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SUMMONS ISSUED

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3 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
4 **FOR THE COUNTY OF CONTRA COSTA**

5 ELEAZAR HERRERA, on behalf of all those
6 similarly situated to him,

7 Plaintiffs,

8 vs.

9 ONTRAC LOGISTICS, INC., a Delaware
10 corporation; JESUS FERNANDO GONZALEZ,
11 an individual; LEO [LAST NAME UNKNOWN],
12 an individual; and DOES 1 THROUGH 100,
13 inclusive,

14 Defendants.

) **Case No.:** C24-02771

) **CLASS ACTION**

) **COMPLAINT FOR DECLARATORY AND**
) **INJUNCTIVE RELIEF, RESTITUTION,**
) **AND DAMAGES FOR VIOLATIONS OF**
) **THE CALIFORNIA LABOR CODE, WAGE**
) **ORDERS, PRIVATE ATTORNEYS**
) **GENERAL ACT, AND BUSINESS AND**
) **PROFESSIONS CODE**

1 Plaintiff Eleazar Herrera, on behalf of himself and all others similarly situated, hereby files
2 this Class and Representative Action Complaint against Defendants OnTrac Logistics, Inc.
3 (“OnTrac”); Jesus Fernando Gonzalez, an Individual; Leo [last name unknown], an Individual; and
4 Does 1 through 100 (hereinafter referred to collectively as “Defendants”).

5 **INTRODUCTION**

6 1. This is a class action for damages, penalties, and injunctive relief on behalf of
7 delivery drivers who were misclassified as independent contractors and required to incur
8 significant business expenses without reimbursement, required to work overtime hours without
9 overtime premium pay, not provided with legally-compliant meal and rest breaks, not provided
10 with accurate wage statements, and not paid all wages owed upon separation from employment, in
11 violation of California law and the applicable Wage Orders.

12 2. OnTrac is a last-mile parcel delivery service that delivers packages to residential
13 customers across 35 states, including California, and Washington, D.C. According to publicly
14 available information, OnTrac operates a “hub-and-spoke” network of more than 102 locations and
15 18 sort centers throughout the United States. OnTrac hires individuals, such as Defendants
16 Gonzalez and Leo, to oversee the employees, such as Plaintiff, who scan, sort, load, and deliver
17 OnTrac’s packages (“delivery drivers” or “drivers”).

18 3. Plaintiff was a non-exempt hourly employee who worked for Defendants Gonzalez
19 and Leo as a delivery driver at OnTrac’s South San Francisco sort center and throughout his
20 assigned delivery areas, including Richmond, CA, and San Francisco, CA.

21 4. Throughout his employment with Defendants Gonzalez and Leo, Plaintiff was jointly
22 employed by OnTrac. OnTrac exercises extensive and continuous control over the manner in which
23 delivery drivers conduct their work, the terms and conditions of their employment, and their work
24 conditions. OnTrac’s control includes, but is not limited to, determining delivery areas to be
25 assigned to drivers or groups of drivers, effectively determining their work assignments and daily
26 schedules; requiring drivers to lease vans bearing the OnTrac logo or to display the OnTrac logo on
27 their personal vehicles; requiring drivers to purchase and wear OnTrac uniforms; requiring drivers
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to scan packages using a scanner rented to delivery drivers connected to OnTrac's system, and/or to purchase a telephone and application to scan packages and map and track package deliveries; processing driver job applications; hiring and firing drivers; and controlling drivers' ability to take meal and rest breaks.

5. Defendants Gonzalez and Leo are responsible for overseeing various aspects of delivery drivers' work, including but not limited to recruiting and supervising drivers; enforcing OnTrac's directives, including but not limited to that drivers wear OnTrac uniforms, drive OnTrac vans, and/or display the OnTrac logo on their personal vehicles; and taking corrective action where deemed necessary. Defendants Gonzalez and Leo report to OnTrac.

6. Plaintiff alleges that Defendants violated the Labor Code, the Industrial Welfare Commission (“IWC”) Wage Order 9-2001, and the Business and Professions Code §§17200, *et seq.* (“Unfair Competition Law” or “UCL”).

7. Plaintiff seeks full compensation on behalf of himself and all others similarly situated for all unpaid wages, unpaid overtime, denied or non-compliant meal periods, denied or non-compliant rest periods, inaccurate wage statements, and waiting time penalties. Plaintiff further seeks penalties on behalf of himself and the proposed Class for Defendants' violations of the Labor Code and IWC Wage Order 9-2001. Plaintiff also seeks declaratory and injunctive relief, including restitution. Finally, Plaintiff seeks reasonable attorneys' fees and costs under the Labor Code and Code of Civil Procedure § 1021.5.

PARTIES

8. Plaintiff Eleazar Herrera was employed by Defendants Gonzalez and OnTrac from approximately 2018 to June 2022 and by Defendants Leo and OnTrac from approximately July 2022 to September 2023 as a delivery driver at OnTrac’s South San Francisco sorting center located at 250 Utah Street, South San Francisco, CA 94080. Plaintiff is a resident of San Francisco County, California. At all relevant times, he was an “employee” as that term is used in the California Labor Code and in IWC Wage Orders regulating wages, hours, and working conditions.

9. Defendant OnTrac is a corporation headquartered in Delaware that does business in

1 the State of California. OnTrac is and was engaged in the business of last-mile parcel delivery.

2 10. Defendant Jesus Fernando Gonzalez is an individual who does business in the State
3 of California. Defendant Gonzalez is and was engaged in the business of last-mile parcel delivery.

4 11. Defendant Leo [last name unknown] is an individual who does business in the State
5 of California. Defendant Leo is and was engaged in the business of last-mile parcel delivery.

6 12. Defendants have done business under the laws of California, have had places of
7 business in California, and have employed Class Members, including Plaintiff, to perform job
8 duties in this judicial district. They are “persons” as defined in California Labor Code § 18 and
9 California Business and Professions Code § 17201. They are also “employers” as that term is used
10 in the California Labor Code and the IWC Wage Orders regulating wages, hours and working
11 conditions. As employers of Plaintiff and the Class throughout the relevant time period,
12 Defendants, and each of them, are either solely or jointly and severally liable for back pay and
13 other economic damages and statutory penalties owed to Plaintiff and the Class and to the Labor
14 Workforce Development Agency (“LWDA”).

15 13. On information and belief, Defendants are liable to Plaintiff and the Class as joint
16 employers. Defendants are all jointly and severally liable for the back pay and other economic
17 damages, including statutory penalties, owed to Plaintiff and Class Members under common law
18 and by statute.

19 14. Throughout this Complaint, any reference to “Defendants” is intended to refer to all
20 named Defendants jointly and to all Doe defendants who are entities involved in last-mile parcel
21 delivery for OnTrac.

22 **JURISDICTION**

23 15. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for unpaid
24 straight-time, overtime, and double time wages; for meal and rest period violations; for failure to
25 provide accurate wage statements; for failure to maintain time and payroll records; for
26 unreimbursed necessary business expenditures; for waiting time penalties; and for applicable
27 penalties pursuant to the California Labor Code, including Cal. Lab. Code §§ 210, 225.5, 226.3,
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1 226.8, 558, 1174.5, 1197.1, 1199, 2802, and subsection 20 of IWC Wage Order 9-2001.

2 16. This Court has jurisdiction over Plaintiff's and the Class Members' claims for
3 injunctive relief, including restitution of earned wages and benefits, which are the money and
4 property of Plaintiff and the Class Members, arising from Defendants' unfair competition under
5 Business & Professions Code §§ 17203 and 17204.

6 **VENUE**

7 17. Venue as to Defendants is proper in Contra Costa County pursuant to California
8 Code of Civil Procedure §§ 395(a) and 395.5. Defendants employed Plaintiff to perform job duties
9 in Contra Costa County, such that Contra Costa County is the county in which his employment
10 contract was to be performed. Moreover, Plaintiff was injured in Contra Costa County in that he
11 was required to make unreimbursed business expenditures and denied legally-compliant meal and
12 rest breaks in Contra Costa County.

13 **FACTUAL ALLEGATIONS**

14 18. Defendants hired Plaintiff and Class Members to scan, sort, and load packages at
15 OnTrac sort centers, then deliver those packages to OnTrac customers within a designated delivery
16 area. Plaintiff and Class Members generally worked at least 5 days per week for 10 to 13 hours per
17 day.

18 19. Plaintiff's wife often assisted him in performing his job duties, even though she was
19 not directly contracted by OnTrac or its agents. Other delivery drivers likewise were assisted by
20 members of their own families, some of whom were minors, in performing their job duties.
21 Defendants were aware delivery drivers' family members assisted them with their work, and
22 suffered and permitted those family members to perform work for Defendants.

23 20. Defendants typically paid Plaintiff and Class Members either a daily rate plus an
24 additional amount per delivery stop, or no daily rate and higher amount per stop. Plaintiff was paid
25 \$1.75 per package delivered when employed by Defendants Gonzalez and OnTrac, and a base rate
26 of \$150.00 per day and \$1.19 per package delivered when employed by Defendants Leo and
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1 OnTrac. Plaintiff's wife and the other adult and minor family members who assisted delivery
2 drivers in performing their duties did not receive any compensation at all for their work.

3 21. Defendants were and are responsible for controlling the terms and conditions of
4 Plaintiff's and the Class Members' employment and for directing and supervising their work.

5 22. During the relevant statutory period, Plaintiff and Class Members were non-exempt
6 employees of Defendants who worked hours constituting both regular "straight-time" hours and
7 "overtime" hours as those terms are defined in the California Labor Code and IWC Wage Order 9-
8 2001. Plaintiff and Class Members worked these hours with Defendants' knowledge, consent, and
9 acquiescence, performing tasks that were assigned to them.

10 23. At all times relevant herein, Defendants voluntarily and knowingly misclassified
11 Plaintiff and continue to misclassify other similarly situated delivery drivers as independent
12 contractors for the purpose of evading their legal obligations as employers.

13 24. Defendants require drivers to pay for package insurance for the purpose of covering
14 losses to OnTrac in the event of package theft from delivery vehicles.

15 25. Once a driver is hired, Defendants control all aspects of their work. For example,
16 Defendants assign a delivery area to the driver and require them to deliver all of their assigned
17 packages before finishing work for the day, effectively determining the driver's work schedule.
18 Defendants also require drivers to sort the packages assigned to them on-site at the OnTrac sorting
19 center.

20 26. Defendants require drivers to pay rent for proprietary devices to scan packages
21 and/or to purchase a telephone to scan packages and pay for an application to map and track
22 package deliveries. Defendants Gonzalez and OnTrac required Plaintiff to pay approximately \$100
23 per month to rent a scanner and/or a telephone, which was deducted from his pay. When Plaintiff
24 worked for Leo, Plaintiff paid approximately \$350 to \$400 to purchase a telephone to scan packages
25 and paid approximately \$12 per month for the mapping application.

1 27. Defendants require drivers either to use a scanner which connects to OnTrac's
2 software system or to purchase a telephone to scan packages and an application to map and track
3 deliveries.

4 28. Plaintiff and Class Members were required to deliver every package they picked up
5 in the morning on the same day, typically over 200 packages. Upon information and belief, the
6 OnTrac package-scanning app "closes" at 8:00 pm, making it impossible for drivers to log
7 deliveries made after that time.

8 29. Due to the time pressure to complete their routes determined by Defendants, Plaintiff
9 and other delivery drivers were unable to take legally-compliant meal and rest breaks and/or were
10 discouraged from taking legally-compliant meal and rest breaks because of the time pressure to
11 finish the delivery of packages.

12 30. Defendants require drivers who do not have their own delivery vehicles to rent vans
13 bearing the OnTrac logo and/or rent vehicles that had to bear a magnetic OnTrac logo from
14 Defendants and use them to deliver their assigned packages. Defendants Gonzalez and OnTrac
15 required Plaintiff to pay \$200 weekly to rent a van to use for deliveries.

16 31. Defendants require drivers to purchase OnTrac uniforms and wear them while
17 performing their jobs.

18 32. Drivers' job responsibilities—delivering packages from sorting centers to
19 customers—are at the core of Defendants' business, that is, delivering packages to residential
20 customers.

21 33. OnTrac drivers do not need any special skills other than driving and/or the ability to
22 deliver parcels to perform their jobs. Given the number of days and hours per week they work for
23 Defendants, drivers generally cannot and do not perform work for other entities.

24 34. Defendants require drivers to pay for their own gas, vehicle maintenance and repairs,
25 vehicle insurance, and package insurance and do not reimburse them for these amounts. For drivers
26 who have their own delivery vehicles, Defendants additionally do not reimburse them for mileage.

1 35. Defendants failed to maintain complete and accurate time records for Plaintiff and
2 other delivery drivers. Plaintiff and other delivery drivers were not provided wage statements
3 which set forth their hours worked or their rates, and the records of the deliveries they made were
4 often missing stops, which meant Plaintiff and other delivery drivers were not paid at all for some
5 deliveries and therefore were not paid for all time worked.

6 36. At the South San Francisco sorting facility, OnTrac employs a warehouse operations
7 manager, Jude [last name unknown], who has authority over Defendant Gonzalez, Leo and all
8 delivery drivers. OnTrac exercises control over the wages, hours, and working conditions of
9 Plaintiff and other drivers not only through its contractual relationships with Defendants Gonzalez
10 and Leo and other subcontractors, but also through physical oversight of their operations.
11 Moreover, OnTrac's warehouse operations manager exercises direct control over hiring decisions.
12 After Plaintiff's employment was terminated by Defendant Gonzalez, before Defendant Leo could
13 hire Plaintiff, Plaintiff and Defendant Leo were required to meet with OnTrac's warehouse
14 operations manager to discuss the previous termination. Defendant Leo lacked the authority to hire
15 Plaintiff without OnTrac's approval and hired Plaintiff only after authorized to do so by OnTrac's
16 warehouse operations manager. Upon information and belief, OnTrac employs warehouse
17 operations managers in all of its sorting facilities in California who similarly exercise oversight over
18 subcontractors and delivery drivers, including control over hiring decisions.

19 37. Between 2013 and 2022, OnTrac defended against class and group claims by then-
20 current and former delivery drivers in California for, among other things, misclassifying them as
21 independent contractors and failing to pay them the minimum wage, failing to pay them overtime,
22 and failing to provide meal and rest periods. *Thomas Lewis v. Express Messenger Systems, Inc.,*
23 *dba OnTrac*, Los Angeles County Superior Court Case No. BC501521; *Eliseo Leal v. Express*
24 *Messenger Systems, Inc., dba OnTrac*, Los Angeles County Superior Court Case No. BC509904.
25 OnTrac ultimately settled those claims for \$10.5 million.

26 38. In 2019, OnTrac, dba Express Messenger Systems, and Mr. Gonzalez were found to
27 have jointly employed delivery driver Juan Jose Reyes at the South San Francisco sorting center,
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1 and to have misclassified him as an independent contractor after a trial in San Francisco Superior
2 Court.

3 39. As of August 2024, at least four (4) wage claims have been filed against Defendant
4 Gonzalez with the California Department of Industrial Relations in the “Couriers and Express
5 Delivery Services” industry.

6 40. Defendants have chosen despite these claims to continue to willfully misclassify
7 Plaintiff and the Class as independent contractors in order to avoid their obligations as employers,
8 including the cost of delivery vehicles and overtime premium pay.

9 41. As a result of Defendants’ pattern and practice of failing to pay the compensation
10 due to them, Plaintiff and members of the putative Plaintiff Class have been and continue to be
11 systematically deprived of the wages to which they are entitled by law, to the detriment of
12 themselves, their families, and Defendants’ competitors, who face unfair competition as the result
13 of Defendants’ unlawful business practices.

14 **ALLEGATIONS FOR CLASS ACTION**

15 42. Plaintiff brings this action on behalf of himself, and all others similarly situated
16 pursuant to California Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent is
17 defined as follows:

18 All individuals who are currently employed, or formerly have been engaged,
19 suffered, or permitted to work delivering packages for OnTrac in California at any
20 time from four years before the filing of this Complaint through the date of judgment
21 in this action.

22 43. This action has been brought and may properly be maintained as a class action under
23 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
24 the litigation and the proposed Class is easily ascertainable:

25 a. Numerosity: The potential members of the Class as defined are so numerous that
26 joinder of all the members of the Class is impracticable. Upon information and
27 belief, at least 150 delivery drivers are employed at the South San Francisco
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1 sorting facility and Defendant OnTrac operates additional sorting facilities in the
2 State of California.

- 3 b. Commonality: There are questions of law and fact common to Plaintiff and the
4 Class that predominate over any questions affecting only individual members of
5 the Class. These common questions of law and fact include, without limitation:
- 6 i. Whether Defendants have violated and continue to violate the California
7 Labor Code and applicable IWC Wage Orders;
 - 8 ii. Whether Defendants have violated California Labor Code § 226.8 by
9 willfully misclassifying Plaintiff and the Class as independent
10 contractors;
 - 11 iii. Whether Defendants have violated California Labor Code §§ 204 and
12 1194 by failing to pay Plaintiff and other members of the proposed Class
13 the applicable straight-time rates for all regular (non-overtime) hours
14 worked;
 - 15 iv. Whether Defendants have violated Section 3 of IWC Wage Order 9-2001
16 and California Labor Code § 510 by failing to pay Plaintiff and other
17 members of the proposed Class who worked in excess of forty (40) hours
18 per week and/or eight (8) hours a day the applicable overtime premium
19 rates for all overtime hours worked;
 - 20 v. Whether Defendants' time keeping policies and practices have violated
21 the California Labor Code and/or the California Unfair Competition Law
22 by failing to accurately record the actual hours worked, including the start
23 and end time for each workday, meal periods, and total daily hours
24 worked by Plaintiff and the Class in violation of California Labor Code
25 §§ 226 and 1174, and the IWC Wage Orders;
 - 26 vi. Whether Defendants have violated Labor Code § 2802 by failing to
27 reimburse or indemnify employees for their uniforms, device rent, gas,
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1 vehicle repairs, vehicle insurance, package insurance, mileage, and other
2 business-related expenses they have incurred in the course of performing
3 their jobs;

4 vii. Whether Defendants have engaged in a continuing policy, pattern, or
5 practice of denying their non-exempt hourly employees the bona fide
6 meal and rest periods to which they are entitled in violation of California
7 Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001;

8 viii. Whether Defendants have violated California Labor Code §§ 201-203 by
9 failing to pay delivery drivers the wages owed to them upon termination
10 or quit;

11 ix. Whether Defendants' payroll policies and practices have violated the
12 California Labor Code, applicable Wage Orders, and/or the California
13 Unfair Competition Law by resulting in the provision of wage statements
14 that do not accurately reflect employee earnings and/or other items listed
15 in California Labor Code § 226 and applicable Wage Orders;

16 x. Whether Defendants have violated California Labor Code § 204, by
17 failing to pay delivery drivers their wages at least twice during each
18 month on days designated in advance by the employer;

19 xi. Whether Defendants' policies and practices have constituted unlawful,
20 unfair, or fraudulent business practices in violation of California Unfair
21 Competition Law;

22 xii. Whether Defendants violated the California Private Attorneys General
23 Act of 2004 (Labor Code § 2698, *et seq.*) based on the same or similar
24 facts and/or claims alleged in the PAGA letter sent to the LWDA by
25 Plaintiff prior to the Action, as well as any claims that could have been
26 pled under the California Labor Code and California Industrial Welfare
27 Commission Wage Orders; and
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- 1 xiii. The proper formula for calculating restitution, damages, and waiting time
2 penalties owed to Plaintiff and the Class as alleged herein.
- 3 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Defendants'
4 common policies, practices, and course of conduct are in violation of the law as
5 alleged herein and have caused Plaintiff and the Class to sustain the same or
6 similar injuries and damages. Plaintiff's claims are thereby representative of and
7 co-extensive with the claims of the Class.
- 8 d. Adequacy: Plaintiff is a member of the Class, does not have a conflict of interest
9 with other Class Members, and will prosecute the case vigorously on behalf of
10 the Class. Plaintiff will fairly and adequately represent and protect the interests
11 of the members of the Class. Plaintiff has retained counsel competent and
12 experienced in complex employment class action litigation.
- 13 e. Superiority: The nature of this action and the nature of laws available to Plaintiff
14 make use of the class action format the superior and appropriate procedure to
15 afford relief for the wrongs alleged herein. Individual joinder of all the members
16 of the Class is not practicable, and questions of law and fact common to the Class
17 predominate over any questions affecting only individual members of the Class.
18 Each member of the Class has been damaged and is entitled to recovery by
19 reason of Defendants' illegal policies and/or practices. Class action treatment
20 will allow those similarly situated persons to litigate their claims in the manner
21 that is most efficient and economical for those parties and the judicial system.
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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages Due**

3 **(California Labor Code §§ 204 and 1194)**

4 **(Against all Defendants on behalf of Plaintiff and the Class)**

5 44. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
6 forth herein.

7 45. California Labor Code § 204(a) provides that wages for all work performed must be
8 paid “twice during each calendar month, on days designated in advance by the employer as the
9 regular paydays.”

10 46. California Labor Code § 1194(a) provides as follows:
11 Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
12 the legal minimum wage or the legal overtime compensation applicable to the employee is
13 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and
costs of suit.

14 47. California Labor Code § 200 defines “wages” as “all amounts for labor performed by
15 employees of every description, whether the amount is fixed or ascertained by the standard of time,
16 task, piece, commission basis, or other method of calculation.”

17 48. Defendants paid Plaintiff and Class Members per stop, at times in addition to a daily
18 base rate and at times not, rather than the applicable minimum wage for all the hours they worked.
19 In addition, Defendants failed to pay Plaintiff and Class Members for all deliveries completed. As a
20 result, Defendants deny Plaintiff and the Class compensation for all hours worked, including
21 minimum wages.

22 49. Defendants have knowingly and willfully refused to perform their obligations to
23 provide Plaintiff and the Class with compensation for all time worked as required by California law.
24 Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and
25 deliberate intention of injuring Plaintiff and the Class, with improper motives amounting to malice,
26 and in conscious disregard of the rights of Plaintiff and the Class. Plaintiff and the Class are thus
27 entitled to recover nominal, actual and compensatory damages in amounts according to proof at
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1 time of trial.

2 50. As a proximate result of the aforementioned violations, Defendants have damaged
3 Plaintiff and the Class in amounts to be determined according to proof at the time of trial, but in an
4 amount in excess of the jurisdictional requirements of this Court.

5 51. California Labor Code § 1194.2(a) provides as follows:

6 In any action under Section [1194] to recover wages because of the payment of a wage less
7 than the minimum wage fixed by an order of the commission or by statute, an employee
8 shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

9 52. Defendants are liable to Plaintiff and the Class for the unpaid compensation with
10 interest thereon, as well as liquidated damages in an amount equal to the unpaid compensation with
11 interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set
12 forth below.

13 53. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

1 **SECOND CAUSE OF ACTION**

2 **Failure to Pay Overtime & Double Time Wages**

3 **(California Labor Code § 510; IWC Wage Order 9-2001)**

4 **(Against all Defendants on behalf of Plaintiff and the Class)**

5 54. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
6 forth herein.

7 55. California Labor Code § 510(a) provides as follows:

8 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
9 one workday and any work in excess of 40 hours in any one workweek and the
10 first eight hours worked on the seventh day of work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the regular rate of
12 pay for an employee. Any work in excess of 12 hours in one day shall be
13 compensated at the rate of no less than twice the regular rate of pay for an
14 employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of
pay of an employee. Nothing in this section requires an employer to combine more
than one rate of overtime compensation in order to calculate the amount to be paid
to an employee for any hour of overtime work.

15 56. IWC Wage Order 9-2001 Section 3(A)(1) states:

16 The following overtime provisions are applicable to employees 18 years of age or over and
17 to employees 16 or 17 years of age who are not required by law to attend school and are not
18 otherwise prohibited by law from engaging in the subject work. Such employees shall not
19 be employed more than eight (8) hours in any workday or more than 40 hours in any
20 workweek unless the employee receives one and one-half (1 ½) times such employee's
regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of
labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more
than six (6) days in any workweek is permissible provided the employee is compensated for
such overtime at not less than:

21 (a) One and one-half (1 ½) times the employee's regular
22 rate of pay for all hours worked in excess of eight (8) hours
23 up to and including 12 hours in any workday, and for the
24 first eight (8) hours worked on the seventh (7th)
consecutive day of work in a workweek; and

25 (b) Double the employee's regular rate of pay for all hours
26 worked in excess of 12 hours in any workday and for all
27 hours worked in excess of eight (8) hours on the seventh
28 (7th) consecutive day of work in a workweek.

1 57. California Labor Code § 1194(a) provides as follows:

2 Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
3 the legal minimum wage or the legal overtime compensation applicable to the employee is
4 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
 wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and
 costs of suit.

5 58. California Labor Code § 200 defines wages as "all amounts for labor performed by
6 employees of every description, whether the amount is fixed or ascertained by the standard of time,
7 task, piece, commission basis or other method of calculation." All such wages are subject to
8 California's overtime and double time requirements, including those set forth above.

9 59. Defendants did not compensate Plaintiff and the Class at the applicable overtime rate
10 for hours worked in excess of eight hours per day or 40 hours per week, regardless of how many
11 hours they worked. As a result, Plaintiff and Class Members have worked overtime hours for
12 Defendants without being paid overtime premiums in violation of the California Labor Code, IWC
13 Wage Orders, and other applicable law.

14 60. Defendants have knowingly and willfully refused to perform their obligations to
15 provide Plaintiff and the Class with compensation for all premium wages for overtime work as
16 required by California law. As a proximate result of the aforementioned violations, Defendants
17 have damaged Plaintiff and the Class in amounts to be determined according to proof at the time of
18 trial, but in an amount in excess of the jurisdictional requirements of this Court. Defendants are
19 therefore liable to Plaintiff, on behalf of the Class, for the unpaid overtime and double time
20 compensation with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees
21 and costs as set forth below.

22 61. Wherefore, Plaintiff and the Class request relief as hereinafter provided.
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1 entitled to the relief provided by California Labor Code § 226.7(b). Furthermore, Defendants
2 required Plaintiff and the Class to perform work-related activities during their meal and rest periods.
3 Consequently, Defendants have knowingly and willfully refused to perform their obligations to
4 provide, authorize, permit, and/or make available to Plaintiff and the Class the full meal and rest
5 periods to which they are entitled under California law. Defendants committed the acts alleged
6 herein with the wrongful and deliberate intention of injuring Plaintiff and the Class, with improper
7 motives amounting to malice, and in conscious disregard of the rights of Plaintiff and the Class. As
8 a proximate result of the aforementioned violations, Defendants have damaged Plaintiff and the
9 Class in amounts to be determined according to proof at the time of trial, but in an amount in excess
10 of the jurisdictional requirements of this Court. Plaintiff and the Class are thus entitled to recover
11 nominal, actual, and compensatory damages in amounts according to proof at time of trial.

12 67. Defendants' conduct described herein violates California Labor Code §§ 226.7 and
13 512 and Wage Order 9-2001. Therefore, Plaintiff and the Class are entitled to the relief provided in
14 California Labor Code § 226.7(b) and Wage Order 9-2001, damages, restitution for the failure to
15 provide meal and rest periods, plus interest, applicable civil penalties, attorneys' fees, expenses and
16 costs of suit.

17 68. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Reimburse for Necessary Business Expenditures**
20 **(California Labor Code §§ 2802 and 221; IWC Wage Order 9-2001)**
21 **(Against all Defendants on behalf of Plaintiff and the Class)**

22 69. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
23 forth herein.

24 70. California Labor Code § 221 provides that it shall be unlawful for any employer to
25 collect or receive any part of wages theretofore paid by said employer to said employee.

26 71. California Labor Code § 2802 provides that an employer must reimburse an
27 employee for necessary expenditures and losses incurred by an employee in the direct consequence
28

1 of the discharge of his or her duties.

2 72. Plaintiff alleges that, while acting on the direct instruction of Defendants and
3 discharging his duties for them, Defendants have required Plaintiff and members of the Class to
4 incur expenses relating to uniforms, device rent, gas, vehicle repairs, vehicle insurance, package
5 insurance, mileage, and other business-related expenses to perform tasks and/or discharge their job
6 duties for Defendants, without being reimbursed or indemnified for said expenses.

7 73. Because of Defendants' failure to comply with the provisions of IWC Wage Order 9-
8 2001 and California Labor Code §§ 221 and 2802, Plaintiff and the Class have suffered damages.
9 Plaintiff and the Class seek reimbursement for the necessary expenditures they have incurred in
10 direct consequence of the discharge of their duties in an amount according to proof at time of trial,
11 with interest thereon, costs, applicable civil penalties and attorneys' fees pursuant to California
12 Labor Code § 2802.

13 74. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

14 **FIFTH CAUSE OF ACTION**

15 **Unpaid Wages and Waiting Time Penalties**

16 **(California Labor Code §§ 201-203)**

17 **(Against all Defendants on behalf of Plaintiff and the Class)**

18 75. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
19 forth herein.

20 76. California Labor Code § 201(a) provides:

21 If an employer discharges an employee, the wages earned and unpaid at the time of
22 discharge are due and payable immediately.

23 77. California Labor Code § 202 provides:

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72 hours
26 thereafter, unless the employee has given 72 hours previous notice of his or her intention to
27 quit, in which case the employee is entitled to his or her wages at the time of quitting.

28 78. Plaintiff and Class Members who left Defendants' employment within the statutory
period are entitled to their earned wages. As a result of Defendants' failure to pay members of the

1 Class for all hours worked, including minimum wage, overtime and double time hours, and due to
2 Defendants' failure to provide meal and rest periods and reimbursement for expenses, Defendants
3 have willfully refused and continue to refuse to pay Plaintiff and Class Members all the wages that
4 were due and owing to them upon termination of employment. As a result of Defendants' actions,
5 Plaintiff and the Class have suffered and continue to suffer substantial losses, including lost earnings
6 and interest thereon.

7 79. Defendants' willful failure to pay Plaintiff and Class Members the wages due and
8 owing to them constitutes a violation of California Labor Code §§201 and 202. As a result,
9 Defendants are liable to Plaintiff and Class Members for all unpaid wages that should have been
10 paid pursuant to California Labor Code §§ 201 and 202, plus interest thereon.

11 80. California Labor Code § 203 provides that if an employer violates California Labor
12 Code §§ 201 or 202, an employee's wages will continue as a penalty up to thirty (30) days from the
13 time the wages were due. Therefore, Plaintiff and Class Members who left Defendants'
14 employment during the statutory period are entitled to waiting time penalties, plus interest thereon,
15 pursuant to California Labor Code § 203.

16 81. Plaintiff and the Class are entitled to an award of attorneys' fees and costs as set
17 forth below.

18 82. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

19 **SIXTH CAUSE OF ACTION**

20 **Failure to Provide Itemized Wage Statements**

21 **(California Labor Code § 226)**

22 **(Against all Defendants on behalf of Plaintiff and the Class)**

23 83. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
24 forth herein.

25 84. California Labor Code § 226(a) provides:

26 Every employer shall, semimonthly or at the time of each payment of wages, furnish each of
27 his or her employees, either as a detachable part of the check, draft, or voucher paying the
28 employee's wages, or separately when wages are paid by personal check or cash, an accurate

1 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely based on a salary and who
3 is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable
4 order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
5 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
6 provided that all deductions made on written orders of the employee may be aggregated and
7 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
8 employee is paid, (7) the name of the employee and his or her social security number, (8) the
9 name and address of the legal entity that is the employer, and (9) all applicable hourly rates
in effect during the pay period and the corresponding number of hours worked at each
hourly rate by the employee. The deductions made from payments of wages shall be
recorded in ink or other indelible form, properly dated, showing the month, day, and year,
and a copy of the statement or a record of the deductions shall be kept on file by the
employer for at least four years at the place of employment or at a central location within the
State of California.

10 85. California Labor Code § 226(e) provides:

11 An employee suffering injury as a result of a knowing and intentional failure by an employer
12 to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty
13 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
14 (\$100) per employee for each violation in a subsequent pay period, not exceeding an
aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
reasonable attorney's fees.

15 86. Plaintiff and the Class seek to recover actual damages, penalties, costs, and
16 attorneys' fees and costs under this section.

17 87. Defendants have failed and continue to fail to provide timely, accurate itemized
18 wage statements to Plaintiff and the Class in accordance with California Labor Code § 226(a) and
19 IWC Wage Order 9-2001. Furthermore, the wage statements Defendants have provided to their
20 employees, including to Plaintiff and the Class, do not accurately reflect the actual hours worked
21 and wages earned.

22 88. Defendants are liable to Plaintiff and the Class as alleged herein for the amounts
23 described above, in addition to civil penalties, with interest thereon. Furthermore, Plaintiff and the
24 Class are entitled to an award of attorneys' fees and costs as set forth below.

25 89. Wherefore, Plaintiff and the Class request relief as hereinafter provided.
26
27
28

1 **SEVENTH CAUSE OF ACTION**

2 **Individual Liability for Labor Code Violations**

3 **(California Labor Code § 558.1)**

4 **(Against Defendants Gonzalez and Leo on behalf of Plaintiff and the Class)**

5 90. Plaintiff re-alleges and incorporates by reference the allegations contained in the
6 preceding paragraphs as though fully set forth herein.

7 91. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of
8 an employer[] who violates, or causes to be violated, any provision regulating minimum wages or
9 hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor Code]
10 Sections 203, 226, 226.7, 1193.6, 1194, or 2802.”

11 92. Labor Code § 558.1(b) provides that an “other person” is “a natural person who is an
12 owner, director, officer, or managing agent” of an employer.

13 93. Defendants Jesus Fernando Gonzalez and Leo [last name unknown] violated or
14 caused to be violated the provisions of IWC Wage Order 9-2001 governing wages or hours and
15 days or work, as well as Labor Code §§ 203, 226, and/or 1194.

16 94. Defendants Jesus Fernando Gonzalez and Leo [last name unknown] are individually
17 liable for the violations of IWC Wage Order 9-2001 and Labor Code §§ 203, 226, and 1194 alleged
18 above because they are owners, directors, officers, or managing agents of the Defendant entities
19 listed herein.

20 95. Defendants Gonzalez and Leo each caused the violation of Labor Code §§ 203, 226,
21 226.7, 1193.6, 1194, and 2802 by implementing and enforcing policies and procedures regarding
22 compensation established by them and/or Defendant OnTrac, including but not limited to requiring
23 delivery drivers to pay rent for vehicles and scanners, and to pay for their own vehicle insurance
24 and gasoline costs, by requiring delivery drivers to work more than eight hours in a day or forty in a
25 week without overtime premium pay, by failing to provide meal and rest breaks, failing to provide
26 accurate wage statements, failing to maintain accurate time and payroll records, failing to pay at
27 least minimum wage for all hours worked, and failing to pay all wages due upon discharge.

1 96. Plaintiff requests damages, injunctive relief, attorneys' fees and costs, interest, and
2 all penalties provided for by IWC Wage Order 9-2001 and Labor Code §§ 203, 226, and 1194.

3 **EIGHTH CAUSE OF ACTION**

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

5 **(Against all Defendants on behalf of Plaintiff and the Class)**

6 97. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
7 forth herein.

8 98. California Business and Professions Code §§ 17200 *et. seq.* (also referred to herein
9 as the "Unfair Competition Law" or "UCL") prohibits unfair competition in the form of any
10 unlawful, unfair or fraudulent business act or practice.

11 99. California Business and Professions Code § 17204 allows a person injured by unfair
12 business acts or practices to prosecute a civil action for violation of the Unfair Competition Law.

13 100. California Labor Code § 90.5(a) states it is the public policy of California to
14 vigorously enforce minimum labor standards in order to ensure employees are not required to work
15 under substandard and unlawful conditions, and to protect employers who comply with the law
16 from those who attempt to gain competitive advantage at the expense of their workers by failing to
17 comply with minimum labor standards.

18 101. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
19 years prior to the filing of this suit, Defendants have committed acts of unfair competition as
20 defined by the Unfair Competition Law by engaging in the unlawful, unfair and fraudulent business
21 practices and acts described in this Complaint, including, but not limited to violations of California
22 Labor Code §§ 201-204, 221, 226, 226.3, 226.7, 226.8, 510, 512, 558.1, 1194 and 2802, and
23 provisions of IWC Wage Order 9-2001.

24 102. The violations of these laws and regulations, as well as of the fundamental California
25 public policies protecting workers and requiring payment of wages for all work performed,
26 providing workers with adequate meal and rest periods, and discouraging unfair labor practices,
27 serve as unlawful predicate acts and practices for purposes of Business and Professions Code
28

1 §§ 17200 *et. seq.*

2 103. The acts and practices described above constitute unfair, unlawful and fraudulent
3 business practices, and unfair competition, within the meaning of Business and Professions Code
4 §§ 17200 *et. seq.*, in that, for the reasons set forth above, said acts and practices violate explicit
5 provisions of the California Labor Code and/or Wage Orders, including, without limitation, Wage
6 Order 9-2001. Defendants have obtained a significant unfair competitive advantage over law-
7 abiding employers and competitors and engaged in unfair competition, through its acts and practices
8 of denying Plaintiff and the Class meal and rest periods, full compensation for all hours worked,
9 including overtime and double time compensation for overtime and double time hours worked,
10 compensation at or above the minimum wage, and reimbursement of expenses.

11 104. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
12 and the Class have suffered a loss of money and property, in the form of unpaid wages, which are
13 due and payable to them.

14 105. California Business and Professions Code § 17203 provides that a court may make
15 such orders or judgments as may be necessary to prevent the use or employment by any person of
16 any practice that constitutes unfair competition. Injunctive relief is necessary and appropriate to
17 prevent Defendants from repeating its unlawful, unfair and fraudulent business acts and business
18 practices alleged above.

19 106. California Business and Professions Code § 17203 provides that the Court may
20 restore to any person in interest any money or property that may have been acquired by means of
21 such unfair competition. Plaintiff and the Class are entitled to restitution for all wages and
22 payments unlawfully withheld from employees during the four-year period prior to the filing of this
23 Complaint pursuant to California Business and Professions Code § 17203.

24 107. California Business and Professions Code § 17202 provides: “Notwithstanding
25 Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty,
26 forfeiture, or penal law in a case of unfair competition.” Plaintiff and the Class are entitled to
27 enforce all applicable penalty provisions of the California Labor Code pursuant to California
28

1 Business and Professions Code § 17202.

2 108. Plaintiff's success in this action will enforce important rights affecting the public
3 interest, and in that regard, Plaintiff sues on behalf of himself as well as others similarly situated.
4 Plaintiff and the Class seek and are entitled to unpaid wages, restitution, any applicable civil
5 penalties, declaratory and injunctive relief, and all other equitable remedies owing to them.

6 109. Plaintiff herein takes upon himself the enforcement of these laws and lawful claims.
7 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
8 public right, and it would be contrary to the interests of justice to penalize Plaintiff and the Class by
9 forcing them to pay attorneys' fees from the recovery in this action. Plaintiff and the Class request
10 an award of attorneys' fees, costs and expenses pursuant to Code of Civil Procedure § 1021.5 and as
11 otherwise permitted by statute.

12 110. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

13 **TENTH CAUSE OF ACTION**

14 **Violation of California Private Attorneys General Act ("PAGA")**

15 **(California Labor Code §§ 2698 *et seq.*)**

16 **(Against all Defendants on behalf of Plaintiff and the Class)**

17 111. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
18 forth herein.

19 112. Under PAGA, California Labor Code §§ 2698 *et seq.*, any aggrieved employee may
20 bring a representative action as a private attorney general on behalf of the general public, including
21 all other aggrieved employees, to recover civil penalties for their employer's violations of the
22 California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other
23 relief available under the Labor Code and must be allocated 65% to the State of California and 35%
24 to the aggrieved employees, pursuant to California Labor Code § 2699(m).

25 113. Pursuant to California Labor Code § 1198, Defendants' employment of Plaintiff and
26 others similarly situated for longer hours than those fixed by IWC Wage Order 9-2001 or under
27 conditions of labor prohibited by IWC Wage Order 9-2001 is unlawful and constitutes a violation of
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1 the California Labor Code, actionable under PAGA. Pursuant to California Labor Code § 1199, it is
2 unlawful for Defendants to have violated, or refused or neglected to have complied with, any other
3 provision of IWC Wage Order 9-2001 as alleged herein.

4 114. Plaintiff alleges, on behalf of himself and all similarly situated aggrieved employees
5 in the Class, as well as the general public of the State of California, that Defendants have violated
6 the following provisions of the California Labor Code that are actionable through PAGA, as
7 previously alleged herein: California Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 1174,
8 1194, 1198, and 2802. Each of these violations entitles Plaintiff, as a private attorney general, to
9 recover the applicable statutory civil penalties on his own behalf and on behalf of all aggrieved
10 employees, and on behalf of the general public, including but not limited to penalties pursuant to
11 California Labor Code §§ 210, 225.5, 226.3, 226.8, 558, 1174.5, 1197.1, 1199, 2802, and
12 subsection 20 of IWC Wage Order 9-2001.

13 115. On June 20, 2024, Plaintiff provided notice via online submission to the California
14 Labor and Workforce Development Agency (“LWDA”), and via certified mail to all Defendants.
15 The LWDA has not notified the Plaintiff that it does or does not intend to investigate the alleged
16 violations. A true and correct copy of Plaintiff’s June 20, 2024, submission to the LWDA is
17 attached hereto as Exhibit A and incorporated herein.

18 116. Under PAGA, Plaintiff and the State of California are entitled to recover the
19 maximum civil penalties permitted by law for the violations of the California Labor Code and IWC
20 Wage Order 9-2001 that are alleged in this Complaint.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff and the Class pray for relief as follows:

- 23 1. For an order certifying this case as a class action, appointing Plaintiff as the
24 representative of the Class, and appointing Plaintiff’s attorneys, The Villegas Law Firm, APC; Katz
25 Banks Kumin LLP; and Community Legal Services in East Palo Alto as Class Counsel;
- 26 2. For a declaratory judgment that Defendants have violated the California Labor Code,
27 IWC Wage Order 9-2001 and public policy as alleged herein;

1 3. For a declaratory judgment that Defendants have violated Business and Professions
2 Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the California Labor Code,
3 IWC Wage Order 9-2001, and California public policy protecting workers and prohibiting work
4 without full and proper compensation for work performed, adequate meal and rest periods, and
5 reimbursement for necessary work expenses;

6 4. For preliminary, permanent and mandatory injunctive relief prohibiting Defendants
7 from committing in the future those violations of law herein alleged;

8 5. For an order awarding Plaintiff and the Class compensatory and liquidated damages,
9 including lost wages, earnings, and other employee benefits and all other sums of money owed to
10 Plaintiff and the Class, together with interest on these amounts, according to proof;

11 6. For an equitable accounting to identify, locate and restore to all current and former
12 employees the restitution they are due under California Business and Professions Code §§ 17202-
13 17203, with interest thereon;

14 7. For an award of restitution, according to proof, under the California Labor Code and
15 under California Business and Professions Code §§ 17200-17205;

16 8. For an order imposing all statutory and/or civil penalties provided by law, including
17 but not limited to, penalties under California Labor Code §§ 201-203, 225.5, 226(e), 226.3, 226.7,
18 226.8, 558, 1174.5, 1197.1, 1199, 2802, 2699 (a) and (f) and subsection 20 of IWC Wage Order 9-
19 2001, together with interest on these amounts;

20 9. Pre-judgment and post-judgment interest, as provided by law;

21 10. For an award of reasonable attorneys' fees as provided by California Labor Code
22 §§ 218.5, 226(e), and 1194; California Code of Civil Procedure § 1021.5; and/or other applicable
23 law;

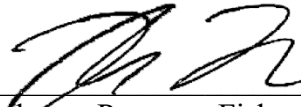
24 11. For all costs of suit; and

25 12. For such other and further legal and equitable relief as this Court deems necessary,
26 just and proper.

1
2 Dated: October 14, 2024

Respectfully submitted,

KATZ BANKS KUMIN LLP

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4 

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9 *forthcoming*)
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13 **THE VILLEGAS LAW FIRM, APC**
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San Francisco, CA 94109
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17 **COMMUNITY LEGAL SERVICES IN EAST**
18 **PALO ALTO**
19 Jennifer Smith (State Bar No. 319852)
20 1861 Bay Road
East Palo Alto, CA 94303
Tel: (650) 204-9065
Fax: (866) 688-5204
Email: jsmith@clsepa.org

22
23 *Counsel for Plaintiff and the Proposed Class*

Exhibit A



THE VILLEGAS
LAW FIRM, APC

WE REPRESENT WORKERS

Thursday, June 20, 2024

File No. 2024-00562

VIA ONLINE FILING SYSTEM PAGAfiling@dir.ca.gov

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

RE: Notice of Labor Law Violations

Labor Code Private Attorneys General Act § 2699.3

Herrera v. Express Messenger Systems, Inc., dba OnTrac; OnTrac Logistics, Inc.;

Jesus Fernando Gonzalez, an individual, Leo (last name unknown), an individual, and Does 1-100

Dear PAGA Administrator:

The Villegas Law Firm, APC, Katz Banks Kumin LLP, and Community Legal Services in East Palo Alto represent Eleazar Noe Herrera (“Complainant”), former employee of Express Messenger Systems, Inc., dba OnTrac; OnTrac Logistics, Inc.; Jesus Fernando Gonzalez, Leo (last name unknown) and Does 1-100. Complainant performed work for respondents at 250 Utah Ave. in South San Francisco, California. Express Messenger Systems, Inc., dba OnTrac was a Minnesota corporation authorized to do business in California. On April 7, 2021, Express Messenger Systems, Inc., dba OnTrac filed an Amended Statement by Foreign Corporation with the California Secretary of State changing its name to OnTrac Logistics, Inc. OnTrac Logistics, Inc., is a Delaware corporation authorized to do business in California. Jesus Fernando Gonzalez and Leo (last name unknown) are subcontractors of Express Messenger Systems, Inc., dba OnTrac and OnTrac Logistics, Inc. Express Messenger Systems, Inc., dba OnTrac; OnTrac Logistics, Inc., which shall be referred to herein collectively as (“OnTrac Respondents”). OnTrac Respondents’ corporate mailing address is listed as 8401 Greensboro Dr., 7th Floor, Mclean, VA 22102. Jesus Fernando Gonzalez and Leo (last name unknown) do business at 250 Utah Ave., South San Francisco 94080. Does 1-100 are other subcontractors of OnTrac who employ delivery drivers at the South San Francisco warehouse and at other warehouses in California.

Complainant worked for Respondents as a “Delivery Driver.” Complainant worked for OnTrac Respondents and Jesus Fernando Gonzalez from approximately 2018 to on or about June 2022, and for OnTrac Respondents and Leo (last name known) from July 2022 to September 14, 2023. Complainant’s job duties included scanning, sorting, loading and delivery of packages. Complainant was hired as a full time, non-exempt employee. Complainant generally worked 5 days a week for 10 to 13 hours per day. Complainant was promised the following compensation:

The Villegas Law Firm, APC

Main Office:

San Francisco Office
1388 Sutter St., Ste. 903
San Francisco, CA 94109

Marin County Office
1110 Mar West, Ste. K
Tiburon, CA 94920

T: 415-989-8000
F: 415-989-8028
www.e-licenciados.com

from 2018 to June 2022 - \$1.55 per “stop” and was paid weekly; from July 2022 to September 14, 2023 - \$150 per day and \$1.19 per delivery and was paid weekly. For approximately the first two years of employment, Complainant rented a van from Respondents to perform his work. Subsequently he used his own vehicle, but he was not reimbursed for wear and tear or gasoline for his vehicle. Complainant was terminated on or about September 14, 2023, because he did not show up for a shift even though he had informed his employer of a medical appointment. Complainant is covered by the provisions of Wage Order 9-2001.

The purpose of this letter is to comply with the statutory exhaustion requirements of California Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code sections 2699, *et seq.* Complainant intends to file a complaint on behalf of himself and other non-exempt hourly employees of Respondents who have been subjected to violations of the California Labor Code and employment laws and who worked within the PAGA statutory period (“Aggrieved Employees”). Accordingly, Complainant hereby notifies you that Respondents have violated or caused to be violated Labor Code sections 201-203 204, 221-223, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2802, Wage Order 9-2001 Sections 3, 4, 7, 11, and 12, with respect to himself, and on information and belief, other Aggrieved Employees. The particulars are set forth below. Upon information and belief, Respondents engage in the same unlawful practices at all warehouses in California through which OnTrac packages are delivered.

1. Failure to Provide Compliant Meal and Rest Breaks, Labor Code §§ 226.7(b), 512, and Wage Order 9-2001 § 11, 12.

Facts supporting complaint: During the time Complainant worked for Respondents, he was deprived of compliant and/or uninterrupted 30-minute meal breaks and 10-minute rest breaks that he was entitled to take. Complainant was often on the road, and delivering packages when he was not driving. Complainant would simply eat while driving and could not stop to eat or take rest breaks because he was required to deliver all his packages within a set time limit, and he was paid per delivery. Complainant is informed and believes that other Aggrieved Employees were likewise not provided with some or all of their legally compliant meal and rest breaks. Complainant was not paid a meal period premium or rest period premium for any missed meal or rest breaks and on information and belief, alleges that other Aggrieved Employees were likewise not paid any missed meal or rest period premiums.

California Labor Code § 512 and Wage Order 9-2001 Section 11 require an employer to provide an employee with a 30-minute meal period no later than the end of an employee’s fifth hour of work and a second 30-minute meal period no later than an employee’s tenth hour of work. Labor Code § 226.7 and Wage Order 9 section 12 require employers to provide one 10-minute paid rest break for shifts from three and one-half to six hours in length, two 10-minute paid rest breaks for shifts of more than 6 hours up to 10 hours, and three 10-minute paid rest breaks for shifts of more than 10 hours up to 14 hours.

An employer who refuses to provide his or her employees with compliant meal and rest periods must compensate that employee for one hour of pay at the employee’s regular rate of pay for each meal and rest period, for a maximum of 2 hours of pay per day. Cal. Lab. Code §

226.7(b); Wage Order 9-2001 Sections 11 and 12.

2. Failure to Pay All Hours Worked Including Premium Overtime Wages, Labor Code §§ 221-223, 204, 510, 558, 1194, 1194.2, 1198 and Wage Order 9-2001 Section 3.

Facts supporting complaint: Complainant and other Aggrieved Employees have worked for Respondents during the statutory PAGA period. As non-exempt employees, Complainant and the other Aggrieved Employees had the right to be paid at the appropriate hourly rate (straight-time, overtime, or double-time) for all the hours they worked. *See* Lab. Code § 221-223. Wage Order 9-2001, which governs the transportation industry, and California Labor Code § 510 require employers to compensate their employees at a rate of one-and-a-half times the employee's regular rate of pay for all hours worked in excess of eight hours in a day or more than 40 hours in a week, and for the first eight hours worked on the seventh day of the workweek. Wage Order 9-2001 section 3(A).

Complainant and, on information and belief, other Aggrieved Employees were not paid at the appropriate hourly rate for all the hours they worked. Specifically, instead of being paid an hourly rate, Complainant was paid per stop, at times in addition to a daily base rate and at times not and was not compensated at the overtime rate for overtime hours worked regardless of the number of hours he worked in a day. Complainant was not paid for any overtime work even though he regularly worked over eight hours in a day or over forty hours in week. Other Aggrieved Employees regularly worked over 8 hours per day and over 40 hours per week. Aggrieved employees generally worked 6 days per week rather than 5 (Complainant did not work Saturday for religious reasons), and over 8 hours per day to complete all required package deliveries each day.

3. Failure to Pay Minimum Wages Due, Labor Code §§ 1182.12, 1194, 1194.2, 1197 and Wage Order 9-2001 Section 4.

Facts supporting complaint: Complainant and other Aggrieved Employees have worked for Respondents during the statutory PAGA period. During that time Complainant and, on information and belief, the other Aggrieved Employees, were not paid for all of the hours they actually worked. On a regular basis, Complainant was shorted about 10-20 deliveries per week and therefore was not paid at least the California minimum wage of \$15.50 per hour for the time spent delivering those packages, in violation of Cal. Lab. §§ 1197 and 1182.2, entitling him to liquidated damages equal to the unpaid wages and interest thereon pursuant to Labor Code Section 1194.2.

4. Failure to Provide Accurate Itemized Wage Statements, Labor Code § 226(a) and 226.3.

Facts supporting complaint: Labor Code section 226(a) expressly mandates that employers provide accurate itemized wage statements to employees with each payment of wages. During the period Complainant worked for OnTrac Respondents and Jesus Fernando Gonzales, Respondents did not *any* wage statements to Complainant and paid him by personal

check. During the time period Complainant worked for OnTrac Respondents and Leo (last name unknown), Respondents provided him with a non-complaint wage statement which summarized his base rate and the cumulative amount he was paid per stop for each day without any further detailed information about the calculation or about his hours worked. Complainant is informed and believes that Respondents likewise did not issue compliant wage statements to other Aggrieved Employees.

In addition, Labor Code section 224(i) requires that an employer provide an employee with written notices that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages. Respondents did not set forth the amount of paid sick leave accrued and available to Complainant in violation of the law. On information and belief, Respondents did not provide other Aggrieved Employees with wage statements that provided the information required by Labor Code Section 224(i) either.

Pursuant to Labor Code §226(e), employees who, like Complainant, have been injured by an employer's failure to comply with section 226(a) are entitled to damages in the amount of \$50.00 for the initial pay period in which a violation occurred and \$100.00 for each violation in subsequent pay periods, up to a maximum of \$4,000.00.

5. Failure to Maintain Payroll Records, Labor Code §§ 226(a), 1174, 1174.5, and Wage Order 9-2001 Section 7.

Facts supporting complaint: Labor Code section 1174 and Wage Order 9-2001 section 7 require that employers maintain accurate payroll and other employee records for a period of at least three years. Moreover, Labor Code § 226(a) expressly mandates that employers provide accurate itemized wage statements to employees with each payment of wages. Respondents did not provide any accurate wage statements to Complainant. On information and belief, Complainant alleges that Respondents similarly failed to maintain accurate time and payroll records for other Aggrieved Employees.

6. Waiting Time Penalties, Labor Code Sections 201, 202 and 203

Facts supporting complaint: Labor Code section 201 provides that if an employer discharges an employee, all wages due and unpaid must be paid immediately at the time of discharge. Labor Code section 202 provides that all wages due and unpaid of an employee who quits without notice are due and payable 72 hours after quitting. Labor Code section 203 provides that an employer who willfully fails to pay all wages due and unpaid in violation of Labor Code sections 201 and 202 is subject to waiting time penalties of up to 30 days of additional wages.

Respondents did not pay Complainant all of his wages, including regular wages, overtime, and premium pay, immediately upon his termination. Therefore, Complainant is entitled to waiting time penalties in the amount of his average daily wage for thirty days. Complainant is informed and believes that other Aggrieved Employees who quit or were

involuntarily terminated were not paid all wages due and unpaid in violation of Labor Code sections 201, 202, and 203.

7. Failure to Reimburse Business Expenses, Labor Code § 2802.

It is a violation of Labor Code § 2802 for employers to fail to reimburse employees for necessary business expenses.

Respondents first required Complainant to rent a vehicle and a scanner from them in order to complete his deliveries. A vehicle was necessary to deliver packages on his route, and a scanner was necessary to log the completion of each delivery. Respondents deducted rent for the van from Complainant's pay and did not reimburse him for out-of-pocket costs for gasoline and repairs. When Complainant used his own vehicle, Respondents did not reimburse him for mileage and required him to purchase an insurance policy. Complainant is informed and believes that other Aggrieved Employees were similarly required to rent a vehicle and/or scanner from Respondents and/or use their own vehicle and were not reimbursed for business expenses.

8. California Paid Sick Leave Violations, Labor Code § 246(b)(1)(c), Lab. Code §246.5

After an employee has completed 90 days of employment, the employer must provide the employee with at least one hour of sick time for each 30 hours worked. Lab. Code § 246(b)(1)-(c). Under California law, an employee begins to accrue sick leave immediately upon starting work at a rate of at least one hour for each 30 hours worked, and, once the employee has completed 90 days of employment, the employer must permit the employee to use the accrued sick leave. Lab. Code § 246(b)(1)-(c). An employer may not deny an employee the right to use accrued sick days. An employer also may not discharge, threaten to discharge, demote, suspend or in any way discriminate against an employee for using accrued sick days. Lab. Code §246.5. Complainant was provided with no sick time and was ultimately terminated after he was unable to go to work to attend a medical appointment. Complainant is informed and believes that other Aggrieved Employees were also similarly denied their ability to use accrued sick leave.

9. Willful Misclassification, California Labor Code § 226.8

Respondents willfully misclassified Complainant as an independent contractor to avoid paying him an hourly rate and overtime, providing meal and rest breaks, providing accrued paid sick time, and reimbursing him for business expenses. Respondents made deductions for vehicle rent and/or vehicle-related costs and scanner rent which would have violated the law had Complainant not been misclassified. Respondents have engaged and continue to engage in a pattern or practice of willfully misclassifying delivery drivers as independent contractors and making unlawful deductions from their wages. Respondents are therefore liable for civil penalties of \$10,000-\$15,000 for each violation.

Conclusion

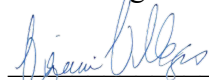
Complainant submits this letter to comply with the provisions of Labor Code Section

2699.3. If we do not receive notice from your agency regarding an intent to investigate within the time periods provided by Labor Code Section 2699.3, we will commence a civil action pursuant to Section 2699.

Please contact us with any questions. Thank you for your attention to this matter.

Sincerely,

The Villegas Law Firm, APC



Virginia Villegas
Attorneys for Complainant

cc: Complainant- Regular Mail

cc: Via Certified Mail to:

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