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Superior Court of California
County of San Bernardino
Rancho Cucamonga District

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By: Kayla Schuebel, DEPUTY

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANDRE STOKES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

JOHN CHRISTNER TRUCKING, LLC, an
Oklahoma Limited Liability Company;
HIRSCHBACH, INC., an Indiana
Corporation; HIRSCHBACH MOTOR
LINES, INC., an Iowa Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2402376
*[Assigned to Hon. Gilbert Ochoa, Dept R17,
for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (3) Failure to Reimburse Business Expenses;
- (4) Failure to Timely Pay Final Wages;
- (5) Failure to Provide Accurate Itemized Wage Statements;
- (6) Unfair and Unlawful Competition;

PAGA CLAIMS

- (7) Failure to Pay Minimum Wages;
- (8) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (9) Failure to Reimburse Business Expenses;
- (10) Failure to Timely Pay Wages;
- (11) Failure to Timely Pay Final Wages; and
- (12) Failure to Provide Accurate Itemized Wage Statements.

JURY TRIAL DEMANDED

1 Plaintiff Andre Stokes (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employers, Defendant John Christner
5 Trucking, LLC, Hirschbach, Inc., Hirschbach Motor Lines, Inc., and DOES 1 through 20,
6 inclusive, (collectively, the “Defendants”) on behalf of himself and all other current and former
7 California resident truck drivers employed by Defendants and who drove in California within the
8 last four years (the “Represented Employees”), for Defendants’ violations of the California
9 Labor Code stemming from Defendants’ failure to pay all wages owed, including minimum and
10 regular wages, failure to pay for nonproductive time under Labor Code § 226.2, failure to
11 reimburse business expenses, failure to timely pay wages, and failure to provide accurate
12 itemized wage statements, among other claims.

13 2. Plaintiff was employed by Defendants from October 2023 through February 2024
14 as a truck driver.

15 3. Plaintiff alleges on information and belief that the Represented Employees were
16 subjected to the same policies, working conditions, and corresponding wage and hour violations
17 to which Plaintiff was subjected during his employment.

18 4. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages owed due to Defendants’ piece-rate compensation policy. Under this pay plan,
20 Plaintiff and the Represented Employees did not receive separate hourly compensation at no less
21 than the minimum wage for unpaid, on-duty, time including tasks, such as but not limited to, pre-
22 trip and post-trip inspections, detention time, completing paperwork, refueling or repair, and
23 downtime between runs. Also, Defendants failed to pay all required minimum and regular wages
24 to the Represented Employees due to Defendants’ failure to accurately record and compensate
25 for all hours worked. For example, Plaintiff and the Represented Employees were often required
26 to clock out for meal periods and/or rest breaks yet were under Defendants’ control and were
27 required to perform duties for Defendants while off the clock. Additionally, Defendants often
28 required the Represented Employees to complete tasks on their “off days” (when they were not

1 on the clock), including tasks related to dispatching and scheduling. Furthermore, Defendants
2 failed to pay the Represented Employees for all agreed-upon wages (*i.e.*, Defendants paid a “day
3 rate” yet, when the work spanned two calendar days, Defendants only paid for a single day of
4 work). Finally, Defendants failed to pay the Represented Employees for nonproductive time as
5 required by Labor Code § 226.2. As a result of these policies and practice, the Represented
6 Employees were required to perform off-the-clock work that Defendants either knew or should
7 have known they were performing, in violation of California law. *Troester v. Starbucks*
8 *Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require
9 employees to routinely work for minutes off the clock without compensation”); *Frlekin v. Apple*
10 *Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control
11 and where the tasks served the employer’s interests).

12 5. Also, Defendants required Plaintiff and the Represented Employees to incur
13 substantial business-related expenses and costs without reimbursement. For example,
14 Defendants required Plaintiff and the Represented Employees to use personal cell phones to
15 carry out their duties for Defendants without sufficient reimbursement.

16 6. Plaintiff also alleges that he and the Represented Employees were not paid all
17 wages due and owing upon separation of employment within the time required by Labor Code §§
18 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
19 wages due and owing to Plaintiff and the Represented Employees at the time their employment
20 ended with Defendants, including, but not limited to minimum, regular, and sick pay wages.

21 7. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
22 statements that fully complied with the requirements of Labor Code § 226(a).

23 8. Plaintiff alleges that Defendants’ violations of the wage and hour components of
24 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
25 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
26 competitors.

27 9. At all material times, Defendants and DOES 1 through 10 were and/or are
28 Represented Employees’ employers or persons acting on behalf of Represented Employees’

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
3 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
4 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
5 California law.

6 10. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
7 monetary relief against Defendants and each of them, on behalf of himself and the Represented
8 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
9 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
10 221, 223, 226, 226.2, 226.3, 558, 1194, 1194.2, and 2802, among possibly other sections
11 inadvertently omitted. Plaintiff also reserves the right to name additional representatives
12 throughout the State of California.

13 **II. JURISDICTION**

14 11. This Court has jurisdiction over the claims for relief of Plaintiff and the
15 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

16 **III. VENUE**

17 12. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
18 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
19 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
20 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
21 Employees in San Bernardino County.

22 **IV. PARTIES**

23 **Plaintiff**

24 13. Plaintiff and Class Representative Andre Stokes was employed by Defendants
25 from approximately October 2023 through February 2024 and performed work for Defendants in
26 San Bernardino County.

27 ///

28 ///

Defendants

14. Plaintiff is informed and believes and thereon alleges that Defendant John Christner Trucking, LLC, is an Oklahoma Limited Liability Company authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

15. Plaintiff is informed and believes and thereon alleges that Defendant Hirschbach, Inc., is an Indiana Corporation authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

16. Plaintiff is informed and believes and thereon alleges that Defendant Hirschbach, Motor Lines, Inc., is an Iowa Corporation authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

17. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20, inclusive, but on information and belief alleges that those Defendants are legally responsible for the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

18. Plaintiff is informed and believes and thereon alleges that he worked under the joint direction and control of Defendants and that Defendants, and each of them, acted 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 respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other similarly situated employees.

1 19. Plaintiff is informed and believes and thereon alleges that, in conducting
2 themselves in the manner described herein, Defendants, and each of them, were acting in active
3 concert with one another such that the acts of each were and are fully attributable to the others in
4 all material respects. Plaintiff is further informed and believes that at all relevant times
5 Defendants and each of them are now, and at all material times herein mentioned were, the
6 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
7 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
8 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
9 their remaining co-Defendants.

10 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
11 Defendants, and each of them, are an integrated enterprise and should be treated as a single
12 employer because these entities share an interrelation of operations, with common human
13 resources and personnel policies and shared common offices and facilities. Additionally,
14 Defendants also have a shared website, common management, a centralized control of labor
15 operations, and common ownership or financial control.

16 21. Plaintiff is further informed and believes that at all relevant times, Defendants
17 have been inadequately capitalized to conduct business, have failed to follow appropriate
18 corporate formalities, and have simply been a shell and instrumentality through which
19 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
20 the corporate veil should be pierced and any liability attached, Defendants should be imposed
21 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
22 separate existence of these corporate entities would permit abuse of the corporate privilege,
23 thereby sanctioning fraud and promoting injustice.

24 **V. CLASS ACTION ALLEGATIONS**

25 22. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

27 23. Plaintiff brings this action on behalf of himself and all others similarly situated as
28 a class action, pursuant to Code of Civil Procedure § 382.

1 24. The relevant time period for this class action is defined as the time period
2 beginning four years prior to the filing of this action until class certification (the “Relevant Time
3 Period”).

4 25. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
5 represent is defined as follows:

6 **California Class**

7 All current and former California resident truck drivers
8 employed by Defendants and who drove in California at any
9 time during the Relevant Time Period.

10 26. Plaintiff reserves the right to amend or modify the class description with greater
11 specificity or further division into subclasses or limitation to particular issues as appropriate.

12 27. Plaintiff, as Class Representative, is a member of the class that he seeks to
13 represent.

14 28. This action has been brought and may properly be maintained as a class action
15 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
16 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll
17 records.

18 29. **Numerosity:** The potential members of the Class as defined are so numerous that
19 a joinder of all Represented Employees is impracticable. Although the exact number is currently
20 unknown to Plaintiff, this information is easily ascertainable from Defendants’ payroll and
21 personnel records.

22 30. **Commonality:** There are questions of law and fact common to the class which
23 predominate over any questions affecting only individual members of the class, including
24 without limitation:

25 i. Whether Defendants violated the California Labor Code and IWC Wage
26 Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented
27 Employees for all hours worked;

1 ii. Whether Defendants violated California Labor Code and IWC Wage
2 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
3 hourly compensation for rest periods and other nonproductive time;

4 iii. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business
6 expenses incurred while discharging their duties or in obedience to the directions of their
7 employer;

8 iv. Whether Defendants violated the California Labor Code by failing to
9 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
10 Represented Employees, whether such separation was voluntary or involuntary;

11 v. Whether Defendants violated the California Labor Code by failing to
12 provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

13 vi. Whether Defendants violated California Business & Professions Code §§
14 17200 *et seq.* due to the: failure to pay all wages owed, failure to reimburse business expenses,
15 unlawful deduction of wages, and failure to timely pay final wages; and

16 vii. Whether Plaintiff and Represented Employees are entitled to equitable
17 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

18 31. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
19 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
20 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
21 wages owed, failure to reimburse business expenses, failure to timely pay final wages, and
22 failure to provide accurate itemized wage statements.

23 32. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
24 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
25 conflict with those of the Class. Class Representative's counsel are competent and experienced in
26 litigating large employment class actions and other complex litigation matters, including cases
27 like this case.
28

1 33. **Superiority of Class Action.** Class certification is appropriate because a class
2 action is superior to other available means for the fair and efficient adjudication of this
3 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
4 law and fact common to the Class predominate over any questions affecting only individual
5 members of the Class. Each Represented Employee has been damaged and is entitled to
6 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
7 treatment will allow those similarly situated persons to litigate their claims in the manner that is
8 most efficient and economical for the parties and the judicial system.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

11 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

12 *Plaintiff and the Represented Employees Against All Defendants*

13 34. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

15 35. Plaintiff and the Represented Employees were not exempt from the requirement
16 to be paid at least the applicable California minimum wage throughout the statutory period for
17 each hour worked.

18 36. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages based on the facts set forth herein.

20 37. Consequently, Defendants violated California Labor Code laws and minimum
21 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
22 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

23 38. Plaintiff is informed and believes and thereon alleges that Defendants
24 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
25 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

26 39. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
27 Represented Employees were entitled to be paid wages throughout the statutory period for each
28 hour worked, including proper minimum wages, yet Defendants chose not to pay them in

1 accordance thereto.

2 40. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's
3 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the
4 Represented Employees' employer, within the meaning of California Labor Code § 558, who
5 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
6 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

7 41. During employment of Plaintiff and the Represented Employees, Defendants
8 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

9 42. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
10 Employees have been damaged in amounts to be proven at trial.

11 43. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
12 all unpaid wages, liquidated damages, penalties, interest, attorneys' fees and costs, pursuant to
13 Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY FOR NONPRODUCTIVE TIME**

16 (Labor Code § 226.2)

17 *Plaintiff and the Represented Employees Against All Defendants*

18 44. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 45. Plaintiff and the Represented Employees are and/or were employees of
21 Defendants who were paid on a piece-rate basis.

22 46. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
23 basis to provide separate payment for nonproductive time at an hourly rate that is no less than the
24 applicable minimum wage. Labor Code § 226.2(a)(4).

25 47. At all relevant times herein, Defendants failed to compensate the Represented
26 Employees, including Plaintiff, for all nonproductive time separate from any piece-rate
27 compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor
28 Code § 226.2 every pay period with respect to Plaintiff and every Represented Employee.

48. As a result of Defendant's violation of Labor Code § 226.2, Plaintiff and the Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount of unpaid payments for nonproductive time, including interest thereon, reasonable attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Represented Employees Against All Defendants

49. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

50. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

51. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses incurred while discharging their duties or in obedience to directions of their employer.

52. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Represented Employees to incur substantial business-related expenses and costs without sufficient reimbursement.

53. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

54. At all relevant times herein, Defendants failed to reimburse the Represented Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants, thereby receiving an economic benefit.

55. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under the law, all in an amount to be

1 proved at time of trial.

2 56. Labor Code § 2802(b) states that “[a]ll awards made by a Court for
3 reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in
4 civil actions, and said interest will accrue from the date on which the employee incurred the
5 necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees
6 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
7 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

8 57. Labor Code § 2802(c) states that “[f]or the purposes of this section, the term
9 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,
10 attorney’s fees incurred by the employee in enforcing the rights granted by this section.”
11 Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed expenses,
12 interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily incurred in
13 pursuing same, all in an amount to be proven at trial.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY FINAL WAGES**

16 (Labor Code §§ 201 – 203)

17 *Plaintiff and the Represented Employees Against All Defendants*

18 58. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 59. Plaintiff and the Represented Employees are and/or were employees of
21 Defendants who did not receive proper protections and benefits of the laws governing the timing
22 and payment of wages.

23 60. Labor Code § 201 requires that the employer immediately pay any wages, without
24 abatement or reduction, to any employee who is discharged.

25 61. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
26 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
27 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.
28

62. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

63. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Represented Employees were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

64. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented Employees upon separation of employment, including, but not limited to, minimum and regular wages.

65. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented Employees the above-described waiting time penalty, all in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Represented Employees Against All Defendants

66. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

67. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

68. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating the number of piece-rate units earned and any applicable piece rate, gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer,

1 and all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee.

3 69. Defendants violates Labor Code § 226(a) every pay period with respect to
4 Plaintiff and the Represented Employees because the wage statements that Defendants issued to
5 Plaintiff and the Represented Employees failed to accurately state the number of piece-rate units
6 earned and the applicable piece rate, gross wages earned, total hours worked, all deductions, net
7 wages earned, the name and address of the legal entity that is the employer, and all applicable
8 hourly rates in effect during the pay period and the corresponding number of hours at each
9 hourly rate by the employee.

10 70. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a
11 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
12 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
13 specified in that subdivision, separately state the following, to which the provisions of Section
14 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
15 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
16 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
17 wages paid for that time during the pay period.”

18 71. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
19 and the Represented Employees that complied with the requirements of Labor Code §
20 226.2(a)(2) because the wage statements did not include any information regarding compensable
21 rest and recovery periods, nonproductive time, or the rates of pay and compensation for the
22 same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect
23 to Plaintiff and the Represented Employees.

24 72. Defendants’ failure to provide the required writing deprived Plaintiff and the
25 Represented Employees of the ability to know, understand, and question the calculation and rate
26 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the
27 Represented Employees had no way to dispute the resulting miscalculation of wages, all of
28 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,

1 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses
2 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
3 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
4 all to their respective damages in amounts according to proof at trial.

5 73. As a result of Defendants' knowing and intentional failure to comply with Labor
6 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
7 prevented from knowing, understanding and disputing the wage payments paid to them.
8 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
9 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
10 Represented Employees being denied all necessary deductions, payments, and withholdings
11 owed by the employer, including, but not limited to, the failure to make all necessary
12 contributions for unemployment benefits, social security benefits, proper payment of taxes and
13 withholdings, and other mandated state and federal benefits.

14 74. Plaintiff has also been injured as a result of having to bring this action to attempt
15 to obtain correct wage information following Defendants' refusal to comply with many of the
16 mandates of California's Labor Code and related laws and regulations.

17 75. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
18 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
19 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
20 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by
21 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
22 penalty is all in an amount to be shown according to proof at trial.

23 **SIXTH CAUSE OF ACTION**

24 **UNFAIR AND UNLAWFUL COMPETITION**

25 (Business and Professions Code § 17200 *et seq.*)

26 *Plaintiff and the Represented Employees Against All Defendants*

27 76. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 77. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
3 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
4 due to the unfair and unlawful business practices of Defendants as alleged herein.

5 78. Defendants, and each of them, are “persons” as defined under Business &
6 Professions Code § 17021.

7 79. As alleged herein, Defendants engaged in conduct that violated California’s wage
8 and hour laws, including failure to pay minimum and regular wages, failure to reimburse
9 business expenses, and failure to timely pay final wages, all in order to decrease their costs and
10 increase their profits.

11 80. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
12 Employees wages and monies and other financial obligations to which they were entitled.

13 81. As a result of Defendants’ failure to comply with the Labor Code and IWC
14 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
15 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
16 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*
17 Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to
18 lower its payroll costs as alleged herein, constitute unlawful and unfair business practices
19 because it was done in a systematic manner over a period of time to the detriment of the Plaintiff
20 and all others similarly-situated.

21 82. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
23 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
24 of Civil Procedure § 1021.5.

25 83. A violation of California Business & Professions Code § 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as
27 violations of, among other things, the California Labor Code and IWC Wage Orders, are
28 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code §§ 17200, et seq.

3 84. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
4 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
6 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
7 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
8 harm unless Defendants, and each of them, are restrained from continuing to engage in said
9 unfair, unlawful and/or fraudulent business practices.

10 85. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
11 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
12 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
13 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
14 Represented Employees are not obligated to establish individual knowledge of the unfair
15 practices of Defendants in order to recover restitution.

16 86. Plaintiff, individually, and on behalf of the Represented Employees, is further
17 entitled to and do seek a declaration that the above described business practices are unfair,
18 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
19 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
20 the future.

21 87. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
22 Represented Employees are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

2 88. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
5 action filed on behalf of himself and all other similarly situated current and former aggrieved
6 employees in California against whom one or more of the alleged violations was committed
7 (hereinafter the “Aggrieved Employees”).

8 89. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
9 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
10 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
11 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
12 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

13 90. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
14 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
15 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
16 the facts and theories to support the alleged violations. More than sixty-five (65) days have
17 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
18 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
19 satisfied the administrative prerequisites to suit under the PAGA.

20 **SEVENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM AND REGULAR WAGES**

22 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

23 *Plaintiff and the Aggrieved Employees Against All Defendants*

24 91. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 92. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
27 be paid at least the applicable California minimum wage throughout the statutory period for each
28 hour worked.

93. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages owed based on the facts alleged herein.

94. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

95. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

96. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

EIGHTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY FOR NONPRODUCTIVE TIME

(Labor Code § 226.2)

Plaintiff and the Aggrieved Employees Against All Defendants

97. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

98. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who were paid on a piece-rate basis.

99. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no less than the applicable minimum wage. Labor Code § 226.2(a)(4).

100. At all relevant times herein, Defendants failed to compensate the Aggrieved Employees, including Plaintiff, for all nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Aggrieved Employees.

1 101. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **NINTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 (Labor Code § 2802)

7 *Plaintiff and the Aggrieved Employees Against All Defendants*

8 102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 103. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing reimbursement of
12 business expenses.

13 104. Labor Code § 2802(a) requires that the employer indemnify its employees for
14 expenses and losses incurred while discharging their duties or in obedience to the directions of
15 their employer.

16 105. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
18 and costs without reimbursement.

19 106. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
20 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
21 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

22 107. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
23 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and
24 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

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1 **TENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 108. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 109. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws regarding the timing of payment
9 of wages each period.

10 110. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month. And Labor Code § 204(d) states “[t]he requirements of this section shall
15 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
16 the wages are paid not more than seven calendar days following the close of the payroll period.”

17 111. At all relevant times herein, Defendants did not provide Plaintiff and the
18 Aggrieved Employees with all wages due and owing each period within the time required by
19 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
20 Employees with all wages due and owing each pay period, including, but not limited to,
21 minimum wages and wages for unpaid nonproductive time within the time specified by § 204.

22 112. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
24 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **ELEVENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 113. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 114. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of final wages.

10 115. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged. Labor Code § 202 requires that the
12 employer pay all wages earned and unpaid, without abatement or reduction, no later than 72
13 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if
14 at least a 72-hour notice was provided. Labor Code §§ 201-203 cause the unpaid wages of the
15 employee to continue as a penalty from the due date thereof at the same rate until paid or until an
16 action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

17 116. At all relevant times, Defendants employed a policy and practice whereby
18 Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation
19 of employment within the time required by Labor Code §§ 201 and 202.

20 117. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
21 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,
22 including, but not limited to, minimum and regular wages.

23 118. Plaintiff alleges that, at all times material to this action, Defendants had a planned
24 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
25 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

26 119. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

1 **TWELFTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees Against All Defendants*

6 120. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 121. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 122. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating the number of piece-rate units earned and any applicable
13 piece rate, gross wages earned, all deductions, net wages earned, the inclusive dates of the pay
14 period, the employee's name and the last four digits of his or her Social Security number (or
15 employee identification number), the name and address of the legal entity that is the employer,
16 and all applicable hourly rates in effect during the pay period and the corresponding number of
17 hours worked at each hourly rate by the employee.

18 123. Defendants violates Labor Code § 226(a) every pay period with respect to
19 Plaintiff and the Aggrieved Employees because the wage statements that Defendants issued to
20 Plaintiff and the Aggrieved Employees failed to accurately state the number of piece-rate units
21 earned and the applicable piece rate, gross wages earned, total hours worked, all deductions, net
22 wages earned, the name and address of the legal entity that is the employer, and all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours at each
24 hourly rate by the employee.

25 124. Furthermore, Labor Code § 226.2(a) states "[f]or employees compensated on a
26 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
27 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
28 specified in that subdivision, separately state the following, to which the provisions of Section

226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

125. At all relevant times, Defendants failed to provide a wage statement to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2) because the wage statements did not include any information regarding compensable rest and recovery periods, nonproductive time, or the rates of pay and compensation for the same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect to Plaintiff and the Aggrieved Employees.

126. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and accurate wage statements that complied with the requirements of Labor Code § 226(a). *See Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”).

127. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Seventh through Twelfth Causes of Action, the assessment of all remedies and/or penalties available under PAGA;
2. For reasonably attorneys’ fees and costs as permitted under PAGA;
3. That the First through Sixth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;

1 5. That counsel for Plaintiff be appointed Class Counsel;

2 6. For all applicable statutory penalties recoverable under the First through Sixth
3 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
4 Orders of the Industrial Welfare Commission;

5 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
6 law, including those pursuant to the Labor Code;

7 8. For injunctive relief and/or restitution as provided by the Labor Code and
8 Business and Professions Code § 17200, *et seq.*;

9 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
10 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 256, 558, 1194, and 2802, among
11 other sections inadvertently omitted;

12 10. For an award of damages in the amount of unpaid compensation including, but
13 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
14 thereon;

15 11. For pre- and post-judgment interest; and

16 12. For such other relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
19 demand a jury trial as to the First through Sixth Causes of Action pled herein.

20
21 Dated: May 14, 2024

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



24 Brian J. Mankin, Esq.
25 Peter J. Carlson, Esq.
26 Attorneys for Plaintiff
27
28

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On June 10, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 10, 2024, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

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