Tuvia Korobkin (SBN 268066)
tuvia@marqueelaw.com
Gary S. Brotman (SBN 287726)
gary@marqueelaw.com
Alex Purcell (SBN 347862)
alex@marqueelaw.com
MARQUEE LAW GROUP, A Professional Corporation
9100 Wilshire Boulevard, Suite 445 East Tower
Beverly Hills, California 90212
(310) 275-1844 telephone
(310) 275-1801 fax

Attorneys for Plaintiff
HENRY PANIAGUA

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
2/7/2025 6:28:06 PM

Clerk of the Superior Court
By A. Gidron ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

HENRY PANIAGUA, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

C & D TOWING, INC., a California corporation; C & D TOWING INVESTMENTS, INC., a California corporation; C & D TOWING SPECIALISTS, INC., a California corporation; and DOES 1 through 100, Inclusive,

Defendants.

Case No. 24CU025818C

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

(1) FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);
(2) MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 204, 1182.12, 1194, 1194.2, 1197, 1198);
(3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 1198);
(4) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 1198);
(5) UNLAWFUL DEDUCTIONS FROM WAGES (LABOR CODE § 221 *et seq.*);
(6) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);
(7) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
(8) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE §§ 2802, 2804);
(9) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200, *et seq.*); and
(10) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT.

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Henry Paniagua ("Plaintiff"), on behalf of himself and all others similarly situated, and as a private attorney general on behalf of the State of California and other aggrieved employees, brings this Class and Representative Action Complaint against C & D Towing, Inc.; C & D Towing Investments, Inc.; C & D Towing Specialists, Inc.; and Does 1 through 100, inclusive (collectively, "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, and as a private attorney general on behalf of the State of California and other aggrieved employees, hereby brings this class and representative action for recovery of unpaid wages and penalties under California Business and Professions Code section 17200, *et. seq*.; Labor Code sections 201-204, 221-223, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq*.; and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"), in addition to seeking declaratory relief and restitution. This class action is brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in San Diego County. Defendants own, maintain offices, transact business, have an agent or agents within San Diego County, and/or otherwise are found within San Diego County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code sections 201-204,

221-223, 226, 226.2, 226.7, 510-512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 1815, 2802, 2804, 2698 *et seq.*; Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 9, which sets employment standards for employees in the transportation industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a company offering towing services, and that they employed Plaintiff and other similarly situated non-exempt employees within San Diego County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 22) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 22).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff has worked for Defendants as a driver from in or about September 2023 until on or about November 5, 2024.

10. Plaintiff and many other drivers are paid on an hourly basis, and they often work over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but Defendants have failed to pay them overtime at one and one-half times (or double-time at two times) their "regular rate" of pay as required under Labor Code § 510 and Wage Order 9. Specifically, Plaintiff and other non-exempt employees have regularly received non-discretionary bonuses and commissions and/or other forms of compensation not excludable from the "regular rate" of pay (these forms of compensation are hereinafter referred to collectively as "Incentive Pay"), but Defendants have failed to incorporate Incentive Pay into the "regular rate" of pay when paying overtime and/or double-time compensation. For example, on December 7, 2023, Plaintiff's wage statement reflects that he was paid commissions of $140.00 for the pay period of November 16-30, 2023. Plaintiff's wage statement further reflects that he worked 24.8 hours of overtime in that same pay period. However, Defendants failed to incorporate the commissions into Plaintiff's "regular rate" of pay when paying him overtime wages, and paid his overtime wages at $27.00 per hour, which was 1.5 times Plaintiff's *base* hourly rate, and not 1.5 times his "regular rate" of pay. Similarly, Plaintiff's wage statement dated November 7, 2023, for the pay period of October 16-31, 2023, reflects that Plaintiff earned a $300.00 bonus, but again, Defendants failed to incorporate that bonus into Plaintiff's "regular rate" of pay and paid Plaintiff's 19.16 hours of overtime wages at $25.50 per hour, which was 1.5 times Plaintiff's *base* hourly rate of pay. Plaintiff and other non-exempt employees likewise received bonuses, commissions, and/or other Incentive Pay at many points throughout the putative class period, and Defendants failed to incorporate them into the "regular rate" of pay, resulting in underpaid overtime and/or double-time wages.

11. In addition to under-paying overtime wages, Defendants have also sometimes failed to pay Plaintiff and other non-exempt employees for time spent working, by unilaterally clocking them out while they were still working and/or failing to pay them for all hours worked. For example, on one occasion Plaintiff had to work for approximately 24 hours after his tow truck

went into “limp mode” because of a mechanical issue, meaning the truck would not permit Plaintiff to drive faster than 5 miles per hour (“mph”). Despite being informed of the situation, Defendants refused to send another tow truck for Plaintiff, so Plaintiff had to finish his drive going only 5 mph. Plaintiff’s drive therefore took significantly longer than anticipated, and he was even forced to remain in the truck overnight and resume driving the next morning. By the time Plaintiff returned to Defendants’ yard the following day, he had worked for roughly 24 hours straight. Although Plaintiff was performing work and/or subject to Defendants’ control for the entire 24-hour period, Defendants refused to pay Plaintiff for his full hours and only compensated Plaintiff for 12 hours of that work. When Plaintiff noticed the pay discrepancy, he asked his manager why he was not being paid for his full time worked and was told that Defendants were paying him for 12 hours “for the inconvenience,” even though Plaintiff should have been paid for the full 24 hours. On several other occasions, Plaintiff would attempt to clock out and notice that Defendants had already clocked Plaintiff out before Plaintiff finished working, deciding to make Plaintiff finish those shifts wholly uncompensated. On information and belief, Defendants have similarly failed to pay other non-exempt employees for all hours worked, resulting in unpaid minimum wages and overtime wages.

12. Defendants have also made unlawful deductions from Plaintiff’s and other non-exempt employees’ wages. For example, when Plaintiff lost a set of keys, Defendants deducted $180.00 from Plaintiff’s paycheck. Plaintiff did not lose the keys through any dishonest or willful act, or through gross negligence. Even though Plaintiff later found the keys and returned them to Defendants, Defendants still deducted the $180.00 from Plaintiff’s pay. Plaintiff is informed and believes, and based thereon alleges, that it is Defendants’ policy or practice to deduct from its employees’ wages expenses for lost or broken equipment without regard for whether the breakage or loss was caused by a dishonest or willful act, or by the gross negligence of the employee.

13. Defendants have also failed to authorize and permit off-duty 10-minute rest periods to Plaintiff and other non-exempt employees. Defendants rarely, if ever, permitted their non-exempt employees such as Plaintiff to take off-duty rest periods, Defendants did not schedule rest periods, and Defendants did not do anything else to ensure that Plaintiff and other non-exempt

employees were afforded the ability to take 10-minute rest periods. In fact, Plaintiff does not recall ever being authorized or permitted to take a rest period while working for Defendants, and the back-to-back nature of his work calls made it impracticable to take rest breaks.

14. Despite failing to authorize and permit legally compliant rest periods to Plaintiff and other non-exempt employees, Defendants have failed to pay the rest period premiums required by Labor Code § 226.7. Upon information or belief, during at least a portion of the putative class period, Defendants have maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

15. Defendants also failed to provide their non-exempt employees, including Plaintiff, with thirty-minute meal periods before the end of their fifth hour of work. In fact, Defendants instructed Plaintiff and other drivers to take their thirty-minute meal periods at seemingly random points in their shifts. Plaintiff frequently did not receive a message allowing him to take his lunch until his seventh or eighth hour of work. Further, Plaintiff did not clock out for lunch himself. Rather, Defendants would deduct the thirty minutes from his pay. There were numerous occasions on which Plaintiff was not given a thirty-minute meal period <u>at all</u>, but Defendants would still deduct thirty minutes from his pay, resulting in additional unpaid minimum wages and/or overtime wages. Additionally, when Plaintiff or other non-exempt employees worked a shift in excess of 10 hours, they were not provided a second thirty-minute meal period.

16. Despite failing to provide Plaintiff and other non-exempt employees with legally compliant meal periods, Defendants have failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants have maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

17. Defendants' failure to pay all owed minimum wages, failure to pay overtime wages, unlawful deduction of wages, and failure to pay meal period and rest period premium wages have resulted in Defendants' maintaining inaccurate payroll records and issuing inaccurate wage statements to Plaintiff and other non-exempt employees.

18. In addition, the wage statements issued to Plaintiff and other employees have been facially deficient, in that they did not include Defendants' full address. While they contained a street address, they did not contain the city.

19. As a further result of Defendants' failure to pay all minimum wages and overtime wages, unlawful deduction of wages, as well as Defendants' failure to pay meal period and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

20. Additionally, Defendants have failed to pay all wages to Plaintiff and other former employees by conditioning payment of their final paycheck upon the signing of a release, in violation of Labor Code § 206.5. For example, Defendants told Plaintiff that they would not give Plaintiff his final paycheck unless and until he signed a general release. Plaintiff refused to sign the release form, so Defendants refused to provide Plaintiff with his final paycheck.

21. Defendants have also failed to reimburse Plaintiff and other employees for all business expenses incurred in the course of their employment. Specifically, Defendants have required Plaintiff and other employees to use their personal cell phones for work purposes. For example, Plaintiff was required to download the Skype app to communicate with dispatchers for work, which was used throughout each of his shifts. Plaintiff and other drivers also used their personal cell phones for GPS apps (such as Waze) which were used throughout their shifts to route their drives. Plaintiff and other employees were also required to download the application "TowBook" for receiving calls, which Plaintiff used regularly. Beginning in or about July 2024, Plaintiff and other non-exempt employees were also required to download the ADP app onto their personal cellphones to clock in and out. Despite requiring Plaintiff and other employees to use their personal cell phones for work, Defendants have failed to reimburse them for any portion of their personal cell phone bill, as required under California law, including but not limited to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

CLASS ACTION ALLEGATIONS

22. Class Definitions: Plaintiff brings this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and (i) were subject to Defendants' timekeeping and payroll practices, and/or (ii) received Incentive Pay in a corresponding pay period, at any time from four years immediately preceding the filing of this action through the present.

b. The Minimum Wage Class consists of all of the Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping and payroll practices, at any time from four years prior to the filing of this action to the present.

c. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

d. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, and/or at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of this action through the present.

e. The Unlawful Deduction Class consists of all of the Defendants' current and former non-exempt employees in California from whom Defendants deducted wages for the breakage or loss of equipment that was not broken or lost due to a dishonest or willful act, or by gross negligence of the employee, at any time from four years immediately prior to the filing of this action to the present.

f. The Wage Statement Class consists of (i) all members of the Overtime Class, Minimum Wage Class, Unlawful Deduction Class, Rest Period Class, and/or Meal Period Class, and (ii) all of Defendants' California employees who received who received a wage statement that did not contain the city of Defendants' address, at any time from one year immediately prior to the filing of this action through the present.

g. The Waiting Time Class consists of (i) all members of the Overtime Class, Minimum Wage Class, Unlawful Deduction Class, Rest Period Class, and/or Meal Period Class, whose employment with Defendants ended at any time from three years prior to the filing of this action to the present; and (ii) all of the Defendants' current and former non-exempt employees in California who refused to sign a release form upon separation of their employment, and whose employment with Defendants ended at any time from three years prior to the filing of this action through the present.

h. The Expense Reimbursement Class consists of all of Defendants' employees in California who were required to use their personal property, including but not limited to personal cellular phones, for work-related purposes, at any time from four years prior to the filing of this action through the present.

23. **Numerosity/Ascertainability:** The Classes are so numerous that joinder of all members would be impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals each. The identity of such membership is readily ascertainable via Defendants' employment records.

24. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation:

i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;

ii. Whether Defendants paid at least the legal minimum wage for all hours worked by the members of the Minimum Wage Class;

iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;

iv. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;

v. Whether Defendants took unlawful deductions from the wages of members of the Unlawful Deduction Class;

vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;

vii. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and

viii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

25. **Predominance of Common Questions:** Common questions predominate over questions that affect only individual Class members. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each Class member, such as Defendants' wage payment, wage statement, rest period, meal period, wage deduction, and expense reimbursement policies/practices. Thus, common questions predominate over individual questions concerning each Class member.

26. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of earned minimum wages and overtime wages, was subject to Defendants' rest period policies/practices and meal period policies/practices, was furnished with inaccurate wage statements, experienced unlawful deductions from his wages, and was not reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

28. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in

California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of individual Class members are not large enough to warrant individual prosecution considering all of the concomitant costs and expenses attending thereto. Thus, the Classes are maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198 which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California

Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.

32. As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime and double-time hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

33. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid overtime wages, interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. Wage Order 9, § 4 and Labor Code §§ 1197 and 1182.12 establish employees' right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code § 226.2 provides that rest periods and non-productive time must be paid separately for employees paid on a piece rate. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees, costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

36. At all relevant times, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to Defendants' control and/or suffered or permitted to work under the Labor Code and Wage Order 9.

37. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

38. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 9.

39. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, interest, statutory penalties, and attorneys' fees and costs of suit, per Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

41. As alleged herein, Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 9, and have failed to pay meal period premiums at Plaintiff's and Meal Period Class members' regular rate of compensation as required under Labor Code § 226.7.

42. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 9, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

///

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Labor Code §§ 226.7 and 516, and Wage Order 9, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof, and that the authorized rest time shall count as hours worked for which there shall be no deduction from wages.

45. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each workday they were not authorized and permitted all rest periods to which they were entitled.

46. These violations create an entitlement to recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest period premiums, interest thereon, statutory penalties, civil penalties, and costs of suit under Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FIFTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM WAGES

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Labor Code section 221 provides in pertinent part, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

49. IWC Wage Order 9-2001, section 8, states that, "No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee."

///

50. As set forth herein, Plaintiff and the Unlawful Deduction Class have suffered improperly deducted wages when Defendants made deductions from their wages for breakage or loss of equipment that was not broken or lost due to a dishonest or willful act, or by gross negligence of the employee.

51. Through Defendants’ conduct during the applicable statutory period, Defendants violated Labor Code section 221 when it illegally deducted these wages. As a result of Defendants’ improper deduction of wages from Plaintiff and the Unlawful Deduction Class, he did not timely receive his proper wages due.

52. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the Unlawful Deduction Class has suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

54. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all hours worked, all hours worked at each rate of pay, the full address of Defendants, and all wages earned, in violation of Labor Code § 226.

55. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their minimum wages, overtime wages, and meal and rest period premium wages, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants’ reported data.

56. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

58. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

59. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid minimum, overtime, and double-time wages, unlawfully deducted wages, and unpaid meal and rest period premium wages.

60. Additionally, Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment because Defendants conditioned the payment of their final paycheck upon signature of a release.

61. Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner.

62. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting

Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

63. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

64. At all relevant times, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

65. At all relevant times, Defendants were subject to Labor Code § 2804, which states, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

66. Due to Defendants' unlawful policy and practice of requiring employees to use their personal property, including but not limited to personal cell phones, for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

67. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

68. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

69. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

<u>NINTH CAUSE OF ACTION</u>

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

71. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all wages due, failing to provide compliant meal periods, failing to authorize and permit compliant rest periods, making unlawful deductions from wages, failing to reimburse business expenses, failing to furnish accurate itemized wage statements, and failing to pay all wages due at termination.

72. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

73. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

74. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

75. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

TENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

77. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*. Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $100.00 for each initial violation and $250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250.00 for each initial violation of Labor Code § 226 and $1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

b. Failing to pay Plaintiff and other aggrieved employees at least the minimum wage for all hours worked, in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198;

c. Failing to provide all legally mandated meal periods to Plaintiff and other aggrieved employees and failing to pay meal period premiums at employees' regular rate of compensation, in violation of Labor Code §§ 226.7, 512, 516, and 1198;

d. Failing to authorize and permit legally compliant rest periods to Plaintiff and other aggrieved employees, and failing to pay rest period premiums at the regular rate of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;

e. Making unlawful deductions from Plaintiff's and other aggrieved employees' wages, in violation of Labor Code §§ 221-223 and 1198;

f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

g. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;

h. Failing to reimburse Plaintiff and other aggrieved employees for expenses incurred in the course of employment, in violation of Labor Code §§ 2802, 2804, and 1198;

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226, 1174, and 1198; and

j. Conditioning the payment of Plaintiff's and other aggrieved employees' final wages on the signing of a release, in violation of Labor Code § 206.5.

78. On or about December 2, 2024, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq*. with respect to the violations of the California Labor Code identified in paragraph 77 (a)-(j) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act ("PAGA") with respect to these violations. As noted in Plaintiff's notice letter, the "aggrieved employees" Plaintiff seeks to represent in his PAGA action are all current and former non-exempt employees of Defendants who have worked for Defendants in California at any time from one year immediately preceding the date of Plaintiff's PAGA notice letter through the date

that judgment is entered in Plaintiff's PAGA action or any alternative date agreed upon by the parties and/or approved by the court.

79. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;

3. For an order appointing counsel for Plaintiff as counsel for the Classes;

4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 511, 558, 1194, and 1198;

5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;

6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 221-223;

9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;

10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $100.00 for each initial violation and $250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250.00 for each initial violation of Labor Code § 226 and $1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

14. Prejudgment interest on all due and unpaid wages and other damages pursuant to Cal. Labor Code §§ 218.6, 1194(a); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, 2802(c), 2699(k), Code of Civil Procedure § 1021.5, and all other relevant statutes; and

///

///

///

///

16. For such other and further relief the Court may deem just and proper.

Date: February 7, 2025

Respectfully submitted,
MARQUEE LAW GROUP, A.P.C.

By: ______________________
Tuvia Korobkin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: February 7, 2025

Respectfully submitted,
MARQUEE LAW GROUP, A.P.C.

By: ______________________
Tuvia Korobkin
Attorneys for Plaintiff

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 9100 Wilshire Boulevard, Suite 445, East Tower, Beverly Hills, California 90212.

On February 7, 2025, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION

on all interested parties in this action by transmitting a true copy of the document(s) described above, addressed as follows:

SEE ATTACHED SERVICE LIST

( ) **BY MAIL** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Beverly Hills, California.

( ) **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand to the above addressee(s).

( ) **BY OVERNIGHT COURIER:** I am "readily familiar" with the firm's practice of collecting and processing overnight deliveries, which includes depositing such packages in a receptacle used exclusively for overnight deliveries. The packages were deposited before the regular pickup time and marked accordingly for delivery the next business day.

(X) **BY ELECTRONIC TRANSMISSION:** Participants in this case were served electronically to the address of the recipient(s) as set forth below. I am readily familiar with the Code of Civil Procedure and California Rules of Court for electronic service and this document/these documents were duly served electronically in accordance with said rules and regulations on the date stated above, and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 7, 2025, at Beverly Hills, California.

Claudia Perez

Claudia Perez

SERVICE LIST:

Fisher & Phillips LLP c/o Stephanie Reynolds, Esq. c/o A.J. Sparagna, Esq. 4747 Executive Drive, Suite 1000 San Diego, CA 92121 E: *sreynolds@fisherphillips.com*; *kzekan@fisherphillips.com;* *asparagna@fisherphillips.com*	*Attorneys for Defendants C&D Towing, Inc., C&D Investments, Inc., and C&D Towing Specialists, Inc.*