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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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Attorneys for Plaintiff Israel Alcantar individually,
and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ISRAEL ALCANTAR., individually and on
behalf of all others similarly situated and on
behalf of the general public,

Plaintiff,

v.

ACCELERATED SERVICES LLC, and
DOES 1 through 10, inclusive,

Defendants.

Case No. CIVSB2415634

*Assigned for All Purposes to:
Judge Carlos Cabrera; Dept. S24*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay All Wages to Piece-Rate Workers for Time Spent in Rest Breaks
3. Failure to Pay Wages Upon Separation of Employment
4. Failure to Pay Wages Within the Required Time;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Reimburse Necessary Business Expenses;
7. Failure to Refrain From Unlawful Deductions;
8. Violation of California Business; and Professions Code §§ 17200, *et seq.*
9. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

Plaintiff Israel Alcantar, individually and on behalf of all others similarly situated, allege as follows:

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff Israel Alcantar (“Plaintiff”) brings this putative class action and representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, and representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against Accelerated Service, LLC and Does 1 through 10, inclusive (collectively “Defendants”) on behalf of himself individually and on behalf of a class of Defendants’ non-exempt employees who were misclassified as independent contractors.

2. Defendants are in the business of providing transportation of cars throughout California.

3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”), all of which contribute to Defendants’ deliberate unfair competition.

4. Plaintiff is informed and believes, and thereon alleges, during the relevant time period, Defendants had a consistent policy of violating state wage and hour laws by, among other things:

- (a) Misclassifying Plaintiff and drivers as independent contractors;
- (b) Failing to pay all wages for all hours worked, including minimum wage;¹
- (c) Failing to pay wages to piece-rate workers for time spent in rest breaks and/or recovery periods;
- (d) Willfully failing to provide accurate semi-monthly itemized wage statements;
- (e) Failing to pay all wages due upon separation of employment;
- (f) Failing to reimburse all business expenses incurred by class members in direct consequence of the discharge of his or her duties; and
- (g) Unlawfully deducting items from class members’ pay or requiring forced patronage.

¹ Due to the current state of the law, Plaintiff does not allege claims for unpaid overtime. Plaintiff reserves the right to add this claim if the law changes.

5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of himself and all others similarly to recover, among other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 450, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2750.3, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

6. Plaintiff, on behalf of himself and all class members, pursuant to Business and Professions Code sections 17200, *et seq*, also seek injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint

JURISDICTION AND VENUE

7. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one facility in this county, or acts and omissions alleged herein took place in this county.

THE PARTIES

11. Plaintiff Israel Alcantar is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

12. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in

1 and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders,
2 whose employees are and were engaged throughout this county and the State of California.

3 13. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff, who
5 therefore sues said Defendants by such fictitious names under California Code of Civil Procedure
6 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
7 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to
8 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
9 capacities of the Defendants designated hereinafter as DOES when such identities become known.

10 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are
13 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
14 employers and/or joint employers of Plaintiff and the class members.

15 **CLASS ACTION ALLEGATIONS**

16 15. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself
17 and all other members of the general public similarly situated who were affected by Defendants’
18 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19 16. All claims alleged herein arise under California law for which Plaintiff seeks relief
20 authorized by California law.

21 17. Plaintiff’s proposed Class consists of and is defined as follows:

22 Class

23 All California citizens who performed work for Defendants in the State of
24 California as drivers, who were classified as independent contractors from
25 January 1, 2022 to the date of class certification.

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18. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their working relationship from Defendants from January 1, 2022 to the date the Subclass is certified.

19. Members of the Class and Subclass described above will collectively be referred to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

20. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants misclassified Plaintiff and class members as independent contractors rather than non-exempt employees;
- b. Whether Defendants failed to pay at least minimum wage for all hours worked by Plaintiff and class members;
- c. Whether Defendants failed to pay all wages to Plaintiff and class members for time spent in rest breaks;
- d. Whether Defendants failed to timely pay Plaintiff and class members all earned wages during their employment;
- e. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- f. Whether Defendants failed to furnish Plaintiff and class members with accurate itemized wage statements;
- g. Whether Defendants required Plaintiff and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- h. Whether Defendants made unlawful deductions from Plaintiff’s and class members’ pay;

- i. Whether Defendants' conduct was willful or reckless; and
- j. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

(a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff is also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and penalties due him and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

1 (d) Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve economies
3 of time, effort and expense as compared with separate lawsuits, and will avoid
4 inconsistent outcomes because the same issues can be adjudicated in the same
5 manner and at the same time for each Class. If appropriate this Court can, and
6 is empowered to, fashion methods to efficiently manage this case as a class
7 and/or collective action.

8 (e) Public Policy Considerations: Employers in the State of California and other
9 states violate employment and labor laws every day. Current employees are
10 often afraid to assert their rights out of fear of direct or indirect retaliation.
11 Former employees are fearful of bringing actions because they believe their
12 former employers might damage their future endeavors through negative
13 references and/or other means. Class actions provide the class members who
14 are not named in the complaint with a type of anonymity that allows for the
15 vindication of their rights at the same time as affording them privacy
16 protections.

17 **GENERAL ALLEGATIONS**

18 22. Plaintiff performed services for Defendants in California during the relevant time
19 period. During the relevant time period, Plaintiff was classified by Defendants as an independent
20 contractor.

21 23. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
22 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
23 knowledgeable about California wage and hour law, employment and personnel practices and the
24 requirements of California.

25 24. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
26 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of
27 which contribute to Defendants' deliberate unfair competition.
28

1 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive wages for all time
3 worked (including minimum wages) and that they were not receiving all wages earned for work that
4 was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
5 class members were not paid wages (including minimum wages) for all hours worked when
6 Defendants failed to pay or underpaid Plaintiff and class members for all hours worked, and failed
7 to pay for time spent in rest breaks, among other things.

8 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known they had a duty to separately compensate Plaintiff and class members who were
10 piece-rate workers for time spent during rest breaks, when rest breaks were taken. In violation of the
11 Labor Code, Defendants did not pay piece-rate workers for time spent during rest breaks, when rest
12 breaks were taken.

13 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of wages during
15 their employment. In violation of the California Labor Code, Plaintiff and class members did not
16 receive payment of all wages within permissible time periods.

17 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Waiting Time class members were entitled to timely payment
19 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and
20 Waiting Time class members did not receive payment of all wages including, but not limited to,
21 unpaid wages within permissible time periods.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive complete and accurate
24 wage statements in accordance with California law. In violation of the California Labor Code,
25 Plaintiff and class members were not furnished with complete and accurate wage statements showing
26 their total hours worked, number of hours or pieces worked at each hourly or piece rate, and gross
27 and net wages, among other things.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to reimbursement for necessary expenditures incurred in connection with the performance and execution of their job duties. In violation of the California Labor Code, Plaintiff and class members did not receive adequate reimbursement for necessary business expenses.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to pay without unlawful deductions or forced patronage. In violation of the California Labor Code, Plaintiff and class members did not their wages free of unlawful deductions.

32. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class members, and that Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

33. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on behalf of himself and all class members to recover, among other things, unpaid wages, interest, attorneys' fees, penalties, reimbursements, costs and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)

34. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

35. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

36. During the relevant time period, failed to pay Plaintiff and class members all minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time spent in rest breaks, among other reasons. Plaintiff and class members were not being paid at least minimum wage for their work.

37. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

38. Defendants' failure to pay Plaintiff and class members the minimum wage as required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorney's fees.

39. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS FOR REST BREAKS

(Violation of Labor Code § 226.2; Violation of IWC Wage Order)

40. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

41. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

42. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis shall be compensated for rest and recovery periods, and other nonproductive time separate from any piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than the higher of (a) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods. (b) The applicable minimum wage.

43. During the relevant time period, Plaintiff and Class Members paid on a piece-rate basis were not compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

1 44. At all relevant times, Defendants knowingly and intentionally failed to comply with
2 Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-
3 rate basis.

4 45. As a result of Defendants' failure to pay Plaintiff and Class Members compensated
5 rest and recovery periods, Plaintiff and Class Members suffered and continue to suffer a loss of wages
6 and compensation.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES UPON SEPARATION**

9 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

10 **(Violations of Labor Code §§ 201, 202, 203; Violation of IWC Wage Order)**

11 46. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
12 though fully set forth herein.

13 47. California Labor Code §§ 201 and 202 provide that if an employer discharges an
14 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
15 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due
16 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
17 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
18 to his or her wages at the time of quitting.

19 48. During the relevant time period, Defendants willfully failed to pay Plaintiff and
20 Waiting Time Subclass Members all their earned wages upon termination including, but not limited
21 to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving
22 Defendants' employ.

23 49. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their
24 earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
25 employ, is in violation of California Labor Code §§ 201 and 202.

26 50. California Labor Code § 203 provides that if an employer willfully fails to pay wages
27 owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and
28 202, then the wages of the employee shall continue as a penalty from the due date, and at the same

1 rate until paid or until an action is commenced; but the wages shall not continue for more than thirty
2 (30) days.

3 51. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all
4 wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages
5 for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant
6 to California Labor Code § 203 all in an amount to be shown according to proof at trial.

7 52. Based on these violations, Plaintiff and the Waiting Time Subclass they seek to
8 represent request relief as described herein and below.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO TIMELY PAY WAGES**

11 **(Violation of Labor Code §§ 204, 210; Violation of IWC Wage Order)**

12 53. Plaintiff hereby re-allege and incorporate by reference the previous paragraphs, as
13 though fully set forth herein.

14 54. Labor Code § 204 provides, in pertinent part, “Labor performed between the 1st and
15 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of
16 the month during which the labor was performed, and labor performed between the 16th and the last
17 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
18 month.”

19 55. Defendants failed to timely pay Plaintiff and class members all of their earned wages
20 as required by Labor Code Section 204.

21 56. Plaintiff and class members have been deprived of their rightfully earned wages as a
22 direct and proximate result of Defendants’ failure to pay said compensation. Plaintiff and class
23 members are entitled to recover such amounts, plus interest thereon, attorney’s fees and costs.

24 57. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor
25 Code § 210 as follows: (1) for Defendants’ initial violation, \$100 for each failure to pay each Class
26 Member; and (2) for each of Defendants’ subsequent violations, or any willful or intentional
27 violation, \$200 for each failure to pay each Class Member, plus 25 percent of the amount unlawfully
28 held.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

4 58. Plaintiff hereby re-allege and incorporate by reference the previous paragraphs, as
5 though fully set forth herein.

6 59. California Labor Code § 226(a) requires employers to furnish their employees with
7 an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net
8 wages earned, the inclusive dates of the period for which the employee is paid, the name of the
9 employee and the portion of his or her social security number as required by law, the name and
10 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee.

12 60. In addition, pursuant to Labor Code § 226.2(a)(2), the itemized statements of
13 employees paid on a piece-rate basis shall also state (1) the total hours of compensable rest and
14 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
15 pay period; and (2) the total hours of other nonproductive time, the rate of compensation, and the
16 gross wages paid for that time during the pay period.

17 61. Defendants have intentionally and willfully failed to provide Plaintiff and class
18 members with complete and accurate wage statements. The deficiencies include, among other things,
19 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly
20 rates in effect during the pay period.

21 62. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
22 class members have suffered injury and damage to their statutorily protected rights. Specifically,
23 Plaintiff and class members have been injured by Defendants' intentional violation of California
24 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
25 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
26 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
27 Defendants have prevented Plaintiff and class members from determining if all hours worked were
28 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit

1 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,
2 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
3 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
4 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

5 63. California Labor Code § 226(a) requires an employer to pay the greater of all actual
6 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
7 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's
8 fees and costs, to each employee who was injured by the employer's failure to comply with California
9 Labor Code § 226(a).

10 64. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
11 class members from knowing, understanding and disputing the wages paid to them, and resulted in
12 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
13 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have
14 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown
15 according to proof at trial.

16 65. Plaintiff and class members are also entitled to injunctive relief under California
17 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek
18 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

21 **(Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)**

22 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 67. Labor Code § 2800 states that an employer shall in all cases indemnify its employee
25 for losses.

26 68. Labor Code § 2802 requires employers to indemnify their employees for all
27 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
28 their duties.

69. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

70. During the relevant time period, Defendants required Plaintiff and class members to download an app onto their personal cellular devices in order to view, accept and process jobs, without paying Plaintiff and class members for a reasonable percentage of their cell phone bills.

71. During the relevant time period, Defendants required Plaintiff and class members to buy supplies or pay for other business expenses, without properly compensating them.

72. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

73. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

SEVENTH CAUSE OF ACTION

FAILURE TO REFRAIN FROM UNLAWFUL DEDUCTIONS

(Violation of Labor Code §§ 221, 223, 450; Violation of IWC Wage Order)

74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

75. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

76. Labor Code §223 provides, in pertinent part, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

77. Labor Code § 450 provides, in pertinent part, “No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to

1 patronize his or her employer, or any other person, in the purchase of any thing of value.”

2 78. During the relevant time period, Defendants made unlawful deductions from
3 Plaintiff’s and class members’ wages and required forced patronage.

4 79. Defendants’ violation of Labor Code §§ 221, 223, and 450 caused Plaintiffs and class
5 members to suffer substantial monetary losses, and expenses and attorney’s fees in seeking to
6 compel Defendants to fully perform their obligations under California law, as a result Plaintiff and
7 class members suffered and continue to suffer a loss of wages and compensation.

8 **EIGHTH CAUSE OF ACTION**

9 **UNFAIR BUSINESS PRACTICES**

10 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

11 80. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
12 though fully set forth herein.

13 81. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
14 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

15 82. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
16 predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and
17 practices have violated state law causing Plaintiff and class members to suffer and continue to suffer
18 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
19 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum
20 wages, failing to pay wages for time spent in rest breaks and/or recovery periods, failing to pay all
21 wages due and owing upon separation of employment and in a timely manner, failing to timely pay
22 wages during employment, failing to furnish accurate wage statements, failing to reimburse business
23 expenses, and failing to refrain from unlawful deductions, all in order to decrease their costs of doing
24 business and increase their profits.

25 83. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
26 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing
27 business in order to undercut their competitors and establish and/or gain a greater foothold in the
28 marketplace.

1 84. At the time Plaintiff and class members were hired, Defendants knowingly,
2 intentionally and wrongfully misrepresented to each of them their conformance with the California
3 Labor Code and IWC Wage Orders including proper payments required by law.

4 85. At all relevant times herein, Defendants held themselves out to Plaintiff and class
5 members as being knowledgeable concerning the labor laws of California.

6 86. At all times relevant herein, Plaintiff and class members relied on and believed
7 Defendants' representations concerning their conformance with California's wage and hour laws all
8 to their detriment.

9 87. As a result of Defendants' intentional, willful, purposeful and wrongful
10 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
11 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown
12 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,
13 Defendants' acts constitute unfair and unlawful business practices under California Business and
14 Professions Code §§ 17200, *et seq.*

15 88. Defendants' violations of the California Labor Code and IWC Wage Orders and their
16 scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because
17 they were done in a systematic manner over a period of time to the detriment of Plaintiff and class
18 members.

19 89. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff
20 and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be
21 shown according to proof at trial.

22 90. Plaintiff seeks to enforce important rights affecting the public interest within the
23 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has
24 been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general
25 public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to
26 an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)**

3 1. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
4 though fully set forth herein.

5 2. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for
6 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
8 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
10 to the procedures specified in Labor Code § 2699.3.

11 3. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 4. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
17 including, but not limited to, the following:

18 (a) violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194,
19 1197, and 1198 for failure to timely pay all earned wages (including
20 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
21 employees during employment and upon separation of employment as herein
22 alleged;

23 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
24 to Plaintiff and other aggrieved employees and failure to pay premium wages
25 for missed meal periods as herein alleged;

26 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
27 and other aggrieved employees and failure to pay premium wages for missed
28 rest periods as herein alleged;

- (d) violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and
- (f) violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business expenses as herein alleged.

5. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

6. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

7. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

91. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Israel Alcantar as the class representative;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;

7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;

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

9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;

10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;

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

12. For pre-judgment interest;

13. For civil penalties;

14. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and

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

Dated: November 7, 2024

AEGIS LAW FIRM, PC

By: Alexander G.L. Davies
Alexander G.L. Davies
Attorneys for Plaintiff