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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JORGE AVALOS, ARMANDO SOTO, JESUS OROZCO, HECTOR GARCIA, GERARDO ZENDEJAS, JAIME GARCIA,

Plaintiffs,

v.

G.I. INDUSTRIES, dba WASTE MANAGEMENT, a corporation, and DOES 1-10, inclusive,

Defendants.

Case No. 2:22-cv-03842-MAA

SECOND AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime [29 U.S.C. § 201, *et seq*.]
2. Failure to Provide Proper Meal Breaks or Premium Pay [Lab. Code §§ 226.7, 512]
3. Failure to Provide Accurate Wage Statements [Lab. Code § 226]
4. Failure to Compensate for All Time Worked [Lab. Code §§1194, 1197]
5. Failure to Compensate for All Time Worked at Agreed Rate [Lab. Code § 223]
6. Failure to Timely Pay Wages on Termination [Lab. Code §§ 201, 202]
7. Unlawful Competition [Cal. Bus. & Prof. Code § 17200, *et seq*.]
8. Enforcement Action under PAGA

DEMAND FOR JURY TRIAL

Plaintiffs, Jorge Avalos, Armando Soto, Jesus Orozco, Hector Garcia, Gerardo Zendejas and Jaime Garcia, individually and on behalf of all persons similarly situated, file this collective and class action seeking all available relief under the Fair Labor Standards Act (FLSA), the California Labor Code and the California Business and Professions Code. Plaintiffs bring their FLSA claim as an "opt-in" collective action and their state law claims as a Rule 23 "opt-out" class action.

JURISDICTION AND VENUE

1. This action is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and under California law. Jurisdiction exists pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. This court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367(a).
2. Venue is proper in the Central District under 28 U.S.C. § 1391(b)(2) because the events complained of herein all occurred within this district.

NATURE OF CASE

3. Plaintiffs seek relief on a collective and class-wide basis challenging Defendants' policy and practice of paying their truck drivers straight time, rather than time-and-a-half, for all hours worked over 40 per week, as required by the FLSA, Defendants' policy and practice of failing to provide proper meal breaks, as required by California law, and Defendants' policy and practice of failing to pay for all time worked. Plaintiffs are or were employed by Defendants as hourly truck

drivers and regularly worked shifts of ten, twelve or more hours per day and regularly worked more than 40 hours per week during the relevant time period. Defendants' unlawful practices resulted in Defendants failing to: (a) pay overtime compensation at the rate required by the FLSA; (b) provide timely and proper meal periods; (c) pay one hour of premium pay for each day in which a proper meal break was not provided; (d) provide accurate earnings statements; (e) pay all compensation due in a timely manner; (f) pay separating employees all wages due at the time of separation; and (g) pay drivers for all time worked. By engaging in these practices, Defendants benefitted financially to the significant detriment of both the drivers who worked for them and the marketplace in which Defendants competed.

4. During the relevant time period, Defendants employed other truck drivers, in addition to the named Plaintiffs, who also worked over 40 hours per week on a regular basis without being paid at 1.5 times their regular rate of pay for their overtime hours and regularly worked without receiving proper and timely meal breaks. Those drivers are similarly situated to Plaintiffs and comprise the FLSA Collective and the Rule 23 Class defined in this Complaint.

THE PARTIES

5. Plaintiff Jorge Avalos is an individual residing in Ventura County. Avalos has been employed by Defendants as a truck driver since August 2017 and is currently so employed.

6. Plaintiff Armando Soto is an individual residing in Ventura County. Soto has been employed by Defendants as a truck driver since 1984 and is currently so employed.

7. Plaintiff Jesus Orozco is an individual residing in Ventura County. Orozco has been employed by Defendants as a truck driver since 1990 and is currently so employed.

8. Plaintiff Hector Garcia is an individual residing in Ventura County. Hector Garcia has been employed by Defendants as a truck driver since 1988 and is currently so employed.

9. Plaintiff Gerardo Zendejas is an individual residing in Ventura County. Zendejas has been employed by Defendants as a truck driver since 2006 and is currently so employed.

10. Plaintiff Jaime Garcia is an individual residing in Ventura County. Jaime Garcia was employed by Defendants as a truck driver from 1998 until September 4, 2021.

11. Defendant G.I. Industries dba Waste Management ("GI Industries" or "Defendant" or "Waste Management") is a corporation organized under the laws of Utah with its principal place of business in Houston, Texas, and regularly conducts its

business operations in Ventura and Los Angeles Counties, California. GI Industries is a direct or indirect subsidiary of Waste Management, Inc.

12. Plaintiffs are unaware of the true identity, nature, and capacity of each of the Defendants identified herein as a DOES 1 through 50, inclusive, and therefore sues said Defendants by fictitious names. Each of the Defendants so designated is in some manner responsible for the damages and injuries alleged in this Complaint, and was the managing agent, employee, agent and/or representative of the other Defendants and was acting with the knowledge and consent of each other Defendant and within the purpose and scope of such employment, agency or representation in doing or failing to do the things alleged in the Complaint. Upon learning the true identity, nature and capacity of the DOE Defendants, Plaintiffs will amend this complaint to allege their true names and capacities.

Defendant employs individuals engaged in commerce and/or who handle or otherwise work on or utilize goods or materials that have been moved in or produced in commerce, making each Defendant a covered employer under the FLSA. The annual gross volume of Defendant's business exceeds $500,000. Defendant is not an independently owned and controlled local enterprise within the meaning of 29 U.S.C. § 207(b)(3)

13. All Defendants, including those designated as DOE, were at all times material hereto the agents, servants or alter egos of the other Defendants. In doing the things

hereinafter alleged, each Defendant was acting within the course and scope of such relationship. Each Defendant ratified, endorsed and/or directly participated in the wrongful conduct alleged in this Complaint. Each Defendant is directly responsible for the acts alleged herein and is liable under the doctrines of agency, vicarious liability, respondiat superior, successor liability, joint employer liability, joint and several liability and/or alter ego.

14. In committing the acts described in this Complaint, each Defendant, including those designated as “DOES,” knew that its conduct was illegal, and acted with a conscious disregard for the unlawfulness of that conduct, the rights of Plaintiffs, and the harm its actions would bring upon Plaintiffs and the other drivers. At all relevant times, Defendants knew that the FLSA required them to pay drivers time-and-a-half for all hours worked over 40 per week. Defendants intentionally, and with reckless disregard for their obligations under law, adopted a policy and practice of refusing to pay the overtime rate required by the FLSA. Defendants also knew that California law required them to provide drivers with timely and proper 30-minute meal periods and to pay drivers an hour of compensation each day they were denied an opportunity to take a compliant meal break (“premium pay”). Defendants also knew that California law required them to timely compensate employees for all time worked. Defendants intentionally, and with reckless disregard for their obligations under law, adopted a policy and practice of refusing

to provide the required meal periods or the premium pay or the total compensation earned.

15. The decisions to force Plaintiffs and the other drivers to work overtime, to pay drivers less than the legally required overtime rate, and not to pay for all time worked or provide compliant meal periods or premium pay were made by Defendant and its parent companies and carried outby Defendant.

16. Defendant is a California employer covered by both the FLSA and all provisions of the California Labor Code that are pertinent to this action.

17. Plaintiffs file this suit individually and as representatives of all similarly situated drivers who were employed by Defendants during the time period relevant to this Complaint. All Plaintiffs have consented in writing to joining this lawsuit as plaintiffs and have filed their consents with the court.

GENERAL FACTUAL ALLEGATIONS

18. Defendant is in the business of providing waste collection services for residential and commercial customers in Ventura and Los Angeles Counties. Plaintiffs and all similarly situated drivers are or were employed by Defendants as nonexempt hourly truck drivers performing services for Defendants in Ventura and Los Angeles Counties and working out of Defendants' facility located at 195 W. Los Angeles Avenue, Simi Valley, California ("Simi Valley Facility"). All driving performed by Plaintiffs and the similarly situated drivers is, and at all relevant

times was, done strictly within California. The driving job consists primarily of driving trucks from the Simi Valley Facility to the homes and businesses of Waste Management's customers located in Ventura and Los Angeles Counties, collecting trash from those homes and businesses, and disposing of the collected trash in local sites owned by Waste Management.

19. Plaintiffs and the other drivers are covered by the FLSA's overtime requirements and are entitled to protection under both the FLSA and the California labor laws invoked herein.

20. During the time period relevant to this action, Plaintiffs and similarly situated drivers routinely worked at least 10 hours per day and more than 40 hours per week. More specifically, during the relevant time period, Plaintiffs and the other drivers typically worked a daily shift of 10-12 hours, regularly worked 6 days per week, and averaged at least 16-21 hours of overtime each week. During the relevant time period, Waste Management maintained a strict policy and practice of paying its drivers straight time for the overtime hours they worked, rather than 1.5 times their regular rate of pay as required by the FLSA. Under company policy, Plaintiffs and the other drivers lost at least one half-hour of pay for each hour of overtime they worked.

21. Under its timekeeping practices, Waste Management tracked and recorded the time each driver worked. Waste Management, including its human resources and legal

departments, was well aware of its obligations to pay overtime under the FLSA and knew that Plaintiffs and the other drivers worked overtime virtually every week. Knowing that the FLSA required it to pay 1.5 times the regular rate for those overtime hours, Waste Management instead chose to compensate overtime hours at the regular rate.

22. Under Defendant's timekeeping practices and policies, Defendant utilized a system that captured the actual times drivers clocked in at the beginning of their shifts and out at the end of their shifts. Defendant also used its timekeeping system to implement a rounding policy. Under Defendant's rounding policy, its timekeeping system was programmed to record both an actual clock-in time and a "rounded" clock-in time. This practice generally recorded a "rounded clock-in time" that was later than the actual clock-in time. Pursuant to Defendant's uniform payroll practices, compensation was calculated based on rounded clock-in time, although Defendant required its drivers to start work and become subject to its control upon actual clock-in. The rounding policy resulted in drivers working for a number of minutes each day without compensation. During the relevant time period, Plaintiffs and the similarly situated drivers were paid for less time than they actually worked, resulting in thousands of unpaid hours for the class. Those unpaid hours should have been compensated at the drivers' regular hourly rate. Defendant's

timekeeping policies and practices, including the rounding policy, were uniformly applied to all drivers during the relevant period.

23. Waste Management acted willfully and/or with reckless disregard of the applicable FLSA provisions when it failed and refused to properly compensate Plaintiffs and the other drivers for hours worked in excess of forty (40) during the workweek. Waste Management also acted willfully and/or with reckless disregard of California law when it implemented a rounding policy that failed to compensate Plaintiffs and the other drivers for all hours they worked. Waste Management's unlawful practices, which constituted wage theft, heaped a great financial benefit on Waste Management while depriving drivers of their earned pay. Plaintiffs and the other drivers worked a physically grueling job for long hours and modest pay. Waste Management compelled these drivers to work well above the five eight-hour days that comprise a "regular" workweek while refusing to compensate them for that extra time in an amount required by law. Defendant also saved on payroll, and deprived drivers of pay, by improperly rounding clock-in times. The company benefitted. The drivers suffered.

24. During the relevant time period, Waste Management maintained a meal break policy under which drivers were not permitted to take timely 30-minute meal breaks. The company imposed excessive workloads on the drivers with strict requirements to complete their routes on time. These workloads and requirements

made taking timely, compliant meal breaks extremely difficult, if not impossible. Pursuant to Waste Management's policy, drivers were not compensated for the hardship of working without proper meal breaks. In particular, drivers were not paid one hour of "premium pay" for each day they were denied a compliant meal break, as required by California Labor Code section 226.7, subdivision (c).

25. During the relevant time period, under Waste Management's payroll practices, drivers were paid on a weekly basis. Each driver received a weekly earnings statement that set forth a number of hours characterized as the "regular" hours worked during the pay period and a number of hours characterized as "overtime." The earnings statements contained a number of critical inaccuracies. For example, pursuant to Waste Management's payroll policy, each driver's earnings statement listed the hours worked up to and including 48 per week as "regular" hours, paid at the "regular" rate, and the hours worked over 48 per week as "overtime" hours, also paid at the "regular" rate. Additionally, the earnings statements did not reflect the premium pay owed to drivers for each day during the payroll period on which they were deprived of a compliant meal break. By omitting and inaccurately stating key payroll information, the earnings statements were fatally misleading and left drivers unable to determine whether they had been properly paid.

26. During the time period relevant to this Complaint, the employment of numerous drivers ended. Plaintiff Jaime Garcia, for example, worked for Defendants from

1998 until September 2021. All such drivers regularly worked more than 40 hours per week and were not paid for overtime at the legally required rate. All such drivers were denied compliant meal breaks when they worked a 10-hour shift and were denied premium pay for those missed breaks. All such drivers were entitled to be paid all compensation owed them, including overtime compensation at the legal rate and premium pay, at the time of their separation. Neither Plaintiff Jaime Garcia nor the similarly situated drivers whose employment ended were paid all compensation due them at the time their employment ended or at any time thereafter.

COLLECTIVE ACTION ALLEGATIONS

27. Plaintiffs bring the First Claim for Relief (Violation of the FLSA) individually and as a collective action on behalf of the following group of similarly situated employees pursuant to 29 U.S.C. § 216(b):

> All individuals who were employed by G.I. Industries at its facility in Simi Valley, California as non-exempt drivers from June 4, 2019 and March 7, 2024 (the "FLSA Collective").

28. Plaintiffs may redefine the FLSA Collective prior to notice or certification, and thereafter, as necessary.

29. The claims of the named Plaintiffs typify the claims of the FLSA Collective. All claims are brought under the FLSA for Defendants' failure to pay overtime

compensation at the legally required rate. The job duties of the named Plaintiffs and the FLSA Collective are substantially the same, their hourly rates of pay are similar, their employment circumstances are the same or similar, and they all work in the same location. The named Plaintiffs and the FLSA Collective have suffered the effects of a common, uniform policy and practice by which Defendants deny their truck drivers overtime compensation at 1.5 times their regular rate of pay. The named Plaintiffs will fairly and adequately protect the interests of the FLSA Collective because they have a united interest in receiving all wages they are due under the FLSA.

30. Defendants employ and have employed numerous drivers similarly situated to the named Plaintiffs who have been denied legally required overtime compensation in violation of the FLSA. The number and identity of similarly situated drivers yet to opt in may be determined from the records of Defendants, and such drivers may be easily and quickly notified of the pendency of this action. These individuals would benefit from the issuance of court-supervised notice of this lawsuit and an opportunity to join this action.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring the Second, Third, Fourth, Fifth, Sixth and Seventh Claims for Relief as a class action under Rule 23 of the Federal Rules of Civil Procedure.

Plaintiffs bring these claims on behalf of themselves and all other similarly situated individuals. The class represented by Plaintiffs is defined as follows:

> The Class. All individuals who were employed by G.I. Industries at its facility in Simi Valley, California as non-exempt drivers from June 4, 2018 through March 7, 2024 (the "Class Period") ("the Class" or "Class Members").

32. This Class Action is based on particular uniform policies and practices adopted by Defendants for the payment of wages and the provision of meal breaks and earnings statements to their truck drivers. All members of the Class are entitled to timely pay, legally compliant meal periods, premium pay for denied meal breaks, accurate wage statements, liquidated damages, penalties, interest, injunctive and other equitable relief, and attorneys' fees and costs as provided by applicable law.

33. Numerosity: Plaintiffs are informed and believe and thereon allege that the Class Members exceed one hundred and therefore are so numerous as to make it impracticable to bring them all before this Court as individual plaintiffs.

34. Means of Identifying the Class: The Class Members can easily be identified through Defendants' payroll, timekeeping and personnel records..

35. Common Questions Predominate the Class: The rights that Plaintiffs seek to vindicate through this action are common to all Class Members. Questions of law and fact presented in this case are common to all Class Members and predominate

over any questions that pertain only individual class members. The common questions of law and fact include, but are not limited to, the following:

i. Whether Defendants violated the FLSA, and, therefore, California Business and Professions Code section 17200, *et seq*. by establishing a corporate policy and practice of paying truck drivers at their regular rate of pay for overtime, rather than 1.5 times their regular rate of pay;

ii. Whether Defendants violated the California Labor Code by failing to pay Class Members all compensation due them by the next regular payday following the payroll period in which the compensation was earned;

iii. Whether Defendants violated the California Labor Code by failing to provide Class Members with proper and timely meal breaks;

iv. Whether Defendants violated the California Labor Code by failing to pay Class Members one hour of premium pay for each day on which they were denied a compliant meal break;

v. Whether Defendants violated the California Labor Code by failing to provide Class Members with legally compliant wage statements;

vi. Whether Defendants violated the California Labor Code by failing to pay all wages owed upon termination of employment;

vii. Whether Defendants violated the California Labor Code by failing to pay Class Members for all time worked;

viii. Whether Defendants' wage and hour violations constituted a violation California Business and Professions Code section 17200, *et seq*.;

ix. Facts pertaining to Defendants' practices, policies, decision-making, and protocols regarding payment of wages for all overtime hours worked by their drivers;

x. Facts pertaining to Defendants' practices, policies, decision-making, and protocols regarding the provision of meal breaks to their drivers;

xi. Facts pertaining to Defendants' practices, policies, decision-making, and protocols regarding the recording of time worked by drivers for purposes of calculating payroll;

xii. Facts pertaining to the willfulness of Defendants' actions, including facts relating to the knowledge possessed by Defendants' managing agents about FLSA requirements and applicability;

xiii. Facts pertaining to the willfulness of Defendants' actions, including facts relating to the knowledge possessed by Defendants' managing agents about FLSA requirements and applicability;

xiv. The nature and amount of relief due Class Members, including damages, penalties and other relief under the California Labor Code, and injunctive or other equitable relief under Business and Professions Code section 17200, *et seq*.

36. Typicality: Plaintiffs' claims are typical of the claims of all Class Members. Plaintiffs and Class members were subject to the same unlawful employment practices, sustained the same type of injuries and seek the same type of relief.

37. Adequacy of Representation: Plaintiffs are Class Members who have no interests adverse to or in conflict with those of the class, and Plaintiffs will fairly and adequately represent and protect the interests of Class Members. Counsel representing Plaintiffs have the skills, experience and resources necessary to prosecute this case through trial.

38. Superiority: Adjudicating this case as a class action is superior to other available means for the fair and efficient adjudication of this dispute. Individualized litigation of the Class Members' claims, which involve virtually identical factual and legal issues, would increase delay and impose excess burdens on the parties and the judicial system, particularly this district. On the other hand, adjudicating these issues in a single class lawsuit would relieve those burdens, streamline the litigation and avoid potentially inconsistent results that could harm the drivers and be confusing for Defendants to implement. Management of the individual lawsuits, especially when compared to the ease with which the issues can be litigated as class action.

39. Manageability: This class action will be manageable because the issues presented are common to Class Members across the board.. The same evidence and type of

evidence pertaining to corporate behavior, payroll practices, company policy, job functions, and hours worked will be common to all claims.

FIRST CLAIM FOR RELIEF
Violation of the Fair Labor Standards Act
(All Plaintiffs and the FLSA Collective Against All Defendants)

40. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

41. The FLSA, in 29 U.S.C. § 207(a), forbids covered employers from requiring employees to work more than forty (40) hours in a workweek unless the employer pays such employees at a rate of not less than one and one-half times the employees' regular rate of pay.

42. Defendants are, and at all relevant times were, subject to the FLSA's overtime requirements as employers within the meaning of 29 U.S.C. § 203(d). Although Plaintiffs and the FLSA Collective members drive strictly within California, and do not engage in interstate commerce, they utilize equipment that has been moved in or produced through interstate commerce. Defendants employ other individuals who are engaged in interstate commerce and/or who handle, work on or utilize goods or materials that have been moved in or produced through interstate commerce.

43. Defendants' compensation practices and policies, as described in this Complaint, failed to comply with the overtime requirements of 29 U.S.C. § 207(a). By

engaging in those practices and implementing those policies, Defendants violated the FLSA. In particular, Defendants failed and refused to pay Plaintiffs and the FLSA Collective members 1.5 times their regular pay for all hours worked in excess of forty (40) per week.

44. Defendants further failed to make and keep proper payroll records with respect to Plaintiffs and the FLSA Collective by stating in those records an incorrect rate of overtime compensation. In so doing, Defendants violated the recordkeeping requirements of the FLSA. See, for example, 29 U.S.C. § 516.2(a).

45. Defendants also violated the FLSA's Time of Payment requirements by failing to pay Plaintiffs and the FLSA Collective their earned overtime compensation on the regular pay day for the period in which that compensation was earned. See, for example, 29 U.S.C. § 778.106.

46. In violating the FLSA, Defendants acted will full knowledge of the FLSA's overtime requirements and the applicability of those requirements to Plaintiffs and the FLSA Collective. Defendants acted willfully and with reckless disregard of their duties under the FLSA. Defendants committed these violations in order to reap a financial benefit—the millions of dollars in earned wages they withheld from their drivers.

47. Under the FLSA, Defendants are liable to Plaintiffs and the FLSA Collective for all unpaid overtime compensation, liquidated damages (including, but not limited to, damages under 29 U.S.C. § 216(b)), interest, costs, and attorneys' fees.

SECOND CLAIM FOR RELIEF
Violation of California Labor Code §§ 226.7 and 512
(All Plaintiffs and Class Members Against All Defendants)

48. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

49. At all relevant times, California Labor Code sections 226.7 and 512 required Defendants to provide 30-minute meal periods to their nonexempt, hourly employees. Under these statutes, employers may not require employees to work a 10-hour shift without providing a 30-minute off-duty meal period during the first 5 hours and a second 30-minute off-duty meal period before the end of the 10th hour.

50. During the time relevant to this Complaint, Defendants enforced a company meal break policy under which drivers were not permitted or given the opportunity to take proper meal breaks, including an uninterrupted 30-minute meal break before the sixth hour of a shift, as required by law. Defendants' meal break policy violated Labor Code sections 226.7 and 512 and IWC Wage Order No. 9 (which is applicable to commercial truck drivers, including Plaintiffs and Class Members).

51. Under Labor Code section 226.7, subdivision (c), an employer who fails to provide a required meal break must pay the deprived employee one hour of pay at the employee's regular rate for each workday in which the meal break is not provided. This "premium pay" constitutes wages and is designed to, among other things, compensate employees for the hardship of being required to work long hours without a proper meal break. Defendants did not pay Plaintiffs or Class Members that one hour of premium pay when they failed to provide a statutory meal break.

52. All relevant times, Defendants knew their obligations to provide their drivers with meal breaks that complied with California law and to compensate drivers with premium pay when denying them a break. Defendants knew their drivers were not able to take timely, proper meal breaks and, in fact, required drivers to do so. Defendants knowingly and willfully refused to provide compliant breaks or pay the required premium compensation.

53. At no time relevant to this Complaint were Plaintiffs or other Class Members subject to a valid Collective Bargaining Agreement within the meaning of Labor Code section 512, subdivision (e).

54. Pursuant to Labor Code § 558, Defendants' meal break violations subject them to liability for nonpayment of wages in addition to civil penalties.

55. Plaintiffs and Class Members are entitled to an award of damages, including, but not limited to, amounts recoverable under Labor Code sections 226.7, subdivision

(c) and 558, subdivision (a) and all other available penalties and relief, plus interest, attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
Violation of California Labor Code § 226
(All Plaintiffs and Class Members Against All Defendants)

56. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

57. At all times relevant to this Complaint, California Labor Code section 226 required Defendants to provide all California employees with an itemized statement every payday that accurately showed gross wages earned, net wages earned, the name and address of the employing entity, all applicable hourly rates of pay and the corresponding number of hours worked at each rate, and other specified information.

58. During all times relevant to this Complaint, Defendants failed to furnish Plaintiffs and Class Members with earnings statements that complied with section 226. Inaccuracies in the wage statements included, among other things: erroneously characterizing hours worked between 40 and 48 per week as "regular" hours; stating an inaccurate rate of pay for the overtime and regular hours each driver worked; failing to include the premium pay owed under Labor Code section 226.7; and misstating the gross and net earned pay, including the pay lost due to rounding. Plaintiffs are informed and believe and thereon allege that the wage statements

provided to Class Members were inaccurate in a number of additional ways, to be ascertained through discovery.

59. Defendants' violations of Labor Code section 226 were knowing and intentional.

60. Plaintiffs and the other Class Members suffered injury as a result of Defendants' violations of Labor Code section 226 in that, among other detriment, they were misinformed as to the amount of compensation due them and were unable to easily ascertain the actual pay earned during any given pay period.

61. As a result of Defendants' violations of Labor Code section 226, Class Members are entitled to an award of damages (including the amounts specified in section 226, subdivision (e)), interest, penalties, injunctive and other equitable relief, attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF

Failure to Pay for All Time Worked in Violation of California Labor Code §§ 1194, 1197

(All Plaintiffs and Class Members Against All Defendants)

62. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

63. Under California law, including the applicable Wage Order, "hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Cal. Code Reg. tit. 8, § 11090, subd. 2.)

64. Under California law, including the applicable Wage Order and Labor Code sections 1194, 1194.2, 1197, 1197.1 and 1198, employers must pay at least the legal minimum wage for all hours worked by their employees. California law does not permit employers to shave time, even a few minutes, from the hours an employee actually works. Such practice deprives employees of earned wages. California law requires employers to accurately track all compensable time and pay the agreed rate, or at the very least, minimun wage, for that time.

65. Defendant's uniform practice of rounding time punches in a manner that results in underpayment of wages, as described above, violates these statutes and the Wage Order. Through this practice, Plaintiffs and Class Members have worked, cumulatively, many hours without pay, in violation of the minimum wage laws and to the great harm of these employees.

66. Plaintiffs and Class Members are, therefore, entitled to recover all unpaid minimum wages, liquidated damages pursuant to Labor Code section 1194.2, all available civil penalties, costs, interest and attorney's fees as well as injunctive and other equitable relief.

FIFTH CLAIM FOR RELIEF
Failure to Pay for All Time Worked at the Agreed Wage in Violation of California Labor Code § 223
(All Plaintiffs and Class Members Against All Defendants)

67. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

68. Under California Labor Code section 223, employers may not secretly pay employees lower than the amount employees are entitled to be paid while purporting to pay the proper amount.

69. Defendant's uniform practice of rounding time punches in a manner that results in underpayment of wages, as described above, violates section 223. Defendant kept this rounding practice secret while leading Plaintiffs and Class Members to believe they were being paid for all time worked at their regular hourly rate. Through this practice, Plaintiffs and Class Members have worked, cumulatively, many hours without pay.

70. Plaintiffs and Class Members are, therefore, entitled to recover all unpaid amounts at their agreed hourly rate in addition to all available liquidated damages and civil penalties, including the penalties set forth in Labor Code section 225.5, costs, interest and attorney's fees as well as injunctive and other equitable relief.

SIXTHTH CLAIM FOR RELIEF
Violation of California Labor Code §§ 201 and 202
(Plaintiffs and Class Members Against All Defendants)

71. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

72. At all times relevant to this Complaint, Labor Code sections 201 and 202 applied to Defendants' employment of Plaintiffs and the Class.. Under Labor Code section 201, employers who discharge employees must pay all earned and due wages, including overtime and premium pay, at the time of the discharge. Under Labor Code section 202, employers must pay, to employees who voluntarily resign, all earned and due wages, including overtime and premium pay, with 72 hours of the resignation (or at the time of the resignation if the employee provided 72 hours' notice of the intent to resign).

73. Plaintiff Jaime Garcia and other members of the Class resigned or were discharged during the Class Period and were not paid all wages due them at the time of discharge or within 72 hours after resigning. In particular, Defendants failed to pay Plaintiff and the Class Members their earned and unpaid overtime compensation or the premium pay due under Labor Code section 226.7, subdivision (e) for missed meal breaks. Defendants' failure to pay all wages due at the time of the drivers' discharge or resignation constituted a violation of sections 201 and 202.

74. Defendants' violations of Labor Code sections 201 and 202 were done willfully.

75. Plaintiff Jaime Garcia and other members of the Class were injured by Defendants' failure to timely pay them in that, among other things, they have long been deprived of monies that belong to them and have lost the use to which those monies could have been put.

76. Accordingly, Plaintiff and the Class Members who left employment during the Class Period are entitled to an award of damages, including, but not limited to, amounts recoverable under Labor Code section 203, interest, attorneys' fees and costs.

SEVENTH CLAIM FOR RELIEF
Violation of California Business and Professions Code § 17200, *et seq*.
(All Plaintiffs and Class Members Against All Defendants)

77. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

78. At all times relevant to this Complaint, Plaintiffs were protected by, and Defendants were subject to, California's law against unfair competition ("UCL"), codified in Business and Professions Code section 17200, *et seq*. The UCL prohibits unfair competition, which includes any unlawful, unfair or fraudulent business practice or act. Under the UCL, the violation of virtually any law or regulation—federal or state, statutory or common law—can constitute a UCL violation. Further, it is the public policy of California to both protect employees from wage theft and to protect employers who comply with wage and hour laws against a competitive edge gained by employers who do not comply. See, for example, Labor Code section 90.5, subdivision (a). Employer violations of labor laws, including the FLSA, are actionable as acts of unlawful/unfair competition. Business and Professions Code section 17204 allows any person who has suffered

injury and has lost money or property as a result of unfair competition to prosecute a civil action for the UCL violation(s).

79. The acts of Defendants alleged in this Complaint, including, but not limited to, Defendants' violations of the FLSA (including 29 U.S.C. § 207(a)) and the California Labor Code (including, but not limited to, sections 201, 202, 204b, 223, 226.7,512, 1194, 1194.2, 1197, 1197.1 and 1198) constituted unlawful, unfair and fraudulent business acts and practices in violation of the UCL.

80. Plaintiffs and Class Members suffered injury-in-fact and lost money as a result of Defendants' acts of unlawful and unfair competition. For example, Plaintiffs and Class Members lost years of overtime compensation they earned, they were forced to work prolonged shifts without proper breaks, and they lost premium pay they were owed when not provided with meal breaks.

81. By means of unlawful and unfair competition, Defendants have acquired money in the form of unpaid compensation earned by, and unpaid premium pay due, Plaintiffs and Class Members.

82. Plaintiffs and Class Members are entitled to restitution of all wages and premium pay wrongfully withheld and to other equitable relief, including declaratory relief and an injunction requiring Defendants to cease engaging in wage practices that constitute unlawful competition. Without obtaining such relief, Plaintiffs and the other Class Members will continue to suffer irreparable harm, including loss of use

of funds belonging to them, for which no adequate legal remedy is available. An actual, present controversy exists between Plaintiffs and Defendants concerning the facts alleged in this Sixth Claim for Relief.

83. Therefore, on behalf of themselves and those similarly situated, Plaintiffs seek restitution of wrongfully withheld wages, premium pay, and the value of benefits denied them by Defendants. Pursuant to Business and Professions Code section 17205, this Claim for Relief seeks remedies and penalties that are cumulative to any other remedies sought in this Complaint. This Claim seeks all equitable relief the court deems appropriate even if not specifically requested herein.

84. Plaintiffs are enforcing important rights that significantly affect the public interest within the meaning of Code of Civil Procedure section 1021.5. Therefore, Plaintiffs seek attorneys' fees and costs under section 1021.5 and any other applicable law.

EIGHTH CLAIM FOR RELIEF
For Civil Penalties Under Private Attorneys General Act (PAGA)
Labor Code §§ 2698, *et seq*.
(All Plaintiffs and Class Members Against All Defendants)

85. Plaintiffs reallege and incorporate the allegations set forth in all preceding paragraphs as though fully set forth hereat.

86. PLAINTIFFS bring this PAGA claim in their representative capacities on behalf of the State of California and on behalf of all of CLASS MEMBERS who were

employed by G.I. Industries at its facility in Simi Valley, California as non-exempt drivers between March 7, 2023 and March 7, 2024 ("PAGA PERIOD") and who suffered one or more of the Labor Code violations enumerated in Labor Code §§ 2698 *et seq*. during the PAGA PERIOD. Such CLASS MEMBERS make up the "PAGA GROUP" in this litigation and may be referred to as "PAGA MEMBERS." Plaintiffs and all PAGA MEMBERS are aggrieved employees within the meaning of Labor Code section 2698, subdivision (c).

87. Plaintiffs complied with the procedures for bringing a PAGA action as specified in Labor Code Section 2699.3. On May 15, 2024, Plaintiffs' counsel submitted notice of the PAGA claims to the Labor Workforce Development Agency ("LWDA") via the agency's online filing system. The notice included a letter from Plaintiffs' counsel outlining the claims, along with a copy of the operative complaint filed in this case. A copy of the LWDA letter is attached hereto as Exhibit 1. The letter was sent to Defendant in accordance with statutory requirements.

88. More than 65 calendar days have passed since the notice was submitted to the LWDA and mailed by certified mail to defense counsel. The LWDA has not notified Plaintiffs of an intent to investigate the alleged violations. Therefore, under Labor Code section 2699.3, subdivision (a)(2)(A), Plaintiffs may commence this PAGA action.

89. PAGA authorizes aggrieved employees like Plaintiffs, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties.

90. Based on a number of Defendant's wage and hour practices as described in this SAC, Plaintiffs and the other aggrieved employees are entitled to civil penalties under Labor Code section 2699, subdivision (f).

Prayer for Relief

WHEREFORE, Plaintiffs pray relief and judgment against Defendants as follows:

Class and Collective Certification and Notice:

1. That the Court permit this action to be maintained as a collective action under the FLSA and as a class action as to non-FLSA claims, with the named Plaintiffs appointed as collective and class representatives, and Plaintiffs' counsel appointed as collective and class counsel;
2. For prompt written notice of this litigation, pursuant to 29 U.S.C. § 216(b), to all potential FLSA Collective members.

First Claim for Relief:

1. For compensatory damages, including all overtime pay earned during the Class Period by members of the FLSA Collective, in amounts to be determined through discovery and/or at trial;

2. For liquidated damages pursuant to 29 U.S.C. § 216(b) and any other applicable law, in amounts to be determined through discovery and/or at trial;
3. For all penalties available under any statute;
4. For prejudgment interest at the legal rate;
5. For reasonable attorneys' fees;
6. For costs of suit;
7. For all such other and further relief as the Court deems appropriate.

<u>Second Claim for Relief</u>:

1. For compensatory damages in amounts to be determined through discovery and/or at trial;
2. For one hour of pay for each Plaintiff and each Class Member for each day that a compliant meal period was not provided, pursuant to Labor Code section 226.7, subdivision (c);
3. For all penalties and liquidated damages available under any statute, including penalties available under Labor Code section 558, subdivision (a);
4. For prejudgment interest at the legal rate;
5. For reasonable attorneys' fees;
6. For costs of suit;
7. For all such other and further relief as the Court deems appropriate.

<u>Third Claim for Relief</u>:

1. For the greater of actual damages (as determined through discovery and/or trial) or the amounts specified in Labor Code section 226, subdivision (e);
2. For all penalties available under Labor Code sections 226 and 226.3 and any other statute;
3. For prejudgment interest at the legal rate;
4. For reasonable attorneys' fees;
5. For costs of suit;
6. For all such other and further relief as the Court deems appropriate.

Fourth Claim for Relief:

1. For compensatory damages, including all unpaid minimum wages earned during the Class Period by Class Members, in amounts to be determined through discovery and/or at trial;
2. For all penalties and liquidated damages available under the Labor Code, including liquidated damages pursuant to Labor Code section 1194.2;
3. For prejudgment interest at the legal rate;
4. For reasonable attorneys' fees;
5. For costs of suit;
6. For all such other and further relief as the Court deems appropriate.

Fifth Claim for Relief:

1. For compensatory damages, including all unpaid wages earned during the Class Period by Class Members, in amounts to be determined through discovery and/or at trial;
2. For all available liquidated damages and civil penalties, including the penalties set forth in Labor Code section 225.5;
3. For prejudgment interest at the legal rate;
4. For reasonable attorneys' fees;
5. For costs of suit;
6. For all such other and further relief as the Court deems appropriate.

Sixth Claim for Relief:

1. For compensatory damages in amounts to be determined through discovery and/or at trial;
2. For 30 calendar days' pay for each member of the Class who left employment during the Class Period (or the number of days between the date payment was due and the date payment was made, if less than 30 days) under Labor Code section 203;
3. For all penalties and liquidated damages available under any statute;
4. For prejudgment interest at the legal rate;
5. For reasonable attorneys' fees;

6. For costs of suit;
7. For all such other and further relief as the Court deems appropriate.

Seventh Claim for Relief:

1. For an order finding and declaring that the acts of Defendants complained of herein constitute unlawful and/or unfair competition within the meaning of California's UCL;
2. For an order preliminarily and permanently enjoining Defendants from engaging in the practices complained of herein;
3. For an order requiring full restitution, with interest, of all monies withheld by Defendants by means of the unfair, fraudulent and/or unlawful practices complained of herein;
4. For an accounting to determine the amount to be returned by Defendants and the amounts to be restored to Class Members;
5. For prejudgment interest at the legal rate to the extent permitted by law;
6. For reasonable attorneys' fees under C.C.P. § 1021.5 and any other applicable law or theory;
7. For costs of suit;
8. For all such other and further relief as the Court deems appropriate.

Eighth Claim for Relief:

1. For penalties under Labor Code section 2699, subdivision (f);

2. For attorney's fees and all other relief available under PAGA;

3. For costs of suit;

4. For all such other and further relief as the Court deems appropriate.

Dated: 11/04/2024

Respectfully Submitted,

SOTTILE BALTAXE

BREWER LAW OFFICE

By:________________________

KATHLEEN A. BREWER
Attorneys for Plaintiffs
and Similarly Situated Employees

DEMAND FOR JURY TRIAL

On behalf of themselves, the FLSA Collective and the putative class members, Plaintiffs hereby demand a jury trial as to all claims for relief that are triable to a jury.

Dated: 11/04/2024

Respectfully Submitted,

SOTTILE BALTAXE

BREWER LAW OFFICE

By:________________________________
KATHLEEN A. BREWER
Attorneys for Plaintiffs
and Similarly Situated Employees

Exhibit 1 to SAC

BREWER LAW OFFICE
2945 TOWNSGATE ROAD, SUITE 200
WESTLAKE VILLAGE, CALIFORNIA 91361

Tel. 805•719•2731 Fax 805•980•5789
kab@brewerlawoffice.com www.brewerlawoffice.com

May 15, 2024

Via Online Filing and Certified Mail

Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612
Attn: PAGA Administrator

Re: *Avalos v. GI Industries*, C.D. Cal., Case No, 2:22-cv-03842-MAA

Dear Labor and Workforce Development Agency:

This office and the office of Sottile Baltaxe, 28632 Roadside Drive, Suite 100, Agoura Hills, CA 91301, 818.889.0050, represent a group of commercial drivers employed by GI Industries in Simi Valley, California. Pursuant to Labor Code § 2699.3, this letter provides notice to the Labor and Workforce Development Agency (LWDA) and GI Industries that Complainants Jorge Avalos, Armando Soto, Jesus Orozco, Hector Garcia, Gerardo Zendejas and Jaime Garcia intend to amend their pending civil lawsuit to add claims for penalties under the Private Attorneys General Act, California Labor Code §§ 2699, *et seq*. (PAGA).

On June 4, 2022, Complainants filed suit, on behalf of themselves and all similarly situated drivers, against GI Industries in the United States District Court for the Central District of California, Case No, 2:22-cv-03842-MAA. The operative complaint alleges various violations of California employment law, as discussed below.[1]

Complainants Avalos, Soto, Orozco, Garcia (Hector), and Zendejas have worked as commercial drivers for GI Industries from at least June 4, 2018 through the present. Complainant Jaime Garcia worked as a commercial driver for GI Industries from at least June 4, 2018 through September 5, 2021. During their employment, Complainants and similarly situated drivers[2] were subjected to a number of practices by GI Industries that violated California employment laws. For example, GI Industries utilized a rounding practice in which employee clock-in punches were generally rounded up by several minutes resulting in unpaid minutes of work by each driver on

[1] The case also alleges failure to pay overtime in violation of the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*.
[2] The term "Complainants" used in the remainder of this letter refers to both the named Complainants and all similarly situated drivers.

most shifts. The rounding practice was kept secret from Complainants, who had no idea they were working "off the clock" for several minutes per day. GI Industries represented to its drivers that they were paid an hourly rate for all hours worked, when, in fact, they were being paid nothing for several minutes of every shift. Because of the secret rounding practice, the drivers' wage statements did not reflect wages actually earned.

GI Industries also violated California law by failing to provide compliant meal breaks to its drivers, failing to create or keep records of meal breaks that were taken, and failing to pay premium pay to drivers when they did not receive a compliant meal break. Drivers' wage statements did not accurately reflect wages earned during on-duty meal breaks. Nor did they reflect earned premium pay. When drivers left employment, they did not receive the earned and unpaid premium pay and other wages unpaid due to the rounding practice and the meal break violations.

On or about March 27, 2022, GI Industries and its drivers entered a collective bargaining agreement (CBA) that covered meal breaks. Because Complainants are commercial drivers, Labor Code provisions regarding meal breaks ceased to cover Complainants as of the date of the CBA. Labor Code § 512, subds. (e), (f). However, the meal break violations prior to March 27, 2022 remain subject to redress. Additionally, claims derivative of the meal break violations, such as claims for waiting time penalties under Labor Code section 203, claims based on the inaccurate wage statements, and possibly claims for premium pay, remain viable through the current date.

GI Industries' rounding and other practices, as described above, violate the following provisions of the California Labor Code, among others:

- Lab. Code § 201 (failure to timely pay wages upon involuntary discharge)
- Lab. Code § 202 (failure to timely pay wages upon voluntary departure)
- Lab. Code § 204 (failure to timely pay all earned wages)
- Lab. Code § 223 (payment of less than designated wage)
- Lab. Code § 223 (payment of less than designated wage)
- Lab. Code § 226 (wage statement violations)
- Lab. Code §§ 226.7/512 (meal periods)
- Lab. Code § 1197 (minimum wage)

Complaints are entitled to seek all remedies associated with the above violations, including unpaid principal amounts, penalties, interest, attorney's fees and costs, under the following provisions, among others:

- Lab. Code § 210
- Lab. Code § 225.5
- Lab. Code § 226, subds. (e), (h)
- Lab. Code § 558
- Lab. Code § 1194 (attorneys' fees and costs)
- Lab. Code § 1194.2
- Lab. Code § 1197.1
- Lab. Code § 2699, subd. (f)
- Lab. Code § 2699, subd. (g)(1) (attorney's fees and costs)

As stated above, Complainants will amend the current operative complaint to add a claim for the PAGA penalties identified above and will define members of the PAGA group as those individuals who were employed by GI Industries at its Simi Valley facility as non-exempt drivers form March 7, 2023 through March 7, 2024.

Please note that GI Industries is represented in this case by David J. Dow, John Ybarra and Matthew Ruza, Littler Mendelson, P.C. 501 W. Broadway, Suite 900 San Diego, California 92101.3577, Tel. 619.232.0441.

Please provide, at your earliest convenience, notice of the LWDA's intention with respect to whether or not it will pursue the matters discussed in this letter.

Respectfully,

KATHLEEN A. BREWER

BREWER LAW OFFICE

Cc David Dow, [redacted]
John Ybarra, [redacted]
Matthew Ruza, [redacted]
Littler Mendelson, P.C. 501 W. Broadway, Suite 900 San Diego, California 92101.3577

Tim Sottile, [redacted]
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Sottile Baltaxe, 28632 Roadside Drive, Suite 100, Agoura Hills, CA 91301