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all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

EDUARDO LUEVANO on behalf of
himself, all others similarly situated,
and on behalf of the general public,

Plaintiffs,

v.

STARRUE, INCORPORATED DBA
STAR TOWING; and DOES 1-100,

Defendants.

Case No. 37-2024-00012876-CU-OE-CTL

**PLAINTIFF EDUARDO LUEVANO'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

- 1. Violation of the PAGA for Failure to Pay Straight Time Wages;**
- 2. Violation of the PAGA for Failure to Pay All Overtime Wages;**
- 3. Violation of PAGA for Failure to Provide Meal Periods;**
- 4. Violation of PAGA for Failure to Provide Rest Periods;**
- 5. Violation of PAGA for Failure to Pay Wages Due at Termination of Employment;**
- 6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements;**
- 7. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth Amount of Sick Leave Available; and**
- 8. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties**

DEMAND FOR JURY TRIAL

1 Plaintiff EDUARDO LUEVANO (hereinafter referred to as “Plaintiff”), on behalf himself and all
2 other non-exempt, hourly employees who worked for Defendant Starrue, Incorporated dba Star
3 Towing (hereinafter referred to as “Defendant” or “STAR TOWING”) and/or DOES in California
4 (hereinafter referred to as the “Aggrieved Employees”), files this Complaint against Defendant and/or
5 DOES 1-100.

6 **I. INTRODUCTION**

7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et
9 seq., against Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
10 bring a lawsuit on behalf of himself and other current and former employees to address an
11 employer’s violations of the *California Labor Code*.

12 2. STAR TOWING is a towing company.

13 3. STAR TOWING is a California corporation that operates out of locations in California.

14 4. STAR TOWING employs non-exempt drivers to work at its locations.

15 5. Defendant and/or DOES have maintained uniform policies that violate the wage and hour
16 rights of Plaintiff and similarly situated non-exempt, hourly employees in the manner
17 complained of herein.

18 6. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendant
19 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
20 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
21 break; were not provided accurate itemized wage statements; were not paid compensation for
22 all time worked at the straight or overtime rate; were not reimbursed for business expenses;
23 were not paid waiting time penalties; and were not provided with paid sick leave / paid time
24 off and/or a written notice setting forth the amount of sick leave available. Plaintiff seeks
25 penalties on behalf of himself and all other Aggrieved Employees of Defendant and/or DOES
26 as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA,
27 *California Labor Code* section 2699(g)(1).

28 7. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified

as “exempt” or primarily employed in an executive, professional, or administrative capacity. Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid compensation for all time worked at the regular or overtime rate; provided meal periods; authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid penalties for not being provided itemized wage statements; paid compensation for all time worked at the regular or overtime rate; paid penalties for not being paid timely at the time of termination; provided with sick pay in compliance with California law; and reimbursed for business expenses.

8. At all times mentioned herein, Defendant and/or DOES control the working conditions of Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved Employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight-time, rest periods, wage statements, paying compensation at time of termination, timing of payment, and sick pay/paid time off. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the Aggrieved Employees from working.

II. JURISDICTION AND VENUE

9. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the Aggrieved Employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant

- and/or DOE operate industrial facilities, employ hourly employees, conduct business, and commit *California Labor Code* violations within San Diego County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within San Diego County. Defendant and/or DOES employ numerous aggrieved employees in California and/or San Diego County.
11. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.
12. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.
13. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, and/or otherwise are found within the County of San Diego, California.

III. THE PARTIES

A. Plaintiff

14. Throughout the Statutory Period, Plaintiff Eduardo Luevano is and was a resident of California. During the Statutory Period, Mr. Luevano was employed by STAR TOWING and/or DOES in California as a tow truck driver and performed work in STAR TOWING's and/or DOES' locations in San Diego, California in San Diego County.
15. Plaintiff and the Aggrieved Employees were and are employed in the State of California by

Defendant and/or DOES as non-exempt, hourly employees.

16. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to the LWDA and Defendant on January 4, 2024. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. The violations alleged in this notice also forms the basis for the allegations herein. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notices of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Labor Code* section 2699.3(a)(2)(C).

B. Defendants

17. STAR TOWING is a towing company.
18. TAR TOWING is a California corporation that operates out of locations in California.
19. STAR TOWING employs non-exempt drivers to work at its locations.
20. STAR TOWING employed Plaintiff and similarly situated non-exempt drivers in California.
21. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.
22. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.
23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of

Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

24. During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt drivers of Defendant and/or DOES, or any of its operating divisions and/or subsidiaries, who worked in California.

25. At all times mentioned herein, Defendant and/or DOES have not paid Plaintiff and the Aggrieved Employees for all time they were performing work and/or are subject to Defendant's and/or DOES' control. Defendant and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all hours worked. Specifically, STAR TOWING and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Luevano and the Aggrieved Employees are not paid for this time.

26. At all times mentioned herein, Defendant and/or DOES automatically deduct wages from Mr. Luevano's and the Aggrieved Employees' hours worked for a meal period regardless of whether a meal period was actually taken. STAR TOWING and/or DOES insert a meal period into Mr. Luevano's and the Aggrieved Employees' time records even though a meal period was not actually taken.

27. At all times mentioned herein, when Mr. Luevano and the Aggrieved Employees are able to take meal periods, Mr. Luevano and the Aggrieved Employees are not relieved of all duties and employer control during their unpaid meal periods. Mr. Luevano and the Aggrieved Employees are responsible for STAR TOWING's and/or DOES' company truck and its contents at all times, including during unpaid meal periods. In addition, Mr. Luevano and the Aggrieved Employees have to keep their phones on and with them during their meal periods. STAR TOWING and/or DOES call and/or otherwise contact Mr. Luevano and the Aggrieved Employees while they are on unpaid meal periods for dispatch and other business purposes. Thus, Mr. Luevano and the Aggrieved Employees are owed wages for meal period time during

with they are subject to STAR TOWING's and/or DOES' control and during which they are not free from all work duties.

28. At all times mentioned herein, STAR TOWING and/or DOES fail to pay Plaintiff and the Aggrieved Employees at the appropriate regular rate of pay for all overtime hours worked. Specifically, STAR TOWING and/or DOES fail to incorporate commissions and bonuses employees are paid when calculating employees' regular rate of pay for purposes of paying overtime compensation.

29. At all times mentioned herein, STAR TOWING and/or DOES fail to provide Plaintiff and the Aggrieved Employees with meal periods that comply with California law and failed to authorize and permit rest periods that comply with California law.

30. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by failing to provide compensation for these unprovided meal periods, Defendant and/or DOES willfully violate the provisions of *California Labor Code* section 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations, Section 11090(11). In addition, STAR TOWING and/or DOES fail to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

31. At all times mentioned herein, STAR TOWING and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one (1) hour of pay as additional compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

32. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to provide compensation for these periods, STAR TOWING and/or DOES willfully violate the provisions of *California Labor Code* section 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations, Section 11090(12).

- 1 33. At all times mentioned herein, STAR TOWING and/or DOES knew and/or should have known
2 that Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay
3 statements in accordance with California law.
- 4 34. At all times mentioned herein, STAR TOWING and/or DOES knew and/or should have known
5 that they were not providing complete and accurate pay statements in accordance with
6 California law to Plaintiff and the Aggrieved Employees.
- 7 35. At all times mentioned herein, STAR TOWING and/or DOES knowingly and intentionally fail
8 to include the address of the legal entity that is the employer on wage statements.
- 9 36. At all times mentioned herein, STAR TOWING and/or DOES have had a consistent policy
10 and/or practice of failing to itemize the amount of accrued/available sick leave non-exempt
11 drivers have on wage statements each pay period.
- 12 37. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
13 they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with
14 California law, and that Defendant and DOES had the ability to pay such compensation, but
15 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
16 Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the
17 Aggrieved Employees.
- 18 38. At all times mentioned herein, STAR TOWING and/or DOES failed to pay all wages owed to
19 Plaintiff and to other terminated or resigned Aggrieved Employees and failed to timely pay
20 wages during employment.
- 21 39. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination.
23 Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, meal
24 period premiums, and/or rest period premiums owed at the time of termination.
- 25 40. At all times mentioned herein, Defendant and/or DOES fail to pay Plaintiff and the Aggrieved
26 Employees a sum certain at the time of termination or within seventy-two (72) hours of their
27 resignation and have failed to pay those sums for thirty (30) days thereafter.
- 28 41. At all times mentioned herein, STAR TOWING and/or DOES fail to reimburse Mr. Luevano

and Aggrieved Employees for all necessary expenses incurred in the performance of their jobs. These expenses include, but are not limited to, having to use their personal cell phones for business purposes.

42. At all times mentioned herein, SUN BELT and/or DOES knew and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to be reimbursed for expenses incurred in direct consequence of their duties.

43. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all Defendant's non-exempt drivers who worked in California beginning one year prior to the date Plaintiff sent notice to the LWDA.

44. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).

45. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

46. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked.

47. It is fundamental that an employer must pay its employees for the time worked. *California Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

48. Section 1197.1 of the *California Labor Code* states "[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by

an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

49. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendant and/or DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

50. Defendant and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all hours worked. Specifically, STAR TOWING and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods.

51. Defendant and/or DOES automatically deduct wages from Mr. Luevano’s and the Aggrieved Employees’ hours worked for a meal period regardless of whether a meal period was actually taken. STAR TOWING and/or DOES insert a meal period into Mr. Luevano’s and the Aggrieved Employees’ time records even though a meal period was not actually taken.

52. When Mr. Luevano and the Aggrieved Employees are able to take meal periods, Mr. Luevano and the Aggrieved Employees are not relieved of all duties and employer control during their unpaid meal periods. Mr. Luevano and the Aggrieved Employees are responsible for STAR TOWING’s and/or DOES’ company truck and its contents at all times, including during unpaid meal periods. In addition, Mr. Luevano and the Aggrieved Employees have to keep their phones on and with them during their meal periods. STAR TOWING and/or DOES call and/or otherwise contact Mr. Luevano and the Aggrieved Employees while they are on unpaid meal periods for dispatch and other business purposes. Thus, Mr. Luevano and the Aggrieved Employees are owed wages for meal period time during which they are subject to STAR TOWING’s and/or DOES’ control and during which they are not free from all work duties.

53. STAR TOWING and/or DOES failed to pay Mr. Luevano and the Aggrieved Employees the correct hourly rate. For example, STAR TOWING’s and/or DOES’ Craigslist ad recruiting drivers, such as Mr. Luevano, stated that the pay was \$20 to \$25 per hour. Yet, when Mr. Luevano started working for STAR TOWING and/or DOES he was paid minimum wage. In

1 addition, Mr. Luevano and the Aggrieved Employees were promised commissions per tow and
2 impound bonuses. Yet, Mr. Luevano was not paid all commissions and bonuses earned. STAR
3 TOWING and/or DOES owe Mr. Luevano and the Aggrieved Employees these additional
4 wages, commissions, and bonuses.

5 54. Failing to pay for all hours worked while under Defendant's and/or DOES' control and/or
6 while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees
7 being deprived of straight time wages.

8 55. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
9 unpaid wages, and lost interest on such wages, and expenses.

10 56. Plaintiff and the Aggrieved Employees were employed by Defendants and/or DOES at all
11 relevant times. Defendant and/or DOES were required to compensate Plaintiff and the
12 Aggrieved Employees for all hours worked and were prohibited from making deductions that
13 had the effect of reducing the agreed upon wage.

14 57. Defendant and/or DOES commit the acts alleged herein knowingly and willfully, with the
15 wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.
16 Defendant and/or DOES act with malice or in conscious disregard of Plaintiff's and the
17 Aggrieved Employees' rights.

18 58. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES
19 in California.

20 59. Plaintiff, as a former "non-exempt" employee of Defendant and/or DOES who Defendant
21 and/or DOES fail to pay all wages, is an aggrieved employee with standing to bring an action
22 under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general
23 public to enforce California's labor laws, and the penalty provisions identified in *California*
24 *Labor Code* section 2699.5.

25 60. Plaintiff, as a representative of the people of the State of California, seeks any and all penalties
26 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
27 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in
28 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any

alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

61. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

62. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Pay All Overtime Wages Owed

63. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

64. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

65. *California Labor Code* section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

66. Defendant and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all hours worked, including hours worked

- 1 over eight (8) hours in a day and forty (40) hours in a week.
- 2 67. Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours worked
3 because Defendant and/or DOES fail to pay them overtime wages for all overtime hours
4 worked. This resulted in Plaintiff and the Aggrieved Employees not being paid all overtime
5 wages owed to them.
- 6 68. Defendant and/or DOES have a continuous policy of not paying Plaintiff and those similarly
7 situated Aggrieved Employees for all overtime hours worked because Defendant and/or DOES
8 have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved
9 Employees for all hours worked. Specifically, STAR TOWING and/or DOES have a
10 continuous and consistent policy of requiring employees to work before clocking in, after
11 clocking out, and during meal periods. When Plaintiff and the Aggrieved Employees work
12 over eight (8) hours in a shift, these unpaid hours must be compensated at an overtime rate.
13 Because Plaintiff and the Aggrieved Employees were typically scheduled to work shifts lasting
14 over eight (8) hours, the majority of these unpaid hours would qualify for the overtime rate.
- 15 69. STAR TOWING and/or DOES automatically deducts wages from Mr. Luevano's and the
16 Aggrieved Employees' hours worked for a meal period regardless of whether a meal period
17 was actually taken. STAR TOWING and/or DOES insert a meal period into Mr. Luevano's
18 and the Aggrieved Employees' time records even though a meal period was not actually taken.
19 This had the effect of reducing Mr. Luevano's and the Aggrieved Employees' overtime hours
20 worked.
- 21 70. When Mr. Luevano and the Aggrieved Employees are able to take meal periods, Mr. Luevano
22 and the Aggrieved Employees are not relieved of all duties and employer control during their
23 unpaid meal periods. Mr. Luevano and the Aggrieved Employees are responsible for STAR
24 TOWING's and/or DOES' company truck and its contents at all times, including during unpaid
25 meal periods. In addition, Mr. Luevano and the Aggrieved Employees have to keep their
26 phones on and with them during their meal periods. STAR TOWING and/or DOES call and/or
27 otherwise contact Mr. Luevano and the Aggrieved Employees while they are on unpaid meal
28 periods for dispatch and other business purposes. Thus, Mr. Luevano and the Aggrieved

1 Employees are owed wages for meal period time during with they are subject to STAR
2 TOWING's and/or DOES' control and during which they are not free from all work duties.
3 When Mr. Luevano and the Aggrieved Employees work over eight hours in a shift, these
4 unpaid hours must be compensated at an overtime rate.

5 71. Furthermore, STAR TOWING and/or DOES failed to pay Mr. Luevano and the Aggrieved
6 Employees at the appropriate regular rate of pay for all overtime hours worked. Specifically,
7 STAR TOWING and/or DOES failed to incorporate non-discretionary commissions, bonuses,
8 and/or other non-hourly payments employees were paid when calculating employees' regular
9 rate of pay for purposes of paying overtime compensation. For example, Mr. Luevano and the
10 Aggrieved Employees are paid non-discretionary commissions per tow and impound bonuses.
11 These commissions and bonuses are not included in employees' regular rate of pay.

12 72. STAR TOWING and/or DOES also failed to pay Mr. Luevano and the Aggrieved Employees
13 the correct overtime rate. For example, STAR TOWING's and/or DOES' Craigslist ad
14 recruiting drivers, such as Mr. Luevano, stated that the pay was \$20 to \$25 per hour. Yet, when
15 Mr. Luevano started working for STAR TOWING and/or DOES he was paid minimum wage.
16 As such, Mr. Luevano's and the Aggrieved Employees' overtime rate was based upon the
17 minimum wage rather than the promised rate in STAR TOWING's and/or DOES' ad. Thus,
18 STAR TOWING and/or DOES owe Mr. Luevano and the Aggrieved Employees these
19 additional overtime wages.

20 73. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
21 unpaid wages, and lost interest on such wages, and expenses.

22 74. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES
23 in California.

24 75. Plaintiff, as a representative of the people of the State of California, will seek any and all
25 penalties otherwise capable of being collected by the Labor commission and/or the Department
26 of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

27 76. Plaintiff, as a representative of the people of the State of California, will seek all penalties
28 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes

each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 222, 223 and 510.

77. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

78. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).

79. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

80. Under *California Labor Code* section 512, and IWC Wage Order 9-2001(11), no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

81. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty

1 (30) minutes.

2 82. Under *California Labor Code* section 226.7, if the employer does not provide an employee a
3 meal period in accordance with the above requirements, the employer shall pay the employee
4 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
5 meal period is not provided.

6 83. Defendant and/or DOES breach the legal duty to provide meal periods to employees by failing
7 to provide employees with meal periods within the timeframes outlined by California law.
8 Specifically, Defendant and/or DOES fail to provide Plaintiff and the Aggrieved Employees
9 with meal periods within the first five continuous hours of work.

10 84. Defendant and/or DOES breach the legal duty to provide meal periods to employees by
11 imposing a continuous and consistent policy requiring Plaintiff and the Aggrieved Employees
12 to work through their meal periods to satisfy the demanding workload duties imposed by STAR
13 TOWING and/or DOES, thereby denying Plaintiff and the Aggrieved Employees of the right
14 to be completely free from employer control under California law. Thus, Plaintiff and the
15 Aggrieved Employees did not receive lawful meal periods while working for STAR TOWING
16 and/or DOES.

17 85. STAR TOWING and/or DOES automatically record a meal period for Mr. Luevano and the
18 Aggrieved Employees regardless of whether a meal period was actually taken. STAR
19 TOWING and/or DOES insert a meal period into Mr. Luevano's and the Aggrieved
20 Employees' time records even though a meal period was not actually taken.

21 86. STAR TOWING and/or DOES do not keep accurate records of meal periods. STAR TOWING
22 and/or DOES do not provide any method for Mr. Luevano and the Aggrieved Employees to
23 record their time when they are away from STAR TOWING's and/or DOES' location. As
24 such, when Mr. Luevano and the Aggrieved Employees are out in the field during their shift,
25 they have no way of recording a meal period should they take one.

26 87. When Mr. Luevano and the Aggrieved Employees are able to take meal periods, Mr. Luevano
27 and the Aggrieved Employees are not relieved of all duties and employer control during their
28 unpaid meal periods. Mr. Luevano and the Aggrieved Employees are responsible for STAR

1 TOWING's and/or DOES' company truck and its contents at all times, including during unpaid
2 meal periods. In addition, Mr. Luevano and the Aggrieved Employees have to keep their
3 phones on and with them during their meal periods. STAR TOWING and/or DOES call and/or
4 otherwise contact Mr. Luevano and the Aggrieved Employees while they are on unpaid meal
5 periods for dispatch and other business purposes.

6 88. Defendant and/or DOES have a consistent policy and/or practice of not providing second meal
7 periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu
8 thereof. Specifically, Plaintiff and the Aggrieved Employees were not provided with second
9 meal periods when they worked shifts over ten (10) hours long.

10 89. By failing to provide statutory first and/or second meal periods, and by failing to provide
11 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
12 willfully violated the provisions of the *California Labor Code* section 226.7 and 512.

13 90. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES
14 in California.

15 91. By failing to provide statutory first and/or second meal periods, and by failing to provide
16 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
17 willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and IWC
18 Wage Order No. 9-2001.

19 92. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Aggrieved
20 Employees have been deprived of premium wages and/or other compensation in amounts to
21 be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys'
22 fees, and costs.

23 93. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled
24 to work for a period of time in excess of six (6) hours were required to work for periods longer
25 than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

26 94. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled
27 to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not
28 waive their legally-mandated meal periods by mutual consent were required to work in excess

- of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted meal period of not less than thirty (30) minutes.
95. During the relevant time period, Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees all meal period premiums due pursuant to *California Labor Code* section 226.7.
96. Defendant's and/or DOES' conduct violates applicable IWC Wage Order 5-2001 and *California Labor Code* sections 226.7 and 512(a).
97. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.
98. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7 and 512.
99. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).
100. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to *California Labor Code* Section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

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**FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the
PAGA for Failure to Provide Rest Periods (California Labor Code §2698 et. seq.).**

101. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

102. Industrial Welfare Commission Order No. 9-2001 section 12(A) states “[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 week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

103. At all times mentioned herein, Defendant and/or DOES fail to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

104. Further, Plaintiff and the Aggrieved Employees are required to work shifts lasting nine (9) to eleven (11) hours long but are not provided with first, second, third, and/or fourth rest breaks free of their employer’s control, or compensation in lieu thereof.

105. Defendant and/or DOES have a consistent policy and/or practice of not providing duty free, net-ten minute, paid rest periods to Plaintiff and all Aggrieved Employees and/or providing compensation in lieu thereof.

106. Defendant and/or DOES breach the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and all Aggrieved Employees to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and all Aggrieved Employees of the right to be completely free from employer control under California law.

107. When Mr. Luevano and the Aggrieved Employees are able to take rest periods, Mr. Luevano and the Aggrieved Employees are not relieved of all duties and employer control during their rest periods. Mr. Luevano and the Aggrieved Employees are responsible for STAR TOWING’s and/or DOES’ company truck and its contents at all times, including during rest periods. In addition, Mr. Luevano and the Aggrieved Employees have to keep their phones on and with

1 them during their rest periods. STAR TOWING and/or DOES call and/or otherwise contact
2 Mr. Luevano and the Aggrieved Employees while they are on rest periods for dispatch and
3 other business purposes.

4 108. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
5 day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for
6 these unprovided rest periods, as alleged above, Defendant and/or DOES willfully violate the
7 provisions of *California Labor Code* section 226.7.

8 109. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES
9 in California.

10 110. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
11 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
12 has satisfied all prerequisites to serve as a representative of the general public to enforce
13 California's labor laws, and the penalty provisions identified in *California Labor Code* section
14 2699.5 for violations of *California Labor Code* section 226.7.

15 111. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest
16 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
17 satisfied all prerequisites to serve as a representative of the general public to enforce
18 California's labor laws, and the penalty provisions identified in *California Labor Code* section
19 2699.5.

20 112. Plaintiff, as a representative of the people of the State of California, will seek all penalties
21 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
22 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
23 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
24 226.7.

25 113. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
26 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
27 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
28 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars

(\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

114. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor Code §2698 et. seq.).

115. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

116. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the Aggrieved Employees who left Defendant's and/or DOES' employ or who were terminated.

117. Plaintiff and the Aggrieved Employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

118. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

119. During the relevant time period, Defendant and/or DOES intentionally and willfully fail to pay the Aggrieved Employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

- 1 120. Plaintiff's employment with Defendant and/or DOES was terminated on or about October 18,
2 2023.
- 3 121. Whether Plaintiff Eduardo Luevano voluntarily or involuntarily terminated his employment
4 with Defendant STAR TOWING and/or DOES, Defendant and/or DOES did not timely pay
5 him all straight time wages owed at the time of his termination.
- 6 122. Whether Plaintiff Eduardo Luevano voluntarily or involuntarily terminated his employment
7 with Defendant STAR TOWING and/or DOES, Defendant and/or DOES did not timely pay
8 him all overtime wages owed at the time of his termination.
- 9 123. Whether Plaintiff Eduardo Luevano voluntarily or involuntarily terminated his employment
10 with Defendant STAR TOWING and/or DOES, Defendant and/or DOES did not timely pay
11 him meal and/or rest period premiums owed at the time of his termination.
- 12 124. STAR TOWING and/or DOES have had a continuous policy of not paying Plaintiff and those
13 similarly situated for all hours worked, as outlined herein. Specifically, STAR TOWING
14 and/or DOES has a continuous and consistent policy of requiring employees to work before
15 clocking in, after clocking out, and during meal periods. As outlined herein, STAR TOWING
16 also fails to pay Mr. Luevano and the Aggrieved Employees all straight time and overtime
17 wages owed and promised.
- 18 125. Defendant's and/or DOES' failure to pay Plaintiff and the Aggrieved Employees who are no
19 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, at the
20 time of termination or within seventy-two (72) hours of their leaving Defendant's and/or
21 DOES' employ, is in violation of *California Labor Code* sections 201 and 202.
- 22 126. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages
23 owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the
24 employee shall continue as a penalty from the due date thereof at the same rate until paid or
25 until and action is commenced; but the wages shall not continue for more than thirty (30) days.
- 26 127. Plaintiff, as a non-exempt employee who Defendant and/or DOES fail to pay all wages, failed
27 to provide a minimum statutory first and/or second meal periods, and failed to provide paid ten
28 (10) minute rest periods, is an aggrieved employee with standing to bring an action under the

PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

128. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201 through 203.

129. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES in California.

130. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

131. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

132. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

133. *California Labor Code* section 226(a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked

1 by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires
2 Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her
3 employees, either as an detachable part of the check, draft, or voucher paying the employee’s
4 wages, or separately when wages are paid by personal check or cash, an accurate itemized
5 statement in writing showing (1) gross wages earned, (2) total hours worked by the
6 employee...(3) the number of piece-rate units earned and any applicable piece rate if the
7 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
8 on written orders of the employee may be aggregated and shown as one item, (5) net wages
9 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
10 the employee and only the last four digits of his or her social security number or an employee
11 identification number other than the social security number, (8) the name and address of the
12 legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period
13 and the corresponding number of hours worked at each hourly rate and the corresponding
14 number of hours worked at each hourly rate by the employee....”

15 134. *California Labor Code* section 226, subdivision (a) also requires that “deductions made from
16 payment of wages shall be recorded in ink or other indelible form, properly dated, showing the
17 month, day and year, and a copy of the statement and the record of the deductions shall be kept
18 on file by the employer for at least three years at the place of employment or at a central
19 location within the State of California.”

20 135. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in
21 excess of the normal work period shall be paid no later than the payday for the next regular
22 payroll period.” An employer complies with section 226(a) “if hours worked in excess of the
23 normal work period during the current pay period are itemized as corrections on the paystub
24 for the next regular pay period. Any corrections set out in the subsequently issued paystub shall
25 state the inclusive dates of the pay period for which the employer is correcting its initial report
26 of hours worked.”

27 136. Defendant and/or DOES have knowingly and intentionally failed to comply with *California*
28 *Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the

Aggrieved Employees.

137. STAR TOWING and/or DOES knowingly and intentionally did not include the total gross wages earned on wage statements. STAR TOWING and/or DOES therefore knowingly and intentionally failed to itemize the total gross wages earned on Plaintiff's and the Aggrieved Employees' wage statements.

138. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226 (a), requires. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the total hours worked on wage statements and failed to include this information accurately. Defendant and/or DOES therefore knowingly and intentionally fail to itemize the total hours worked on Plaintiff's and the Aggrieved Employees' wage statements.

139. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226 (a), requires. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked by requiring employees to work before clocking in, after clocking out, and during meal periods. Specifically, STAR TOWING and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Luevano and the Aggrieved Employees are not paid for this time. As outlined herein, STAR TOWING also fails to pay Mr. Luevano and the Aggrieved Employees all straight time and overtime wages owed and promised.

140. In addition, STAR TOWING and/or DOES failed to include all meal and rest period premiums that were owed to Mr. Luevano and the Aggrieved Employees on wage statements.

141. Also, STAR TOWING and/or DOES failed to include all overtime hours worked by Mr. Luevano and the Aggrieved Employees on wage statements at the proper regular rate of pay that incorporated bonuses earned during that pay period.

142. STAR TOWING and/or DOES also fails to provide employees with written notice that sets

- 1 forth the amount of sick leave available for use, either in employees' itemized wage statements
2 or in a separate writing provided to employees on the designated pay date.
- 3 143. STAR TOWING and/or DOES also fails to provide employees with written notice that sets
4 forth the amount of sick leave available for use, either in employees' itemized wage statements
5 or in a separate writing provided to employees on the designated pay date.
- 6 144. Throughout the statutory period, because of the knowing and intentional failure by Defendant
7 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
8 Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours
9 worked and have, therefore, not received full compensation.
- 10 145. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES
11 in California.
- 12 146. Plaintiff, as a non-exempt employee who Defendant and/or DOES fail to provide accurate and
13 itemized wage statements, is an aggrieved employee with standing to bring an action under the
14 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
15 enforce California's labor laws, and the penalty provisions identified in *California Labor Code*
16 section 2699.5.
- 17 147. Plaintiff, as a representative of the people of the State of California, will seek all penalties
18 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
19 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
20 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
21 226, 1174, 1199.
- 22 148. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
23 himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one
24 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation
25 per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved
26 Employee per pay period for each subsequent violation, per *California Labor Code* section
27 2699(f)(2).
- 28 149. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other

Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth the Amount of Sick Leave Available (California Labor Code §2698 et. seq.).

150. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

151. Section 246(a)(1) of the *California Labor Code* states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

152. *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, “an employee shall accrue paid sick days at the rate of not less than one hour per every thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.”

153. *California Labor Code* section 246(k) provides that, “[a]n employee may determine how much paid sick leave they need to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.”

154. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

155. Section 233(c) of the *California Labor Code* states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

1 156. Section 233(d) of the *California Labor Code* provides relief for violations of this section,
2 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to
3 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate
4 equitable relief.”

5 157. Section 234 of the *California Labor Code* further forbids employers from adopting an “absence
6 control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead
7 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section
8 233. An employee working under this policy is entitled to appropriate legal and equitable relief
9 pursuant to Section 233.”

10 158. SUN BELT and/or DOES operate under an absence control policy that counts sick leave taken
11 pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge,
12 demotion, or termination. Thus, SUN BELT and/or DOES’ sick pay policy punishes Plaintiff
13 and Aggrieved Employees by way of suspension and/or termination for use of protected and
14 appropriate sick leave. Plaintiff and the Aggrieved Employees are entitled to actual damages
15 or one day’s pay pursuant to Labor Code Section 233(d).

16 159. Further, SUN BELT’s and/or DOES’ sick pay policy fails to pay sick pay for all appropriate
17 and protected purposes enumerated in Labor Code section 233, 234, and 246.

18 160. Section 246(i) of the California Labor Code states, “[a]n employer shall provide an employee
19 with written notice that sets forth the amount of sick leave available, or paid time off an
20 employer provides in lieu of sick leave, for use on either the employee’s itemized wage
21 statement described in Section 226 or in a separate writing provided on the designated pay date
22 with the employee’s payment of wages.”

23 161. SUN BELT and/or DOES fail to itemize sick leave available, or paid time off an employer
24 provides in lieu of sick leave, for us on Plaintiff’s and the Aggrieved Employees’ itemized
25 wage statements or in a separate writing provided on the designated pay date with the
26 employee’s payment of wages.

27 162. SUN BELT’s and/or DOES’ sick pay policy fails to pay sick pay for all appropriate and
28 protected purposes enumerated in Labor Code sections 233, 234, 246, and 246.5, and SUN

BELT and/or DOES fail to itemize the amount of accrued/available sick leave employees have on wage statements each pay period.

163. As a result of the unlawful acts of SUN BELT and/or DOES, Plaintiff and the Aggrieved Employees he seeks to represent have been incurred damages, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 233(e).

164. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES in California.

165. Plaintiff, as a non-exempt employee who was subject to Defendant's and/or DOES' unlawful sick pay/paid time off policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of the *California Labor Code* sections 233, 234, 246, and 246.5.

166. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (California Labor Code §2698 et. seq.)

167. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

168. Section 2802(a) of the *California Labor Code* requires "[a]n employer [to] indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

169. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without

- 1 receiving reimbursement from Defendant and/or DOES.
- 2 170. STAR TOWING and/or DOES fail to reimburse Mr. Luevano and Aggrieved Employees for
3 all necessary expenses incurred in the performance of their jobs including, but not limited to,
4 having to use their personal cell phones for business purposes. STAR TOWING and/or DOES
5 require Mr. Luevano and the Aggrieved Employees to download the “TowBook” application
6 on their personal cell phones. All tows that Mr. Luevano and the Aggrieved Employees are
7 assigned by STAR TOWING and/or DOES come through this application. STAR TOWING
8 and/or DOES would also call Mr. Luevano and the Aggrieved Employees on their personal
9 cell phones for business purposes. STAR TOWING and/or DOES fail to reimburse Mr.
10 Luevano and the Aggrieved Employees for this expense.
- 11 171. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to
12 reimbursement for said necessary expenditures, plus interest and expenses.
- 13 172. These claims are on behalf of all non-exempt drivers who worked for Defendant and/or DOES
14 in California.
- 15 173. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or
16 DOES fail to reimburse, is an aggrieved employee with standing to bring an action under the
17 PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public
18 to enforce California’s labor laws, and the penalty provisions identified in *California Labor*
19 *Code* section 2699.5.
- 20 174. Plaintiff, as a representative of the people of the State of California, seeks all penalties
21 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
22 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
23 that section 2699.3(a) applies to any alleged violation of the following provisions: for
24 violations of the *California Labor Code* section 2802.
- 25 175. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
26 herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
27 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
28 per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved

employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

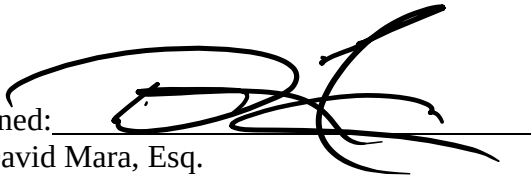
- A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compliant meal periods;
- C. For all statutory penalties for each pay period during which an employee was underpaid due to failure to provide compliant meal periods;
- D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide all rest periods;
- E. For all statutory penalties provided under *California Labor Code* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to timely pay wages at separation;
- G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time worked;
- H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compensation at the minimum wage;
- I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide accurate, itemized wage statements;
- J. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to adopt a lawful sick pay policy;
- K. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to reimburse business expenses; and
- L. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section 2699(g)(1).

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial as to liability.

MARA LAW FIRM, PC

Date: March 19, 2024

Signed: 
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff EDUARDO
LUEVANO, on behalf of himself and all
others similarly situated, and on behalf of the
general public