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Superior Court of California
County of Sacramento
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By: R. Fisher Deputy

Attorneys for Plaintiff VICTOR AUGUST, on
behalf of himself and all others similarly situated
and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

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

Plaintiff,

v.

CME TRANSCO, LLC; and DOES 1-100,

Defendants.

Case No. **24CV00999**

**PLAINTIFF VICTOR AUGUST'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff VICTOR AUGUST (hereinafter “Plaintiff”), on behalf himself and all other similarly
2 aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendant
3 CME TRANSCO, LLC (hereinafter “Defendant”) and/or DOES 1-100.

4 **I. INTRODUCTION**

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

10 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
11 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
12 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
13 break; worked qualifying shifts without receiving second meal periods and second and third
14 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
15 owed twice per month; were not paid compensation for all time worked; were not paid waiting
16 time penalties; and were not reimbursed for business expenses. Plaintiff seeks penalties on
17 behalf of himself and all other aggrieved employees of Defendant and/or DOES as provided
18 herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal. Lab. Code
19 § 2699(g)(1).

20 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
21 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
22 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
23 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
24 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
25 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
26 paid compensation for all time worked; paid all wages owed twice per month; paid penalties
27 for not being paid timely at the time of termination; and not reimbursed for business expenses.

28 4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of

1 Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire
2 and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other
3 aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or
4 where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved
5 and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved
6 employees labored under. These policies and/or practices included, but were not limited to,
7 policies and/or practices regarding meal periods, paying for all time worked, rest periods, wage
8 statements, paying compensation at time of termination, timing of payment, and business
9 expense reimbursement. Further, Defendant and/or DOES had the ability to prevent Plaintiff
10 and the other aggrieved employees from working.

11 **II. JURISDICTION AND VENUE**

- 12 5. Plaintiff is an individual residing in California. Plaintiff was employed by Defendant and/or
13 DOES in California. Plaintiff, and each of the aggrieved employees, were employees of
14 Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of
15 California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies
16 beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor
17 and Workforce Development Agency (LWDA).
- 18 6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
19 and/or DOE operates facilities, employs drivers, delivery drivers, truck drivers, truck workers,
20 or similar job designations, conducts business, and commits *California Labor Code* violations
21 within Sacramento County and California. Each Defendant and/or DOE is within the
22 jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have
23 a direct effect on Plaintiff and the other aggrieved employees situated within the State of
24 California and within Sacramento County. Defendant and/or DOES employ numerous
25 aggrieved employees in California and/or Sacramento County.
- 26 7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of
27 Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the
28 general public, will and does seek to recover any and all penalties for each and every violation

- shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.
8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.
9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Sacramento, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, compensation for all time worked, to be paid timely pursuant to California law, to receive timely wages at the time of termination, and to be reimbursed for business expenses.
11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as drivers, delivery drivers, truck drivers, truck workers, or similar job designations and hauled freight for Defendant and/or DOES and spent a majority of their work time in California and/or had their base of operations in California during the relevant time period. Plaintiff was employed in a non-exempt capacity.
12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on March 14, 2024. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA

and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendant

13. Defendant and/or DOES operate throughout the State of California to transport and/or deliver freight, such as produce, beverages, and other food products, to Defendant’s and/or DOES’ customers in the State of California.

14. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

15. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

16. California is the nerve center of Defendant’s and/or DOES’ operations.

17. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

18. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of Defendant and/or DOES at all times.

IV. GENERAL ALLEGATIONS

20. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims

1 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
2 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
3 composed of all similarly situated drivers, delivery drivers, truck drivers, truck workers, or
4 similar job designations who haul freight for Defendant and/or DOES and who spent a majority
5 of their work time in California and/or had their base of operations in California.

6 21. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
7 Plaintiff and the aggrieved employees were entitled to be paid for all hours worked.

8 22. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
10 periods in a timely manner or payment of one hour of pay as additional compensation at
11 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
12 uninterrupted meal period.

13 23. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
14 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
15 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES
16 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 9-2001, and
17 California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed
18 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
19 less than thirty (30) minutes for every shift of more than ten (10) hours per day.

20 24. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
21 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
22 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
23 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
24 not authorized and/or permitted to take a legally compliant rest period.

25 25. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
26 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
27 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
28 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations,

Section 11070(12).

26. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff and to other terminated or resigned members of the aggrieved employees and failed to timely pay wages during employment.

27. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees all wages earned twice per month.

28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay statements in accordance with California law.

29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they were not providing complete and accurate pay statements in accordance with California law to Plaintiff and the aggrieved employees.

30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with California law, and that Defendant and DOES had the ability to pay such compensation, but willfully and intentionally failed to do so, and Defendant and DOES falsely represented to Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and the other aggrieved employees.

31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the other aggrieved employees were entitled to timely wages at the time of termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, meal period premiums, and/or rest period premiums owed at the time of termination.

32. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to receive be reimbursed for business expenses in accordance with California law.

1 34. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
2 all similarly situated drivers, delivery drivers, truck drivers, truck workers, or similar job
3 designations who haul freight for Defendant and/or DOES and who spent a majority of their
4 work time in California and/or had their base of operations in California, employed beginning
5 one year prior to the date Plaintiff sent Notice to the LWDA.

6 35. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
7 respect to the issues or in any other way.

8 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
9 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
10 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

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

13 37. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
14 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
15 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
16 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
17 from wages when the employer is required or empowered to do so by state or federal law or
18 when the deduction is expressly authorized in writing by the employee for specified purposes
19 that do not in effect reduce the agreed upon wage.

20 38. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting
21 individually as an officer, agent, or employee of another person, who pays or causes to be paid
22 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
23 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
24 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

25 39. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
26 employees for all hours worked under Defendant’s and/or DOES’ piece-rate pay system.
27 California Labor Code § 226.2, requires employees to be “compensated for rest and recovery
28 periods and other nonproductive time separate from any piece-rate compensation.” Defendant

1 and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system which
2 compensates them based on the number of deliveries they complete, as opposed to an hourly
3 rate. However, Defendant's and/or DOES' piece-rate does not separately and directly
4 compensate Plaintiff and the aggrieved employees for the substantial amount of non-driving
5 work that Defendant and/or DOES requires, including, but not limited to, verifying their loads
6 with dispatch prior to their shifts, picking up paperwork, performing pre-and post-trip
7 inspections, loading and unloading, fueling the truck, waiting at a customer's location, or
8 having to stop and wait at CHP inspections.

9 40. Furthermore, when Plaintiff and the aggrieved employees are able to take meal periods,
10 Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control
11 during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through
12 their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
13 thereby denying them the right to be completely free from employer control under California
14 law. Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the
15 number of deliveries they complete, Plaintiff and the aggrieved employees are incentivized to
16 work through their meal periods or risk being paid less for the day.

17 41. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
18 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay
19 Plaintiff and similarly aggrieved employees for meal period time when Plaintiff and the
20 aggrieved employees were not relieved of all duties and/or employer control.

21 42. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the
22 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant
23 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved
24 employees' rights.

25 43. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
26 wages, and lost interest on such wages, and expenses.

27 44. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers,
28 truck workers, or similar job designations who haul freight for Defendant and/or DOES and

1 who spent a majority of their work time in California and/or had their base of operations in
2 California.

3 45. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant sand/or
4 DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under
5 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
6 to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* §
7 2699.5.

8 46. Plaintiff, as a representative of the people of the State of California, will seek any and all
9 penalties otherwise capable of being collected by the Labor Commission and/or the
10 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
11 set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any
12 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

13 47. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
14 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
16 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

18 48. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
19 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
20 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
21 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
22 pursuant to *Cal. Lab. Code* § 558(a).

23 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private**
24 **Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (*Cal. Lab. Code***
25 **§2698 et. seq.).**

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

28 50. Under *Cal. Lab. Code* § 512, and IWC Wage Order 9-2001, no employer shall employ any

1 person for a work period of more than five (5) hours without providing a meal period of not
2 less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the
3 employee is to be completely free of the employer's control and must not perform any work
4 for the employer. If the employee does perform work for the employer during the thirty (30)
5 minute meal period, the employee has not been provided a meal period in accordance with the
6 law. Also, the employee is to be compensated for any work performed during the thirty (30)
7 minute meal period.

8 51. In addition, an employer may not employ an employee for a work period of more than ten (10)
9 hours per day without providing the employee with another meal period of not less than thirty
10 (30) minutes.

11 52. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in
12 accordance with the above requirements, the employer shall pay the employee one (1) hour of
13 pay at the employee's regular rate of compensation for each workday that the meal period is
14 not provided.

15 53. Defendant and/or DOES breached the legal duty to provide meal periods to Plaintiff and the
16 aggrieved employees by failing to provide Plaintiff and the aggrieved employees with meal
17 periods within the timeframes outlined by California law. Specifically, Defendant and/or
18 DOES fails to provide Plaintiff and the aggrieved employees with meal periods of thirty (30)
19 minutes in duration within the first five (5) continuous hours of work.

20 54. Additionally, when Plaintiff and the aggrieved employees are able to take meal periods,
21 Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control
22 during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through
23 their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
24 thereby denying them the right to be completely free from employer control under California
25 law. Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the
26 number of deliveries they complete, Plaintiff and the aggrieved employees are incentivized to
27 work through their meal periods or risk being paid less for the day.

28 55. Further, Defendant and/or DOES instituted a consistent policy/practice of not providing second

meal periods to Plaintiff and the aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the aggrieved employees are required to work shifts greater than ten (10) hours long but never received second meal periods, let alone second meal periods before the tenth hour of work in shifts over ten (10) hours long.

56. In addition, Defendant and/or DOES fail to keep accurate records of meal periods for Plaintiff and the aggrieved employees.

57. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant and/or DOES willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

58. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers, truck workers, or similar job designations who haul freight for Defendant and/or DOES and who spent a majority of their work time in California and/or had their base of operations in California.

59. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

60. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

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

62. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this

chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

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

64. Industrial Welfare Commission Order No. 9-2001 section 11(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

65. Defendant and/or DOES have had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Plaintiff and the aggrieved employees.

66. Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff and the aggrieved employees with rest periods “at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or DOES do not provide Plaintiff and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours worked or major fraction thereof.

67. Additionally, Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system which compensates them based on the number of deliveries they complete, as opposed to an hourly rate. However, Defendant and/or DOES pay Plaintiff and the aggrieved employees for rest periods under this piece-rate pat system at a rate less than Plaintiff’s and the aggrieved employees’ hourly rate of pay.

68. Furthermore, when Plaintiff and the aggrieved employees are able to take rest periods, Plaintiff

1 and the aggrieved employees are not relieved of all duties and/or employer control during their
2 rest periods. Specifically, Plaintiff and the aggrieved employees worked through their rest
3 periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby
4 denying them the right to be completely free from employer control under California law.
5 Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the
6 number of deliveries they complete, Plaintiff and the aggrieved employees are incentivized to
7 work through their rest periods or risk being paid less for the day

8 69. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
9 day by non-exempt employees, and by failing to provide compensation for these unprovided
10 periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal.
11 Lab. Code § 226.7 and Industrial Welfare Commission Order No. 9-2001 section 11(A).

12 70. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers,
13 truck workers, or similar job designations who haul freight for Defendant and/or DOES and
14 who spent a majority of their work time in California and/or had their base of operations in
15 California.

16 71. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
17 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
18 has satisfied all prerequisites to serve as a representative of the general public to enforce
19 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
20 violations of Cal. Lab. Code § 226.7.

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

25 73. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
26 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
27 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
28 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

2 74. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
3 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
4 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
5 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
6 pursuant to Cal. Lab. Code § 558(a).

7 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
8 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination**
9 **and During Employment (Cal. Lab. Code §2698 *et. seq.*).**

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

12 76. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay,
13 in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left
14 Defendant's and/or DOES' employ or who were terminated.

15 77. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant
16 and/or DOES during the last year were entitled to be promptly paid all lawful compensation,
17 and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

18 78. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
19 an employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately, and if an employee quits his or her employment, his or her wages shall become
21 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
22 seventy-two (72) hours notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages at the time of quitting.

24 79. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
25 pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant
26 and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their
27 leaving Defendant's and/or DOES' employ.

28 80. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff

1 and the aggrieved employees for all hours worked under Defendant's and/or DOES' piece-rate
2 pay system. California Labor Code § 226.2, requires employees to be "compensated for rest
3 and recovery periods and other nonproductive time separate from any piece-rate
4 compensation." Defendant and/or DOES pay Plaintiff and the aggrieved employees via a
5 piece-rate pay system which compensated them based on the number of deliveries they
6 complete, as opposed to an hourly rate. However, Defendant's and/or DOES' piece-rate pay
7 system does not separately and directly compensate Plaintiff and the aggrieved employees for
8 the substantial amount of non-driving work that Defendant and/or DOES require, including,
9 but not limited to, verifying their loads with dispatch prior to their shifts, picking up paperwork,
10 performing pre-and post-trip inspections, loading and unloading, fueling the truck, waiting at
11 a customer's location, or having to stop and wait at CHP inspections.

12 81. Furthermore, when Plaintiff and the aggrieved employees are able to take meal periods,
13 Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control
14 during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through
15 their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
16 thereby denying them the right to be completely free from employer control under California
17 law. Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the
18 number of deliveries they complete, Plaintiff and the aggrieved employees are incentivized to
19 work through their meal periods or risk being paid less for the day.

20 82. In addition, through its failure to provide Plaintiff and the aggrieved employees with lawful
21 meal and rest periods, Defendant and/or DOES do not pay all meal and rest period premiums
22 owed to Plaintiff and the aggrieved employees at the time of termination.

23 83. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
24 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
25 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
26 Cal. Lab. Code §§ 201 and 202.

27 84. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
28 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until and action is commenced; but the
2 wages shall not continue for more than thirty (30) days.

3 85. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers,
4 truck workers, or similar job designations who haul freight for Defendant and/or DOES and
5 who spent a majority of their work time in California and/or had their base of operations in
6 California.

7 86. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
8 at termination, is an aggrieved employee with standing to bring an action under the
9 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
10 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
11 2699.5.

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

17 88. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

22 89. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

27 \\
28 \\
29

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 et. seq.).

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

91. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) 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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

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

93. *California Labor Code* section 246(i) also requires that, “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid

time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

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

95. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) by failing to include all of the information required by *California Labor Code* section 226(a)(1) through (9) on each and every wage statement provided to Plaintiff and the aggrieved employees.

96. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the number of piece-rate units earned and any applicable piece rate on Plaintiff's and the aggrieved employees' wage statements. As a result, Plaintiff and the aggrieved employees are unable to determine from the wage statement how they are being paid under Defendant's and/or DOES' piece-rate pay system or whether they are being paid correctly.

97. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally provides Plaintiff's and the aggrieved employees' with wage statements that do not enable Plaintiff and the aggrieved employees to determine the hours for which they are being paid. Despite itemizing the total hours worked on these wage statements, Plaintiff and the aggrieved employees have no way of determining from the wage statement alone how Defendant and/or DOES calculated that total or whether that total matches the number of hours Plaintiff and the aggrieved employees should be paid.

98. Additionally, by virtue of its failure to pay for all time worked, Defendant and/or DOES

1 knowingly and intentionally did not correctly itemize the gross wages earned, total hours
2 worked, net wages earned, and number of hours worked at each hourly rate on wage statements
3 provided to Plaintiff and the aggrieved employees as *California Labor Code* section 226,
4 subsection (a), requires in every pay period during the period of the relevant statute of
5 limitations.

6 99. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff
7 and the aggrieved employees for all hours worked under Defendant's and/or DOES' piece-rate
8 pay system. California Labor Code § 226.2, requires employees to be "compensated for rest
9 and recovery periods and other nonproductive time separate from any piece-rate
10 compensation." Defendant and/or DOES pay Plaintiff and the aggrieved employees via a
11 piece-rate pay system which compensated them based on the number of deliveries they
12 complete, as opposed to an hourly rate. However, Defendant's and/or DOES' piece-rate does
13 not separately and directly compensate Plaintiff and the aggrieved employees for the
14 substantial amount of non-driving work that Defendant and/or DOES requires, including, but
15 not limited to, verifying their loads with dispatch prior to their shifts, picking up paperwork,
16 performing pre-and post-trip inspections, loading and unloading, fueling the truck, waiting at
17 a customer's location, or having to stop and wait at CHP inspections.

18 100. For example, Defendant and/or DOES have a continuous policy or practice that instructs
19 Plaintiff and the aggrieved employees to show up several minutes prior to the start of their
20 shifts. This is because the clock in process can take several minutes, and Defendant and/or
21 DOES expect Plaintiff and the aggrieved employees to start their shifts on time. However,
22 Defendant and/or DOES fail to pay Plaintiff and the aggrieved employees for this time.
23 Further, Defendant and/or DOES require Plaintiff and the aggrieved employees to review and
24 fill out post hire paperwork prior to working the first shift of their employment with Defendant
25 and/or DOES but fail to compensate them for this time.

26 101. Furthermore, when Plaintiff and the aggrieved employees are able to take meal periods,
27 Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control
28 during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through

1 their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
2 thereby denying them the right to be completely free from employer control under California
3 law. Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the
4 number of deliveries they complete, Plaintiff and the aggrieved employees are incentivized to
5 work through their meal periods or risk being paid less for the day.

6 102. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
7 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay
8 Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved
9 employees were not relieved of all duties and/or employer control.

10 103. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to
11 Plaintiff and the aggrieved employees for Defendant's and/or DOES' failure to provide lawful
12 meal and rest periods.

13 104. Defendant and/or DOES also failed to itemize the amount of sick leave available for
14 use on Plaintiff's and the aggrieved employees' wage statements in violation of *California*
15 *Labor Code* section 246(i).

16 105. Throughout the statutory period, because of the knowing and intentional failure by Defendant
17 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
18 aggrieved employees have been able to reconstruct only a reasonable estimate of the hours
19 worked and have, therefore, not received full compensation.

20 106. Further, in addition to any penalties levied upon Defendant and/or DOES for its failure to
21 comply with *Labor Code* section 226 subdivision (a)'s requirement to provide Plaintiff and the
22 aggrieved employees accurate, itemized wage statements, *Labor Code* section 226.3 assesses
23 additional penalties for the failure to keep the records required in subdivision (a) of Section
24 226. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES to maintain
25 records that "accurately shows all of the information required by this subdivision." Defendant
26 and/or DOES have violated their statutory duty to maintain records for Plaintiff and the
27 aggrieved employees that contain all of the information under *Labor Code* section 226(a)(1)
28 through (9)

1 107. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers,
2 truck workers, or similar job designations who haul freight for Defendant and/or DOES and
3 who spent a majority of their work time in California and/or had their base of operations in
4 California.

5 108. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate
6 and itemized wage statements, is an aggrieved employee with standing to bring an action under
7 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
8 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
9 2699.5.

10 109. Plaintiff, as a representative of the people of the State of California, will seek all penalties
11 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
12 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
13 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174,
14 1199.

15 110. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
16 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
17 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
18 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
19 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

20 111. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
21 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
22 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
23 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
24 pursuant to Cal. Lab. Code § 558(a).

25 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
26 **Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month**
27 **(Cal. Lab. Code § 2698 *et. seq.*).**

28 112. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein

1 as if fully plead.

2 113. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in
3 any employment are due and payable twice during each calendar month, on days designated in
4 advance by the employer as the regular paydays.

5 114. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any
6 employment are due and payable twice during each calendar month, on days designated in
7 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
8 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the
9 month during which the labor was performed, and labor performed between the 16th and the
10 last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the
11 following month.”

12 115. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and
13 the aggrieved employees twice per month. By failing to pay employees twice per month,
14 Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 204(a).

15 116. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
16 pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice
17 during each calendar month.

18 117. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
19 employees for all hours worked under Defendant’s and/or DOES’ piece-rate pay system.
20 *California Labor Code* § 226.2, requires employees to be “compensated for rest and recovery
21 periods and other nonproductive time separate from any piece-rate compensation.” Defendant
22 and/or DOES pays Plaintiff and the aggrieved employees via a piece-rate pay system which
23 compensated them based on the number of deliveries they complete, as opposed to an hourly
24 rate. However, Defendant’s and/or DOES’ piece-rate does not separately and directly
25 compensate Plaintiff and the aggrieved employees for the substantial amount of non-driving
26 work that Defendant and/or DOES require, including, but not limited to, verifying their loads
27 with dispatch prior to their shifts, picking up paperwork, performing pre-and post-trip
28 inspections, loading and unloading, fueling the truck, waiting at a customer’s location, or

1 having to stop and wait at CHP inspections.

2 118. Furthermore, when Plaintiff and the aggrieved employees are able to take meal periods,
3 Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control
4 during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through
5 their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
6 thereby denying them the right to be completely free from employer control under California
7 law. Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the
8 number of deliveries they complete, Plaintiff and the aggrieved employees are incentivized to
9 work through their meal periods or risk being paid less for the day.

10 119. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
11 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay
12 Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved
13 employees were not relieved of all duties and/or employer control.

14 120. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to
15 Plaintiff and the aggrieved employees for Defendant's and/or DOES' failure to provide lawful
16 meal and rest periods.

17 121. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that
18 were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code §
19 204.

20 122. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers,
21 truck workers, or similar job designations who haul freight for Defendant and/or DOES and
22 who spent a majority of their work time in California and/or had their base of operations in
23 California.

24 123. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
25 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
26 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
27 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
28 2699.5 for violations of Cal. Lab. Code § 204.

1 124. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
2 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
4 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
5 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

6 125. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
7 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
8 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
9 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
10 pursuant to Cal. Lab. Code § 558(a).

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

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

16 127. California Labor Code section 2802 provides: “An employer shall indemnify his or her
17 employees for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions
19 of the employer...[which includes] all reasonable costs, including, but not limited to, attorneys’
20 fees incurred by the employee enforcing the rights granted by this section.”

21 128. Plaintiff and the aggrieved employees incurred expenses necessary for the discharge of their
22 duties without receiving reimbursement from Defendant and/or DOES. Defendant and/or
23 DOES required Plaintiff and the aggrieved employees to use their personal cell phones for
24 business purposes, such as fielding calls from Defendant and/or DOES throughout the
25 workday, but failed to reimburse this expense.

26 129. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to
27 reimbursement for said necessary expenditures, plus interest and expenses.

28 130. These claims are for Plaintiff and all similarly situated drivers, delivery drivers, truck drivers,

truck workers, or similar job designations who haul freight for Defendant and/or DOES and who spent a majority of their work time in California and/or had their base of operations in California.

131. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or DOES failed to reimburse, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802.

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

V. PRAYER FOR RELIEF

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

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*

- 1 for failure to timely pay wages at separation;
- 2 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 3 for failure to provide compensation for all time worked;
- 4 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 5 for failure to provide compensation at the minimum wage;
- 6 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 7 for failure to provide accurate, itemized wage statements;
- 8 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 9 for failure to pay employees all wages owed twice per month;
- 10 K. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, *et. seq.*
- 11 for failure to reimburse business expenses; and
- 12 L. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

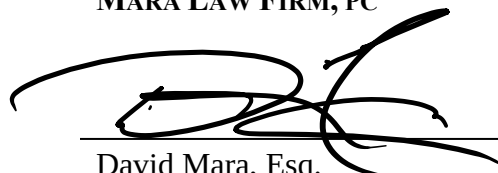
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a jury trial.

MARA LAW FIRM, PC

15
16 Date: May 21, 2024

Signed:



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff VICTOR AUGUST, on
behalf of himself and all others similarly
situated, and on behalf of the general public