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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

ERICK AMAYA, individually, and on behalf
of other members of the general public
similarly situated and on behalf of other
aggrieved employees,

Plaintiff,

vs.

C. PALLETS & TRUCKING, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. BCV-23-102690-TMS

[Assigned for all purposes to the Honorable T.
Mark Smith, Dept. T-2]

**FIRST AMENDED CLASS ACTION
COMPLAINT AND ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

- (1) Violation of California Labor Code
§§ 510, 1194, 1194.2, 1197, 1197.1, and
1198 (Failure to Pay Regular and
Overtime Wages);
- (2) Violation of California Labor Code
§§ 226.7 and 512(a) (Failure to Provide
Compliant Meal Periods or Pay Premium
Compensation in Lieu Thereof);
- (3) Violation of California Labor Code
§ 226.7 (Failure to Provide Compliant
Rest Periods or Pay Premium
Compensation in Lieu Thereof);

- (4) Violation of California Labor Code §§ 201 – 203 (Failure to Pay Wages Timely Upon Termination);
- (5) Violation of California Labor Code §§ 204 and 210 (Failure to Pay Wages Timely During Employment);
- (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements);
- (7) Violation of California Business & Professions Code § 17200, *et seq.*; and
- (8) Penalties pursuant to California Labor Code § 2698, *et seq.* (Private Attorneys General Act) and California Labor Code § 558.

JURY TRIAL DEMANDED

Plaintiff ERICK AMAYA, individually and on behalf of all other members of the public similarly situated and on behalf of other aggrieved employees, alleges as follows:

THE PARTIES

1. Plaintiff ERICK AMAYA (“Plaintiff”) is at least 18 years of age and is a resident of the County of Kern in the State of California.

2. Defendant C. PALLETS & TRUCKING, INC., was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and in the State of California.

3. Plaintiff is unaware of the true names or capacities of defendants sued herein under the fictitious names DOES 1 through 100, but prays for leave to amend and serve such fictitiously named defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.

4. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are the partners, agents, owners, shareholders, managers or employees of C. PALLETS &

1 TRUCKING, INC. and were acting on behalf of C. PALLETS & TRUCKING, INC. at all
2 relevant times.

3 5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
4 and omissions alleged herein were performed by, or are attributable to C. PALLETS &
5 TRUCKING, INC., and DOES 1 through 100 (collectively “Defendants”), each acting as the agent
6 for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendants
7 were in accordance with, and represent the official policy of Defendants.

8 6. At all relevant times herein mentioned, Defendants, and each of them, ratified each
9 and every act or omission complained of herein. At all times herein mentioned, Defendants, and
10 each of them, aided and abetted the acts and omissions of each and all the other Defendants in
11 proximately causing the damages herein alleged.

12 7. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 **JURISDICTION AND VENUE**

16 8. This class action is brought pursuant to California Code of Civil Procedure § 382.
17 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits
18 of the Superior Court and will be established according to proof at trial. The amount in
19 controversy for each class representative, including claims for compensatory damages and pro rata
20 share of attorneys’ fees, is less than \$75,000.

21 9. This Court has jurisdiction over this action pursuant to the California Constitution,
22 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
23 those given by statute to other courts.” The statutes under which this action is brought do not
24 specify any other basis for jurisdiction.

25 10. This Court has jurisdiction over all Defendants because, upon information and
26 belief, each party is either a citizen of California, has sufficient minimum contacts in California, or
27 otherwise intentionally avails itself of the California market so as to render the exercise of
28 jurisdiction over it by the California courts consistent with traditional notions of fair play and

substantial justice.

11. Venue is proper in this Court because, upon information and belief, one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

12. Plaintiff has timely provided notice to the California Labor and Workforce Development Agency ("LWDA") and to Defendants, pursuant to California Labor Code § 2699.3

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

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

15. Plaintiff's proposed class consists of and is defined as:

All non-exempt employees who have worked for Defendants in the State of California at any time between August 14, 2019 and the date of final judgment in this action.

16. Plaintiff's proposed PAGA subclass consists of and is defined as:

All non-exempt employees who have worked for Defendants in the State of California at any time between May 4, 2023 and the date of certification of the class in this lawsuit.

17. Plaintiff reserves the right to establish additional subclasses as appropriate.

18. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

(a) **Numerosity**: The members of the class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time, however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by

inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are well-versed in the rules governing class action discovery, certification, and settlement. Plaintiff and his counsel have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows

1 for the vindication of their rights at the same time as their privacy is
2 protected.

3 19. There are common questions of law and fact as to the class (and each subclass, if
4 any) that predominate over questions affecting only individual members, including but not limited
5 to:

- 6 (a) Whether Defendants paid Plaintiff and similarly situated employees less
7 than the applicable minimum wage for all hours worked, as required by
8 California law;
- 9 (b) Whether Defendants paid Plaintiff and similarly situated employees for all
10 of their overtime hours at the correct hourly rate, as required by California
11 law;
- 12 (c) Whether Defendants have provided Plaintiff and similarly situated
13 employees with duty-free meal breaks of at least 30 minutes for every five
14 hours of work, and whether Defendants have paid the required premiums
15 when such meal breaks were not provided, as required by California law;
- 16 (d) Whether Defendants have provided Plaintiff and class members with
17 compliant 10-minute rest periods for every four hours worked or major
18 fraction thereof, and whether Defendants have paid the required premiums
19 when such rest periods were not provided, as required by California law;
- 20 (e) Whether Defendants paid Plaintiff and class members all wages owed
21 upon the separation of their employment within the time periods required
22 by California law;
- 23 (f) Whether Defendants paid Plaintiff and class members all wages owed
24 timely during their employment within the time periods required by
25 California law;
- 26 (g) Whether Defendants provided accurate, itemized wage statements to
27 Plaintiff and class members, as required by California law;
- 28 (h) Whether Defendants' conduct, as described above, was willful or reckless;

- (i) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code § 17200, *et seq.*; and
- (j) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

GENERAL ALLEGATIONS

20. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as non-exempt employees who belong to the class as set forth above.

21. Defendants employed Plaintiff ERICK AMAYA as a non-exempt, hourly-paid employee from approximately January 13, 2022 to approximately March 28, 2022. Plaintiff worked as a forklift driver, and his job duties included transporting cargo and cutting wood for pallets.

22. At all relevant times set forth herein, Defendants systematically failed to pay minimum and overtime wages to Plaintiff and other similarly situated non-exempt employees (sometimes collectively "employees" or "class members").

23. Plaintiff and class members regularly worked more than 8 hours per day and/or more than 40 hours per week and were not paid for all overtime hours.

24. At all relevant times set forth herein, Defendants have failed to provide compliant meal breaks to Plaintiff and other similarly situated employees, as required by California law. Plaintiff and class members were deprived of the opportunity to take a timely, duty-free meal break of at least 30 minutes for every 5 hours of work.

25. Defendants fail to pay meal break premiums to Plaintiff and other similarly situated employees when compliant meal breaks are not provided.

26. At all relevant times set forth herein, Defendants have failed to provide compliant rest periods to Plaintiff and other similarly situated employees, as required by California law. Plaintiff and class members were deprived of the opportunity to take rest periods of at least 10 minutes for each 4 hours worked or major fraction thereof due to the working conditions imposed by Defendants.

27. Defendants did not pay rest period premiums to Plaintiff and other similarly

1 situated employees when compliant rest periods were not provided.

2 28. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
3 similarly situated employees all wages owed upon the separation of their employment, including
4 the unpaid overtime wages described herein.

5 29. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
6 similarly situated employees all wages owed timely during employment, including the unpaid
7 regular and overtime wages, and meal and rest break premium wages described herein.

8 30. At all relevant times set forth herein, Defendants have failed to provide Plaintiff
9 and other similarly situated employees with accurate itemized wage statements, as required by
10 California Labor Code § 226(a). The number of hours worked and/or the corresponding hourly
11 rates are inaccurate as a consequence of Defendants' practice of paying employees in cash for a
12 portion of their hours worked and of Defendants' failure to pay overtime wages, as set forth
13 herein. Further, Defendants' wage statements listed a P.O. Box and therefore failed to include the
14 "address of the legal entity that is the employer" as required by California Labor Code § 226(a)(8).

15 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
17 advisors knowledgeable about California labor and wage law, employment and personnel
18 practices, and about the requirements of California law.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and similarly situated employees were entitled to receive
21 minimum wage for all hours worked as well as overtime pay at one-and-a-half times the regular
22 rate of pay or two-times the regular rate of pay, but that Plaintiff and similarly situated employees
23 were not paid all their hours worked and/or were not paid at the correct hourly rate.

24 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other similarly situated employees were entitled to receive all
26 meal breaks as required by California law, or payment of one additional hour of pay at the regular
27 rate of pay when a compliant meal break was not provided.

28 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other similarly situated employees were entitled to receive all
2 rest periods as required by California law, or payment of one additional hour of pay at the regular
3 rate of pay when a compliant rest period was not provided.

4 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other similarly situated employees were entitled to timely
6 payment of all wages—including, without limitation, regular and overtime wages—due upon
7 termination or discharge in accordance with California law, and that they were not timely paid
8 such wages.

9 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and similarly situated employees were entitled to timely payment
11 of all wages – including, without limitation, regular and overtime wages, prevailing
12 wages/benefits, and premium wages for meal/rest period violation – during employment in
13 accordance with California law.

14 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other similarly situated employees were entitled to receive
16 complete and accurate wage statements in accordance with California law, and that such wage
17 statements were not provided.

18 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
20 and other similarly situated employees, and that Defendants had the financial ability to pay such
21 compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to
22 Plaintiff and other similarly situated employees that they were properly denied wages, all in order
23 to increase Defendants' profits.

24 39. California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall
25 limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or
26 her] under this article.

27 40. At all relevant times set forth herein, the California Private Attorneys General Act,
28 Labor Code § 2698, *et seq.* (“PAGA”) was applicable to Plaintiff’s employment by Defendants.

1 41. At all times herein set forth, PAGA provides that any provision of law under the
2 California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA
3 for violations of the California Labor Code may, as an alternative, be recovered through a civil
4 action brought by an aggrieved employee on behalf of himself or herself and other current or
5 former employees pursuant to procedures outlined in California Labor Code § 2699.3.

6 42. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
7 employee,” who is any person that was employed by the alleged violator and against whom one or
8 more of the alleged violations was committed.

9 43. Plaintiff was employed by Defendants and the alleged violations were committed
10 against him during his employment and he is, therefore, an aggrieved employee. Plaintiff and
11 other employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that
12 they are all current or former employees of Defendants, and one or more of the alleged violations
13 were committed against them.

14 44. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
15 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
16 have been met:

- 17 a. The aggrieved employee shall give written notice (hereinafter “Employee’s
18 Notice”) to the LWDA (via online submission) and the employer (by
19 certified mail) of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support the
21 alleged violations.
- 22 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
23 employer and the aggrieved employee by certified mail that it does not
24 intend to investigate the alleged violation within sixty (60) calendar days of
25 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
26 Notice, or if the LWDA Notice is not provided within sixty-five (65)
27 calendar days of the postmark date of the Employee’s Notice, the aggrieved
28 employee may commence a civil action pursuant to California Labor Code

§ 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

45. On May 4, 2024, Plaintiff provided the requisite written notice via online submission to the LWDA and via certified mail to Defendant C. PALLETS & TRUCKING, INC., informing them of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On September 5, 2024, Plaintiff submitted an amended notice to the LWDA and Defendant C. PALLETS & TRUCKING, INC.

46. To date, the LWDA has not responded to Plaintiff's notice.

47. Plaintiff has satisfied the administrative prerequisites under California Labor Code § 2699.3 to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, and 1198. Plaintiff has also satisfied the administrative prerequisites to recover civil penalties against Defendants for violations of California Labor Code § 558.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, and 1198

(Against All Defendants)

48. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 47.

49. California Labor Code § 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a week or for the first 8 hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of 12 hours in a day or in excess of 8 hours in a day on the seventh day of work.

50. During the relevant time period, Plaintiff and class members consistently worked in excess of 8 hours in a day and/or in excess of 40 hours in a week.

51. California Labor Code § 1197 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at

1 minimum wage.

2 52. California Labor Code § 1198 and the applicable IWC Wage Order provide that it
3 is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half
4 or two-times that person's regular rate of pay, depending on the number of hours worked by the
5 person on a daily or weekly basis.

6 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and class members employed by Defendants, and working more
8 than 8 hours in a day or more than 40 hours in a workweek, at the rate of time-and-one-half for all
9 hours worked in excess of 8 hours in a day or more than 40 hours in a workweek.

10 54. During the relevant time period, Defendants willfully failed to pay all wages,
11 including minimum and overtime wages, owed to Plaintiff and class members.

12 55. Defendants' failure to pay Plaintiff's and class members' minimum and overtime
13 wages violates the provisions of California Labor Code §§ 510, 1194, 1197, 1194.2, and 1198, and
14 is therefore unlawful.

15 56. Plaintiff and class members are entitled to recover unpaid wages and such general
16 and special damages as may be appropriate and interest thereon.

17 57. Pursuant to California Labor Code § 1194 and 1194.2, Plaintiff and class members
18 are entitled to recover their unpaid overtime wages, as well as interest, costs, and attorneys' fees.

19 58. Pursuant to California Labor Code § 1197.1, Plaintiff and class members are
20 additionally entitled to recover a penalty of \$100.00 for the initial failure to timely pay minimum
21 wages, and \$250.00 for each subsequent failure to pay minimum wages.

22 **SECOND CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 226.7 and 512(a)**

24 **(Against All Defendants)**

25 59. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
26 material allegations set out in paragraphs 1 through 58.

27 60. At all relevant times, the applicable IWC Wage Order and California Labor Code
28 §§ 226.7 and 512(a) were applicable to Plaintiff's and class members' employment by Defendants.

1 61. At all relevant times, California Labor Code § 226.7 provides that no employer
2 shall require an employee to work during any meal break mandated by an applicable order of the
3 California IWC.

4 62. At all relevant times, the applicable IWC Wage Order and California Labor Code
5 § 512(a) provide that an employer may not require, cause or permit an employee to work for a
6 period of more than 5 hours per day without providing the employee with an uninterrupted meal
7 break of not less than 30 minutes, except that if the total work period per day of the employee is
8 not more than 6 hours, the meal break may be waived by mutual consent of both the employer and
9 the employee.

10 63. At all relevant times, the applicable IWC Wage Order and California Labor Code
11 section 512(a) further provide that an employer may not require, cause or permit an employee to
12 work for a period of more than 10 hours per day without providing the employee with a second
13 uninterrupted meal break of not less than 30 minutes, except that if the total hours worked is not
14 more than 12 hours, the second meal break may be waived by mutual consent of the employer and
15 the employee only if the first meal break was not waived.

16 64. During the relevant time period, Plaintiff and class members who were scheduled
17 to work for a period of time no longer than 6 hours, and who did not waive their legally-mandated
18 meal breaks by mutual consent, were required to work for periods longer than 5 hours without an
19 uninterrupted meal break of not less than 30 minutes.

20 65. During the relevant time period, Plaintiff and class members who were scheduled
21 to work for a period of time in excess of 6 hours were required to work for periods longer than 5
22 hours without an uninterrupted meal break of not less than 30 minutes.

23 66. During the relevant time period, Defendants willfully required Plaintiff and class
24 members to work during meal breaks and failed to compensate Plaintiff and class members for
25 work performed during meal breaks.

26 67. At all relevant times set forth herein, Defendants have failed to provide compliant
27 meal breaks to Plaintiff and other similarly situated employees, as required by California law.
28 Plaintiff and class members were deprived of the opportunity to take a timely, duty-free meal

1 break of at least 30 minutes for every 5 hours of work due to the working conditions imposed by
2 Defendants.

3 68. During the relevant time period, Defendants failed to pay Plaintiff and class
4 members the full meal break premiums due for non-compliant meal breaks pursuant to California
5 Labor Code § 226.7.

6 69. Defendants' conduct violates the applicable IWC Wage Orders and California
7 Labor Code §§ 226.7 and 512(a).

8 70. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b),
9 Plaintiff and class members are entitled to recover from Defendants one additional hour of pay at
10 the employees' regular hourly rate of compensation for each work day that a compliant meal break
11 was not provided.

12 **THIRD CAUSE OF ACTION**

13 **Violation of California Labor Code § 226.7**

14 **(Against All Defendants)**

15 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
16 material allegations set out in paragraphs 1 through 70.

17 72. At all relevant times herein set forth, the applicable IWC Wage Order and
18 California Labor Code § 226.7 were applicable to Plaintiff's and class members' employment by
19 Defendants.

20 73. At all relevant times, California Labor Code § 226.7 provides that no employer
21 shall require an employee to work during any rest period mandated by an applicable order of the
22 California IWC.

23 74. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
27 or major fraction thereof" unless the total daily work time is less than three and one-half (3½)
28 hours.

75. During the relevant time period, Defendants required Plaintiff and class members to work 4 or more hours without authorizing or permitting a 10-minute rest period per each 4 hour period worked or major fraction thereof.

76. At all relevant times set forth herein, Defendants failed to provide compliant rest periods to Plaintiff and other similarly situated employees, as required by California law. Plaintiff and class members were deprived of the opportunity to rest periods of at least 10 minutes for each 4 hours worked or major fraction thereof.

77. Defendants did not pay rest period premiums to Plaintiff and other similarly situated employees when compliant rest periods were not provided.

78. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code § 226.7.

79. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b), Plaintiff and class members are entitled to recover from Defendants one additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 201, 202 and 203

(Against All Defendants)

80. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 79.

81. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

82. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other similarly situated employees all wages owed upon the separation of their employment, including

1 the unpaid overtime wages described herein.

2 83. Defendants' failure to pay Plaintiff and those class members who are no longer
3 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72
4 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201, 202
5 and 203.

6 84. All California employers know or should know that employees must be paid for all
7 hours worked, and must be paid overtime at a rate of one-and-a-half times the regular rate of pay
8 for overtime hours as defined by California law. Defendants' failure to abide by this well-
9 established law is willful and not in good faith.

10 85. California Labor Code § 203 provides that if an employer willfully fails to pay
11 wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as
12 a penalty from the due date, and at the same rate until paid or until an action is commenced; but
13 the wages shall not continue for more than thirty (30) days.

14 86. Plaintiff and class members are entitled to recover from Defendants the statutory
15 penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to
16 California Labor Code § 203.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 204 and 210**

19 **(Against All Defendants)**

20 87. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
21 material allegations set out in paragraphs 1 through 86.

22 88. At all times herein set forth, California Labor Code § 204 provides that the wages
23 earned by any person in any employment (other than final wages, the wages of temporary
24 employees, commissions, and the salaries of some exempt employees) are due and payable twice
25 during each calendar month. Labor performed between the 1st and 15th days of the calendar
26 month must be paid for between the 16th and 26th days of the calendar month, and labor
27 performed between the 16th and last days of the calendar month must be paid for between the 1st
28 and 10th days of the following month.

1 89. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
2 similarly situated employees in a timely manner for all wages earned during their employment.
3 This occurred as a result of Defendants' failure to pay regular and overtime wages, and meal and
4 rest break premium wages described herein.

5 90. Based on Defendants' violation of California Labor Code § 204, Plaintiff and other
6 similarly situated employees are entitled to statutory penalties under California Labor Code § 210
7 and/or civil penalties under California Labor Code § 2699(f)-(g) and 2699.5.

8 **SIXTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 226(a)**

10 **(Against All Defendants)**

11 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
12 material allegations set out in paragraphs 1 through 90.

13 92. At all material times set forth herein, California Labor Code § 226(a) provides that
14 every employer shall furnish each of his or her employees an accurate itemized wage statement in
15 writing showing the following information: (1) gross wages earned; (2) total hours worked by the
16 employee, except for any employee whose compensation is solely based on a salary and who is
17 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
18 the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all
20 deductions made on written orders of the employee may be aggregated and shown as one item; (5)
21 net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the
22 name of the employee and his or her social security number, except that by January 1, 2008, only
23 the last four digits of his or her social security number or an employee identification number other
24 than a social security number may be shown on the itemized statement; (8) the name and address
25 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate by the employee

27 93. Defendants have intentionally and willfully failed to provide employees with
28 complete and accurate wage statements. The number of hours worked and/or the corresponding

1 hourly rates are inaccurate as a consequence of Defendants' practice of paying employees in cash
2 for a portion of their hours worked and of Defendants' failure to pay overtime wages, as set forth
3 herein. Further, Defendants' wage statements listed a P.O. Box and therefore failed to include the
4 "address of the legal entity that is the employer" as required by California Labor Code § 226(a)(8).

5 94. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
6 and class members have suffered injury and damage to their statutorily-protected rights.

7 95. Specifically, Plaintiff and other class members have been injured by Defendants'
8 intentional violation of California Labor Code § 226(a) because they were denied both their legal
9 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
10 California Labor Code § 226(a). Plaintiff and other class members have been injured by
11 Defendants' intentional violation of California Labor Code § 226(a) in that it has caused confusion
12 over whether they had received all of the wages owed them, in addition to their difficulty and
13 expense in reconstructing pay records and making mathematical computations to analyze whether
14 the wages paid them did in fact compensate them for all hours worked.

15 96. Furthermore, Labor Code § 226(e)(2)(B) provides that an employee is deemed to
16 suffer injury if the wage statement fails to accurately and completely provide certain pieces of
17 information and the employee cannot promptly and easily determine such information from the
18 wage statement alone. In relevant part, Labor Code § 226(e)(2)(B) provides that an employee is
19 deemed to suffer injury if the wage statement does not accurately and completely state the total
20 number of hours worked by the employee, and all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate.

22 97. Plaintiff and class members are deemed to have suffered injury because their wage
23 statements did not provide complete and accurate information regarding the total number of hours
24 they worked in a given pay period, the applicable hourly rates in effect during the pay period, the
25 corresponding number of hours worked at each hourly rate, and or the employer's address.

26 98. Plaintiff and class members are entitled to recover from Defendants the greater of
27 their actual damages caused by Defendants' failure to comply with California Labor Code
28 § 226(a), or an aggregate penalty not exceeding \$4,000 per employee.

SEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, *et seq.*

(Against All Defendants)

99. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 98.

100. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

101. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, *et seq.*

102. A violation of California Business & Professions Code § 17200, *et seq.* may be predicated on the violation of any state or federal law. In this case, Defendants' policy and practice of failing to pay Plaintiff and class members the proper hourly rates for all overtime hours worked violates California Labor Code §§ 510, 1194, and 1198; Defendants' policy and practice of requiring Plaintiff and class members to work through their meal and rest periods without paying them proper compensation violates California Labor Code §§ 226.7 and 512(a); Defendants' policy and practice of not timely paying all wages owed to Plaintiff and other similarly situated employees upon resignation or termination violates California Labor Code §§ 201, 202, and 203; Defendants' policy and practice of not timely paying all wages owed to Plaintiff and other similarly situated employees timely during employment violates California Labor Code § 204; and Defendants' policy and practice of failing to provide accurate itemized wage statements violate California Labor Code § 226.

103. Plaintiff and putative class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

104. Pursuant to California Business & Professions Code § 17200, *et seq.*, Plaintiff and

putative class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

Penalties Pursuant to California Labor Code § 2698, *et seq.*

(Private Attorneys General Act)

(Against All Defendants)

105. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 104.

106. At all relevant times set forth herein, the California Private Attorneys General Act, Labor Code § 2698, *et seq.* ("PAGA") was applicable to Plaintiff's employment by Defendants.

107. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

108. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations were committed.

109. Plaintiff was employed by Defendants and the alleged violations were committed against him during his employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

110. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements

1 have been met:

- 2 a. The aggrieved employee shall give written notice (hereinafter “Employee’s
3 Notice”) to the LWDA (via online submission) and the employer (by
4 certified mail) of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support the
6 alleged violations.
- 7 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
8 employer and the aggrieved employee by certified mail that it does not
9 intend to investigate the alleged violation within sixty (60) calendar days of
10 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
11 Notice, or if the LWDA Notice is not provided within sixty-five (65)
12 calendar days of the postmark date of the Employee’s Notice, the aggrieved
13 employee may commence a civil action pursuant to California Labor Code
14 § 2699 to recover civil penalties in addition to any other penalties to which
15 the employee may be entitled.

16 111. On May 4, 2024, Plaintiff provided the requisite written notice by online
17 submission to the LWDA and by certified mail to Defendant C. PALLETS & TRUCKING, INC.
18 informing them of the specific provisions of the California Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations. On September 5, 2024,
20 Plaintiff submitted an amended notice to the LWDA and Defendant C. PALLETS & TRUCKING,
21 INC.

22 112. To date, the LWDA has not responded to Plaintiff’s notice.

23 113. At all material times set forth herein, California Labor Code § 558 provides that an
24 employer or person acting on behalf of an employer who violates (or causes to be violated) any
25 provision of Labor Code §§ 500 through 558 or any provision of the IWC Wage Orders regulating
26 hours and days of work shall be subject to civil penalties of \$50 to \$100 per pay period to each
27 underpaid employee in addition to an amount sufficient to recover underpaid wages, plus other
28 civil penalties provided for by law.

114. Plaintiff has satisfied the administrative prerequisites under California Labor Code § 2699.3 to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, and 1198. Plaintiff has also satisfied the administrative prerequisites to recover civil penalties against Defendants for violations of California Labor Code § 558.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

As to the First Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, and applicable IWC Wage Orders by willfully failing to pay all wages, including overtime wages, due to Plaintiff and class members;

2. For general unpaid wages at the applicable wage rates and such general and special damages as may be appropriate;

3. For pre-judgment interest on any unpaid wages commencing from the date such amounts were due;

4. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and

5. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

6. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal breaks to Plaintiff and class members;

7. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a compliant meal break was not provided;

As to the Fifth Cause of Action

22. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 204 and 210 by failing to timely pay Plaintiff and class members all compensation owed to them during their employment;

23. For all actual, consequential and incidental losses and damages, according to proof;

24. For statutory penalties pursuant to California Labor Code § 210;

25. For civil penalties pursuant to California Labor Code § 2699(f) and (g); and

26. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

27. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized wage statements thereto;

28. For all actual, consequential and incidental losses and damages, according to proof;

29. For statutory penalties pursuant to California Labor Code § 226(e); and

30. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code § 17200, *et seq.* by failing to pay Plaintiff and class members all wages due to them, including overtime wages; failing to provide compliant meal and rest periods to Plaintiff and class members and failing to pay premium wages when compliant meal and rest periods were not provided; failing to timely pay all wages due upon employees' resignation or termination; failing to timely pay all wages due during employment; and failing to provide Plaintiff and class members with compliant wage statements.

32. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

33. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants

1 as a result of violations of California Business & Professions Code § 17200 *et seq.*;

2 34. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure § 1021.5; and

4 35. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Eighth Cause of Action

6 36. For civil penalties pursuant to California Labor Code § 2699 (f) and (g) in the
7 amount of \$100 for each violation per pay period for the initial violation and \$200 for each
8 aggrieved employee per pay period for each subsequent violation, plus attorneys' fees and costs;

9 37. For civil penalties pursuant to California Labor Code § 558 in the amount of \$50
10 per underpaid employee for each initial pay period in which the employee was underpaid and \$100
11 per underpaid employee for each subsequent pay period in which the employee was underpaid, in
12 addition to an amount sufficient to recover underpaid wages; and

13 38. For such other and further relief as the Court may deem equitable and appropriate.

14
15 Dated: September 25, 2024

AEQUITAS LEGAL GROUP

16
17 By: 

18 RONALD H. BAE
19 OLIVIA D. SCHARER
20 CARSON M. TURNER

21 Attorneys for Plaintiff ERICK AMAYA
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18, and my business address is 1156 E. Green Street, Suite 200, Pasadena, California 91106.

On September 25, 2024, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT AND ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on the following interested parties and/or their counsel in this action by the method(s) noted below:

Debra Ellwood Meppen
Dina S. Glucksman
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Attorneys for Defendant C. PALLETS & TRUCKING, INC.

- ☐ **(BY FIRST CLASS MAIL):** I caused an envelope containing the above-described document to be deposited in the United States mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.
- ☒ **(BY EMAIL):** The above-described document was emailed to the above addressees' email address(es) as full and complete service pursuant to California Code of Civil Procedure § 1010.6(a).
- ☐ **(BY ELECTRONIC SERVICE):** I caused the above-described document to be served electronically via Green Filing (authorized and court-approved Electronic Filing Service Provider).
- ☒ **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ **(FEDERAL):** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 25, 2024 at Pasadena, California.


MICHAELA MURPHY