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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

JOSE RENTERIA, an individual,

Plaintiff,

v.

**AMERICAN INTERNATIONAL
TRANSPORTATION SERVICE, INC., a
corporation; and DOES 1-100, inclusive,**

Defendants.

Case No.: 24CV001642

CLASS ACTION COMPLAINT

- 1. FAILURE TO PAY OVERTIME AT
CORRECT RATE**
- 2. FAILURE TO PROVIDE PAID SICK
LEAVE AT CORRECT RATE**
- 3. FAILURE TO PROVIDE REST PERIODS
OR PAY PREMIUMS AT CORRECT
RATE**
- 4. FAILURE TO PROVIDE MEAL
PERIODS OR PAY PREMIUMS AT
CORRECT RATE**
- 5. UNFAIR COMPETITION**
- 6. UNFAIR COMPETITION (TIPS)**
- 7. FAILURE TO PAY ALL WAGES DUE
AT END OF EMPLOYMENT**
- 8. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**

JURY TRIAL DEMANDED

Plaintiff Jose Renteria brings this class action against American International Transportation Service, Inc., a corporation; and Does 1 through 100, for violations of the Labor Code.

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PARTIES

1. Plaintiff Jose Renteria ("Plaintiff") is and at all times relevant herein was employed in Monterey County, California, and was an "employee" as defined by the Labor Code and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. Defendant American International Transportation Service, Inc. ("Defendant") is a California corporation formed under the laws of that state.

3. At all times relevant herein, Defendant was an "employer" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Order(s).

4. Defendant and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, acted as the agent, servant, employee, partner and/or joint venturer of and acted in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, acted both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

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7. Venue is proper in this court because the unlawful acts alleged herein took place in Monterey County, California and Plaintiff's place of employment with Defendants was within Monterey County. Plaintiff hereby demands a jury trial.

8. Plaintiff was hired by Defendant in 2014 as a driver.

9. Defendant is a private company based in Monterey, California which provides “premium transportation services” (e.g., via luxury sedan, SUV, or shuttle) for Monterey and surrounding communities.

10. At all times throughout his employment, Plaintiff was accurately classified and paid as an hourly, nonexempt employee, eligible for overtime.

11. Throughout his employment with Defendant, Plaintiff has been consistently denied rest and meal periods in violation of the Labor Code. Typically, Plaintiff is without any relief during his workshifts, as he is the only employee in his work vehicle. Thus, during Plaintiff's shifts he is not relieved of all duty and permitted the opportunity to take a ten-minute rest period, free of all duty, for every four hours worked.

12. Similarly, Plaintiff is not relieved of all duty and permitted the opportunity to take a thirty-minute meal period, free of all duty, for every workshift that is longer than five hours. Furthermore, Plaintiff has not been paid an hour's pay at his regular rate of compensation for every rest and meal period that was unlawfully withheld.

13. Defendant also failed to pay Plaintiff all overtime and doubletime wages earned and caused Plaintiff to work in excess of those limits prescribed by the Labor Code.

14. In the course of his employment with Defendant, Plaintiff has frequently worked seven days in a workweek (in violation of Labor Code sections 551 and 552). Additionally, Plaintiff has worked in excess of twelve hours in a workday without receiving *any* doubletime compensation. Defendant also failed to pay Plaintiff overtime for the first eight hours worked on the seventh day of

1 the workweek, *and* doubletime for time worked in excess of eight hours on the seventh day of the
2 workweek.

3 15. Additionally, Defendant systematically failed to pay Plaintiff his earned overtime and
4 doubletime wages at the correct rate, by failing to incorporate the value of nondiscretionary bonuses
5 and/or other items of compensation into his “regular rate of pay.”

6 16. Defendant bills its clients, among other things, mandatory “service charges” in
7 connection with its services. Plaintiff is informed and believes that he receives 19 percent of any given
8 mandatory service charge, and Defendant keeps the remaining 81 percent. Plaintiff is informed and
9 believes that customers are informed, accurately, that a portion of these paid service charges are given
10 to the employee (driver) who provides the services.

11 17. While the mandatory service charges are represented to the customers as exactly that—
12 mandatory service charges—they are referenced in Plaintiff’s wage statements as gratuities. (**Exhibit**
13 **1.**) If the mandatory service charges were, in fact, mandated tips or gratuities, then Defendant violated
14 Labor Code section 351 because it kept a portion of these gratuities (i.e., Plaintiff’s property) and did
15 not distribute 100 percent of them to Plaintiff. (See *O’Grady v. Merchant Exchange Products, Inc.*
16 (2019) 41 Cal.App.5th 771, 777-778.)

17 18. However, if the portion of the service charges that were paid to Plaintiff were not
18 gratuities or tips, then they constituted nondiscretionary bonuses or other items of compensation and,
19 accordingly, during the applicable statutory period, Defendant failed to properly calculate and pay
20 overtime and doubletime wages.

21 19. Specifically, and if the service charges were *not* gratuities or tips, then Defendant failed
22 to properly calculate the regular rate of pay for purposes of overtime and doubletime by failing to
23 include, in the value of the regular rate of pay, the value of the portion of service charges distributed to
24 the employee. (See also 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual, §
25 49.). Instead, Defendant paid Plaintiff his overtime at only 1.5 times his base, hourly rate.

26 20. Because Plaintiff and other employees were not paid for missed rest and meal periods
27 (and at the correct rate), and were not paid earned for all earned overtime and doubletime wages (and
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1 at the correct rate), the itemized wage statements furnished to them did not show, accurately, the gross
2 wages earned, net wages earned, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each rate, in violation of Labor Code section 226(a).

4 21. Defendant was, at all times relevant herein, aware of the requirements of California
5 Labor Code section 226.

6 22. Defendant, at all times relevant herein, furnished wage statements to each of its
7 California employees pursuant to an established set of policies, procedures and practices.

8 23. Plaintiff and Defendant's other California employees, both current and former, have
9 suffered injury as a result of Defendant's knowing and intentional failure to comply with California
10 Labor Code section 226(a).

11 24. Plaintiff and Defendant's other nonexempt California employees, both current and
12 former, were unable to promptly and easily determine their gross wages earned, net wages earned, and
13 all applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked from the wage statements furnished by Defendant.

15 25. Plaintiff and Defendant's other nonexempt California employees, both current and
16 former, have suffered injury as a result of Defendants' knowing and intentional failure to furnish wage
17 statements accurately showing all information required by Labor Code section 226(a).

18 26. Additionally, Defendant failed to pay sick leave at the correct rate, given that it paid
19 Plaintiff and others a portion of collected service charges. Paid sick days are mandated in California,
20 pursuant to Labor Code section 245 *et seq.* Sick pay is a form of wages. (*Murphy v. Kenneth Cole*
21 *Productions* (2007) 40 Cal.4th 1094, 1103.) Furthermore, Labor Code section 247(l) requires that sick
22 days to be paid at the "regular rate of pay." Again, the "regular rate of pay" includes all remuneration
23 for employment, including but not limited to hourly earnings, salary, piece work earnings, and
24 nondiscretionary bonuses. (29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations
25 Manual, § 49.)
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1 27. Nevertheless, when Plaintiff was paid sick leave, such was paid only at his base hourly
2 rate; as with overtime, Defendant failed to incorporate the value of earned portions of service charges
3 into the regular rate of pay.

4 28. From at least four years prior to the filing of this action, Defendant has adopted and
5 employed unfair business practices. These unfair business practices include, but are not limited to,
6 failing to properly calculate and pay overtime wages due, failing to properly calculate and pay accrued
7 sick leave, failure to provide compliant rest and meal periods or pay premiums at the correct regular
8 rate of compensation, and unlawful retention of employees' tips or gratuities.

9 29. Plaintiff resigned his employment with Defendant on April 17, 2024. As of the date of
10 this Complaint, Plaintiff has not been paid all wages due and owing, *supra*.

11 30. The foregoing list of misconduct is a partial list only and is set forth by way of example.

12 **CLASS ACTION ALLEGATIONS**

13 31. Plaintiff brings the First through Eighth Causes of Action as a class action, on behalf of
14 himself and all others similarly situated, pursuant to Code of Civil Procedure 382. The classes which
15 Plaintiff seeks to represent consist of the following:

- 16
- 17 a. All current and former California employees of Defendants who worked at
18 any time from four years prior to the filing of this complaint through the entry
19 of final judgment in this action, and who were paid tips or gratuities (the "351
20 Class");
- 21 b. All current and former nonexempt California employees of Defendants who
22 worked overtime during one or more pay periods at any time from four years
23 prior to the filing of this Complaint through the entry of final judgment in this
24 action (the "Overtime Class");
- 25 c. All current and former nonexempt California employees of Defendants who
26 worked one or more shifts of four hours or longer, at any time from four years
27 prior to the filing of this Complaint through the entry of final judgment in this
28 action (the "Rest and Meal Period Class");
- d. All current and former nonexempt California employees of Defendants who
 received nondiscretionary bonuses and/or other items of compensation and
 received sick pay during one or more pay periods at any time from four years

1 prior to the filing of this complaint through the entry of final judgment in this
2 action (the "Sick Pay Class");

3 e. All members of the Overtime Class, the Rest and Meal Period Class, and Sick
4 Pay Class who received one or more wage statements at any time from one
5 year prior to the filing of this complaint through the entry of final judgment in
6 this action (the "Wage Statement Class"); and

7 f. All members of the Overtime Class, Rest and Meal Period Class, and Sick Pay
8 Class whose employment with Defendants ended at any time from three years
9 prior to the filing of this Complaint through the entry of final judgment in this
10 action (the "Waiting Time Penalty Class").

11 The 351 Class, the Overtime Class, the Rest and Meal Period Class, the Sick Pay Class, the Wage
12 Statement Class, and the Waiting Time Penalty Class are collectively referred to as "the Class."

13 32. The Class is so numerous that joinder of all members is impracticable, and the
14 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
15 informed and believes, and based thereon alleges, that Defendants employ more than 30 employees
16 who satisfy the class definition. Although the exact number and identity of class members is not
17 presently known, they can be identified in Defendants' records through coordinated discovery pursuant
18 to this class action.

19 33. This action may be maintained as a class because the questions of law and fact which are
20 common to class members clearly predominate over any questions affecting only individual members
21 and because a class action is superior to other available methods for adjudicating the controversy.

22 34. There are numerous common questions of law and fact arising out of Defendants'
23 conduct. This class action focuses on Defendants': (a) systematic failure to properly pay employees for
24 overtime and doubletime hours; (b) systematic failure to properly pay employees with paid sick leave,
25 (c) systematic failure to provide their employees with rest and meal breaks or properly pay premiums at
26 the appropriate regular rate of compensation, (d) systematic failure to pay all wages due and owing at
27 the end of employment; (e) systematic failure to comply with Labor Code section 226(a); and (f)
28 systematic and improper taking of tips.

1 35. Furthermore, common questions of fact and law predominate over any questions
2 affecting only individual members of the class. The predominating common or class-wide questions of
3 law and fact include but are not limited to the following:

- 4 a. Whether Defendants failed to pay overtime and doubletime wages as required by
- 5 California law;
- 6 b. Whether Defendants failed to properly calculate and pay their nonexempt California
- 7 employees' overtime pay;
- 8 c. Whether Defendants impermissibly took a portion of the gratuities belonging to their
- 9 California nonexempt employees;
- 10 d. Whether Defendants provided their nonexempt California employees with compliant
- 11 rest and meal periods, or paid premiums at the appropriate regular rate of
- 12 compensation, accounting for the value of any earned nondiscretionary bonuses
- 13 and/or other items of compensation;
- 14 e. Whether Defendants failed to properly calculate and pay their nonexempt California
- 15 employees with paid sick leave;
- 16 f. Whether Defendants failed to pay all wages due and owing at end of their
- 17 nonexempt California employees' employment;
- 18 g. Whether the wage statements Defendants furnished to their California employees
- 19 comply with Labor Code section 226;
- 20 h. Whether the alleged violations of the Labor Code constitute unfair business
- 21 practices;
- 22 i. Whether the Class is entitled to injunctive relief; and
- 23 j. Whether the Class is entitled to unpaid wages, statutory penalties, and/or
- 24 restitutionary relief, and the amount of the same.

25 36. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of
26 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
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1 alleged violations of Defendants. Plaintiff's claims are typical of those of the Class because
2 Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

3 37. The defenses of Defendants, to the extent that such defenses apply, are applicable
4 generally to the whole Class and are not distinguishable as to the proposed class members.

5 38. Plaintiff will fairly and adequately protect the interests of all members of the Class, and
6 has retained attorneys with extensive experience in litigation, including class and representative actions.
7 Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and adequately
8 protect the interests of all members of the class because it is in her best interest to prosecute the claims
9 alleged herein in order to obtain the full compensation due herself and the other class members.

10 39. A class action is superior to any other method available for fairly and efficiently
11 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
12 litigating the claims of individual class members would be unnecessarily costly and burdensome and
13 would deter individual claims, 3) litigating the claims of individual class members would create a risk
14 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
15 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
16 bring individual claims, 5) class members would be discouraged from pursuing individual claims
17 because the damages available to them are relatively small, and 6) public policy encourages the use of
18 the class actions to enforce employment laws and protect individuals who, by virtue of their
19 subordinate position, are particularly vulnerable.

20 40. Judicial economy will be served by maintenance of this lawsuit as a class action. To
21 process numerous virtually identical individual cases will significantly increase the expense on the
22 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
23 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
24 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
25 to, efficiency, economy, and uniform adjudication with consistent results.

41. Notice of a certified class action and any result or resolution of the litigation can be provided to class members by mail, email, publication, or such other methods of notice as deemed appropriate by the Court.

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME AT CORRECT RATE
(Lab. Code § 510 & 1198)
Against Defendants

42. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

43. Pursuant to Labor Code section 510, 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. 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.

44. Pursuant to Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

45. During the relevant time period, Plaintiff and other class members regularly worked overtime and doubletime.

46. During the relevant time period, Defendants intentionally and willfully failed to pay the proper overtime/doubletime wages due to Plaintiff and other class members.

47. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief as hereafter provided.

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS AT CORRECT RATE
(Lab. Code, § 226.7)
Against Defendants

48. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

49. Labor Code section 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

50. Section 11 of the applicable IWC Wage Order provides:

“(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

1 (D) If an employer fails to provide an employee a rest period in accordance with the
2 applicable provisions of this order, the employer shall pay the employee one (1) hour of
3 pay at the employee's regular rate of compensation for each workday that the rest period
4 is not provided."

5 51. The "regular rate of compensation", for purposes of rest and meal break premiums,
6 must account for not only hourly wages but also other nondiscretionary payments for work performed
7 by the employee. (*Ferra v. Loews Hollywood Hotel, LLC* (2021), 11 Cal.5th 858.)

8 52. During the relevant time period, Plaintiff was not provided with rest breaks as required
9 by law and did not receive an additional hour of premium pay at his regular rate of compensation for
10 each missed rest period.

11 53. Wherefore, Plaintiff and the Class have been injured and request relief as
12 hereinafter provided.

13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS AT CORRECT RATE**
15 **(Lab. Code, §§ 226.7, 512)**
16 **Against Defendants**

17 54. Plaintiff hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 55. Labor Code section 226.7 requires employers to provide employees meal periods as
21 mandated by Order of the Industrial Welfare Commission. It states:

- 22 a. No employer shall require any employee to work during any meal or rest period
23 mandated by an applicable order of the Industrial Welfare Commission.
- 24 b. If an employer fails to provide an employee a meal period or rest period in
25 accordance with an applicable order of the Industrial Welfare Commission, the
26 employer shall pay the employee one additional hour of pay at the employee's
27 regular rate of compensation for each work day that the meal or rest period is
28 not provided.

56. Labor Code section 512(a) and applicable Wage Order(s) of the Industrial Welfare Commission provide that an employer may not employ a person for a work period of more than five hours per day without providing that employee a meal period of not less than thirty minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than ten hours per day without providing an employee with a second meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than twelve hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

57. The “regular rate of compensation”, for purposes of rest and meal break premiums, must account for not only hourly wages but also other nondiscretionary payments for work performed by the employee. (*Ferra v. Loews Hollywood Hotel, LLC* (2021), 11 Cal.5th 858.)

58. During the relevant time period, Plaintiff was not provided with meal breaks as required by law and did not receive an additional hour of premium pay at his regular rate of compensation for each missed meal period.

59. Wherefore, Plaintiff and the Class have been injured and request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE SICK LEAVE AT CORRECT RATE
(Lab. Code, §§ 218, 233, 246 *et seq.*)
Against Defendants

60. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

61. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

62. According to the California Supreme Court, sick pay is a form of wages. (*Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.)

1 63. Labor Code section 233 provides that “any employer who provides sick leave for
2 employees shall permit an employee to use in any calendar year the employee's accrued and
3 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
4 during six months at the employee's then current rate of entitlement, for the reasons specified in
5 subdivision (a) of Section 246.5.”

6 64. During the relevant time period, Defendants intentionally and willfully failed to pay
7 Plaintiff and other class members sick pay as required by law. Accordingly, Plaintiff and other
8 class members did not receive the full amount of paid sick time that they was entitled to receive by
9 law, and were therefore denied the right to use sick leave within the meaning of Labor Code
10 sections 233(a) and (c).

11 65. Any employer who violates Labor Code section 233 is liable to employees for the
12 greater of one days’ pay or actual damages, reasonable equitable relief, and reasonable attorneys’
13 fees and costs. (Lab. Code, § 233, subds. (d), (e).)

14 66. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
15 wages.

16 67. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief
17 as hereafter provided.

18 **FIFTH CAUSE OF ACTION**
19 **UNFAIR BUSINESS PRACTICES**
20 **(Bus. & Prof. Code, § 17200, *et seq.*)**
 Against Defendants

21 68. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 69. The statutory violations, as alleged above, are unfair business practices within the
25 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and
26 include, but are not limited to, failing to properly calculate and pay overtime and sick wages and failing
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1 to authorize and permit rest and meal periods (or pay premiums, at the correct rate, for missed rest and
2 meal periods).

3 70. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief
4 as hereafter provided.

5 **SIXTH CAUSE OF ACTION**
6 **UNFAIR BUSINESS PRACTICES (TIPS)**
7 **(Bus. & Prof. Code, § 17200, *et seq.*)**
8 **Against Defendants**

9 108. Plaintiff hereby realleges and incorporates by reference each and every allegation
10 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 109. Labor Code section 356 sets forth the Legislature's declaration of intent that
13 preventing fraud upon the public regarding the practice of tipping is the purpose of Labor Code
14 sections 351-356.

15 110. Defendants' misrepresentations to customers regarding the tips provided to its
16 servers, as alleged above, are unfair business practices within the meaning of the Unfair
17 Competition Law (Business and Professions Code sections 17200 *et seq.*), and include, but are not
18 limited to depressing the compensation earned by servers by intentionally misrepresenting to the
19 general public that mandatory service charges constitute gratuities and/or unlawfully retaining a
20 portion of employees' gratuities, thus promoting a fraud upon the public regarding the practice of
21 tipping.

22 111. Wherefore, Plaintiff and the Class have been injured as set forth above and request
23 relief as hereafter provided.

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1 **SEVENTH CAUSE OF ACTION**
2 **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**
3 **(Lab. Code, § 201, *et seq.*)**
4 **Against Defendants**

5 71. Plaintiff hereby realleges and incorporates by reference each and every allegation set
6 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
7 allegations of this cause of action.

8 72. Labor Code section 201 provides that if an employer discharges an employee, the wages
9 earned and unpaid at the time of discharge are due and payable immediately.

10 73. Labor Code section 202 requires an employer to pay an employee all earned wages
11 within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting
12 if the employee has given 72 hours previous notice of his or her intention to quit.

13 74. As set forth above, Plaintiff and other California employees of Defendants were not
14 timely paid all earned but unpaid wages when their employment with Defendants ended.

15 75. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief
16 as hereafter provided.

17 **EIGHTH CAUSE OF ACTION**
18 **FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS**
19 **(Lab. Code, § 226(a))**
20 **Against Defendants**

21 76. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 77. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the
25 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
26 check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by
27 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
28 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the

1 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
2 last four digits of his or her social security number or an employee identification number, (8) the name
3 and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during
4 the pay period and corresponding number of hours worked at each hourly rate by the employee and, if
5 the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each
6 temporary services assignment.”

7 78. An employee suffering injury as a result of the knowing and intentional failure by an
8 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
9 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
10 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
11 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
12 fees. (Lab. Code, § 226, subd. (e)(1).)

13 79. An employee is deemed to suffer injury if the employer fails to provide a wage
14 statement or if the employer fails to provide accurate and complete information as required by any one
15 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
16 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
17 during the pay period or any of the other information required to be provided pursuant to Labor Code
18 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
19 and address of the employer and iv) the name of the employee and the last four digits of his or her
20 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
21 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain
22 the information without reference to other documents or information. (Lab. Code, § 226, subd.
23 (e)(2)(C).)

24 80. As set forth above, Defendants intentionally and willfully failed to furnish accurate
25 itemized wage statements which complied with Labor Code section 226.

26 81. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief
27 as hereafter provided.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 3 1. That this Court certify the Class;
- 4 2. That this Court appoint Plaintiff as Class Representative;
- 5 3. That this Court appoint Mayall Hurley P.C. as Class Counsel;
- 6 4. That this Court award actual and compensatory damages, as well as restitutionary
- 7 relief, to Plaintiff and other members of the Class, including but not limited to the
- 8 remedies provided for under Labor Code section 233(d);
- 9 5. That this Court award injunctive relief, including that available under Labor Code
- 10 sections 226(h) and 248.5(e), as well as Business and Professions Code section 17203;
- 11 6. That this Court award statutory penalties including, but not limited to, those available
- 12 under Labor Code sections 203 and 226;
- 13 7. That this Court award statutory attorneys' fees and costs, including those available
- 14 under Labor Code sections 218.5, 226(e)(1) and (h), 233(e), 248.5(e), and 1194, as well
- 15 as those available under Code of Civil Procedure section 1021.5;
- 16 8. That this Court award prejudgment and post-judgment interest according to any
- 17 applicable provision of law or as otherwise permitted by law; and
- 18 9. That this Court award such other and further relief as the court deems just and proper.

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20 **DATED:** April 22, 2024

MAYALL HURLEY P.C.

21 By  _____

22 JOHN P. BRISCOE

23 Attorneys for Plaintiff

24 JOSE RENTERIA

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EXHIBIT 1

Statement of Earnings For: JOSE LUIS RENTERIA						AMERICAN INTERNATIONAL TRANSPORTATION				
Employee #:	215	Division:	200	Period Begin:	9/1/2023	Check Date:	9/25/2023	2434 DEL MONTE AVENUE MONTEREY, CA 93940		
Check Number:		Department:	200	Period End:	9/15/2023	Additional Tax:				
SSN:		Federal Filing:	Married	Exemptions:	0	Additional Tax:				
Company Id:	0160PA43	Scale Filing:	Single or Marri	Exemptions:	2	Additional Tax:				
Check Number	Check Amount	Gross Pay	Net Pay	Check Message						
14751	\$2,739.45	\$3,541.33	\$2,739.45							
EARNINGS *Not Included In Totals										
Description	Rate	Hours	Dollars	YTD Hours	YTD Dollars	Description	Current	YTD	Description	
Regular	16.0000	108.25	1,732.00	1,241.25	19,860.00	SOC SEC EE	219.56	2,711.67		
Overtime	24.0000	12.50	300.00	213.50	5,124.00	MED EE	51.35	634.18		
*Parking Reimb.	16.0000	0.00	12.00	0.00	162.00	FEDERAL WH	332.63	3,780.07		
Gratuity paid		0.00	1,509.33	0.00	18,752.65	CALIFORNIA WH	178.47	1,685.72		
						CALIFORNIA SDI EE	31.87	393.63		
Total:					120.75	3,541.33	1,454.75	43,736.65	Total:	
CURRENT PERIOD LEAVE ACCRUAL					DISTRIBUTION OF NET PAY					
Sick	Accrued:	0.000000	Taken:	0.000000	Balance:	24.000000				