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Attorneys for Plaintiff JORGE ZAMUDIO,
individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Assigned for All Purposes
Judge Sandy Leal

JORGE ZAMUDIO, individually and on behalf
of all others similarly situated,

Plaintiff(s),

v.

COOL BREEZE TRUCKING INC; and DOES
1 through 100,

Defendant(s).

Case No. 30-2024-01431161-CU-OE-CJC

COMPLAINT

- 1. Failure to Provide Compliant Meal Periods**
- 2. Failure to Provide Compliant Rest Periods**
- 3. Failure to Pay for All Hours Worked**
- 4. Failure to Pay All Overtime Owed**
- 5. Wage Statement Penalties**
- 6. Violation of Unfair Competition Law**
- 7. Violation of California Government Code § 12940 (h) - Retaliation**

RELEVANT PARTIES

1. Plaintiff JORGE ZAMUDIO ("Plaintiff") is an adult resident of Los Angeles County, California, and was at all times relevant residing in Los Angeles County, California.
2. Defendant COOL BREEZE TRUCKING INC ("Defendant") is a California corporation with its principal place of business located in Orange County, California. Defendant is registered to and does conduct business in the State of California and is subject to the laws of the State of California. All acts and omissions of Defendant employees as alleged herein occurred while they were acting within the course and scope of their employment.
3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1 through 100, inclusive ("Doe Defendants"), and therefore sues said Doe Defendants by such

1 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
2 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
3 informed and believes, and based on such information and belief alleges, that each of the fictitiously
4 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
5 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
6 and Doe Defendants are collectively referred to as “Defendants”.

7 **JURISDICTION AND VENUE**

8 4. This action is properly filed in Orange County because the acts and omissions that give rise
9 to Plaintiff’s claims took place in Orange County, and Defendants transact substantial business in
10 this County.

11 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
12 alleged herein occurred in Orange County, California and Plaintiff suffered damages from such
13 conduct within Orange County, California.

14 **FACTUAL ALLEGATIONS**

15 6. At all times relevant, Plaintiff was Defendants’ employee.

16 7. Plaintiff was employed by Defendants from July 27, 2023, to the present.

17 8. Defendants failed to provide Plaintiff with compliant meal breaks because Defendants
18 required Plaintiff to wait over six hours before taking his first meal break, never provided him a
19 second meal break during his frequent shifts over 10 hours, affirmatively instructed him not to take
20 breaks, pressured him to skip or delay breaks to meet delivery deadlines, and incorrectly claimed
21 that waiting in his truck while counted as break time. Despite not being provided with compliant
22 meal breaks, Defendants did not pay premium pay for these missed breaks at Plaintiff’s regular rate
23 of pay.

24 9. Defendants failed to provide Plaintiff with compliant rest breaks because Defendants did not
25 allow Plaintiff to take any rest breaks during shifts, including extended shifts of over 12 hours,
26 incorrectly claiming that waiting in his truck counted as rest break time. Despite not being provided
27 with compliant rest breaks, Defendant did not pay premium pay for these missed breaks at
28 Plaintiff’s regular rate of pay.

1 10. Defendants failed to pay Plaintiff for all hours worked because Defendants required Plaintiff
2 to perform work during his breaks and off the clock.

3 11. Defendants failed to pay Plaintiff all overtime owed because Defendant manipulated or did
4 not account for Plaintiff's meal and rest breaks or the work that he performed during these breaks,
5 resulting in an incorrect rate of pay.

6 12. Defendants failed to correctly calculate Plaintiff's regular rate of pay, and as a result,
7 underpaid Plaintiff's overtime. Specifically, Defendants did not include all non-discretionary pay
8 that Plaintiff earned when calculating Plaintiff's regular rate of pay.

9 13. Defendants failed to provide Plaintiff with accurate wage statements because the wage
10 statements issued to Plaintiff did not accurately list total wages owed and hours worked, among
11 other things.

12 14. Within one month of Plaintiff's complaint to Defendants regarding Defendants' violations,
13 Defendants reneged on their promises to Plaintiff for a raise and additional job training that would
14 allow Plaintiff's career advancement, citing a pretextual reason.

15 **PAGA ALLEGATIONS**

16 15. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
17 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
18 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
19 action brought by an aggrieved employee on behalf of himself or herself and other current or former
20 employees pursuant to the procedures outlined in Labor Code section 2699.3.

21 16. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action
22 under PAGA after the following requirement have been met:

23 17. The aggrieved employee has provided written notice by online filing to the LWDA and by
24 certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the
25 Labor Code alleged to have been violated, including the facts and theories to support the alleged
26 violations; and

27 18. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the
28 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's

1 claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within
2 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may
3 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

5 19. On July 22, 2024, Plaintiff provided written notice by online filing to the LWDA and by
6 certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated
7 by Defendants, including the facts and theories to support the alleged violations.

8 20. Upon expiration of the 65-day notice period, if the LWDA does not provide Plaintiff with
9 written notice that it intends to investigate the alleged violations of the Labor Code, Plaintiff will
10 amend this complaint to add a cause of action seeking PAGA Penalties on behalf of all Aggrieved
11 Employees.

12 21. The Aggrieved Employees are defined as "All other nonexempt, hourly employees, current
13 and former, who were employed by Defendants within one year prior to July 22, 2024, through final
14 disposition of this action."

15 **FIRST CAUSE OF ACTION**

16 **Failure to Provide Compliant Meal Periods**

17 **By Plaintiff Against All Defendants**

18 22. Plaintiff incorporates by reference the paragraphs above.

19 23. Labor Code section 512 and the Wage Orders provide that "an employer shall not employ an
20 employee for a work period of more than five hours per day without providing the employee with a
21 meal period of not less than 30 minutes" or "for a work period of more than 10 hours per day
22 without providing the employee with a second meal period of not less than 30 minutes".

23 24. An employer provides compliant meal breaks to its employees "if it relieves its employees
24 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
25 take an uninterrupted 30-minute break." (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
26 1004, 1040 (2012)).

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1 25. Not only must an employer affirmatively relieve its employees of all duty during their meal
2 breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks.
3 (*Brinker*, supra).

4 26. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

5 27. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
6 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
7 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
8 11 Cal. 5th 858 (2021)).

9 28. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a meal
10 break was missed.

11 29. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
12 penalties, attorney fees, and costs.

13 **SECOND CAUSE OF ACTION**

14 **Failure to Provide Compliant Rest Periods**

15 **By Plaintiff Against All Defendants**

16 30. Plaintiff incorporates by reference the paragraphs above.

17 31. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
18 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
19 per four hours or major fraction thereof.

20 32. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and
21 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
22 5th 257, 269 (2016)).

23 33. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

24 34. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
25 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
26 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
27 11 Cal. 5th 858 (2021)).

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1 35. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest
2 break was missed.

3 36. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
4 penalties, attorney fees, and costs.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Pay for All Hours Worked**

7 **By Plaintiff Against All Defendants**

8 37. Plaintiff incorporates by reference the paragraphs above.

9 38. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
10 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
11 40 hours in a workweek.

12 39. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

13 40. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
14 penalties, attorney fees, and costs.

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Pay All Overtime Owed**

17 **By Plaintiff Against All Defendants**

18 41. Plaintiff incorporates by reference the paragraphs above.

19 42. Labor Code section 510 provides that "[a]ny work in excess of eight hours in one workday
20 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
21 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
22 one-half times the regular rate of pay for an employee."

23 43. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

24 44. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages,
25 interest, penalties, attorney fees, and costs.

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1 **FIFTH CAUSE OF ACTION**

2 **Wage Statement Penalties**

3 **By Plaintiff Against All Defendants**

4 45. Plaintiff incorporates by reference the paragraphs above.

5 46. Labor Code section 226(a) requires employers to provide itemized wage statements to its
6 employees that identify accurate information regarding their compensation. Defendants, as a matter
7 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
8 statements to Plaintiff in violation of Labor Code section 226(a).

9 47. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
10 and incomplete.

11 48. Defendants knowingly and intentionally issued wage statements that were inaccurate and
12 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
13 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

14 49. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
15 costs.

16 **SIXTH CAUSE OF ACTION**

17 **Violation of Unfair Competition Law**

18 **By Plaintiff Against All Defendants**

19 50. Plaintiff incorporates by reference the paragraphs above.

20 51. Defendants' conduct described herein constitutes unfair competition.

21 52. Specifically, Defendants have gained an unfair advantage over other similarly situated
22 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
23 owed.

24 53. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
25 wrongfully withheld wages.

26 54. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Government Code § 12940 (h) - Retaliation**

3 **By Plaintiff Against All Defendants**

4 55. Plaintiff incorporates by reference the paragraphs above.

5 56. Government Code § 12940(h) makes it unlawful for an employer to discriminate against any
6 employee who opposes or makes a complaint for practices forbidden by FEHA.

7 57. Plaintiff engaged in protected activity under § 12940(h) as set forth herein.

8 58. Defendants retaliated against Plaintiff in violation of California Government Code §
9 12940(h).

10 59. The actions of Defendants against Plaintiff constitute unlawful retaliation, in violation of
11 FEHA. Such violations were a proximate cause in Plaintiff's damage as stated below.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

14 **First Cause of Action**

- 15 1. Damages and/or penalties pursuant to Labor Code section 226.7
16 2. Interest
17 3. Attorneys' fees
18 4. Costs
19 5. Other relief the court deems proper

20 **Second Cause of Action**

- 21 1. Damages and/or penalties pursuant to Labor Code section 226.7
22 2. Interest
23 3. Attorneys' fees
24 4. Costs
25 5. Other relief the court deems proper

26 **Third Cause of Action**

- 27 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1
28 2. Liquidated damages

- 1 3. Interest
2 4. Attorneys' fees
3 5. Costs
4 6. Other relief the court deems proper

5 Fourth Cause of Action

- 6 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194
7 2. Interest
8 3. Attorneys' fees
9 4. Costs
10 5. Other relief the court deems proper

11 Fifth Cause of Action

- 12 1. Penalties pursuant to Labor Code section 226
13 2. Attorneys' fees
14 3. Costs
15 4. Other relief the court deems proper

16 Sixth Cause of Action

- 17 1. Restitution of all wrongfully withheld wages
18 2. Attorneys' fees
19 3. Costs
20 4. Other relief the court deems proper

21 Seventh Cause of Action

- 22 1. Compensatory damages
23 2. Punitive damages
24 3. Attorneys' fees
25 4. Costs
26 5. Other relief the court deems proper

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2 DATED: October 3, 2024

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/s/ Manny Starr

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Manny Starr

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Attorneys for Plaintiff

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JORGE ZAMUDIO,

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individually and on behalf of all others

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similarly situated

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