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LANCE VIERRA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

LANCE VIERRA, on behalf of himself and all
others similarly situated;

Plaintiff,

vs.

ALL CITY TRUCKING, INC., a California
corporation; ALL CITIES TRUCKING
SERVICES, INC., a California corporation; A1
TRUCKING SERVICES, INC., a California
corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No. 24CV081116

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);**
- 2. FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- 3. MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- 4. REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- 5. WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- 6. WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- 7. FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- 8. UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- 9. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Lance Vierra (“Plaintiff”), on behalf of himself and all others similarly situated,
2 as well as the State of California and other aggrieved employees, hereby brings this Second
3 Amended Class and Representative Action Complaint against All City Trucking, Inc., All Cities
4 Trucking Services, Inc., A1 Trucking Services, Inc., A1 Trucking Svs, Inc. (originally sued as
5 DOE Defendant No. 1), All Cities Trucking Svs., Inc. (originally sued as DOE Defendant No. 2)
6 and Does 3 through 100, inclusive (collectively, “Defendants”), and on information and belief
7 alleges as follows:

8 **JURISDICTION**

9 1. Plaintiff, on behalf of himself and all others similarly situated, as well as the State
10 of California and other aggrieved employees, hereby brings this class and representative action
11 for recovery of unpaid wages and penalties under California Business and Professions Code
12 section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 226.8, 510, 512, 516, 558,
13 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission
14 Wage Order No. 9 (“Wage Order 9”), in addition to seeking declaratory relief and restitution.
15 This class action is brought pursuant to Code of Civil Procedure section 382. This Court has
16 jurisdiction because the amount in controversy exceeds this Court’s jurisdictional minimum.

17 **VENUE**

18 2. Venue is proper in this judicial district pursuant to California Code of Civil
19 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
20 occurred in Alameda County. Defendants own, maintain offices, transact business, have an agent
21 or agents within Alameda County, and/or otherwise are found within Alameda County, and
22 Defendants are within the jurisdiction of this Court for purposes of service of process.

23 **PARTIES**

24 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
25 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
26 the filing of this action and within the statute of limitations periods applicable to each cause of
27 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee, although
28 Defendants misclassified him and other Class members as independent contractors. Plaintiff was,

1 and is, a victims of Defendants' policies and/or practices complained of herein, lost money and/or
2 property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-204,
3 226, 226.7, 226.8, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et*
4 *seq.*; California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage
5 Order 9, which sets employment standards for employees in the transportation industry.

6 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
8 business as a trucking company, and that they employed Plaintiff and other similarly situated non-
9 exempt employees within Alameda County and the State of California.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner,
11 or corporate, of the defendants sued herein as DOES 3 through 100, and for that reason, said
12 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
13 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
14 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
15 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
16 and proximately caused Plaintiff and the Classes (as defined in Paragraph 21) to be subject to the
17 unlawful employment practices, wrongs, injuries, and damages complained of herein.

18 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

20 7. At all times herein mentioned, each of said Defendants participated in the acts
21 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
22 each of them, were the agents, servants, and employees of each of the other Defendants, as well
23 as the agents of all Defendants, and at all times herein mentioned were acting within the course
24 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
25 and/or otherwise ratified each of the acts or omissions alleged herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 21).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was hired by Defendants in approximately late 2022 as a city sweeper operator. In addition to operating a city sweeper truck, Plaintiff also performed mechanical work on Defendants' vehicles. Plaintiff's employment with Defendants ended in approximately April 2024. Although Plaintiff should have been classified as an employee, as he performed the very work that Defendants provide to their customers, Defendants misclassified Plaintiff as an independent contractor throughout his employment. On information and belief, Defendants have employed many other workers during the relevant time period, including drivers, mechanics, and others, who likewise have been misclassified by Defendants as independent contractors.

10. Defendants knew, or reasonably should have known, that Plaintiff and their other workers were employees, but Defendants willfully misclassified them as independent contractors. Specifically, Defendants are a trucking company that provides trucking services to their customers. Plaintiff and other Class members provide those trucking services and/or provide other services (such as mechanical work) to Defendants that are within the usual course and scope of Defendants' business, and perform those duties under Defendants' direct supervision and control. *See Dynamex Operations West v. Superior Court*, 4 Cal.5th 903, 916-17 (2018) ("Under this [ABC] test, a worker is properly considered an independent contractor to whom a wage order does not apply only if the hiring entity establishes: .(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, . . . [and] (B) that the worker performs work that is outside the usual course of the hiring entity's business . . .").

11. In addition to willfully misclassifying Plaintiff and other employees as independent contractors, Defendants have failed to provide Plaintiff or other employees with any wage statements, in violation of Labor Code § 226. Instead, Defendants would pay their employees, including Plaintiff, using an app such as Zelle or Venmo, without providing any accompanying wage statement.

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1 12. Defendants also have failed to pay Plaintiff and other employees for all hours
2 worked. Specifically, before Plaintiff would begin traveling to each job site, he was required to
3 perform a pre-trip inspection on his company vehicle. This inspection was approximately 15
4 minutes, and it was not paid for by Defendants. Similarly, Plaintiff was required to perform an
5 inspection of his vehicle before leaving the job site, which also took about 15 minutes, but this
6 inspection, too, was unpaid. Plaintiff was also instructed by Defendants to arrive at his job site
7 approximately 30 minutes prior to the scheduled start of each job, in order to meet with the
8 foreman/supervisor and receive instructions prior to starting the job. This time was not paid.
9 Likewise, Plaintiff would frequently be instructed by his foreman/supervisor to remain at the job
10 site after the scheduled end of the job and clean up the job site; this would typically take about 15
11 minutes or more, but that time, too, was not paid. On information and belief, Defendants' other
12 employees were similarly required to perform pre- and post-job inspections, arrive early and stay
13 late at their job sites, and/or perform other work without compensation. The above practices
14 resulted in Plaintiff and other employees not being paid for all hours worked, including unpaid
15 minimum wages and overtime wages.

16 13. Defendants also failed to pay Plaintiff at an overtime rate for any of his work, even
17 though he often worked more than 8 hours in a workday and/or more than 40 hours in a workweek.
18 Instead, all of Plaintiff's work would be paid at a base rate of pay, irrespective of whether he
19 worked overtime hours. On information and belief, Defendants likewise did not pay overtime
20 compensation to their other employees during the relevant time period.

21 14. Defendants have also failed to provide their non-exempt employees, including
22 Plaintiff, with uninterrupted off-duty 30-minute meal periods. Rather, because of the workload
23 imposed on Plaintiff, and because Defendants misclassified Plaintiff as an independent contractor,
24 Plaintiff would not be able to take a legally compliant meal period, even though he typically
25 worked well over 5 hours, and often over 10 hours, on a given workday. Nor did Defendants
26 provide any mechanism for Plaintiff to clock out or otherwise records meal periods. Despite
27 failing to provide Plaintiff and other non-exempt employees with legally compliant meal periods,
28 Defendants have failed to pay the meal period premiums required by Labor Code § 226.7. Upon

information and belief, during at least a portion of the putative class period, Defendants have maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

15. Defendants have also failed to authorize and permit compliant rest periods to Plaintiff and other non-exempt employees. As with meal periods, Defendants never authorized rest periods in the first place because they misclassified Plaintiff and other employees as independent contractors, and in addition, the workload imposed by Defendants made it impracticable to take a 10 minute off-duty rest period for each four hours of work (or major fraction thereof). Despite failing to authorize and permit legally compliant rest periods to Plaintiff and other non-exempt employees, Defendants have failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants have maintained no payroll code or other mechanism for paying rest period premiums when they failed to authorize and permit a legally compliant rest period.

16. Defendants have also failed to reimburse Plaintiff and other employees for expenses they incurred during their employment. Specifically, Defendants required Plaintiff and other employees to use their personal cellphones for a variety of work-related reasons, including communicating with management, communicating with dispatch, using their phones' GPS capabilities for navigation, as well as to take pictures of and transmit "freight bills" (or similar term), which Plaintiff and other employees would use to bill Defendants in order to get paid. Plaintiff also needed to use his personal tools when performing mechanical work for Defendants.

17. Despite requiring Plaintiff and other employees to use their personal property for work-related purposes, Defendants have failed to reimburse them for any portion of their personal expenses, including any portion of their monthly cell phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding employer must reimburse employees for "reasonable percentage" of their cell phone bills if they are required to use their cell phones for work, even if employees did not incur specific out-of-pocket expense).

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18. As a result of Defendants' failure to pay all minimum wages and overtime wages due, their failure to account for and compensate for all hours worked by their employees, and/or their failure to pay meal and rest period premium wages, Defendants have failed to pay all wages to Plaintiff and other formerly employed employees at the separation of their employment.

19. As a further result of Defendants' unlawful practices described above, Defendants have maintained inaccurate payroll and timekeeping records and have failed to issue accurate wage statements to Plaintiff and other non-exempt employees. Indeed, as noted above, Defendants failed to issue any wage statements at all.

20. In addition, and as a result of misclassifying their workforce as independent contractors, Defendants failed to provide any sick pay to Plaintiff or their other employees, as required by Labor Code § 245 *et seq.*

CLASS ACTION ALLEGATIONS

21. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of the Defendants' current and former workers in California who were classified by Defendants as independent contractors, and who were subject to Defendants' timekeeping and payroll practices, at any point from four years prior to the filing of this action to the present.

b. The Overtime Class consists of all of the Defendants' current and former workers in California who were classified by Defendants as independent contractors, and who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, at any time from four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of the Defendants' current and former workers in California who were classified by Defendants as independent contractors, and who worked at least one shift in excess of 5.0 hours, and/or at least one shift in excess of 10.0 hours, at any point from four years immediately preceding the filing of this action through the present.

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1 d. The Rest Period Class consists of all of the Defendants' current and former
2 workers in California who were classified by Defendants as independent contractors, who
3 worked at least one shift of 3.5 hours or more, at any time from four years immediately
4 preceding the filing of this action through the present.

5 e. The Wage Statement Class consists of all of Defendants' workers in California
6 who were classified by Defendants as independent contractors, at any time from one year
7 prior to the filing of this action to the present.

8 f. The Waiting Time Class consists of all of members of the Minimum Wage Class,
9 Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer engaged
10 by Defendants and whose engagement with Defendants ended at any time from three years
11 immediately preceding the filing of this action through the present.

12 g. The Expense Reimbursement Class consists of all of Defendants' workers in
13 California who were classified by Defendants as independent contractors, and who were
14 required to use their personal property, including but not limited to personal cellular phones
15 or personal tools, for work-related purposes, at any time from four years prior to the filing
16 of this action through the present.

17 22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
18 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
19 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
20 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
21 Defendants' employment and other business records.

22 23. **Common Questions of Law and Fact Predominate/Well Defined Community**
23 **of Interest:** There are common questions of law and fact as to Plaintiff and the Classes, which
24 predominate over questions affecting only individual members including, without limitation to:

- 25 i. Whether Defendants misclassified members of the Classes as independent
26 contractors;
27 ii. Whether Defendants paid members of the Minimum Wage Class at least
28 the applicable minimum wage for all hours worked;

- 1 iii. Whether Defendants' timekeeping and payroll practices violate the
2 applicable Labor Code provisions including, but not limited to, Sections
3 510 and 1194 by requiring overtime work and not paying the Overtime
4 Class for said work according to California's overtime laws;
5 iv. Whether Defendants provided legally compliant meal periods to members
6 of the Meal Period Class;
7 v. Whether Defendants authorized and permitted legally compliant rest
8 periods to members of the Rest Period Class;
9 vi. Whether Defendants furnished legally compliant wage statements to
10 members of the Wage Statement Class pursuant to Labor Code § 226;
11 vii. Whether Defendants paid all wages due to members of the Waiting Time
12 Class at the time of separation of employment; and
13 viii. Whether Defendants properly reimbursed expenses incurred by members
14 of the Expense Reimbursement Class.

15 24. **Predominance of Common Questions:** Common questions of law and fact
16 predominate over questions that affect only individual members of the Classes. The common
17 questions of law set forth above are numerous and substantial and stem from Defendants' policies
18 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
19 overtime, wage statement, meal period, rest period, expense reimbursement, and final wage
20 policies/practices. As such, the common questions predominate over individual questions
21 concerning each individual class member's showing as to his or her eligibility for recovery or as
22 to the amount of his or her damages.

23 25. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
24 Plaintiff was employed by Defendants in California during the statute(s) of limitation applicable
25 to each cause of action pled in the Complaint in this action, and was misclassified by Defendants
26 as an independent contractor. As alleged herein, Plaintiff, like the members of the Classes, was
27 not paid all earned minimum wages and overtime wages; was subject to Defendants' uniform
28 meal and rest period policies/practices; was furnished with inaccurate wage statements; was

1 deprived of all final wages upon his separation of employment from Defendants; and was not
2 reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

3 26. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
4 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
5 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
6 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
7 actions in state and federal courts in the past and are committed to vigorously prosecuting this
8 action on behalf of the members of the Classes.

9 27. **Superiority:** The California Labor Code is broadly remedial in nature and serves
10 an important public interest in establishing minimum working conditions and standards in
11 California. These laws and labor standards protect the average working employee from
12 exploitation by employers who have the responsibility to follow the laws and who may seek to
13 take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment. The nature of this action and the format of laws available to Plaintiff
15 and Class members make the class action format a particularly efficient and appropriate procedure
16 to redress the violations alleged herein. If each employee were required to file individual lawsuits,
17 Defendants would necessarily gain an unfair advantage, as they would be able to exploit and
18 overwhelm the limited resources of each individual plaintiff with their vastly superior financial
19 and legal resources. Moreover, requiring each Class member to pursue an individual remedy
20 would discourage the assertion of lawful claims by employees who would be disinclined to file
21 an action against their former and/or current employer for real and justifiable fear of retaliation
22 and permanent damage to their careers at subsequent employment. Further, the prosecution of
23 separate actions by individual class members would create a substantial risk of inconsistent or
24 varying verdicts or adjudications with respect to individual Class members against Defendants;
25 and which would establish potentially incompatible standards of conduct for Defendants. Further,
26 the claims of individual Class members are not large enough to warrant vigorous individual
27 prosecution considering all of the costs and expenses attending thereto. As such, the Classes
28 identified in Paragraph 21 are maintainable under Section 382 of the Code of Civil Procedure.

1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 29. Wage Order 9, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
6 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
7 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
8 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
9 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

10 30. At all relevant times, Defendants failed to conform their pay practices to the
11 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
12 actually worked including, but not limited to, all hours they were subject to Defendants' control
13 and/or suffered or permitted to work under the Labor Code and Wage Order 9.

14 31. California Labor Code § 1198 makes unlawful the employment of an employee
15 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
16 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
17 those employees the balance of the unpaid wages as well as liquidated damages in an amount
18 equal to the wages due and interest thereon.

19 32. As a direct and proximate result of Defendants' unlawful conduct as alleged
20 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
21 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
22 entitled to recover economic and statutory damages and penalties and other appropriate relief as
23 a result of Defendants' violations of the California Labor Code and Wage Order 9.

24 33. Defendants' practice and uniform administration of corporate policy regarding
25 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff
26 and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
27 liquidated damages, interest, statutory penalties, and attorneys' fees and costs of suit, per Labor
28 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

35. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

36. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime and double-time hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

37. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed in their affirmative obligation to provide all their hourly non-exempt employees, including
3 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
4 the mandates of the California Labor Code and Wage Order 9, for the reasons set forth in this
5 Complaint.

6 40. As a result, Defendants owe premium compensation for meal period violations,
7 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 9, Labor
8 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

9 **FOURTH CAUSE OF ACTION**

10 **REST PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

12 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 42. Labor Code §§ 226.7 and 516, and Wage Order 9, § 12 establish the right of
14 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
15 (4) hour period worked, or major fraction thereof.

16 43. As alleged herein, Defendants have failed to authorize and permit Plaintiff and
17 Rest Period Class members to take their legally entitled rest periods. Defendants have also failed
18 to compensate Plaintiff and Rest Period Class members with a rest period premium for each
19 workday they were not authorized and permitted all rest periods to which they were entitled.

20 44. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
21 Period Class members in a civil action for the unpaid amount of rest period premiums owing,
22 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
23 Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, §
24 1 of the California Constitution.

25 **FIFTH CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

28 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and the Wage Statement Class with accurate and complete itemized wage statements that
4 included, among other requirements, all hours worked, all hours worked at each rate of pay, and
5 all wages earned, in violation of Labor Code § 226.

6 47. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
7 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
8 among other things, the non-receipt of wage statements, and the non-payment of all their wages
9 and meal and rest period premium wages, and deprived them of the information necessary to
10 identify and reconcile the discrepancies in Defendants' reported data.

11 48. Defendants' failures create an entitlement to recovery by Plaintiff and members of
12 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
13 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
14 of suit, pursuant to Labor Code §§ 226 and 226.3.

15 **SIXTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **(AGAINST ALL DEFENDANTS)**

18 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 50. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
20 an employer to pay all wages immediately at the time of separation of employment in the event
21 the employer discharges the employee, or the employee provides at least 72 hours of notice of
22 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
23 to quit, said employee's wages become due and payable not later than 72 hours upon said
24 employee's last date of employment.

25 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
27 at their separation from employment, including (but not limited to) unpaid overtime and double-
28 time wages and unpaid meal and rest period premium wages.

52. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

53. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. At all relevant times, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

56. At all relevant times, Defendants were subject to Labor Code § 2804, which states, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

57. Due to Defendants' unlawful policy and practice of requiring employees to use their personal property, including but not limited to personal cell phones, for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

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58. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

59. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

60. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

62. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum wages and overtime wages due, failing to provide meal periods, failing to authorize and permit rest periods, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

63. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

64. Because Plaintiff is a victims of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seek full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

65. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

66. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

**CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)**

67. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

68. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

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- a. Willfully misclassifying Plaintiff and other aggrieved employees as independent contractors, in violation of Labor Code § 226.8;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- d. Failing to provide meal periods to Plaintiff and other aggrieved employees, and failing to pay meal period premiums, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to authorize and permit rest periods to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- g. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;
- h. Failing to reimburse Plaintiff and other aggrieved employees for expenses incurred in the course of employment, in violation of Labor Code §§ 2802, 2804, and 1198;
- i. Failing to provide sick pay to Plaintiff and other aggrieved employees, in violation of Labor Code § 245 *et seq.*; and
- j. Failing to maintain accurate timekeeping and payroll records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174 and 1198.

69. On or about June 21, 2024 and March 25, 2025, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 68 (a)-(j) above. Now that sixty-five days

1 have passed from Plaintiff's notifying Defendants and the LWDA of these violations, and the
2 LWDA has not provided notice that it intends to investigate the alleged violations and Defendants
3 have not cured the violations, Plaintiff has exhausted his administrative requirements for bringing
4 a claim under the Private Attorneys General Act ("PAGA") with respect to these violations. As
5 noted in Plaintiff's notice letter, the "aggrieved employees" Plaintiff seeks to represent in his
6 PAGA action are all current and former employees of Defendants (including workers who were
7 classified by Defendants as independent contractors) who have worked or provided services for
8 Defendants in California at any time from one year immediately preceding the date of Plaintiff's
9 PAGA notice letter through the date that judgment is entered in Plaintiff's PAGA action or any
10 alternative date agreed upon by the parties and/or approved by the court.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
13 this suit is brought against Defendants, as follows:

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as representative of the Classes;
- 16 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 17 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
18 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
19 1197, and 1198;
- 20 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
21 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 22 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
23 special damages according to proof pursuant to Labor Code §§ 204, 226.7, 512, 558, and 1198;
- 24 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;
- 26 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
27 226, *et seq.*;

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1 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
2 Labor Code §§ 201-203;

3 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

5 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;

8 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
9 employees, and the State of California according to proof pursuant to Labor Code § 2699,
10 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
11 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
12 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
13 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
14 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
15 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
16 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
17 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
18 each aggrieved employee per pay period, and/or \$200.00 for each aggrieved employee per pay
19 period, for those violations of the Labor Code for which no civil penalty is specifically provided,
20 pursuant to Labor Code § 2699(f); as well as injunctive relief pursuant to Labor Code § 2699(k);

21 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
22 Cal. Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
23 California Constitution;

24 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
25 226(e), 1194 *et seq.*, 2802(c), 2699(k), Code of Civil Procedure § 1021.5, and all other applicable
26 statutes; and

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28 ///

1 15. For such other and further relief the Court may deem just and proper.

2 Date: June 16, 2025

MARQUEE LAW GROUP, APC

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5 Tuvia Korobkin
6 Attorneys for Plaintiff

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

9 Date: June 16, 2025

MARQUEE LAW GROUP, APC

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11 

12 Tuvia Korobkin
13 Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I declare that I am over the age of eighteen (18) and not a party to this action. My business
3 address is 9100 Wilshire Boulevard, Suite 445, East Tower, Beverly Hills, California 90212.

4 On September 3, 2025 I served the foregoing document(s) described as:

5 **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

6 on all interested parties in this action by transmitting a true copy of the document(s) described
7 above, addressed as follows:

8 **SEE ATTACHED SERVICE LIST**

- 9 () **BY MAIL** as follows: I am “readily familiar” with the firm’s practice of collection and
10 processing of correspondence for mailing with the United States Postal Service. I know
11 that the correspondence was deposited with the United States Postal Service on the same
12 day this declaration was executed in the ordinary course of business. I know that the
13 envelope was sealed and, with postage thereon fully prepaid, placed for collection and
14 mailing on this date in the United States mail at Beverly Hills, California.
- 15 () **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand to the
16 above addressee(s).
- 17 () **BY OVERNIGHT COURIER:** I am “readily familiar” with the firm’s practice of
18 collecting and processing overnight deliveries, which includes depositing such packages in
19 a receptacle used exclusively for overnight deliveries. The packages were deposited
20 before the regular pickup time and marked accordingly for delivery the next business day.
- 21 (X) **BY ELECTRONIC TRANSMISSION:** Participants in this case were served
22 electronically to the address of the recipient(s) as set forth below. I am readily familiar
23 with the Code of Civil Procedure and California Rules of Court for electronic service and
24 this document/these documents were duly served electronically in accordance with said
25 rules and regulations on the date stated above, and the transmission was reported as
26 complete and without error.

27 I declare under penalty of perjury under the laws of the State of California that the above is
28 true and correct. Executed on September 3, 2025 at Beverly Hills, California.

Kimberly Gomez Garcia
Kimberly Gomez Garcia

SERVICE LIST:

Michael S. Warda, A Professional Law Corporation c/o Michael S. Warda, Esq 2350 W. Monte Vista Avenue Turlock, California 95382 E: <i>mike@wardalaw.com</i>	<i>Attorneys for Defendants ALL CITY TRUCKING, INC., ALL CITIES TRUCKING SERVICES, INC., and A1 TRUCKING SERVICES, INC.</i>
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