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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MARCUS ANTHONY CROSBY, an individual
and in his representative capacity on behalf of
himself, the State of California, and all other
similarly situated current and former aggrieved
employees,

Plaintiff,

vs.

DHANDWAR BROS TRUCKING, INC., a
California corporation, KULDEEP
DHANDWAR, an individual, HARWINDER
KAUR, an individual, and DOES 1-25,

Defendants.

Case No. 24CV065789

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

PLAINTIFF MARCUS ANTHONY CROSBY ("PLAINTIFF") an individual and in his
representative capacity on behalf of himself, the State of California, and fellow current and former
AGGRIEVED EMPLOYEES, defined below, against DEFENDANT DHANDWAR BROS
TRUCKING, INC., a California corporation, DEFENDANT KULDEEP DHANDWAR, an
individual, DEFENDANT HARWINDER KAUR, an individual, and DOES 1-25 ("Defendant
DOES") (collectively "DEFENDANTS"), alleges on information and belief, except for his own acts
and knowledge which are based on personal knowledge, the following:

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I. INTRODUCTION

1. PLAINTIFF brings this action as an individual and in his representative capacity on behalf of himself and pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

- a. Misclassification of employees;
- b. Failure to provide meal periods;
- c. Failure to provide rest periods;
- d. Failure to pay wages when due;
- e. Failure to pay all regular and overtime wages;
- f. Failure to reimburse business expenses;
- g. Failure to provide accurate payroll records;
- h. Failure to provide accurate itemized wage statements;

4. PLAINTIFF brings the representative action against DEFENDANTS on behalf of himself and all other AGGRIEVED EMPLOYEES of DEFENDANTS in California, seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

II. PARTIES

6. PLAINTIFF MARCUS ANTHONY CROSBY (“PLAINTIFF”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in Alameda County.

1 7. DEFENDANT DHANDWAR BROS TRUCKING, INC., a California corporation,
2 registered with the California Secretary of State as file No. 2789057, that at all relevant times
3 mentioned herein conducted and continues to conduct substantial and regular business throughout
4 California.

5 8. DEFENDANT KULDEEP DHANDWAR is, on information and belief, doing
6 business in California as the Chief Executive Officer and Secretary of Defendant Dhandwar Bros
7 Trucking, Inc. Kuldeep Dhandwar is an owner, director, officer, or managing agent of Dhandwar
8 Bros Trucking, Inc.

9 9. DEFENDANT HARWINDER KAUR is, on information and belief, doing business
10 in California as the Chief Financial Officer of Defendant Dhandwar Bros Trucking, Inc. Harwinder
11 Kaur is an owner, director, officer, or managing agent of Dhandwar Bros Trucking, Inc.

12 10. Defendant DOES 1-25 ("Defendant DOES") are persons and/or entities that at all
13 relevant times mentioned herein conducted and continue to conduct substantial and regular business
14 throughout California.

15 11. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this
16 Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership,
17 associate or otherwise of DEFENDANT DOES 1 through 25, inclusive, are presently unknown to
18 PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal.
19 Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true
20 names and capacities of DOES 1 through 25, inclusive, when they are ascertained. PLAINTIFF is
21 informed and believes, and based upon that information and belief alleges, that the DEFENDANTS
22 named in this Complaint, including DOES 1 through 25, inclusive (hereinafter collectively
23 "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings
24 that proximately caused the injuries and damages hereinafter alleged.

25 12. DEFENDANTS own, operate, and/or manage a dump trucking business.

26 13. DEFENDANTS employed PLAINTIFF between approximately January 2022 and
27 January 2023, at DEFENDANT DHANDWAR BROS TRUCKING, INC.'S Branch # 24171
28 Monument Boulevard Hayward.

1 14. At all times, DEFENDANTS paid PLAINTIFF on a monthly basis.

2 **III. JOINT EMPLOYER AND PAGA**

3 15. PLAINTIFF brings the representative action on behalf of the State of California and
4 on behalf of all non-union, non-exempt individuals who are or previously were employed by
5 DEFENDANTS in California who suffered one or more Labor Code violations enumerated in Labor
6 Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for
7 DEFENDANTS between December 22, 2022, and the present (“PAGA PERIOD”).

8 16. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
9 § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged
10 Labor Code violations committed by DEFENDANTS.

11 17. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
12 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
13 and the applicable Industrial Welfare Commission Wage Order.

14 18. The Private Attorney General Act (“PAGA”) permits an aggrieved employee to
15 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
16 2699(a).)

17 19. Section 558 of the California Labor Code provides that “any employer *or other*
18 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
19 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
20 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

21 20. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
22 acting either individually or as an officer, agent, or employee of another person, who pays or causes
23 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
24 or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

25 21. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
26 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the
27 employer’s failure to pay appropriate wages to its employees, and, since liability under either 558
28 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are

1 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
2 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
3 Cal.App.4th 1112, 1145-1146.

4 22. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and
5 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
7 caused the complaints, injuries, and damages alleged herein.

8 23. At all relevant times, each DEFENDANT, whether named or fictitious, was the
9 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
10 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
11 ratified the acts of the other.

12 24. Each DEFENDANT, whether named or fictitious, exercised control over
13 PLAINTIFF'S wages, working hours, and/or working conditions.

14 25. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
15 this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or
16 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

17 **IV. JURISDICTION AND VENUE**

18 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10.

20 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
22 DEFENDANTS (i) currently maintain and at all relevant times-maintained offices and facilities in
23 this County, and (ii) committed the wrongful conduct herein alleged in this County against
24 PLAINTIFF.

25 **V. FACTUAL ALLEGATIONS**

26 **A. Rest Period Violations**

27 28. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to work in excess
28 of four (4) hours without being provided ten (10) minute rest periods as a result of the nature and

constraints of their ‘per load’ jobs and DEFENDANTS’ policies and practices which impede and discourage employees’ ability to take rest periods.

29. Further, these employees were denied their first rest periods of at least ten (10) minutes for shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.

30. Specifically, DEFENDANTS will assign jobs that only provide compensation “per load” PLAINTIFF and other AGGRIEVED EMPLOYEES complete. In these instances, DEFENDANTS discourage and impede PLAINTIFF and other AGGRIEVED EMPLOYEES to either postpone or forfeit their rest periods as a result.

31. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof, and as a result, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS.

32. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday the rest period is not provided. During the entirety of PLAINTIFF’S employment and the PAGA Period, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying them in accordance with Industrial Wage Orders, especially during “per load” jobs.

33. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their regular wages by working without compensation at the applicable wage and rates. DEFENDANTS had, and continue to practice, a uniform policy to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

B. Meal Period Violations

34. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to

1 work during the meal period(s) during what was supposed to be PLAINTIFF'S and other
2 AGGRIEVED EMPLOYEES' off-duty meal break due to the nature and constraints of their 'per
3 load" jobs and DEFENDANTS' policies and practices which impede and discourage employees'
4 ability to take rest periods.

5 35. Specifically, to PLAINTIFF, DEFENDANTS required and directed PLAINTIFF to
6 either postpone or forfeit his meal period(s) due to commentary from DEFENDANTS' managers
7 and supervisors, in addition to DEFENDANTS' policies and practices to only compensate
8 employees per load completed.

9 36. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
10 required to provide meal periods of not less than thirty (30) minutes to PLAINTIFF and other
11 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
12 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the
13 employee's regular rate of compensation.

14 37. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work
15 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
16 duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED
17 EMPLOYEES with a second off-duty meal period from time to time in which these employees were
18 required by DEFENDANTS to work ten (10) hours of work.

19 38. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeited meal
20 breaks without additional compensation and in accordance with DEFENDANT's strict policy and
21 practice.

22 39. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
23 work during the meal break during what was supposed to be off-duty meal break. As a result,
24 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their meal premiums without
25 compensation at the applicable wage and rates. DEFENDANTS had, and continue to practice, a
26 uniform policy to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES meal periods.

27 40. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to take
28 thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal period.

1 The nature of the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES do not
2 qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other
3 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and
4 in accordance with DEFENDANTS’ policies and practices.

5 C. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

6 41. During PLAINTIFF’S employment and the PAGA Period, DEFENDANTS failed to
7 accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked.

8 42. DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to perform
9 off-the-clock work. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
10 EMPLOYEES necessary wages for attending and performing work at DEFENDANTS’ direction,
11 request and benefit, while off-the-clock.

12 43. Specifically, DEFENDANTS required PLAINTIFF and other EMPLOYEES to pick
13 up DEFENDANTS’ dump trucks at their service yard in Hayward but prohibited PLAINTIFF and
14 other AGGRIEVED EMPLOYEES from clocking in until they arrived at the first assigned work
15 site. DEFENDANTS failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES
16 for travel time despite requiring these employees to report to DEFENDANTS’ yard prior to
17 reporting to the assigned work sites. This uncompensated travel time can take up to two (2) hours,
18 for which PLAINTIFF and other AGGRIEVED EMPLOYEES were not compensated.

19 44. DEFENDANTS directed and directly benefited from the uncompensated off-the-
20 clock work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES.

21 45. DEFENDANTS controlled the work schedules, duties, protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and other AGGRIEVED EMPLOYEES.

23 46. DEFENDANTS were able to track the amount of time PLAINTIFF and other
24 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
25 or pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages earned and owed for all the
26 work they performed, including during off-the-clock work.

27 47. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees,
28 subject to the requirements of the California Labor Code.

1 48. DEFENDANTS' policies and practices deprived PLAINTIFF and other
2 AGGRIEVED EMPLOYEES of all regular and overtime wages owed for the off-the-clock work
3 activities.

4 49. DEFENDANTS knew or should have known that PLAINTIFF and other
5 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

6 50. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
7 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent while
8 off-the-clock. DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF and other
9 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

10 51. Additionally, DEFENDANTS required PLAINTIFF and other AGGRIEVED
11 EMPLOYEES to train with other employees but failed to compensate PLAINTIFF and other
12 AGGRIEVED EMPLOYEES for this time. For instance, DEFENDANTS required PLAINTIFF to
13 train with another employee for an entire week but refused to compensate PLAINTIFF for this time,
14 despite performing work for DEFENDANTS and to DEFENDANTS benefit.

15 52. Moreover, as a result, DEFENDANTS provided PLAINTIFF and other
16 AGGRIEVED EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and
17 did not maintain accurate payroll and timekeeping records.

18 D. Unlawful Deductions

19 53. DEFENDANTS provide PLAINTIFF and other AGGRIEVED EMPLOYEES with
20 dump trucks that are not up to current safety codes. DEFENDANTS do not service or repair the
21 trucks provided to PLAINTIFF and other AGGRIEVED EMPLOYEES. As a result, these trucks
22 are unreliable, malfunction, or suffer from exaggerated wear and tear.

23 54. DEFENDANTS addition direct and instruct employees to avoid or go around scales
24 to avoid tickets for the safety violations on the dump trucks. DEFENDANTS demand PLAINTIFF
25 and other AGGRIEVED EMPLOYEES risk points on their commercial license and fines due to
26 DEFENDANTS refusal to provide safe, up-to-code dump trucks.

27 55. In violation of Cal. Lab. Code § 221, DEFENDANTS deduct the costs of general
28 wear and tear or repairs from PLAINTIFF and other AGGRIEVED EMPLOYEES' wages.

1 56. For instance, DEFENDANTS deducted \$1800.00 from PLAINTIFF'S paycheck to
2 pay for damage to DEFENDANTS' dump truck when a truck tire went over the scale and caused
3 damage to the body of the dump truck.

4 E. Violations for Untimely Payment of Wages and Failure to Pay All Wages Owed

5 57. Pursuant to California Labor Code section 204, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES are entitled to timely payment of wages during their employment.
7 DEFENDANTS pay PLAINTIFF and other AGGRIEVED EMPLOYEES once per month.

8 58. PLAINTIFF and other AGGRIEVED EMPLOYEES did not receive payment of all
9 wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages,
10 and rest period premium wages within permissible time period and on days designated in advance
11 by the employer as regular paydays.

12 59. Additionally, DEFENDANTS have incorrectly and underpaid PLAINTIFF and other
13 AGGRIEVED EMPLOYEES as a result of their failure to maintain accurate records. Specifically,
14 PLAINTIFF has been underpaid on several occasions and DEFENDANTS have failed to provide
15 any waiting time penalties.

16 F. Unreimbursed Business Expenses

17 60. DEFENDANTS required PLAINTIFF and other EMPLOYEES to use their personal
18 cell phone for work-related communications. As a result of DEFENDANTS' failure to service and
19 maintain their vehicles, the radios installed inside DEFENDANTS' vehicles no longer work.
20 Therefore, employees are required to use personal cell phones to communicate with each other and
21 with Defendants and Defendants' managers. This includes daily text messages, even on scheduled
22 days off, about work-related tasks or messages about their assigned work sites for their next shift.

23 61. DEFENDANTS did not provide PLAINTIFF and other AGGRIEVED
24 EMPLOYEES with a designated work phone. PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were neither compensated for the cost of the cellular phone nor the cost of the cellular phone plan.

26 62. DEFENDANTS additionally required PLAINTIFF and other AGGRIEVED
27 EMPLOYEES to purchase work uniforms and materials that are required to perform their job duties.
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1 These items include, safety vests, helmets, safety gloves, shovels, and diesel sprayer.
2 DEFENDANTS failed to reimburse any of these required expenses.

3 63. DEFENDANTS failed to reimbursed PLAINTIFF and other AGGRIEVED
4 EMPLOYEES for use of their personal cell phone, and other expenses incurred for work uniforms.

5 64. Instead, DEFENDANTS directed PLAINTIFF and other AGGRIEVED
6 EMPLOYEES to use their personal cell phone, personal time, and personal money in the discharge
7 of their work duties.

8 G. Willful Misclassification

9 65. DEFENDANTS made a calculated business decision to misclassify its drivers as
10 independent contractors rather than employees in order to avoid its obligations under California
11 law.

12 66. DEFENDANTS had, and may continue to have, a practice to pay half their
13 employees' paychecks as 1099 independent contractors. DEFENDANTS make these 1099
14 payments through personal accounts and do not provide any itemized statements to PLAINTIFF
15 and other AGGRIEVED EMPLOYEES.

16 67. Through this misclassification, DEFENDANTS have engaged in a deliberate
17 scheme to evade its obligations under California law – including, but not limited to the obligation
18 to pay its drivers no less than the applicable minimum wage for all hours worked, to pay overtime
19 compensation for overtime hours worked, to provide paid, duty-free rest periods during the
20 workday, to reimburse the drivers for the cost of all equipment and supplies needed to perform
21 their work, to provide accurate itemized wage deduction statements and other required notices
22 containing required employment-related information, and to timely pay all wages owed during
23 each employee's period of employment and upon separation of employment.

24 H. Inaccurate Itemized Wage Statements

25 68. California Labor Code Section 226 requires an employer to furnish its employees an
26 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
27 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
28 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and only the last four digits of the employee's social security number or an employee
2 identification number other than a social security number, (8) the name and address of the legal
3 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee

5 69. During PLAINTIFF'S employment and during the PAGA period, when PLAINTIFF
6 and other AGGRIEVED EMPLOYEES were not paid meal and rest period premiums and were not
7 paid for all hours worked, DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED
8 EMPLOYEES with complete and accurate wage statements. DEFENDANTS' paystubs failed to
9 show, among other things, the total hours worked and all applicable hourly rates in effect during the
10 pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay
11 for penalty payments or missed meal and rest periods.

12 70. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records
13 and provide wage statements that comply with Cal. Lab. Code § 226.

14 71. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of
15 DEFENDANTS' aforementioned violation because they could not promptly and easily determine
16 from the wage statement alone the applicable hourly rate and the corresponding number of hours
17 worked at the applicable hourly rate for this remuneration.

18 72. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
19 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
20 violations are knowing and intentional, and were not isolated or due to an unintentional payroll error
21 due to clerical or inadvertent mistake.

22 I. Defendants' Retaliation and Constructive Termination

23 73. California On December 22, 2023, PLAINTIFF engaged in a protected activity by
24 filing a PAGA Notice with the Labor Workforce Development Agency. PLAINTIFF identified
25 violations of California Labor Code arising from his employment with DEFENDANTS. The PAGA
26 Notice was sent to DEFENDANTS via certified notifying them of Plaintiff's complaints of the Labor
27 Code and PLAINTIFF'S intent to pursue his claims.

28 74. After receiving the PAGA notice, DEFENDANTS stopped dispatching PLAINTIFF to

1 job sites and prevented him from working any hours with DEFENDANTS.

2 75. PLAINTIFF repeatedly requested work assignments from DEFENDANTS which was
3 refused. On one occasion, DEFENDANTS informed PLAINTIFF he was unable to work with
4 DEFENDANTS while the lawsuit was pending. On another occasion, DEFENDANTS instructed
5 PLAINTIFF to dismiss his lawsuit if he wanted work.

6 76. DEFENDANTS effectively terminated PLAINTIFF as a result of his engagement in a
7 protected activity.

8 77. DEFENDANTS have not schedule PLAINTIFF for any hours since the filing of his
9 PAGA Notice.

10 78. PLAINTIFF suffered an adverse employment action as a result of engaging in a
11 protected activity.

12 79. PLAINTIFF's engagement in a protected activity was a substantial and motivating reason
13 for DEFENDANTS retaliation.

14 **VI. CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 For Unfair Competition
17 (Cal. Bus. & Prof. Code §§ 17200 et seq.)
(Against All DEFENDANTS)

18 80. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporates by reference and
19 realleges as if fully stated herein each and every allegation set forth above.

20 81. DEFENDANTS are a "person" as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

22 82. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair
23 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
24 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

25 Any person who engages, has engaged, or proposes to engage in unfair competition
26 may be enjoined in any court of competent jurisdiction. The court may make such
27 orders or judgments, including the appointment of a receiver, as may be necessary to
28 prevent the use or employment by any person of any practice which constitutes unfair

1 competition, as defined in this chapter, or as may be necessary to restore to any
2 person in interest any money or property, real or personal, which may have been
3 acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

4 83. By the conduct alleged herein, DEFENDANTS have engaged and continue to engage
5 in a business practice that violates California law, including but not limited to, the applicable Wage
6 Order(s), the California Code of Regulations and the California Labor Code including Sections §§
7 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
8 1174.5, 1198, 1199, 6400, 6401, 6401.7, 6402, 6403, 6406, 6306, and for which this Court should
9 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
10 necessary to prevent and remedy the conduct held to constitute unfair competition, including
11 restitution of wages wrongfully withheld.

12 84. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
13 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or
14 substantially injurious to employees, and were without valid justification or utility for which this
15 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
16 Business & Professions Code, including restitution of wages wrongfully withheld.

17 85. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
18 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
19 mandated meal and rest periods and the required amount of compensation for missed meal and rest
20 periods, and failed to pay minimum wages owed, due to a systematic business practice that cannot
21 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
22 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
23 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
24 wages wrongfully withheld.

25 86. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair,
26 and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and other
27 AGGRIEVED EMPLOYEES to be underpaid during their employment with DEFENDANTS.

1 87. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair,
2 and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and other
3 AGGRIEVED EMPLOYEES to be misclassified as independent contractors and during their
4 employment with DEFENDANTS as required by Cal. Lab. Code 226.8.

5 88. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
6 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
7 mandatory meal and/or rest breaks to PLAINTIFF and other AGGRIEVED EMPLOYEES as
8 required by Cal. Lab. Code §§ 226.7 and 512.

9 89. Therefore, PLAINTIFF demands on behalf of himself and on behalf of other
10 AGGRIEVED EMPLOYEES, one (1) hour of pay for each workday in which an off-duty meal
11 period was not timely provided for each five (5) hours of work.

12 90. PLAINTIFF further demands on behalf of himself and on behalf of other
13 AGGRIEVED EMPLOYEES, one (1) hour of pay for each workday in which a rest period was not
14 timely provided as required by law.

15 91. By and through the unlawful and unfair business practices described herein,
16 DEFENDANTS have obtained valuable money and services from PLAINTIFF and other
17 AGGRIEVED EMPLOYEES, including earned wages for all time worked, and has deprived them
18 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
19 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete
20 against competitors who comply with the law.

21 92. All the acts described herein as violations of, among other things, the Industrial
22 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
23 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
24 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
25 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

26 93. PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to, and do, seek
27 such relief as may be necessary to restore to them the money and property which DEFENDANTS
28 have acquired or of which PLAINTIFF and other AGGRIEVED EMPLOYEES have been deprived,

1 by means of the above described unlawful and unfair business practices, including earned but unpaid
2 wages for all time worked.

3 **SECOND CAUSE OF ACTION**

4 For Failure to Pay Minimum Wages
(Cal. Lab. Code § 1194, 1197& 1197.1, 558)
5 (Plaintiff Against All DEFENDANTS)

6 94. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
7 every allegation set forth above.

8 95. PLAINTIFF brings a claim for DEFENDANTS' willful and intentional violations of
9 California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS'
10 failure to accurately calculate and pay minimum wages to PLAINTIFF.

11 96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
12 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
13 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
14 the unpaid minimum wages according to proof at trial.

15 97. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
16 regard to the correct amount of time worked. As set forth herein, DEFENDANTS' uniform policy
17 and practice was to unlawfully and intentionally deny payment of wages due to PLAINTIFF
18 EMPLOYEES for all hours worked and therefore did not receive minimum wage for all hours
19 worked as required by Cal. Lab. Code § 1197.

20 98. Specifically, DEFENDANTS prohibited PLAINTIFF from properly tracking his
21 time worked as a company policy. DEFENDANTS directed and instruction PLAINTIFF on which
22 hours he was allowed to report as time worked.

23 99. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, as a result of implementing a uniform policy and practice that denied accurate
25 compensation to PLAINTIFF in regard to minimum wages.

26 100. Further, DEFENDANTS required PLAINTIFF to train for a week and shadow
27 another driver but refused to compensate PLAINTIFF for this time until he drove his own truck.
28

1 101. DEFENDANTS, as a company policy, improperly deducted wages from
2 PLAINTIFF for repairs to DEFENDANTS' dump trucks. Specifically, to PLAINTIFF,
3 DEFENDANTS improperly deducted at least \$1,800.00 from PLAINTIFF'S paycheck for
4 DEFENDANTS to repair a dump truck.

5 102. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately calculated the amount of time worked, made improper deductions and consequently
7 underpaid the actual time worked by PLAINTIFF. DEFENDANTS acted in an illegal attempt to
8 avoid the payment of all earned wages, and other benefits in violation of the California Labor Code,
9 the Industrial Welfare Commission requirements and other applicable laws and regulations.

10 103. PLAINTIFF was paid less for time worked than they were entitled to, constituting a
11 failure to pay all earned wages.

12 104. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
13 PLAINTIFF has suffered and will continue to suffer an economic injury including the use and
14 enjoyment of wages and lost interest on such wages all to their damage in amounts in amounts which
15 are presently unknown to him, and which will be ascertained according to proof at trial.

16 105. DEFENDANTS knew or should have known that PLAINTIFF was under-
17 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
18 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform
19 corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme
20 by refusing to pay PLAINTIFF the correct wages for his time worked.

21 106. DEFENDANTS maintained a uniform wage practice of not only paying PLAINTIFF
22 without regard to the correct amount of time worked by PLAINTIFF. DEFENDANTS' uniform
23 policy and practice was to unlawfully and intentionally deny accurate and full payment of wages
24 due to PLAINTIFF.

25 107. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate PLAINTIFF for all time worked and provide them with the
27 requisite compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and
28 maliciously toward PLAINTIFF with a conscious disregard for their legal rights, or the

1 consequences to him, and with the intent of depriving him of their property and legal rights, and
2 otherwise causing him injury in order to increase company profits at the expense of this employee.

3 108. PLAINTIFF therefore request recovery of all unpaid wages, according to proof,
4 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
5 in a sum as provided by the California Labor Code and/or other applicable statutes.

6 109. To the extent minimum wage compensation is determined to be owed to
7 PLAINTIFF, whose employment has terminated, DEFENDANTS' conduct also violates Labor
8 Code §§ 201 and/or 202, and therefore PLAINTIFF is also entitled to waiting time penalties under
9 Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANTS' conduct as alleged herein
10 was willful, intentional, and not in good faith. Further, PLAINTIFF is entitled to seek and recover
11 statutory costs.

12 **THIRD CAUSE OF ACTION**

13 For Failure to Pay Overtime Compensation
14 (Cal. Lab. Code §§ 558, 510, 1194, 1198)
(Plaintiff Against All DEFENDANTS)

15 110. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
16 reallege as if fully stated herein each and every allegation set forth above.

17 111. Labor Code section 558 provides for a civil penalty to be assessed against any
18 employer or other person acting on behalf of an employer who fails to compensate employees at the
19 statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40
20 hours in any workweek or who fails to compensate employees at the statutory double time rates for
21 any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day
22 of a workweek.

23 112. DEFENDANTS routinely and systematically failed to properly record accurate time
24 records for each employee showing when each employee began and ended each work period. By
25 failing to properly record hours DEFENDANTS routinely and systematically failed to compensate
26 employees at the statutory overtime rate for any work in excess of eight hours in one day or any
27 work in excess of 40 hours in any workweek as required by Labor Code section 510 and Section 3
28 of the applicable Wage Order.

1 113. As a proximate result of DEFENDANTS' failure to pay overtime and/or wages as
2 alleged above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to section
3 558 as may be established according to proof at trial.

4 114. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
5 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code
6 § 1198 further states that the employment of an employee for longer hours than those fixed by the
7 Industrial Welfare Commission is unlawful.

8 115. During PLAINTIFF'S employment, PLAINTIFF was required by DEFENDANTS
9 to work overtime for DEFENDANTS and was not paid appropriate overtime rates for work
10 performed excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
11 forty (40) hours in any workweek.

12 116. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
13 without limitation, applicable to employees as a whole, as a result of implementing a uniform policy
14 and practice that failed to accurately record time worked by PLAINTIFF and denied accurate
15 compensation to PLAINTIFF for overtime worked, including, the overtime work performed in
16 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40)
17 hours in any workweek.

18 117. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
19 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
20 requirements and other applicable laws and regulations.

21 118. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
22 PLAINTIFF did not receive the correct overtime compensation for their time worked for
23 DEFENDANTS.

24 119. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
25 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF.
26 Further, PLAINTIFF is not subject to a valid collective bargaining agreement that would preclude
27 the causes of action contained herein this Complaint. Rather, PLAINTIFF brings this Action on
28

1 behalf of himself, and other AGGRIEVED EMPLOYEES, based on DEFENDANTS' violations of
2 non-negotiable, non-waivable rights provided by the State of California.

3 120. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF for the true amount of overtime he worked, PLAINTIFF has suffered
5 and will continue to suffer an economic injury in amounts which are presently unknown to them,
6 and which will be ascertained according to proof at trial.

7 121. DEFENDANTS knew or should have known that PLAINTIFF was
8 undercompensated for his time worked. DEFENDANTS systematically elected, either through
9 intentional malfeasance or gross nonfeasance, to not pay him for their labor as a matter of uniform
10 company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme
11 by refusing to pay PLAINTIFF the correct overtime wages for their overtime worked.

12 122. In performing the acts and practices herein alleged in violation of California labor
13 laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite
14 compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and
15 maliciously toward PLAINTIFF with a conscious of and utter disregard for his legal rights, or the
16 consequences to him, and with the despicable intent of depriving him of his property and legal rights,
17 and otherwise causing them injury in order to increase company profits at the expense of this
18 employees.

19 123. Therefore, PLAINTIFF request recovery of overtime wages, according to proof,
20 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
21 in a sum as provided by the California Labor Code and/or other applicable statutes.

22 **FOURTH CAUSE OF ACTION**

23 For Failure to Provide Rest Periods
(Cal. Lab. Code §§ 226.7 & 512)
24 (Plaintiff Against All DEFENDANTS)

25 124. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
26 reallege as if fully stated herein each and every allegation set forth above.

27 125. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders requires
28 DEFENDANTS to provide employees all rest periods specified in the applicable Wage Order. These

1 laws and regulations further entitle employees to be paid one additional hour of pay at their regular
2 rate of compensation for each day of denied rest period.

3 126. PLAINTIFF was required to work in excess of four (4) hours without being provided
4 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied his first rest
5 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
6 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
7 of between six (6) and eight (8) hours. PLAINTIFF was also not provided with one-hour wages in
8 lieu thereof.

9 127. As a result of the work schedules and staffing practices by DEFENDANTS to
10 compensate PLAINTIFF only for the number of loads completed per day, PLAINTIFF was denied
11 their proper rest periods by DEFENDANTS.

12 128. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
13 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
14 accordance with the applicable Wage Order, one additional hour of compensation at each
15 employee's regular rate of pay for each workday that rest period was not provided.

16 129. As a proximate result of the aforementioned violations, PLAINTIFF has been
17 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
18 penalties, expenses and costs of suit.

19 **FIFTH CAUSE OF ACTION**

20 For Failure to Provide Required Meal Periods

21 (Cal. Lab. Code §§ 226.7& 512)

22 (Plaintiff Against All DEFENDANTS)

23 130. PLAINTIFF and AGGRIEVED EMPLOYEES incorporate by reference and reallege
24 as if fully stated herein each and every allegation set forth above.

25 131. DEFENDANTS failed to provide all the legally required off-duty meal breaks to
26 PLAINTIFF as required by the applicable Wage Order and Labor Code. The nature of the work
27 performed by PLAINTIFF did not prevent DEFENDANTS' employees from being relieved of their
28 duties for the legally required off-duty meal periods. As a result of DEFENDANT'S policies,
practices and work requirements, PLAINTIFF was often not fully relieved of duty by

1 DEFENDANTS for meal periods.

2 132. DEFENDANTS discouraged and impeded PLAINTIFF'S ability to take legally
3 required meal periods.

4 133. DEFENDANTS further violated California Labor Code §§ 226.7, 512 and the
5 applicable IWC Wage Order by failing to compensate PLAINTIFF who was not provided a meal
6 period, in accordance with the applicable Wage Order, one additional hour of compensation at each
7 employee's regular rate of pay for each workday that a meal period was not provided.

8 134. As a proximate result of the aforementioned violations, PLAINTIFF has been
9 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
10 penalties, expenses and costs of suit.

11 **SIXTH CAUSE OF ACTION**

12 For Failure to Reimburse Business Expenses
13 (Cal. Lab. Code § 2802)
(Plaintiff Against All Defendants)

14 135. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
15 reallege as if fully stated herein each and every allegation set forth above.

16 136. Pursuant to California Labor Code section 2802, DEFENDANTS are required to
17 indemnify PLAINTIFF for the expenses and losses incurred during the performance of employees'
18 job duties. The purpose of this statute is to prevent employers from passing their operating expenses
19 on to their employees.

20 137. As detailed above, DEFENDANTS required employees to incur the costs of personal
21 cell phone use and other work materials and uniforms without reimbursing PLAINTIFF for these
22 costs.

23 138. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse
24 PLAINTIFF for necessary business expenditures for travel expenses incurred in discharging work
25 duties.

26 139. DEFENDANTS sought to pad their own pockets at the expense of their employees,
27 and instead of compensating their employees for the necessary business costs, the employer passed
28 on its costs to its employees.

1 140. DEFENDANTS intentionally failed to reimburse its employees for the actual
2 expenses incurred and thereby increased its own profits to the detriment of its employees.

3 141. PLAINTIFF seeks to recover these business expenditures, plus interest thereon,
4 reasonable attorneys' fees, and costs, in an amount to be proven at trial.

5 142. Interest accrues from the date the employee incurred the necessary expenditure or
6 loss.

7 **SEVENTH CAUSE OF ACTION**

8 For Waiting Time Penalties
9 (Cal. Lab. Code § 201, 202, 203)
 (Plaintiff Against all Defendants)

10 143. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
11 reallege as if fully stated herein each and every allegation set forth above.

12 144. If an employer willfully fails to pay, without abatement or reduction, in accordance
13 with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages
14 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
15 until an action therefor is commenced; but the wages shall not continue for more than 30 days. (Cal.
16 Lab. Code § 203).

17 145. The employment of PLAINTIFF terminated, and DEFENDANTS have not tendered
18 payment of wages to PLAINTIFF who was underpaid for minimum and overtime wage, and/or
19 missed meal and rest breaks, as required by law.

20 146. Defendants knowingly and willfully violated the laws, regulations and orders
21 governing the wages of PLAINTIFF as described in the causes of action above.

22 147. Therefore, as provided by Cal Lab. Code § 203, PLAINTIFF demands up to thirty
23 (30) days of pay as penalty for not paying all wages due at time of termination and demand an
24 accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

25 **EIGHTH CAUSE OF ACTION**

26 For Failure to Pay Wages When Due
27 (Cal. Lab. Code § 204; 210)
 (Plaintiff Against All DEFENDANTS)

28 148. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and

1 reallege as if fully stated herein each and every allegation set forth above.

2 149. Cal. Lab. Code § 204 requires all wages earned by a person in any employment are
3 due and payable twice during each calendar month, on days designated in advance by the employer
4 as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
5 month shall be paid for between the 16th and the 26th day of the month during which the labor was
6 performed, and labor performed between the 16th and the last day, inclusive, of any calendar month,
7 shall be paid for between the 1st and 10th day of the following month.

8 150. DEFENDANTS only compensate PLAINTIFF once per month on the 15th of each
9 calendar month. Even then, DEFENDANTS have a regular practice of not timely paying
10 PLAINTIFF and require PLAINTIFF to wait several days to receive his paycheck. On these
11 occasions, DEFENDANTS additionally failed to provide PLAINTIFF waiting time penalties when
12 they failed to timely pay PLAINTIFF.

13 151. DEFENDANTS additionally have yet to pay PLAINTIFF all of the wages and all
14 premiums due for meal and rest period violations, off-the-clock work.

15 152. DEFENDANTS additionally have repeatedly underpaid PLAINTIFF on designated
16 workdays.

17 153. Specifically, on instances when PLAINTIFF has vocalized his concerns about
18 missing wages to DEFENDANTS, DEFENDANTS require PLAINTIFF to forgo his wages until
19 his next paycheck. DEFENDANTS falsely promised to compensate the difference on PLAINTIFF'S
20 next paycheck. However, when PLAINTIFF received his next paycheck, the difference was not paid
21 to him and did not include waiting time penalties.

22 154. DEFENDANTS willfully failed and refused and continue to willfully fail and refuse
23 to timely pay wages due to PLAINTIFF on designated paydays.

24 155. DEFENDANTS are therefore liable to PLAINTIFF, under Cal. Lab. Code § 210 in
25 the amount of one hundred dollars (\$100) for each failure to pay each employee and two hundred
26 dollars (\$200) for each subsequent violation each employee, plus 25 percent of the amount
27 unlawfully withheld any willful or intentional violation.

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1 **NINTH CAUSE OF ACTION**

2 For Failure to Provide Accurate, Itemized Wage Statements
3 (Cal. Lab. Code §§ 226; 226.3; 1174.5)
4 (Against All DEFENDANTS)

5 156. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
6 reallege as if fully stated herein each and every allegation set forth above.

7 157. Labor Code section 226 requires defendants to provide employees an accurate
8 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3)
9 the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
10 inclusive date of the period for which the employee is paid, (7) the name of the employee and his
11 or her social security number, (8) the name and address of the legal entity that is the employer, and
12 (9) all applicable hourly rates in effect and the corresponding number of hours worked

13 158. DEFENDANTS did not accurately record PLAINTIFF'S wages, off-the-clock work,
14 improperly classified these employees, and missed meal and rest breaks. DEFENDANTS failed to
15 provide an accurate wage statement in writing that properly and accurately itemizes all wages,
16 missed meal and rest periods, and reporting time wages owed to PLAINTIFF and thereby also failed
17 to set forth the correct wages earned by the employees.

18 159. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
19 section 226(a) on each and every wage statement that they provided to PLAINTIFF.

20 160. By failing to keep adequate records, as required by Labor Code section 226 and 1174,
21 DEFENDANTS injured PLAINTIFF making it difficult for these employees to calculate the
22 minimum wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

23 161. DEFENDANDS additionally failed to provide PLAINTIFF'S payroll and personnel
24 file within twenty-one (21) days and thirty (30) days when requested by PLAINTIFF.

25 162. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
26 226(e), 226.3, and 1174.5 for the wage statement violations committed by DEFENDANTS.

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Violation of Labor Code 6400
(Cal. Lab. Code 6400, 6401, and 6401.7)
(All DEFENDANTS)

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Violation of Labor Code 6402
(Cal. Lab. Code 6402)
(Against All DEFENDANTS)

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1 171. PLAINTIFF is informed and believe and thereon alleges, DEFENDANTS acted with
2 oppression, malic, or in such conscious disregard of PLAINTIFF'S rights and safety such that
3 PLAINTIFF is entitled to punitive damages to punish DEFENDANT to deter such conduct in the
4 future, in an amount to be proven at trial.

5 **TWELVETH CAUSE OF ACTION**

6 Violation of Labor Code 6403
7 (Cal. Lab. Code § 6403)
(Against All DEFENDANTS)

8 172. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
9 reallege as if fully stated herein each and every allegation set forth above.

10 173. Pursuant to Labor Code section 6403, No employer shall fail or neglect to: (a)
11 provide and use safety devices and safeguards reasonably adequate to render the employment and
12 place of employment safe, (b) adopt and use methods and processes reasonably adequate to render
13 the employment and place of employment safe, and (c) do every other thing reasonably necessary
14 to protect the life, safety, and health of employees.

15 174. PLAINTIFF repeatedly complained to DEFENDANTS about unsafe work
16 environment and that there were no safety measures, specifically about the vehicles DEFENDANTS
17 provide to its employees. Yet DEFENDANTS took no effective action to investigate, provide, use
18 safety devices, and safeguard its employees.

19 175. As a direct and proximate result of DEFENDANTS' negligence as set forth above,
20 PLAINTIFF has suffered in an amount to be proven at trial.

21 **THIRTEENTH CAUSE OF ACTION**

22 Violation of Labor Code 6306
23 (Cal. Lab. Code § 6306)
(Against All DEFENDANTS)

24 176. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
25 reallege as if fully stated herein each and every allegation set forth above.

26 177. Pursuant to Labor Code section 6306, (a) Safe, safety, and health as applied to an
27 employment or a place of employment mean such freedom from danger to the life, safety, or health
28 of employees as the nature of the employment reasonably permits. (b) Safety device and safeguard

1 shall be given a broad interpretation so as to include any practicable method of mitigating or
2 preventing a specific danger, including the danger of exposure to potentially injurious levels of
3 ionizing radiation or potentially injurious quantities of radioactive materials.

4 178. As alleged above, DEFENDANTS violated Lab. Code § 6306 by failing to provide
5 vehicles its employees that comply with current safety codes and direct their employees to forgo
6 safety checks in violation of Labor Code 6306.

7 179. As a direct and proximate result of DEFENDANTS' negligence as set forth above,
8 PLAINTIFF has suffered in an amount to be proven at trial.

9 **FOURTEENTH CAUSE OF ACTION**

10 Misclassification of Employees

11 (Cal. Lab. Code § 226.8)

(Against All DEFENDANTS)

12 180. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
13 reallege as if fully stated herein each and every allegation set forth above.

14 181. DEFENDANTS conducts dump trucking services employer and jointly owns,
15 operates, manages, and controls a chain of integrative dump trucking located in California.

16 182. Upon hiring, DEFENDANTS immediately misclassified its employees as
17 independent contractors, despite the following facts:

18 (a) DEFENDANTS provide the vehicles for PLAINTIFF and other AGGRIEVED
19 EMPLOYEES to perform work;

20 (b) DEFENDANTS direct and control work performed by PLAINTIFF and other
21 AGGRIEVED EMPLOYEES including scheduling the time PLAINTIFF and other
22 AGGRIEVED EMPLOYEES work;

23 (c) PLAINTIFF and other AGGRIEVED EMPLOYEES perform work that is within the
24 regular business of DEFENDANTS;

25 (d) PLAINTIFF and other AGGRIEVED EMPLOYEES are not engaged in a distinct
26 occupation or business;

27 (e) PLAINTIFF and other AGGRIEVED EMPLOYEES perform work for
28 DEFENDANTS over a long period of time;

1 (f) PLAINTIFF and other AGGRIEVED EMPLOYEES believe they have an employer-
2 employee relationship with DEFENDANTS.

3 183. DEFENDANTS willfully misclassified PLAINTIFF and other AGGRIEVED
4 EMPLOYEES as independent contractors in violation of Cal. Lab. Code § 226.8.

5 184. DEFENDANTS are therefore liable to civil penalties as provided by Cal. Lab. Code
6 § 226.8.

7 **FIFTEENTH CAUSE OF ACTION**

8 For Retaliation
(Cal. Lab. Code § 98.6)
(Against All DEFENDANTS)

9 185. Plaintiff incorporates by reference and realleges as if fully stated herein each and every
10 allegation set forth above.

11 186. Labor Code section 98.6 prohibits an employer from discriminating or retaliating against
12 an employee for raising concerns about workplace violations or for exercising any of the rights provided
13 under the Labor Code or Orders of the Industrial Welfare Commission.

14 187. PLAINTIFF engaged in a protected activity by filing a PAGA Notice with the Labor
15 Workforce Development Agency on December 22, 2023, identifying violations of California Labor
16 Code arising from his employment with DEFENDANTS. The PAGA Notice was sent to
17 DEFENDANTS via certified notifying them of Plaintiff's complaints of the Labor Code.

18 188. After receiving such notice, DEFENDANTS stopped dispatching PLAINTIFF to job
19 sites and prevented him from working any hours with DEFENDANTS.

20 189. When PLAINTIFF would ask DEFENDANTS for work, they instructed him to call them
21 to discuss the lawsuit or tell PLAINTIFF he was unable to work while the lawsuit was pending.

22 190. DEFENDANTS effectively terminated PLAINTIFF as a result of his engagement in a
23 protected activity.

24 191. PLAINTIFF suffered an adverse employment action as a result of engaging in a
25 protected activity.

26 192. PLAINTIFF'S engagement in protected activities were substantial motivating reasons
27 for DEFENDANTS' decision to reduce PLAINTIFF'S hours and effectively terminate PLAINTIFF.
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1 Thus, PLAINTIFF'S reduction in hours and constructive termination, were retaliatory and in violation
2 of Cal. Lab. Code § 98.6 because it was connected to, and a consequence of, his actions in raising his
3 rights.

4 193. As a proximate result of DEFENDANTS' conduct, PLAINTIFF has suffered actual,
5 consequential, and incidental financial losses, including without limitation, loss of salary and benefits,
6 the intangible loss of employment-related opportunities with DEFENDANTS, and damage to his
7 reputation in his work community, all in an amount subject to proof. PLAINTIFF claims such amounts
8 as damages together with civil penalties pursuant to Cal. Lab. Code § 98.6(b)(3).

9 194. The acts taken toward PLAINTIFF were carried out by and/or ratified by
10 DEFENDANTS and/or managing agent employees of DEFENDANTS acting in a despicable,
11 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and
12 damage PLAINTIFF, thereby justifying an award to him of punitive damages in a sum appropriate to
13 punish DEFENDANTS.

14 **SIXTEENTH CAUSE OF ACTION**

15 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
16 (Cal. Lab. Code §§ 2698 et seq.)
(Against All DEFENDANTS)

17 195. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
18 reallege as if fully stated herein each and every allegation set forth above.

19 196. As a result of the acts alleged herein, PLAINTIFF, as an AGGRIEVED EMPLOYEE
20 within the meaning of Labor Code section 2699, subdivision (c), on behalf of himself and all other
21 AGGRIEVED EMPLOYEES of DEFENDANTS, seek the recovery of civil penalties against
22 DEFENDANTS pursuant to California Labor Code sections 2698 et seq., for the following knowing
23 and intentional violations of the California Labor Code:

24 a. For willfully misclassifying PLAINTIFF and other AGGRIEVED EMPLOYEES as
25 independent contractors, and engaging in a pattern or practice of committing said
26 unlawful acts, in violation of Labor Code section 226.8;

27 b. For failure to provide all minimum wages to PLAINTIFF and other AGGRIEVED
28 EMPLOYEES in violation of Labor Code sections Code § 1194, 1197& 1197.1, 558

- c. For failing to pay wages promptly or when due to PLAINTIFF and other AGGRIEVED EMPLOYEES in violation of Labor Code sections 204 and 210;
- d. For failing to pay wages upon termination to PLAINTIFF and other AGGRIEVED EMPLOYEES in violation of Labor Code sections 201, 202, and 203;
- e. For failing to maintain for and provide accurate, itemized wage statements required by Labor Code Section 226.
- f. For failing to compensate to PLAINTIFF and other AGGRIEVED EMPLOYEES who were not provided a meal period in violation of Labor Code Section 226.7; and
- g. For failing to compensate to PLAINTIFF and other AGGRIEVED EMPLOYEES who were not provided a rest period in violation of Labor Code Section 226.7; and
- h. For failing to provide to PLAINTIFF and other AGGRIEVED EMPLOYEES who worked more than eight (8) hours per workday and more than forty (40) hours per workweek additional compensation beyond their regular wages in violation of Labor Code Sections 558, 510, 1194, 1198.
- i. For failure to adhere to safety practices in violation of Labor Code Sections 6400, 6401, 6402, 6403, and 6306.

197. The above-referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to Labor Code sections §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1174.5, 1198, 1199 and 2699, subdivisions (a) and (f).

198. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to consider PLAINTIFF'S notice of DEFENDANTS' Labor Code violations and of PLAINTIFF'S intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

DEMAND FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and

severally, as follows:

1. On behalf of the PLAINTIFF:

A. Compensatory damages, according to proof at trial, including unpaid wages, due to PLAINTIFF plus interest thereon at the statutory rate;

B. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations;

C. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

D. Plaintiff's wages as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

E. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

F. Punitive damages in an amount to punish DEFENDANTS to be proven at trial.

G. Liquidated damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the unpaid minimum wages according to proof at trial;

2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

i. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004;

2. On all claims:

A. An award of interest, including prejudgment interest at the legal rate;

B. Such other and further relief as the Court deems just and equitable; and

C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

1 DATED: February 28, 2024

Respectfully submitted,

2 **EMRAN LAW FIRM**

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4 By: Harris Emran
5 Harris Emran, Esq.
6 Attorney for PLAINTIFF and OTHER
7 AGGRIEVED EMPLOYEES
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11 **DEMAND FOR A JURY TRIAL**

12 PLAINTIFF demand a jury trial on issues triable to a jury.
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14 DATED: February 28, 2024

EMRAN LAW FIRM

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17 By: Harris Emran
18 Harris Emran, Esq.
19 Attorney for PLAINTIFF and OTHER
20 AGGRIEVED EMPLOYEES
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