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all others similarly situated, and on behalf of the general public

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ADAN MENDOZA, on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

ELITE FUELS TRANSPORTATION,
INC.; and DOES 1-100,

Defendants.

Case No. CIVSB2427100

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 3) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);
- 4) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11110(8)); and
- 5) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff Adan Mendoza (“Plaintiff”), on behalf of himself, all others similarly situated, and on
2 behalf of the general public, complains of Defendant Elite Fuels Transportation, Inc.
3 (“Defendant”) and/or DOES and for causes of action and alleges:

4 1. This is a class action pursuant to *California Code of Civil Procedure* section 382 on behalf
5 of Plaintiff and all drivers, delivery drivers, truck drivers, truck workers, or similar job
6 designations who haul freight for Defendant and/or DOES and who spent a majority of
7 their work time in California and/or had their base of operations in California.

8 2. At all times mentioned herein, Defendant and/or DOES have conducted business in San
9 Bernardino County and elsewhere within California.

10 3. At all times mentioned herein, Defendant and/or DOES, within the State of California,
11 have, among other things, employed current and former drivers, delivery drivers, truck
12 drivers, truck workers, or similar job designations.

13 4. Throughout the time period that includes the four (4) years prior to filing this action to the
14 present (the “Statutory Period”), Defendant and/or DOES have maintained uniform
15 policies that violate the wage and hour rights of Plaintiff and similarly situated drivers,
16 delivery drivers, truck drivers, truck workers, or similar job designations in the manner
17 complained of herein.

18 5. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
19 and/or practice of not paying Plaintiff and similarly situated drivers, delivery drivers, truck
20 drivers, truck workers, or similar job designations all wages owed.

21 6. Throughout the Statutory Period, Defendant and/or DOES and/or their officers and/or
22 managing agents have had a consistent policy and/or practice of failing to reimburse
23 Plaintiff and drivers, delivery drivers, truck drivers, truck workers, or similar job
24 designations for business expenses incurred in the discharge of their duties.

25 7. Throughout the Statutory Period, Defendant and/or DOES, by failing to lawfully pay
26 Plaintiff and those similarly situated all the wages they are owed, engaged in false, unfair,
27 fraudulent and deceptive business practices within the meaning of the Business and
28 Professions Code section 17200, et seq.

- 1 8. Throughout the Statutory Period, Defendant's and/or DOES' employees, including
2 Plaintiff and those similarly situated were not provided all straight time and minimum
3 wages owed, as mandated under the California Labor Code, and the implementing rules
4 and regulations of the Industrial Welfare Commissions ("IWC") California Wage Orders.
- 5 9. Throughout the statutory period, Defendant's and/or DOES' hourly non-exempt
6 employees, including Plaintiff, were not provided with accurate and itemized employee
7 wage statements.
- 8 10. Defendant and/or DOES failed to comply with Labor Code section 226, subdivision (a),
9 by itemizing in wage statements all hourly compensation and accurately reporting total
10 hours worked by Plaintiff and the members of the proposed class. Plaintiff and members
11 of the proposed class are entitled to penalties not to exceed \$4,000 for each employee
12 pursuant to Labor Code section 226(b).
- 13 11. Defendant and/or DOES have failed to comply with IWC Wage Order 9-2001(7) by failing
14 to maintain accurate time records showing hourly compensation, when the employee
15 begins and ends each workday and total daily hours worked by itemizing in wage
16 statements and accurately reporting total hours worked by Plaintiff and members of the
17 proposed class.
- 18 12. Defendant's and/or DOES' failure to retain accurate records of total hours worked by
19 Plaintiff and the proposed class was willful and deliberate, was a continuous breach of
20 Defendant's and/or DOES' duty owed to Plaintiff and the proposed class.
- 21 13. Throughout the statutory period, Defendant's and/or DOES' employees, including Plaintiff
22 those similarly situated, were not timely paid all wages owed to them at the time of
23 termination.
- 24 14. Defendant and/or DOES are and were aware that Plaintiff and members of the proposed
25 class were not paid all straight time and minimum wages owed. Defendant's and/or DOES'
26 denial of wages and other compensation due to Plaintiff and members of the proposed class
27 was willful and deliberate.
- 28 15. Defendant and/or DOES, each and collectively, controlled the wages, hours, and working

conditions of Plaintiff and the proposed class, creating a joint-employer relationship over Plaintiff and the proposed class.

16. Plaintiff, on behalf of himself and all of Defendant's and/or DOES' drivers, delivery drivers, truck drivers, truck workers, or similar job designations employed at any time during the Statutory Period brings this action pursuant to *California Labor Code* sections 201-203, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.3, 248.2, 248.6, 515, 558, 1194, 1194.2, 1197, 2802 and *California Code of Regulations*, Title 8, sections 11110 and 3395, seeking unpaid wages, reimbursement, illegal deductions, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

17. Plaintiff, on behalf of himself and all of Defendant's and/or DOES' drivers, delivery drivers, truck drivers, truck workers, or similar job designations employed at any time during the Statutory Period, pursuant to *California Business and Professions Code* sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant and/or DOES enjoyed from their failure to pay all wages owed and failure to reimburse employees' business expenses.

I. VENUE

18. Venue as to each Defendant and/or DOES is proper in this judicial district, pursuant to *California Code of Civil Procedure* section 395. Defendant and/or DOES conduct business and commit *California Labor Code* violations within San Bernardino County, and each Defendant and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within San Bernardino County. Defendant and/or DOES employ numerous drivers, delivery drivers, truck drivers, truck workers, or similar job designations who perform and/or performed work for Defendant in San Bernardino County, California during the Statutory Period.

II. PARTIES

A. Plaintiff.

19. Throughout the Statutory Period, Plaintiff is and was a resident of California. During the

Statutory Period, Plaintiff was employed by Defendant and/or DOES in California as a delivery driver.

20. Plaintiff and the proposed class of similarly situated drivers, delivery drivers, truck drivers, truck workers, or similar job designations are covered by, inter alia, California IWC Occupational Wage Order No. 9-2001, and Title 8, *California Code of Regulations*, section 11110.

B. Defendant.

21. At all relevant times herein, Defendant and/or DOES employed Plaintiff and members of the proposed class to transport and/or deliver fuel and other hazardous materials to Defendant's and/or DOES' customers in the State of California.

22. On information and belief, Defendant and/or DOES exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class throughout the liability period.

23. Defendant and/or DOES have numerous offices and/or contacts in the State of California. On information and belief, California is the operation nerve center of one or more Defendants and/or DOES.

24. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under *California Code of Civil Procedure* section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

25. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant and/or DOES are legally attributable to the other Defendants

and/or DOES.

III. CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to section 382 of the *California Code of Civil Procedure*. Plaintiff seeks to represent a Class composed of and defined as follows:

All California citizens who are employed by Defendant and/or DOES as drivers, delivery drivers, truck drivers, truck workers, or similar job designations, who haul freight for Defendant and/or DOES and who spent a majority of their work time in California and/or had their base of operations in California during the period of the relevant statute of limitations. (“Class Members”)

Plaintiff also seeks to represent subclasses composed of and defined as follows:

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All Class Members who separated their employment from Defendant and/or DOES.

All Class Members who incurred business expenses and were not reimbursed.

27. Plaintiff reserves the right under Rule 1855, subdivision (b), *California Rules of Court*, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

28. This action has been brought and may properly be maintained as a class action under the

provisions of *California Code of Civil Procedure* section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

29. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant and/or DOES currently employ, and during the liability period employed, over one hundred (100) Class Members in San Bernardino County during the liability period and who are or have been affected by Defendant's and/or DOES' policies of failure to pay all straight and minimum wages owed, willful failure to pay all wages due at time of separation from employment, knowing and intentional failure to provide accurate and itemized employee wage statements, and failure to reimburse for all necessary business expenses incurred in the performance of employees' jobs. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiff alleges Defendant's and/or DOES' employment records will provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

30. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

(1) Whether Defendant and/or DOES violated the *California Labor Code* and/or applicable IWC Wage Orders in failing to pay its employees all earned wages at the regular rate for all hours worked.

(2) Whether Defendant and/or DOES have uniform policies and/or practices of failing to provide employees accurate and itemized wage statements.

1 (3) Whether Defendant and/or DOES knowingly and
2 intentionally fail to provide employees accurate and itemized wage
3 statements.

4 (4) Whether Defendant and/or DOES have uniform policies
5 and/or practices of failing to timely pay all wages owed to employees who
6 left Defendant's and/or DOES' employ or who were terminated.

7 (5) Whether Defendant and/or DOES willfully fail to pay, in a
8 timely manner, wages owed to members of the proposed Class who left
9 Defendant's and/or DOES' employ or who were terminated.

10 (6) Whether Defendant and/or DOES have uniform policies
11 and/or practices of failing to reimburse members of the proposed Class for
12 all necessary expenses incurred in the performance of their jobs.

13 31. The answer to each of these respective questions will generate a common answer capable
14 of resolving class-wide liability in one stroke.

15 32. Said common questions predominate over any individualized issues and/or questions
16 affecting only individual members.

17 **C. Typicality.**

18 33. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff
19 and all members of the proposed Class sustained injuries and damages arising out of and
20 caused by Defendant's and/or DOES' common course of conduct in violation of laws and
21 regulations that have the force and effect of law and statutes as alleged.

22 34. Plaintiff was subjected to the same uniform policies and/or practices complained of herein
23 that affected all such employees. Thus, as Plaintiff was subjected to the same unlawful
24 policies and practices as all employees, his claims are typical of the class he seeks to
25 represent.

26 **D. Adequacy of Representation.**

27 35. Plaintiff will fairly and adequately represent and protect the interests of the members of the
28 Class.

- 1 36. Plaintiff is ready and willing to take the time necessary to help litigate this case.
- 2 37. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and
3 protect the interests of the members of the Class.
- 4 38. Counsel who represent Plaintiff are competent and experienced in litigating large
5 employment class actions.
- 6 39. Specifically, David Mara, Esq. and Matthew Crawford, Esq. of Mara Law Firm, PC are
7 California lawyers in good standing.
- 8 40. Counsel who represent Plaintiff are competent and experienced in litigating large
9 employment class actions.
- 10 41. The lawyers at Mara Law Firm PC have been named class counsel in numerous cases.
- 11 42. Mara Law Firm PC's practice is primarily focused on representing classes, large and small,
12 on the basis of *California Labor Code* and Wage Order Violations similar to those alleged
13 herein. The firm is also frequently called upon to and does author amicus briefs on behalf
14 of the Consumer Attorneys of California on cases in the appellate courts and Supreme
15 Court of California involving important issues relating to those alleged herein.
- 16 43. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.
- 17 44. The lawyers at Mara Law Firm, PC have the experience, ability, and ways and means to
18 vigorously prosecute this case.
- 19 **E. Superiority of Class Action.**
- 20 45. A class action is superior to other available means for the fair and efficient adjudication of
21 this controversy. Individual joinder of all Class Members is not practicable, and questions
22 of law and fact common to the Class predominate over any questions affecting only
23 individual members of the Class. Each member of the Class has been damaged and is
24 entitled to recovery by reason of Defendant's and/or DOES' illegal policies and/or
25 practices of failing to pay all straight time and minimum wages owed, knowingly and
26 intentionally failing to comply with wage statement requirements, failing to pay all wages
27 due at termination, and failing to reimburse for incurred expenses.
- 28 46. Class action treatment will allow those similarly situated persons to litigate their claims in

the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

47. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All Straight Time Wages

48. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

49. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

50. It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

51. Plaintiff and those similarly situated Class Members were employed by Defendant and/or

1 DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff
2 for all hours worked and were prohibited from making deductions that had the effect of
3 reducing the agreed upon wage.

4 52. Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and Class
5 Members for all hours worked. At the start of their assigned shifts, Plaintiff and Class
6 Members are required to wait for the specific truck they are assigned to drive that day to
7 arrive at Defendant's and/or DOES' yard. Plaintiff and Class Members are often forced to
8 wait for hours at Defendant's and/or DOES' yard for their truck to arrive. Sometimes,
9 Defendant and/or DOES will send Plaintiff and Class Members home to wait for their
10 trucks to arrive, but Defendant and/or DOES would require Plaintiff and Class Members
11 to call in every half hour or so to check in on the status of their trucks. In either case,
12 Defendant and/or DOES are required to pay Plaintiff and Class Members for this time as
13 hours worked under Wage Order 9-2001. However, as Defendant and/or DOES do not
14 permit Plaintiff and Class Members to clock in for their shifts until the truck arrives,
15 Defendant and/or DOES fail to pay Plaintiff and Class Members for this time.

16 53. In addition, Defendant and/or DOES require Plaintiff and Class Members to remain in
17 constant attendance of their trucks and its contents at all times because Defendant and/or
18 DOES is in the business of transporting hazardous materials. As such, Plaintiff and Class
19 Members are never relieved of all duties and/or employer control during their meal periods,
20 and Plaintiff and Class Members should therefore be paid for the time spent clocked out
21 during unpaid meal periods.

22 54. Plaintiff and Class Members are informed and believe and thereon allege that Defendant
23 and/or DOES breached the legal duty to pay full wages to Plaintiff and Class Members by
24 failing to pay Plaintiff and Class Members for time when Plaintiff and Class Members were
25 not relieved of all duties and/or employer control.

26 55. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with
27 the wrongful and deliberate intention of injuring Plaintiff and Class Members. Defendant
28 and/or DOES acted with malice or in conscious disregard of Plaintiff's and Class Members'

1 rights

2 56. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
3 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
4 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
5 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
6 and/or DOES to fully perform their obligations under state law, all to their respective
7 damage in amounts, according to proof at trial.

8 57. As a direct result of Defendant's and/or DOES' policy of illegal wage theft, Plaintiff and
9 those similarly situated have been damaged in an amount to be proven at trial.

10 58. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
11 below.

12 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Knowing and**
13 **Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab.**
14 **Code §§ 226, 246, 1174, 1175; IWC Wage Order No. 9-2001; Cal. Code Regs., Title 8, § 11110)**

15 59. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
16 and every other paragraph in this Complaint herein as if fully plead.

17 60. *California Labor Code* section 226(a) requires Defendant and/or DOES to, inter alia,
18 itemize in wage statements and accurately report the total hours worked and total wages
19 earned. Defendant and/or DOES have knowingly and intentionally failed to comply with
20 *California Labor Code* section 226, subdivision (a), on each and every wage statement
21 provided to Plaintiff and members of the proposed Class.

22 61. *California Labor Code* section 1174 requires Defendant and/or DOES to maintain and
23 preserve, in a centralized location, records showing the daily hours worked by and the
24 wages paid to its employees. Defendant and/or DOES have knowingly and intentionally
25 failed to comply with *California Labor Code* section 1174. The failure of Defendant and/or
26 DOES, and each of them, to comply with *California Labor Code* section 1174 is unlawful
27 pursuant to *California Labor Code* section 1175.

28 62. Defendant and/or DOES fail to maintain accurate time records - as required by IWC Wage

1 Order No. 9-2001(7), and *California Code of Regulations* Title 8 section 11110 - showing,
2 among other things, when the employee begins and ends each work period, the total daily
3 hours worked in itemized wage statements, total wages, bonuses and/or incentives earned,
4 and all deductions made.

5 63. Defendant and/or DOES have knowingly and intentionally failed to provide Plaintiff and
6 the Class Members with accurate itemized wage statements which show: “(1) gross wages
7 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
8 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
9 deductions, provided that all deductions made on written orders of the employee may be
10 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
11 period for which the employee is paid, (7) the name of the employee and only the last four
12 digits of his or her social security number or an employee identification number other than
13 a social security number, (8) the name and address of the legal entity that is the employer
14 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
15 1682, the name and address of the legal entity that secured the services of the employer,
16 and (9) all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee[.]” Cal. Lab. Code § 226(a).

18 64. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor
19 in excess of the normal work period shall be paid no later than the payday for the next
20 regular payroll period.” An employer complies with *California Labor Code* section 226(a)
21 “if hours worked in excess of the normal work period during the current pay period are
22 itemized as corrections on the paystub for the next regular pay period. Any corrections set
23 out in a subsequently issued paystub shall state the inclusive dates of the pay period for
24 which the employer is correcting its initial report of hours worked.”

25 65. Defendant and/or DOES have knowingly and intentionally failed to comply with
26 *California Labor Code* section 226(a) by failing to list all of the required information on
27 each and every wage statement provided to Plaintiff and Class Members.

28 66. Additionally, by virtue of its failure to pay for all time worked, Defendant and/or DOES

1 knowingly and intentionally did not correctly itemize the gross wages earned, total hours
2 worked, net wages earned, and number of hours worked at each hourly rate on wage
3 statements provided to Plaintiff and Class Members as *California Labor Code* section 226,
4 subsection (a), requires in every pay period during the period of the relevant statute of
5 limitations.

6 67. As outlined above, Defendant and/or DOES have a continuous policy of failing to pay
7 Plaintiff and Class Members for all hours worked. At the start of their assigned shifts,
8 Plaintiff and Class Members are required to wait for the specific truck they are assigned to
9 drive that day to arrive at Defendant's and/or DOES' yard. Plaintiff and Class Members
10 are often forced to wait for hours at Defendant's and/or DOES' yard for their truck to
11 arrive. Sometimes, Defendant and/or DOES will send Plaintiff and Class Members home
12 to wait for their trucks to arrive, but Defendant and/or DOES would require Plaintiff and
13 Class Members to call in every half hour or so to check in on the status of their trucks. In
14 either case, Defendant and/or DOES are required to pay Plaintiff and Class Members for
15 this time as hours worked under Wage Order 9-2001. However, as Defendant and/or DOES
16 do not permit Plaintiff and Class Members to clock in for their shifts until the truck arrives,
17 Defendant and/or DOES fail to pay Plaintiff and Class Members for this time.

18 68. In addition, Defendant and/or DOES require Plaintiff and Class Members to remain in
19 constant attendance of their trucks and its contents at all times because Defendant and/or
20 DOES is in the business of transporting hazardous materials. As such, Plaintiff and Class
21 Members are never relieved of all duties and/or employer control during their meal periods,
22 and Plaintiff and Class Members should therefore be paid for the time spent clocked out
23 during unpaid meal periods.

24 69. As a result of the knowing and intentional failure by Defendant and/or DOES to comply
25 with itemized employee wage statement provisions, Plaintiff and the Class Members have
26 been able to reconstruct only a reasonable estimate of the hours worked and have, therefore,
27 not received full compensation.

28 70. As a direct result of Defendant's and/or DOES' unlawful acts, Plaintiff and the Class he

1 intends to represent have been damaged and are entitled to recovery of such amounts, plus
2 interest thereon, attorneys' fees, and costs, pursuant to *California Labor Code* section 226,
3 226.3, and 246.

4 71. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
5 below.

6 **THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All**
7 **Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)**

8 72. Plaintiff and those similarly situated Class members hereby incorporate by reference each
9 and every other paragraph in this Complaint herein as if fully plead.

10 73. Plaintiff's employment with Defendant and/or DOES was terminated on or about May 17,
11 2024.

12 74. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
13 and/or DOES, Defendant and/or DOES did not timely pay him all minimum or straight
14 time wages owed at the time of his termination.

15 75. Numerous members of the Class are no longer employed by Defendant and/or DOES. They
16 were either fired or they quit Defendant's and/or DOES' employ. Defendant and/or DOES
17 did not pay all timely wages owed at the time of their termination.

18 76. *California Labor Code* sections 201 and 202 provide that if an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately, and if an employee quits his or her employment, his or her wages shall
21 become due and payable no later than seventy-two (72) hours thereafter, unless the
22 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which
23 case the employee is entitled to his or her wages at the time of quitting.

24 77. During the relevant time period, Defendant and/or DOES intentionally and willfully failed
25 to pay Plaintiff's and the Class Members' who are no longer employed by Defendant and/or
26 DOES their wages that were earned and unpaid within seventy-two (72) hours of their
27 leaving Defendant's and/or DOES' employ in violation of *California Labor Code* sections
28 201 and 202.

- 1 78. *California Labor Code* section 203 provides that, if an employer willfully fails to pay,
2 without abatement or reduction, in accordance with *California Labor Code* sections 201,
3 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages
4 of the employee shall continue at the same rate, for up to thirty (30) days from the due date
5 thereof, until paid or until an action therefore is commenced.
- 6 79. Defendant and/or DOES fail to pay Plaintiff and Class Members a sum certain at the time
7 of their termination or within seventy-two (72) hours of their resignation and have failed
8 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of *California*
9 *Labor Code* section 203, Plaintiff and Class Members are entitled to a penalty in the amount
10 of their daily wage, multiplied by thirty (30) days.
- 11 80. During the relevant time period, Defendant and/or DOES intentionally and willfully failed
12 to pay employees who are no longer employed by Defendant and/or DOES their wages,
13 that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's
14 and/or DOES' employ.
- 15 81. As outlined above, Defendant and/or DOES have a continuous policy of failing to pay
16 Plaintiff and Class Members for all hours worked. At the start of their assigned shifts,
17 Plaintiff and Class Members are required to wait for the specific truck they are assigned to
18 drive that day to arrive at Defendant's and/or DOES' yard. Plaintiff and Class Members
19 are often forced to wait for hours at Defendant's and/or DOES' yard for their truck to
20 arrive. Sometimes, Defendant and/or DOES will send Plaintiff and Class Members home
21 to wait for their trucks to arrive, but Defendant and/or DOES would require Plaintiff and
22 Class Members to call in every half hour or so to check in on the status of their trucks. In
23 either case, Defendant and/or DOES are required to pay Plaintiff and Class Members for
24 this time as hours worked under Wage Order 9-2001. However, as Defendant and/or DOES
25 do not permit Plaintiff and Class Members to clock in for their shifts until the truck arrives,
26 Defendant and/or DOES fail to pay Plaintiff and Class Members for this time.
- 27 82. In addition, Defendant and/or DOES require Plaintiff and Class Members to remain in
28 constant attendance of their trucks and its contents at all times because Defendant and/or

1 DOES is in the business of transporting hazardous materials. As such, Plaintiff and Class
2 Members are never relieved of all duties and/or employer control during their meal periods,
3 and Plaintiff and Class Members should therefore be paid for the time spent clocked out
4 during unpaid meal periods.

5 83. Additionally, when Plaintiff and those members of the Class who are former employees of
6 Defendant and/or DOES separate from Defendant's and/or DOES' employ, Defendant
7 and/or DOES willfully fail to pay all wages owed at the time of termination.

8 84. Defendant's and/or DOES' failure to pay said wages to Plaintiff and members of the Class
9 he seeks to represent, was willful in that Defendant and/or DOES and each of them knew
10 the wages to be due, but failed to pay them.

11 85. As a consequence of Defendant's and/or DOES' willful conduct in not paying wages owed
12 at the time of separation from employment, Plaintiff and members of the proposed Class
13 are entitled to thirty (30) days' worth of wages as a penalty under *California Labor Code*
14 section 203, together with interest thereon and attorneys' fees and costs.

15 86. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
16 below.

17 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to**
18 **Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 9-2001; Cal.**
19 **Code Regs., Title 8, § 11110)**

20 87. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
21 and every other paragraph in this Complaint herein as if fully plead.

22 88. *California Labor Code* section 2082 provides: "[a]n employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties, or of his or her obedience to the directions
25 of the employer.... [which] shall include[s] all reasonable costs, including, but not limited
26 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

27 89. Plaintiff and Class Members incurred expenses necessary for the discharge of their duties
28 without receiving reimbursement from Defendant and/or DOES. Defendant and/or DOES

1 required Plaintiff and Class Members to use their personal cell phones for business
2 purposes, such as fielding calls and messages from Defendant and/or DOES throughout the
3 workday, using GPS for driving directions, and communicating with dispatch, but failed to
4 reimburse this expense.

5 90. Defendant and/or DOES have failed to indemnify or in any manner reimburse Plaintiff and
6 Class Members for these expenditures and losses.

7 91. By requiring Plaintiff and Class Members to pay expenses and cover losses that they
8 incurred in direct consequence of the discharge of their duties for Defendant and/or DOES
9 and/or in obedience of Defendant's and/or DOES' direction, Defendant and/or DOES have
10 violated and continues to violate *California Labor Code* section 2802.

11 92. *California Labor Code* section 2802(a) entitles Plaintiff and the Class members to
12 reimbursement for said necessary expenditures, plus interest and expenses.

13 93. As a direct and proximate result of Defendant's and/or DOES' conduct, Plaintiff and Class
14 Members have suffered substantial losses according to proof, as well as pre-judgment
15 interest, costs, and attorneys' fees for the prosecution of this action, which losses are
16 compensable under *California Labor Code* section 2802.

17 94. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
18 below.

19 **FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of**
20 **Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)**

21 95. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
22 and every other paragraph in this Complaint herein as if fully plead.

23 96. Defendant and/or DOES failure to pay all straight time and minimum wages earned, failure
24 to itemize and keep accurate records, failure to pay all wages due at time of termination,
25 and failure to reimburse all necessary business expenses incurred, as alleged herein,
26 constitutes unlawful activity prohibited by *California Business and Professions Code*
27 section 17200, et seq.

28 97. The actions of Defendant and/or DOES in failing to pay Plaintiff and members of the

proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of *California Business and Professions Code* section 17200, et seq.

98. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as members of the general public actually harmed and as a representative of all others subject to Defendant and/or DOES unlawful acts and practices.

99. As a result of their unlawful acts, Defendant and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent. Defendant and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to *California Business and Professions Code* section 17203. Plaintiff is informed and believes, and thereon alleges, that Defendant and/or DOES are unjustly enriched through their policy of not all wages owed to Plaintiff and members of the proposed Class.

100. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the proposed class are prejudiced Defendant and/or DOES unfair trade practices.

101. As a direct and proximate result of the unfair business practices of Defendant and/or DOES, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages and premium pay which have been unlawfully withheld from Plaintiff and members of the proposed Class as a result of the business acts and practices described herein and enjoining Defendant and/or DOES from engaging in the practices described herein.

102. The illegal conduct alleged herein is continuing, and there is no indication that Defendant and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if Defendant and/or DOES are not enjoined from the conduct set forth in this Complaint, they will continue the unlawful activity discussed herein.

103. Plaintiff further requests that the Court issue a preliminary and permanent injunction prohibiting Defendant and/or DOES from continuing to not pay Plaintiff and the members of the proposed Class all earned but unpaid wages as discussed herein.

104. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. That the Court determine that this action may be maintained as a class action;
- B. For compensatory damages, in an amount according to proof at trial, with interest thereon;
- C. For economic and/or special damages in an amount according to proof with interest thereon;
- D. For compensation for all time worked;
- E. For damages and/or monies owed for failure to comply with itemized employee wage statement provisions;
- F. For reimbursement of business expenses incurred;
- G. For all waiting time penalties owed;
- H. That Defendant and/or DOES be found to have engaged in unfair competition in violation of sections 17200 et seq. of the *California Business and Professions Code*;
- I. That Defendant and/or DOES be ordered and enjoined to make restitution to the Class due to their unfair competition, including disgorgement of their wrongfully withheld wages pursuant to *California Business and Professions Code* sections 17203 and 17204;
- J. That an order of specific performance of all penalties owed be issued under *California Business and Professions Code* sections 17202;
- K. That Defendant and/or DOES be enjoined from continuing the illegal course of conduct, alleged herein;
- L. That Defendant and/or DOES further be enjoined to cease and desist from unfair

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competition in violation of section 17200 et seq. of the *California Business and Professions Code*;

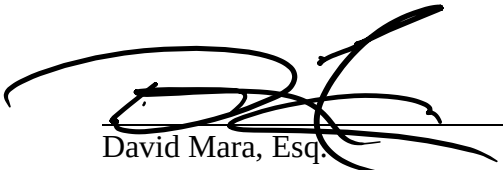
- M. That Defendant and/or DOES be enjoined from further acts of restraint of trade or unfair competition;
- N. For attorneys’ fees;
- O. For liquidated damages;
- P. For interest accrued to date;
- Q. For costs of suit and expenses incurred herein; and
- R. For any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: September 5, 2024

MARA LAW FIRM, PC



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff ADAN MENDOZA, on
behalf of himself, all others similarly situated, and on
behalf of the general public