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9 Attorneys for Plaintiffs DAVID NEWCOMB, FELIPE CORTES,
10 JOSUE CASTRO, SAMETH SMON,
on behalf of the general public as private attorney general

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN JOAQUIN**

13 STK-CV-UOE -2025- 1212

14 DAVID NEWCOMB, FELIPE CORTES,
15 JOSUE CASTRO, SAMETH SMON, on behalf
of the general public as private attorney general,

16 Plaintiffs,

17 v.
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19 NATIONAL EXPRESS CARRIERS, INC., an
Illinois Corporation; 10-4 ALLIANCE, LLC, an
20 Illinois Limited Liability Company and DOES
1-50, inclusive,
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22 Defendants.
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Case No.

ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

COMES NOW Plaintiffs DAVID NEWCOMB, FELIPE CORTES, JOSUE CASTRO, SAMETH SMON (“Plaintiffs”), on behalf the general public and all non-exempt aggrieved employees misclassified as exempt, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants NATIONAL EXPRESS CARRIERS, INC., an Illinois Corporation; 10-4 ALLIANCE, LLC, an Illinois Limited Liability Company and DOES 1-50, inclusive, (“Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendants’: (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all wages earned and owed upon separation from Defendants’ employ and during employment, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse necessary business expenses, (g) misclassification of non-exempt employees as independent contractors, and (h) failure to pay vested vacation pay. As a result Plaintiffs seek penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief,

1 Defendants either has sufficient minimum contacts in California, or otherwise intentionally avails
2 itself of the California market so as to render the exercise of jurisdiction over it by the California
3 Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendants is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants is doing business throughout California, including but
6 not limited to San Joaquin County, and each Defendants is within the jurisdiction of this Court for
7 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiffs and
8 all other aggrieved employees within the State of California. Defendants employs numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants has conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiffs, and the
13 similarly situated aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendants consistently maintained and enforced against
21 Defendants' aggrieved Employees, among others, the following unlawful practices and policies,
22 in violation of California state wage and hour laws: (a) failure to pay minimum and overtime
23 wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all
24 wages earned and owed upon separation from Defendants' employ and during employment, (e)
25 failure to provide accurate itemized wage statements, (f) failure to reimburse necessary business
26 expenses, (g) misclassification of non-exempt employees as independent contractors, and (h)
27 failure to pay vested vacation pay.
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1 9. On information and belief, during the statutory liability period and continuing to
2 the present, Defendants wrongfully misclassified Plaintiffs and aggrieved employees as
3 independent contractors rather than non-exempt employees.

4 10. On information and belief, during the statutory liability period and continuing to
5 the present, Defendants has had a consistent policy of failing to pay wages including overtime
6 wages for hours worked while subject to the control of Defendants.

7 11. On information and belief, during the statutory liability period and continuing to
8 the present, Defendants has failed to provide meal periods to Plaintiffs and aggrieved employees.
9 Defendants has also failed to provide meal premiums for missed meal periods.

10 12. On information and belief, during the statutory liability period and continuing to
11 the present, Defendants has failed to provide rest periods to Plaintiffs and aggrieved employees.
12 Defendants has also failed to provide rest premiums for missed rest periods.

13 13. On information and belief, during the statutory liability period and continuing to
14 the present, Defendants has had a consistent policy of failing to timely pay wages upon separation.

15 14. On information and belief, during the statutory liability period and continuing to
16 the present, Defendants has had a consistent policy of failing to timely pay wages during
17 employment.

18 15. On information and belief, during the statutory liability period and continuing to
19 the present, Defendants has had a consistent policy of failing to pay vested vacation pay.

20 16. On information and belief, during the statutory liability period and continuing to
21 the present, Defendants has failed to provide Plaintiffs and aggrieved employees accurate itemized
22 wage statements.

23 17. On information and belief, during the statutory liability period and continuing to
24 the present, Defendants has failed to reimburse necessary business expenses to Plaintiffs and
25 aggrieved employees.

26 18. Plaintiffs on behalf of the general public as private attorney general and all other
27 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
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1 enumerated under 2699.5 as follows: sections 201-204, 226, 226.8, 510, 558, 226, 226.3, 1174,
2 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and seeking penalties, interest, attorneys' fees and
3 costs.

4 **III. PARTIES**

5 **A. Plaintiffs**

6 19. Plaintiff, DAVID NEWCOMB, was at all times relevant to this action, a resident
7 of California. Plaintiff began working for Defendants in approximately December of 2023 as an
8 independent contractor with the title of Over-The-Road Trucker and worked during the liability
9 period for Defendants until approximately March of 2024.

10 20. Plaintiff, FELIPE CORTES, was at all times relevant to this action, a resident of
11 California. Plaintiff worked as an independent contractor with the title of Over-The-Road Trucker
12 and worked during the liability period for Defendants until approximately March of 2024.

13 21. Plaintiff, JOSUE CASTRO, was at all times relevant to this action, a resident of
14 California. Plaintiff began working for Defendants in approximately December of 2023 as an
15 independent contractor with the title of Over-The-Road Trucker and worked during the liability
16 period for Defendants until approximately March of 2024.

17 22. Plaintiff, SAMETH SMON, was at all times relevant to this action, a resident of
18 California. Plaintiff began working for Defendants in approximately December of 2023 as an
19 independent contractor with the title of Over-The-Road Trucker and worked during the liability
20 period for Defendants until approximately March of 2024.

21 23. Defendants set up the Plaintiffs with separate bank accounts and forced them to
22 each make their own Limited Liability companies to be paid under. Their pay checks were
23 deducted for costs such as rental of the trucks they drove, cleaning of said trucks, and insurance.
24 Plaintiffs never authorized these deductions. Defendants had full control over Plaintiffs and
25 Aggrieved employees Schedules and Routes. Therefore, Plaintiffs and other truck drivers like
26 Plaintiffs were wrongfully classified as independent contractors, causing them to lose all rights
27 and protections afforded to non-exempt employees such as overtime pay, rest periods, and meal
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1 periods.

2 24. As Defendants' employee, Plaintiffs, and all other aggrieved employees were
3 regularly required to and subsequently suffered:

- 4 a) to perform work subject to the control of the employer without being compensated all
5 wages including overtime, all in violation of California labor laws, regulations, and the
6 Industrial Welfare Commission Wage Order ("IWC");
7 b) not provided first and second meal periods nor paid premium wages;
8 c) not provided first and second rest periods nor paid premium wages;
9 d) not paid timely upon separation from Defendants' employ;
10 e) not provided accurate itemized wage statements;
11 f) misclassified as independent contractors;
12 g) not paid timely during employment; and
13 h) not reimbursed or necessary business expenses.

14 25. On information and belief, Defendants willfully failed to pay all earned wages in
15 the form regular wages and overtime wages, to its Non-Exempt Employees and members of the
16 Representative Group; nor have Defendants returned to Plaintiffs or members of the
17 Representative Group, upon or after separation from employment with Defendants, all wages
18 earned and owing. Plaintiffs seeks penalties under Labor Code 2698, *et. seq.* on behalf of the
19 general public as private attorney general and all other aggrieved employees.
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21 **B. Defendants**

22 26. Defendant, NATIONAL EXPRESS CARRIERS, INC. is an Illinois Corporation
23 which operates as a trucking and transit company. Defendant operates in several California
24 locations and nationwide. Plaintiffs estimate there are in excess of one hundred (100) Non-Exempt
25 Employees who work or have worked for Defendant over the last year.

26 27. Defendant, 10-4 ALLIANCE, LLC, is an Illinois Limited Liability Company which
27 operates as a trucking and transit company. Defendant operates in several California locations and
28 nationwide. Plaintiffs estimate there are in excess of one hundred (100) Non-Exempt Employees

1 who work or have worked for Defendant over the last year.

2 28. Other than identified herein, Plaintiffs are unaware of the true names, capacities,
3 relationships and extent of participation in the conduct alleged herein, of the Defendants sued as
4 DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are
5 legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants
6 by such fictitious names. Plaintiffs will amend this complaint when their true names and
7 capabilities are ascertained.

8 29. Plaintiffs are informed and believes and thereon alleges that each Defendants,
9 directly or indirectly, or through agents or other persons, employed Plaintiffs and other members
10 of the Representative Group, and exercised control over their wages, hours, and working
11 conditions. Plaintiffs are informed and believes and thereon alleges that each Defendants acted in
12 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
13 business plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally
14 attributable to the other Defendants.

15 IV. GENERAL ALLEGATIONS

16 30. At all times set forth herein, Defendants employed Plaintiffs and other persons in
17 the capacity of non-exempt positions, however titled, throughout the state of California.

18 31. Plaintiffs are informed and believe Aggrieved Employees have at all times pertinent
19 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
20 rules and regulations of the IWC California Wage Orders.

21 32. Defendants continues to employ Non-Exempt Employees, however titled, in
22 California and implement a uniform set of policies and practices to all non-exempt employees, as
23 they were all engaged in the generic job duties related to Defendants' trucking and transit business.

24 33. Plaintiffs are informed and believe, and thereon alleges, that Defendants is and were
25 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
26 the requirements of California's wage and employment laws.

27 34. On information and belief, during the relevant time frame, Plaintiffs and Aggrieved
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1 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
2 week.

3 35. During the relevant time frame, Defendants compensated Plaintiffs and Aggrieved
4 Employees based upon an hourly rate.

5 36. On information and belief, during the relevant time frame, Plaintiffs and Aggrieved
6 Employees typically worked five (5) days a week.

7 37. Plaintiffs are informed and believe that the Aggrieved Employees were required to
8 keep similar schedules.

9 38. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
10 hours a day and/or over forty (40) hours in a workweek but were not properly paid minimum and
11 overtime wages.

12 39. Plaintiffs and Aggrieved Employees would be scheduled for 14 hour days but
13 would sometimes work a full 24 hours and would have to sleep in their trucks in order to complete
14 any dispatched deliveries required of them. No overtime wages were paid because the Plaintiffs
15 and Aggrieved Employees have been willfully misclassified as Independent Contractors.

16 40. Defendants also failed to properly calculate Plaintiffs' and Aggrieved Employees'
17 regular rate of pay including but not limited to by failing to include all forms of
18 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
19 commissions, shift differentials, and other compensation for overtime calculation purposes.

20 41. During the relevant time, as a consequence of Defendants' staffing and scheduling
21 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
22 provide Plaintiffs and Aggrieved Employees timely, legally complaint uninterrupted 30-minute
23 meal periods on shifts over five hours as required by law.

24 42. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
25 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiffs
26 and Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
27 required by law. Plaintiffs and Aggrieved Employees worked more than ten hours a day on a
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1 consistent and regular basis during the relevant time period without any second meal periods.

2 43. On information and belief, Plaintiffs and Aggrieved Employees did not waive their
3 rights to meal periods under the law.

4 44. Plaintiffs and Aggrieved Employees were not provided with valid lawful on-duty
5 meal periods.

6 45. Despite the above-mentioned meal period violations, Defendants failed to
7 compensate Plaintiffs, and on information and belief, failed to compensate Aggrieved Employees,
8 one additional hour of pay at their regular rate as required by California law when meal periods
9 were not timely or lawfully provided in a compliant manner.

10 46. Plaintiffs are informed and believe, and thereon alleges, that Defendants know,
11 should know, knew, and/or should have known that Plaintiffs and Aggrieved Employees were
12 entitled to receive premium wages based on their regular rate of pay under California Labor Code
13 § 226.7 but were not receiving such compensation.

14 47. In addition, during the relevant time frame, Plaintiffs and the Non-Exempt
15 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
16 period for every four hours worked or major fraction thereof, which is a violation of the California
17 Labor Code and IWC wage order.

18 48. Defendants maintained and enforced scheduling practices, policies, and imposed
19 work demands that frequently required Plaintiffs and Aggrieved Employees to forego their lawful,
20 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
21 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
22 to provide relief for Plaintiffs and Aggrieved Employees to take their lawfully required breaks.

23 49. Despite the above-mentioned rest period violations, Defendants did not compensate
24 Plaintiffs, and on information and belief, did not pay Aggrieved Employees one additional hour of
25 pay at their regular rate as required by California law, including California Labor Code § 226.7
26 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized
27 and permitted.
28

1 50. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
2 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
3 thereof for resignations without prior notice as the case may be) they had a duty to accurately
4 compensate Plaintiffs and Aggrieved Employees for all wages owed including minimum wages,
5 meal and rest period premiums, and any associated profit shares earned by Plaintiffs and Aggrieved
6 Employees which Defendants had the financial ability to pay such compensation, but willfully,
7 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
8 violations.

9 51. Defendants failed to reimburse Plaintiffs and Aggrieved Employees for business
10 expenses incurred pursuant to California Labor Code § 2802. For instance, Plaintiffs and
11 Aggrieved Employees were required to use their own personal cell phones and GPS devices to
12 carry out their employment duties everyday with no reimbursement compensated to them;

13 52. Plaintiffs and Aggrieved Employees were not paid vested vacation pay pursuant to
14 Labor Code section 227.3.

15 53. Plaintiffs and Aggrieved Employees were subject to Defendants willful violation
16 of Labor Code section 226.8. Plaintiffs and Aggrieved Employees were required by Defendants to
17 each create their own limited liability companies and bank accounts so that they could be paid as
18 independent contractors.

19 54. Defendants were essentially seeking to unlawfully act as lease operators of their
20 trucks by requiring Plaintiffs and Aggrieved Employees to pay about \$2,500 in total for each
21 individual for insurance of the trucks they were driving and were responsible for any damages to
22 the trucks. These payments were automatically deducted from their checks on a weekly basis.

23 55. Defendants automatically deducted about \$180 from each pay check to pay for their
24 workers compensation insurance.

25 56. Upon information and belief, Defendants knew and or should have known that it is
26 improper to implement policies and commit unlawful acts such as:
27

28 (a) requiring employees to work four (4) hours or a major fraction thereof without

1 being provided a minimum ten (10) minute rest period and without compensating the employees
2 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
3 rest period was not provided;

4 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
5 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
6 and without compensating employees with one (1) hour of pay at the regular rate of compensation
7 for each workday that such a meal period was not provided;

8 (c) failing to pay overtime and minimum wages;

9 (d) failing to pay timely wages upon separation from Defendants' employ;

10 (e) failing to maintain accurately itemized wage statements;

11 (f) failing to reimburse necessary business expenses;

12 (g) failing to pay vested vacation pay; and

13 (h) misclassifying non-exempt employees as independent contractors

14 57. In addition to the violations above, and on information and belief, Defendants knew
15 they had a duty to compensate Plaintiffs and Aggrieved Employees for the allegations asserted
16 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
17 knowingly, recklessly, and/or intentionally failed to do so.

18 58. Plaintiffs and Aggrieved Employees they seek to represent are covered by, and
19 Defendants is required to comply with, applicable California Labor Codes, Industrial Welfare
20 Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding
21 applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq.*
22

23 **V. REPRESENTATIVE CLAIMS**

24 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

25 59. Plaintiffs incorporates by reference and re-alleges each and every allegation
26 contained above, as though fully set forth herein.

27 60. PAGA is a mechanism by which the State of California can enforce state labor laws
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1 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
2 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a
3 law enforcement action designed to protect the public and not to benefit private parties. The
4 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
5 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
6 Legislature specified that "it was...in the public interest to allow aggrieved employees, acting as
7 private attorneys general to recover civil penalties for Labor Code violations..." Stats. 2003, Ch.
8 906, section 1. Accordingly, PAGA claims cannot be subject to arbitration.

9 61. Plaintiffs brings this Representative Action on behalf of the State of California with
10 respect to himself and all other individuals who are or previously were employed by Defendants
11 as Security Directors who were classified as exempt from overtime wages in California during the
12 applicable statutory period (the "aggrieved employees"). Plaintiffs and the other aggrieved
13 employees regularly worked overtime hours for which they were not compensated as required by
14 California law.

15 62. To perform their finite tasks, Plaintiffs and aggrieved employees did not engage in
16 supervisory or managerial roles given the constraints placed upon them by company policy.
17 Plaintiffs and aggrieved employees did not determine what work was to be done by other
18 employees. Instead, Plaintiffs and aggrieved employees only retained a minor role in readjusting
19 work assignments in accordance with Defendants' uniform corporate guidelines. Furthermore,
20 Plaintiffs and aggrieved employees, only trained other security guards based on training provided
21 to them by the Defendants. Lastly, Plaintiffs and aggrieved employees did not have the authority
22 to hire, fire, or promote employees, or make any other personnel decisions. Such decisions were
23 only made by the human resources department. Overall, Plaintiffs and aggrieved employees were
24 engaged in a type of work that require no exercise of independent judgment or discretion as to any
25 matter of significance. Therefore, Plaintiffs and aggrieved employees were "directors" only in
26 name because they did not have managerial duties or authority and therefore should have been
27 properly classified as non-exempt employees.
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1 63 On November 4, 2024 Plaintiffs complied with notice requirements pursuant to Labor
2 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
3 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
4 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
5 indicated intent to investigate the claims. Therefore, Plaintiffs may proceed with this action in a
6 representative capacity. The substance and violations set forth in this Complaint of which the
7 LWDA was provided timely notice, Plaintiffs has also sent a copy of this PAGA Representative
8 Action Complaint to the LWDA.

9 64. Plaintiffs are an aggrieved employee as defined in Labor Code Section 2699(a).
10 Plaintiffs brings this cause of action on behalf of all current and former California non-exempt
11 Employees of Defendants misclassified as exempt.

12 65. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for
13 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
14 including without limitation Labor Code section 201-204, 226, 226.8, 226.3, 510, 558, 1174,
15 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and, 2698 *et seq.*, applicable IWC Wage Orders
16 and California Code of Regulations, Title 8, section 11000 *et. seq.*

17 66. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
18 overtime wages owed as discussed above for Defendants' wrongful misclassification of Plaintiffs
19 and aggrieved employee's exempt status. Therefore, Defendants violated section 510, and 1194
20 by not compensating its Non-Exempt Employees for work performed in excess of eight hours (8)
21 in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to
22 overtime compensation at the rate of one and one-half times the regular rate of pay for all hours
23 worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime
24 compensation twice the regular rate of pay for hours worked in excess of twelve (12) hours in a
25 day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week

26 67. Defendants also willfully violated Labor Code sections 201-203 by failing to
27 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
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1 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
2 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
3 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
4 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
5 The penalty cannot exceed 30 days of wages.

6 68. Labor Code section 204 states in relevant part "(a) All wages, other than those
7 mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment
8 are due and payable twice during each calendar month, on days designated in advance by the
9 employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of
10 any calendar month shall be paid for between the 16th and the 26th day of the month during which
11 the labor was performed, and labor performed between the 16th and the last day, inclusive, of any
12 calendar month, shall be paid for between the 1st and 10th day of the following month."

13 69. Plaintiffs and all other aggrieved employees who were separated from employment
14 are entitled to compensation for all forms of wages earned, including but not limited to
15 compensation minimum and overtime wages, but to date have not received such compensation,
16 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-204.

17 70. On information and belief, Defendants willfully failed to pay all wages due and
18 owing upon separation from employment. These wages include minimum and overtime wages.

19 71. On information and belief, Defendants failed to provide accurate itemized wage
20 statements which failed to include all hours worked, including overtime, due and owing to
21 Plaintiffs and the aggrieved employees, and the address of the legal entity that is the employer
22 pursuant to Labor Code section 226(a).

23 72. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
24 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
25 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
26 for each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
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1 73. Additionally, Defendants have no accurate records relating to aggrieved
2 employees' work periods, total daily hours worked, total hours worked per payroll period and
3 applicable pay rates, in violation of applicable Wage Orders. Similarly, Defendants failed to
4 maintain accurate records relating to hours worked daily in violation of Labor Code sections
5 1174(d), 1174.5.

6 74. Labor Code section 227.3 requires that accrued vacation time be treated as vested
7 "wages" upon an employee's separation of employment for any reason which must be paid out at
8 the employee's then regular rate of pay. Defendants failed to do comply with this section.

9 75. On information and belief, Defendants failed to reimburse Plaintiffs and Aggrieved
10 Employees for business expenses incurred as described above. Labor Code § 2802 requires
11 Defendants to indemnify Plaintiffs and Aggrieved Employees for necessary expenditures incurred
12 in direct consequences of the discharge of his or her duties. Despite these realities of the job,
13 Defendants failed to provide reimbursements.

14 76. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or
15 implied, made by any employee to waive the benefits of this article or any part thereof is null and
16 void, and this article shall not deprive any employee or his or her personal representative of any
17 right or remedy to which he is entitled under the laws of this State.

18 77. California Labor code section 226.8 states in relevant part: "(a) It is unlawful for
19 any person or employer to engage in any of the following activities: (1) Willful misclassification
20 of an individual as an independent contractor. (2) Charging an individual who has been willfully
21 misclassified as an independent contractor a fee, or making any deductions from compensation,
22 for any purpose, including for goods, materials, space rental, services, government licenses,
23 repairs, equipment maintenance, or fines arising from the individual's employment where any of
24 the acts described in this paragraph would have violated the law if the individual had not been
25 misclassified."

26 78. As a result of Defendants' unlawful conduct, Plaintiffs and aggrieved employees
27 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
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1 worked.

2 79. Plaintiffs and the Representative aggrieved Employees are entitled to recover
3 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

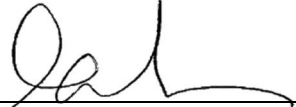
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs prays for judgment against Defendants, as follows:

- 6 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 7 2. For reasonable attorneys' fees and costs; and
- 8 3. For such other and further relief as the Court deems proper.
- 9

10 Dated: January 22, 2025

JAMES HAWKINS APLC

11
12 By: 

13 JAMES R. HAWKINS
14 GREGORY MAURO
15 MICHAEL CALVO
16 LAUREN FALK
17 AVA ISSARY

18 Attorneys for Plaintiffs DAVID
19 NEWCOMB, FELIPE CORTES, JOSUE
20 CASTRO, SAMETH SMON on behalf of the
21 general public as private attorney general
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EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

November 4, 2024

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

NATIONAL EXPRESS CARRIERS, INC.,
an Illinois Corporation
Agent for Service of Process:
SARUNAS BRAZDEIKIS
1130 CHICAGO TUBE DR
ROMEDEVILLE, IL 60446
Receipt No.: Already Served

10-4 ALLIANCE, LLC,
an Illinois Limited Liability Company,
Agent for Service of Process:
MARTYNA BRAZDEIKIS
717 Saint Joseph Dr, Suite 329
SAINT JOSEPH, MI 49085
Receipt No. 9589 0710 5270 2388 9475 23

**Re: AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS
2698, *et seq.***

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiffs DAVID NEWCOMB, FELIPE CORTES, JOSUE CASTRO, SAMETH SMON, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, NATIONAL EXPRESS CARRIERS, INC., an Illinois Corporation and 10-4 ALLIANCE, LLC, an Illinois Limited Liability Company, through its Agent for Service of Process.

Amended to reflect new address for the entity 10-4 Alliance, LLC.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the San Joaquin County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint