employees' regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees.

During the relevant time period, KAVAC LOGISTICS did not provide Mr. Larios and other aggrieved employees with complete and accurate itemized wage statements. The wage statements Mr. Larios and other aggrieved employees received from KAVAC LOGISTICS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include: (1) gross wages earned by Mr. Larios and other aggrieved employees; (2) total hours worked by Mr. Larios and other aggrieved employees; (3) all deductions for Mr. Larios and other aggrieved employees; (4) net wages earned by Mr. Larios and other aggrieved employees; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Larios and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the IWC Wage Order shall be subject to a civil penalty. The civil penalty is as follows: (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

During the relevant time period, Mr. Larios and other aggrieved employees have been denied their wages and premium wages and are entitled to penalties.

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California Labor Code sections 1174(d) requires an employer to keep at a central location in the state or at the plants or establishments at which employees are employed payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than 3 years.

During the relevant time period, KAVAC LOGISTICS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Mr. Larios and other aggrieved employees. KAVAC LOGISTICS also failed to keep accurate time records, including but not limited to accurate records of meal period start and stop times in violation of California Labor Code section 1198.

California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

During the relevant time period, KAVAC LOGISTICS did not provide Mr. Larios and other aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including pre-shift and post-shift work and work performed during meal and rest breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

During the relevant time period, Mr. Larios and other aggrieved employees incurred various necessary business-related expenses that were not fully reimbursed by KAVAC LOGISTICS. Mr. Larios and other aggrieved employees were required to purchase steel-toed boots and work gloves to effectively perform their duties. Yet, KAVAC LOGISTICS did not reimburse Mr. Larios and other aggrieved employees for incurring such out-of-pocket expenses. KAVAC LOGISTICS also expected Mr. Larios and other aggrieved employees to use their personal cell phones to access their work app, GPS-purposes, take pictures, and communicate with supervisors and dispatch. Despite this, KAVAC LOGISTICS did not reimburse Mr. Larios and other aggrieved employees for this usage.

We believe that Mr. Larios and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 223, 224, 226(a), 226.3, 226.7, 229, 510, 512(a), 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant must send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Larios will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of KAVAC LOGISTICS within 1 year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

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