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Attorneys for Plaintiff ALVIN COUNTS and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ALVIN COUNTS, an individual; on behalf of)	CASE NO. CVRI2500837
himself and all others similarly situated and the)	
general public,	[Assigned for all purposes to the Hon. Harold
	W. Hopp, Dept. 1]_____
Plaintiffs,	
	CLASS ACTION
v.	
	FIRST AMENDED COMPLAINT FOR:
PROFESSIONAL AUTO TRANSPORT,	1. Violation of <u>B&PC</u> §17200, et seq.
INC., a Nevada corporation; and DOES 1 to)	2. Violation of <u>Labor Code</u> §§ 204, 510, 1194 and
100, inclusive,	1198;
	3. Violation of <u>Labor Code</u> §§ 200, et seq.;
Defendants.	4. Failure to Pay Meal and Rest Break Premium at
	the Proper Regular Rate of Pay (Labor Code §
	226.7)
	5. Failure to Provide & Maintain Accurate Wage
	Statements Pursuant to Labor Code §226
	6. Failure to Provide Meal Periods (Lab. Code
	§226.7);
	7. Failure to Provide Rest Breaks (Lab. Code
	226.7); and
	8. Failure to Reimburse Expenses (Lab. Code
	§2802).
	9. Violation of Labor Code §§2698-2699 (PAGA)
	DEMAND FOR JURY TRIAL

1 Plaintiff ALVIN COUNTS, on behalf of himself and all other persons similarly situated,
2 and the general public (hereinafter, "Plaintiffs"), hereby complain against Defendants
3 PROFESSIONAL AUTO TRANSPORT, INC. a Nevada corporation ("Professional Auto"); and
4 DOES 1 to 100, inclusive (hereinafter Professional Auto and Does 1-100 are collectively referred
5 to herein as "Defendants"), and on information and belief allege as follows:

6 **GENERAL ALLEGATIONS**

7 **JURISDICTION**

8 1. This is a civil action seeking recovery of unpaid wages, waiting time penalties,
9 pay stub penalties and meal and rest period premiums under California Labor Code §§ 510, 1194
10 et seq., 201 et seq., 226 and 226.7. Plaintiffs bring an action for monetary damages for failure to
11 pay wages as well as for restitution for Defendants' violations of Business and Professions Code
12 (B&PC) §17200, et seq., including full restitution of all compensation retained by Defendants as
13 a result of their unlawful, fraudulent and unfair business practices. Plaintiffs seek all available
14 relief, including full restitution of all compensation retained by Defendants as a result of their
15 unlawful and unfair business practices. Further, Plaintiffs seek injunctive relief under B&PC
16 §17200, et seq.

17 **VENUE**

18 2. Venue as to each of the Defendants is proper in this judicial district pursuant to
19 California Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts
20 complained of herein occurred in the County of Riverside. Each defendant either owns,
21 maintains offices, transacts business, has an agent or agents within the County of Riverside, or
22 otherwise is found within the County of Riverside, and each defendant is within the jurisdiction
23 of this Court for purposes of service of process.

24 **PARTIES**

25 3. Plaintiff Alvin Counts ("Counts") is an individual over the age of eighteen (18).
26 At all relevant times herein, Plaintiff Counts worked for Defendants within the State of
27 California.

28 4. Plaintiffs are informed, believe, thereon allege that at all times mentioned

1 herein, Defendant Professional Auto is a Nevada corporation doing business in California.

2 5. Plaintiffs are informed and believe and thereon allege that at all times mentioned
3 herein, Defendant Professional Auto was authorized to do business in the State of California,
4 County of Riverside, and owning, operating an auto transport company. Thus, each named
5 defendant and DOES 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law)
6 and the Labor Code, as hereinafter alleged.

7 6. Plaintiffs do not know the true names or capacities, whether individual, partner, or
8 corporate, of defendants sued herein as DOES 1 to 100, inclusive, and for that reason, those
9 defendants are sued under such fictitious names, and Plaintiffs will seek from this Court leave to
10 amend this Complaint when such true names and capacities are discovered. Plaintiffs are
11 informed and believe and thereon allege that each of the Defendants and each fictitious
12 defendant, whether individual, partners, or corporate, was responsible in some manner for the
13 circumstances alleged herein, and proximately caused Plaintiffs and all others similarly situated
14 hereinafter alleged and the general public to be subjected to the unlawful employment practices,
15 wrongs, injuries and damages complained of herein.

16 7. At all times herein mentioned, each of the Defendants participated in the doing of
17 the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
18 Defendants, and each of them, were the agents, servants, and employees of each and every one of
19 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
20 were acting within the course and scope of said agency and employment. Plaintiffs herein allege
21 that Defendants and each of them is the joint employer of Plaintiffs and the classes.

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

25 9. At all times herein mentioned, the acts and omissions of various Defendants, and
26 each of them concurred and contributed to the various acts and omissions of each and every one
27 of the other Defendants in proximately causing the complaints, injuries, and damages alleged
28 herein.

10. At all times herein mentioned, Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and every one of the other Defendants, thereby proximately causing the damages, as herein alleged.

11. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof. The California Superior Court also has jurisdiction in this matter because Plaintiffs and the putative classes herein worked within the State of California, and were subject to California's wage and hour laws.

PLAINTIFF CLASSES

12. The class representative Plaintiff who worked in the position of an hourly non-exempt employee or another similar title while employed by Defendants within the State of California, is as follows:

a. Alvin Counts

Plaintiff Alvin Counts worked as a non-exempt hourly employee for Defendants from February 2022 to September 2024.

CLASS ACTION ALLEGATIONS

13. Plaintiff Counts brings this action on behalf of himself and all others similarly situated as a class action pursuant to CCP §382. The Classes which Plaintiff Counts seeks to represent are composed of and defined as follows:

Class 1:

All non-exempt hourly employees from 2021 through the date of judgment, who were not paid premium overtime and/or double time at the employee's regular rate of pay.

Subclass 1:

All non-exempt hourly employees of Defendants who were paid for a missed meal or rest period at an allegedly “reduced” rate of pay from 2021 through the date of judgment (Meal and Rest Reduced Rate Subclass);

Class 2:

All non-exempt hourly employees who worked for Defendants in California from 2021 through the date of judgment, who were not paid the minimum wage for all hours worked (Minimum Wage Class);

Class 3:

All non-exempt hourly employees who worked for Defendants in California and who worked at some point from 2022 through the present, who are no longer employed with Defendants and to whom Defendants willfully failed to pay all wages due upon separation from Defendants (Waiting Time Penalty Class);

Class 4:

All non-exempt hourly employees who worked for Defendants in California from 2021 to the present who were not provided legally compliant meal periods (Meal Break Class);

Class 5:

All non-exempt hourly employees who worked for Defendants in California from 2021 through the present who were not provided legally-compliant rest breaks (Rest Break Class);

Class 6:

All non-exempt hourly employees who worked for Defendants in California from 2024 through the present who were provided a paystub (a.k.a. wage statement) which failed to list all hours actually worked and wages owed (Pay Stub Class);

Class 7:

All non-exempt hourly employees who worked for Defendants in California from 2021 through the present who were not reimbursed for their necessary and reasonable business expenses (Reimbursement Class).

The members of the classes are so numerous that joinder of all members would be

1 unfeasible and not practicable. The membership of the classes is unknown to Plaintiffs at this
2 time; however, it is estimated that the classes number greater than 100 individuals. The identity
3 of such membership is readily ascertainable by inspecting Defendants' employment records.

4 14. There are common questions of law and fact as to Plaintiffs and all others
5 similarly situated which predominate over questions affecting only individual members
6 including, without limitation to:

- 7 i. Whether Defendants paid their employees proper premium overtime
8 and/or double time at the employees' regular rate for hours over eight (8)
9 in a day and/or forty (40) hours in a week, in paying their hourly non-
10 exempt employees;
- 11 ii. Whether Defendants violated the applicable Labor Code provisions
12 including §510, 1194, and 203 by requiring substantial overtime work and
13 not paying for said work according to the overtime laws of the State of
14 California;
- 15 iii. Whether Defendants failed to pay the appropriate premium overtime
16 compensation to the hourly employees;
- 17 iv. Whether Defendants improperly retained, appropriated or deprived
18 Plaintiffs and the class members of the use of monies or sums to which
19 Plaintiffs and the class were legally entitled;
- 20 v. Whether Defendants engaged in unfair business practices;
- 21 vi. Whether Defendants and each of them, were participants in the alleged
22 unlawful conduct;
- 23 vii. Whether Defendants' conduct was willful or reckless;
- 24 viii. The effect upon and the extent of injuries suffered by Plaintiffs and all
25 others similarly situated and the appropriate amount of compensation;
- 26 ix. The appropriate amount of monetary penalties allowed by Labor Code
27 §201, et. seq.;
- 28

- x. Whether Defendants pay and continue to pay for missed meal and rest period premiums at an allegedly “reduced” rate of pay in violation of Section 11 of the applicable Wage Orders;
- xi. Whether Defendants failed and refused to reimburse Plaintiffs and the class members for their reasonable and necessary expenses incurred in fulfilling their work duties for Defendant;
- xii. Whether Defendants violated Labor Code §226 and relevant IWC Wage Orders by failing to, among other violations, accurately report total hours worked, all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly work, by Plaintiffs and the members of the Class; and
- xiii. Whether Defendants knowingly and intentionally failed to maintain records for Plaintiffs and members of the class as required by Labor Code § 1174 and the applicable IWC Wage Orders;

15. Plaintiffs’ claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiffs, as representative parties, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through their attorneys who are skilled and experienced in handling matters of this type. Plaintiffs have no claim or interest that is antagonistic to any class member.

16. The nature of this action and the nature of laws available to the members of the classes and subclasses identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein. Further, this claim involves a large corporate employer, Defendant Professional Auto, and a large number of individual employees (Plaintiffs and all others similarly situated) with many relatively small claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each class member to

1 pursue an individual remedy would also discourage the assertion of lawful claims by employees
2 who would be disinclined to pursue an action against their present and/or former employer for an
3 appreciable and justifiable fear of retaliation and permanent damage to their careers at present
4 and/or subsequent employment. Proof of a common business practice or factual pattern, of
5 which the Plaintiffs experienced, is representative of the class mentioned herein and will
6 establish the right of each of the members of the named class to recovery on the causes of action
7 alleged herein.

8 17. The prosecution of separate actions by the individual class members, even if
9 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
10 respect to the individual class members against Defendants herein; and which would establish
11 potentially incompatible standards of conduct for Defendants; and/or (b) legal determinations
12 with respect to individual class members which would, as a practical matter, be dispositive of the
13 interest of the other class members not parties to adjudications or which would substantially
14 impair or impede the ability of the class members to protect their interests. Further, the claims of
15 the individual members of the class are not sufficiently large to warrant vigorous individual
16 prosecution considering all of the concomitant costs and expenses attending thereto.

17 18. Plaintiffs and all others similarly situated are entitled to the wages and other
18 monies unlawfully withheld. This action is brought for the benefit of the public.

19 **FIRST CAUSE OF ACTION**

20 **(Violation of B&PC §17200, et seq.)**

21 19. Plaintiffs re-allege and incorporate by reference herein the allegations of all
22 preceding paragraphs as though fully set forth herein.

23 20. Beginning on an exact date unknown to Plaintiffs but believed to have occurred
24 from 2021 on, Defendants have engaged in a pattern and practice of acts of unfair competition in
25 violation of B&PC §17200, including the practices alleged herein.

26 21. Defendants, and each of them, own and operate auto transport locations in
27 California, and have engaged in the practice of paying their non-exempt employees, in a fashion
28 that circumvents California's wage and hour laws.

1 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

2 22. Plaintiffs are informed, believe, and thereon allege that as part of Defendants’
3 ongoing unfair business practices, Defendants’ hourly employees worked in excess of eight (8)
4 hours per day, and excess of forty (40) hours per week without receiving all wages owed, and the
5 proper regular rate of pay and therefore have failed to receive overtime compensation and/or the
6 proper overtime premium. Defendants are therefore in violation of Labor Code §§ 510 and
7 1194, and the relevant California Industrial Welfare Commission Orders.

8 23. Defendants, and each of them, consistently administered a corporate policy
9 regarding off-the-clock work, staffing levels, duties, and responsibilities of Defendants’
10 employees, which required that the entirety of the employees work overtime without proper
11 premium overtime pay and/or the regular rate of pay. This corporate policy and pattern of
12 conduct is accomplished with the advanced knowledge and designed intent to avoid paying
13 premium overtime. Accordingly, Plaintiffs and the class members are entitled to the proper
14 overtime compensation under California law. Further, Plaintiffs and the class are entitled to
15 restitution of these wages obtained by Defendants, and each of them. Furthermore, Defendants
16 have failed to properly include items of remuneration when determining the employees’ regular
17 rate, including but not limited to the failure to include performance and other non-discretionary
18 bonuses paid to all eligible employees, including for sick time and overtime, among others.

19 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

20 24. Plaintiffs are informed and believe and thereon allege that as part of Defendants’
21 ongoing unfair business practices, Defendants failed to provide all employees all wages at the
22 time of their separation in violation of Labor Code § 200, et. seq., including but not limited to,
23 §§201, 202, 203 & 204.

24 25. Labor Code § 200, et seq. provides that an employer is required to pay an
25 employee all wages (including accrued vacation) immediately upon the employee’s involuntary
26 separation from employment; immediately upon his or her voluntary separation if the employee
27 gave at least seventy-two (72) hours notice, and within seventy-two (72) hours, if the employee
28 voluntarily separated, but did not give at least seventy-two (72) hours notice.

1 26. Plaintiffs are informed and believe and thereon allege that all employees who
2 have been separated from Defendants did not timely receive a final paycheck detailing the proper
3 amount of pay from Defendants in violation of Labor Code § 200, et. seq.

4 27. Pursuant to Labor Code § 200, et seq. employees that no longer work for
5 Defendants, and who were not timely paid, are entitled to one (1) day of pay in penalties for each
6 day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

7 **VIOLATION OF MEAL AND REST PERIOD PROVISIONS**

8 28. Defendants' improper meal and rest period policies are in violation of California
9 law including, but not limited to Labor Code § 226.7, 512, and the applicable IWC Wage Orders.
10 Plaintiffs and the class are entitled to wages at their regular rate of pay for each violation where
11 Defendants violated the meal and rest break provisions and paid the class the missed meal and
12 rest period premiums at an artificially reduced regular rate. Plaintiffs and the class were entitled
13 to 1 hour of pay for each meal and rest break violation at their regular rate of pay. Defendants
14 failed and continue to fail to pay for meal and rest period violations at the employees' regular
15 rate of pay in violation of Section 11 of the applicable Wage Orders.

16 29. Plaintiffs seek restitution and injunctive relief for said violations.

17 30. Plaintiffs are informed and believe and thereon allege that at all times herein
18 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
19 prohibited by California B&PC § 17200, thereby depriving their employees and the putative class
20 the minimum working standards and conditions due to them under the California labor laws and
21 Industrial Welfare Commission wage orders as specifically described herein. Plaintiffs seek an
22 injunction preventing Defendants from continuing their unfair business practice of improperly
23 depriving their employees of overtime pay, and payment of their regular rate of pay for meal and
24 rest period premiums. Plaintiffs further seek an order requiring Defendants to identify by full
25 name, telephone number, and last known address employees who worked or still work for
26 Defendants between 2021 through the date of judgment; Plaintiffs further seek an order requiring
27 Defendants to timely pay restitution to all current and former employees, including back wages,
28 premium payments, and interest.

1 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

2 31. Plaintiffs are informed and believe and thereon allege that as part of Defendants’
3 ongoing unfair business practices, Defendants, and each of them, fail to provide their employees
4 with proper and understandable itemized wage statement, as required by Labor Code § 226.

5 32. Plaintiffs are informed and believe, and thereon allege, that Defendants, and each
6 of them, fail to provide each employee with an itemized statement which states the actual regular
7 rate paid, the total hours worked by the employee, the gross and net wages earned, and all
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee.

10 **FAILURE TO REIMBURSE EXPENSES**

11 33. Defendants have adopted and implemented an illegal reimbursement policy that
12 fails to compensate Plaintiffs for all necessary business expenses incurred in discharging their
13 duties for Defendants.

14 34. Defendants’ conduct in failing to reimburse Plaintiffs and the class for their
15 necessary business expenses is also unfair within the meaning of Business and Professions Code
16 §17200 because it is against established public policy and has been pursued to attain an
17 unjustified monetary advantage for Defendants by unfairly and unlawfully reducing Plaintiffs
18 and the other class members’ compensation, as Plaintiffs and the class are required to come out
19 of pocket for such expenses. As such, Defendants’ business practices, including their illegal
20 reimbursement policy and practice, is unfair, illegal and fraudulent, in that such policy and
21 practice was intended to reduce Plaintiffs’ and the class’ due and owing compensation.

22 **SECOND CAUSE OF ACTION**

23 **RECOVERY OF UNPAID WAGES & PENALTIES**

24 **(Violation of Labor Code §§ 204, 510, 1194, and 1198)**

25 35. Plaintiffs re-allege and incorporate by reference herein the allegations of all
26 preceding paragraphs as though fully set forth herein.

27 36. Plaintiffs and all others similarly situated identified herein were and are employed
28 and scheduled as a matter of established company policy to work and in fact worked as non-

1 exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40)
2 hours per week. Defendants employed and scheduled all employees without providing overtime
3 compensation for such excess hours worked in violation of Labor Code §§ 510 and 1194 and the
4 relevant California Industrial Welfare Commission (IWC) orders. Labor Code § 204 establishes
5 the fundamental right of all employees in the State of California to be paid the proper amount of
6 wages in a timely fashion for their work, including overtime. Defendants always had a written
7 and verbal agreement to pay overtime and double time based on the Plaintiffs and classes'
8 regular rate of pay.

9 37. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiffs may bring a civil action for
10 overtime wages directly against the employer without first filing a claim with the Division of
11 Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with
12 interest thereon, penalties, attorneys' fees, and costs.

13 38. At all times relevant hereto, Defendants have failed to pay to Plaintiffs and all
14 persons similarly situated wages when due as required by Labor Code § 204.

15 39. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
16 the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders.

17 40. At all times relevant hereto, Plaintiffs are informed and believe and thereon allege
18 that Defendants have treated Plaintiffs as hourly non-exempt employees. Despite this
19 classification, Defendants have willfully violated the Labor Code with respect to meeting the
20 requirements of paying one (1) regular rate of pay and calculating overtime and double time
21 based on that regular rate, as herein before alleged. Defendants have failed to properly pay
22 premium overtime for hours worked in a week, and as such, Defendants are able to reduce their
23 overhead and operating expenses and gain an unfair advantage over competing companies
24 complying with state law. Furthermore, Defendants have failed to include all items of
25 remuneration when determining the employees' regular rate of pay, as described above.

26 41. Plaintiffs are informed and believe and thereon allege that Defendants
27 consistently administered a corporate policy regarding off-the-clock work, staffing levels and
28 duties and responsibilities of the members of the classes which required the entirety of all classes

1 to work overtime without proper premium pay, and to fail to pay all wages for hours worked.

2 This corporate policy and pattern of conduct was/is accomplished with the advanced knowledge
3 and design of all Defendants herein. Thus, Plaintiffs and all others similarly situated routinely,
4 regularly and customarily performed overtime work and/or work that they failed to be
5 compensated at the appropriate hourly wage.

6 42. Plaintiffs are informed and believe and thereon allege that the obligations and
7 responsibilities of the class employees are irrelevant because Plaintiffs and all others similarly
8 situated merely allege wrongdoing with Defendants' pay plans, policies and practices. Further,
9 the duties of Plaintiffs and all others similarly situated are not relevant in certifying any of the
10 classes.

11 43. Plaintiffs are informed, believe, and thereon allege that Defendants consistently
12 administered a corporate policy and practice of failing to include all remuneration into the
13 regular rate for purposes of calculating premium overtime payments and meal period penalties.
14 This corporate policy and pattern of conduct was/is accomplished with the advanced knowledge
15 and design of all Defendants herein. Thus, Plaintiffs and all others similarly situated routinely,
16 regularly, and customarily performed overtime work. Accordingly, Plaintiffs and all others
17 similarly situated are entitled to overtime compensation under California law. Further,
18 Defendants disseminated false information throughout Defendants' facilities and among the
19 employees reciting that all hourly non-exempt employees would receive premium overtime pay.

20 44. Defendants, and each of them, in violation of Labor Code §§ 201 and 202, et seq.,
21 respectively, had a consistent and uniform policy, practice, and procedure of willfully failing to
22 pay the earned and unpaid wages of all such former employees. Defendants have willfully failed
23 to pay the earned and unpaid wages of such individuals, including, but not limited to regular pay,
24 premium pay, and other wages earned and remaining uncompensated according to amendment,
25 or proof.

26 45. The pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation as described herein is unlawful and creates an entitlement to
28 recovery by Plaintiffs and all others similarly situated, in a civil action, for the unpaid balance of

1 the full amount of the all wages owing, including the proper calculation of the regular rate and
2 the proper overtime premiums calculated at 1.5 or 2 times the legal regular rate which are owing,
3 including interest thereon, willful penalties, reasonable attorneys' fees, and costs of suit
4 according to the mandate of Labor Code § 1194, et. seq.

5 46. Likewise, Defendants have a pattern, practice, and uniform administration of
6 corporate policy regarding failure to comply with the required provisions of Labor Code § 226.7,
7 in failing to pay Plaintiffs and the class the meal and rest period premium payment at the regular
8 rate.

9 **THIRD CAUSE OF ACTION**

10 **(Violation of Labor Code §§ 200, et. seq.)**

11 47. Plaintiffs re-allege and incorporate by reference herein the allegations of all
12 preceding paragraphs as though fully set forth herein.

13 48. Labor Code §§ 200, et. seq., provides that an employer is required to pay an
14 employee all wages (including accrued vacation) immediately upon an employee's involuntary
15 separation from employment; immediately upon his or her voluntary separation if the employee
16 gave at least seventy two (72) hours notice, and within seventy-two (72) hours, if the employee
17 voluntarily separated, but did not give at least seventy-two (72) hours notice.

18 49. Plaintiffs and other former employees of Defendants employed in the State of
19 California separated from employment with Defendants, and did not timely receive a final
20 paycheck with all of their wages due from Defendants in violation of Labor Code §§
21 200, et seq. Plaintiffs are informed, believe, and thereon allege that Defendants also violated the
22 mandates of Labor Code §§ 200, et seq., as to other employees whose employment ended during
23 the period of time covered by this action.

24 50. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer
25 works for Defendants, and who was not timely paid all of his or her wages due is entitled to one
26 (1) day of pay in penalties for each day that he or she was paid late, until payment was made, up
27 to a maximum of thirty (30) days.
28

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY MEAL AND REST PERIOD PREMIUMS AT THE PROPER**

3 **REGULAR RATE OF PAY**

4 **(Violation of Labor Code §§ 226.7 & 512, et seq.)**

5 51. Plaintiffs re-allege and incorporates by reference herein the allegations of all
6 preceding paragraphs as though fully set forth herein.

7 52. Plaintiffs believe and thereon allege that Labor Code §226.7 requires an employer
8 to pay an additional hour of compensation at the employee's regular rate of pay for each meal
9 period and rest period violation. During the class period, Plaintiffs are informed and believe, and
10 based thereon allege that Defendants have failed to pay Plaintiffs and the class members meal
11 period and rest period premium pay at their regular rate of pay. Defendants' improper meal and
12 rest period practices and policies are in violation of California law including, but not limited to
13 Labor Code § § 226.7, 512, and the IWC Wage Orders. Plaintiffs and the class are entitled to 1
14 hour of pay for each meal and rest period violation at their regular rate of pay.

15 53. Pursuant to Labor Code §226.7, Plaintiffs are entitled to damages in an amount
16 equal to one (1) hour of the employee's regular rate of pay per each meal and rest period
17 violation, in a sum to be proven at trial.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(Violation of Labor Code § 226)**

21 54. Plaintiffs re-allege and incorporate by reference herein the allegations of all
22 preceding paragraphs as though fully set forth herein.

23 55. Labor Code §226(a) provides, in pertinent part:

24 An employer, semimonthly or at the time of each payment of wages, shall furnish
25 to his or her employee, either as a detachable part of the check, draft, or voucher
26 paying the employee's wages, or separately if wages are paid by personal check or
27 cash, an accurate itemized statement in writing showing (1) gross wages earned,
28 (2) total hours worked by the employee, except as provided in subdivision (j), (3)
the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis, (4) all deductions, provided that all
deductions made on written orders of the employee may be aggregated and shown

1 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
2 the employee is paid, (7) the name of the employee and only the last four digits of
3 his or her social security number or an employee identification number other than
4 a social security number, (8) the name and address of the legal entity that is the
5 employer and, if the employer is a farm labor contractor, as defined in subdivision
6 (b) of Section 1682, the name and address of the legal entity that secured the
7 services of the employer, and (9) all applicable hourly rates in effect during the
8 pay period and the corresponding number of hours worked at each hourly rate by
9 the employee. . .

10 56. During the Class Period, Defendants knowingly and intentionally failed to provide
11 the Class Members, including Plaintiff Counts, with timely and accurate wage and hour
12 statements showing gross wages earned, total hours worked, all deductions made, net wages
13 earned, the name and address of the legal entity employing that Class Member, and all applicable
14 hourly rates in effect during each pay period and the corresponding number of hours worked at
15 each hourly rate by that Class Member.

16 57. The Class Members, including Plaintiff Counts, suffered injury as a result of
17 Defendants' knowing and intentional failure to provide the Class Members, with the wage and
18 hour statements required by law.

19 58. Based on Defendants' conduct as alleged herein, Defendants are liable for actual
20 damages, statutory damages, and/or statutory penalties pursuant to California Labor Code § 226,
21 attorney's fees and costs, and other applicable provisions of the Labor Code and applicable
22 Wage Order.

23 **SIXTH CAUSE OF ACTION**
24 **FAILURE TO PROVIDE MEAL PERIODS**
25 **(Violation of Labor Code §§ 226.7 and 512)**

26 59. Plaintiffs incorporate by reference as if fully set forth herein, the allegations of
27 paragraphs above.

28 60. California Labor Code § 512 and IWC Wage Order 5-2001 state that an employer
may not employ an employee for a work period of more than five (5) hours per day without
providing the employee a meal period of not less than 30 minutes, and an employer may not
employ an employee for a work period of more than 10 hours per day without providing the

1 employee with a second meal period of not less than 30 minutes. Unless the employee is
2 relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on
3 duty” meal period and counted as time worked. California Labor Code § 226.7(a) further states
4 that no employer shall require any employee to work during any meal or rest period mandated by
5 an applicable order of the IWC.

6 61. Employers are prohibited from exerting coercion against the taking of, creating
7 incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

8 62. Plaintiffs and members of the Class were not provided with or given the
9 opportunity to take the requisite meal periods before the end of the first 5 hours of work, nor
10 were they provided with or given the opportunity to take a proper second meal period during the
11 days when they worked more than 10 hours in a day. Defendants coerced Plaintiffs and the
12 members of the Class to forego meal periods by disciplining and/or threatening disciplinary
13 action against them if they attempted to take meal periods, created incentives to forego meal
14 breaks, and encouraged the skipping of meal periods by scheduling work to coincide with the
15 meal periods, among other things. As a result, Plaintiffs and members of the Class were required
16 to work and/or were not relieved of all duties during any meal period taken, and thus were
17 considered “on duty;” however, Defendants failed to count as time worked any “on duty” meal
18 period taken by Plaintiffs and the members of the Class.

19 63. Pursuant to California Labor Code § 226.7(c) and IWC Wage Order 5-2001, if an
20 employer fails to provide an employee a meal period in accordance with the applicable
21 provisions of the IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at
22 the employee’s regular rate of pay for each workday that the meal period is not provided. As
23 such, Plaintiffs and members of the Class are entitled to an additional one hour’s pay for each
24 day in which Plaintiffs and members of the Class were not provided a proper meal break under
25 the above-described authorities.

26 64. Plaintiffs and the members of the Class request that the Court award interest on all
27 unpaid wages at the legal rate specified by California Civil Code § 3289(b), accruing from the
28 date the wages were due and payable pursuant to Labor Code § 218.6.

EIGHTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES

(Violation of (Labor Code § 2802)

71. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the allegations of the preceding paragraphs.

72. California Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

73. Plaintiffs are informed and believe and thereon allege that at all relevant times Plaintiffs and the class members incurred certain expenses for their jobs with Defendants, including but not limited to using their personal cell-phones for company business. Despite this, Defendants failed and refused to indemnify Plaintiffs and the class for all of their expenditures in carrying out their duties for Defendants.

74. As a result of Defendants’ failure to indemnify Plaintiffs and the class members, they have suffered losses according to proof, including prejudgment interest, costs, and attorneys’ fees in prosecuting this case.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Violation of Labor Code §§ 2698 and 2699)

75. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the allegations of the preceding paragraphs.

76. On or about November 27, 2024, Plaintiff Counts provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

77. The LWDA failed to respond to Plaintiffs’ counsel’s correspondence and failed to notify Plaintiffs’ counsel as to whether it would investigate the allegations contained therein, within the time period requirements of the Private Attorneys General Act (PAGA), under Labor Code §2699.3. Plaintiffs have fully complied with the notice requirements set forth in Labor

1 Code §2699.3 in order to commence a civil action against an employer pursuant to Labor Code
2 §2699.

3 78. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages,
4 overtime compensation, failure to provide meal periods, failure to authorize and permit rest
5 periods, failure to pay all wages upon termination or resignation, and failure to provide accurate
6 itemized wage statements, will subject Defendants to civil penalties pursuant to, without
7 limitation, Labor Code §§ 201, 202, 203, 204, 226, 245, 246, 510, 512, 551, 552, 1174, 1194,
8 1198, 2802 and IWC Wage Orders.

9 79. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c),
10 and related Labor Code provisions. Plaintiffs bring this cause of action on behalf of themselves,
11 as private attorneys general, and in a representative capacity on behalf of other aggrieved
12 employees, affected by the labor law violations alleged herein.

13 80. Defendants committed numerous violations of the California Labor Code and
14 IWC Wage Orders against the Plaintiffs, and on information and belief, against members of the
15 Class and other current and former employees while they were employed by Defendants,
16 including but not limited to:

17 a. Defendants violated Labor Code §§ 510, 511, 1194 and/or IWC Wage Orders by
18 failing to pay Plaintiffs and the members of the Class, and on information and belief, other
19 current and former employees of Defendants, all minimum, straight time and overtime wages
20 owed in compliance with California law;

21 b. Defendants violated Labor Code §§ 226.7, 510, 1194, 1197 and/or IWC Wage
22 Orders by failing to pay Plaintiffs and the members of the Class by failing to pay for a missed
23 meal or rest period at the regular rate of pay;

24 c. Defendants violated Labor Code §§ 1194, 1197 and/or IWC Wage Orders by
25 failing to pay Plaintiffs and the members of the Class, and on information and belief, other
26 current and former employees of Defendants, all minimum wages owed in compliance with
27 California law;

28 d. Defendants violated Labor Code §§ 1194, 204, 510, 511 and/or IWC Wage
Orders by failing to pay Plaintiffs and the members of the Class, and on information and belief,

1 other current and former employees of Defendants, all wages owed in a timely manner in
2 compliance with California law;

3 e. Defendants violated Labor Code § 226.7, 512, and /or IWC Wage Orders by
4 failing to provide Plaintiffs and the members of the Class, and on information and belief, other
5 current and former employees of Defendants, the opportunity to take the requisite meal periods
6 in compliance with California law;

7 f. Defendants violated Labor Code § 226.7 and/or IWC Wage Orders by
8 failing to authorize and permit Plaintiffs and the members of the Class, and on information and
9 belief, other current and former employees of Defendants, the opportunity to take the requisite
rest periods in compliance with California law;

10 g. Defendants violated Labor Code §§ 226, 1174 and/or IWC Wage Orders by
11 failing to properly maintain accurate employment time and records, maintain and/or submit
12 accurate itemized wage statements on behalf of Plaintiffs, members of the Class, and on
13 information and belief, on behalf of other current and former employees of Defendants as
14 described herein; and

15 h. Defendants violated Labor Code §§ 201, 202 and/or IWC Wage Orders by
16 failing to pay Plaintiffs, the Class, and on information and belief, other current and former
employees of Defendants as described herein;

17 i. Defendants violated Labor Code § 2802 and/or the IWC Wage Orders by failing
18 to pay Plaintiffs and other members of the Class all of their reasonable and necessary expenses.

19 81. Pursuant to Labor Code § 2699, Plaintiffs, members of the Class, and all other
20 aggrieved current and former employees seek to recover civil penalties, as otherwise provided by
21 statute and wage order, for which Defendants are liable as a result of their violations of the
22 California Labor Code and applicable wage order(s) in an amount to be proven at trial. These
23 penalties include, but are not limited to, those provided by Labor Code §§ 201, 202, 203, 204,
24 210, 226, 226.3, 226.7, 245, 246, 256, 510, 512, 558, 1174, 1194, 1197, 2699, and IWC Wage
25 Orders. Plaintiffs and aggrieved current and former employees further seek and award of
26 reasonable attorneys' fees and costs pursuant to Labor Code § 2698 and 2699.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray:

1. That the Court determines this action may be maintained as a class action;

As to the First Cause of Action:

2. For an order preliminarily and permanently enjoining Defendants from engaging in the practices challenged herein;

3. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendants by means of the unfair practices complained of herein. Plaintiffs seek, on behalf of the putative class, the appointment of a receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 201, 202, 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices;

4. For an order finding and declaring that Defendants' acts and practices as challenged herein are unlawful, unfair, and/or fraudulent;

5. For an accounting, under the administration of Plaintiffs and subject to court supervision, to determine the amount to be returned by Defendants and the amounts to be refunded to members who are or were not paid all their wages due to Defendants' unfair business practices;

6. For the creation of an administrative process wherein each injured current and former employee receives his or her back wages in the form of overtime pay or alternatively that each current or former eligible employee may submit a claim in order to receive his/her money;

7. For an order requiring Defendants to make full restitution and payment pursuant to B&PC Sections 17200, et seq.;

8. For all other appropriate declaratory and equitable relief;

9. For pre-judgment interest to the extent permitted by law;

10. For an order requiring Defendants to identify, by name, address and telephone number of each person who worked in California as an hourly non-exempt employee for Defendants between 2021 through the time of judgment;

11. For an order imposing all civil and statutory penalties provided by law.

As to the Second and Fourth Cause of Action:

12. For damages according to proof, as set forth in Labor Code §§ 510, 226.7 and 1194, et seq., (and the applicable California Industrial Welfare Commission wage orders) regarding wages due and owing;

13. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for reasonable attorneys' fees;

14. For an order imposing all civil and statutory penalties provided by law.

As to the Third Cause of Action:

15. For waiting for time penalties for all former employees not timely paying their last paycheck, including vacation pay;

16. For reasonable attorneys' fees and costs;

17. For an order imposing all civil and statutory penalties provided by law.

As to the Fifth Cause of Action:

18. For recovery as authorized by Labor Code §226(e);

19. For injunctive relief to ensure Defendants' compliance with Labor Code §226 and the IWC Wage Orders §7(A) pursuant to Labor Code §226(h);

20. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or §226(h);

21. For an order imposing all civil and statutory penalties provided by law.

As to the Sixth Cause of Action:

22. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a meal period was not provided, impeded, discouraged, and/or dissuaded;

23. For an order imposing all civil and statutory penalties provided by law.

As to the Seventh Cause of Action:

24. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a rest period was not authorized or permitted, or impeded, interrupted, discouraged, and/or dissuaded;

25. For an order imposing all civil and statutory penalties provided by law.

As to the Eighth Cause of Action:

26. For recovery of all necessary expenditures or losses incurred by Plaintiffs and the class members, according to proof;

27. For pre-judgment interest as allowed by Labor Code §§ 218.6, 1194(a), and Civil Code § 3287;

28. For an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2802(c).

As to the Ninth Cause of Action:

29. That the Court declare, adjudge and decree that Defendants violated California Private Attorneys General Act, Labor Code § 2698 and 2699;

30. For an order imposing all civil and statutory penalties provided by law;

31. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 2699(g); and

32. For such other and further relief as the Court may deem equitable and appropriate.

As to All Causes of Action:

33. For reasonable costs incurred; and

34. For such other and further relief as this Court may deem just and proper.

Dated: April 25, 2025

BARTZ LAW GROUP, APC

By: /s/ Aaron A. Bartz
AARON A. BARTZ
REX J. PHILLIPS
Attorneys for Plaintiff Alvin Counts
and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: April 25, 2025

BARTZ LAW GROUP, APC

By: /s/ Aaron A. Bartz
AARON A. BARTZ
REX J. PHILLIPS
Attorneys for Plaintiff Alvin Counts
and all others similarly situated