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on behalf of himself and all others similarly situated and as Private Attorney General

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JEREMIAH CLAIBORNE, PABLO CAMPOS
HERNANDEZ, MARCOS RODRIGUEZ, and
VICTOR AVALOS on behalf of themselves
and all other similarly situated,

Plaintiffs,

vs.

PERFORMANCE TRANSPORTATION, LLC,
a California limited liability company;
PERFORMANCE FOOD GROUP, INC., a
Colorado corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22STCV31766
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. David S. Cunningham III
DEPT: S11

SECOND AMENDED COMPLAINT

- 1) **Failure to Pay Lawful Wages Including Overtime**
- 2) **Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof**
- 3) **Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof**
- 4) **Failure to Reimburse Employee Expenses**
- 5) **Failure to Timely Pay Wages During Employment**
- 6) **Failure to Timely Pay Wages at Termination**
- 7) **Failure to Provide Accurate, Itemized Wage Statements**
- 8) **Violations of the Unfair Competition Law**
- 9) **Failure to Establish, Implement, and Maintain Effective Injury Prevention Program**
- 10) **Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes**
- 11) **Failure to Pay Minimum Wages**
- 12) **Failure to Provide Time Records**
- 13) **Failure to Pay Correct Sick Pay**
- 14) **Labor Code Private Attorneys General Act (Lab. Code § 2699 et seq.)**

FILED
Superior Court of California
County of Los Angeles

08/28/2024

David W. Slayton, Executive Officer / Clerk of Court

By: A. Soni Deputy

JURY TRIAL DEMANDED

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on behalf of themselves and all others similarly situated and as Private Attorneys General

1 Plaintiffs JEREMIAH CLAIBORNE, PABLO CAMPOS HERNANDEZ, MARCOS
2 RODRIGUEZ, and VICTOR AVALOS on behalf of themselves and all others similarly situated
3 assert claims against Defendants PERFORMANCE TRANSPORTATION, LLC,
4 PERFORMANCE FOOD GROUP, INC., and DOES 1 through 50, inclusive, as follows:

5 **I. INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section
7 382, brought against Defendants PERFORMANCE TRANSPORTATION, LLC
8 (“PTL”), PERFORMANCE FOOD GROUP, INC. (“PFG”), and any subsidiaries
9 and affiliated companies (hereinafter “Defendants”) on behalf of Plaintiffs
10 JEREMIAH CLAIBORNE, PABLO CAMPOS HERNANDEZ, MARCOS
11 RODRIGUEZ, and VICTOR AVALOS (hereinafter “Plaintiffs”) and all current
12 and former non-exempt, hourly-paid employees (including but not limited to hourly
13 and component-pay truck drivers) who performed work for PTL in California
14 during the liability period (hereinafter referred to as “Non-Exempt Employees”
15 and/or “Class Members”).

16 2. During the liability period, defined as the applicable statute of
17 limitations for each and every cause of action contained herein, Defendants
18 enforced shift schedules, employment policies and practices, and workload
19 requirements wherein Plaintiffs and all other Non-Exempt Employees: (1) were not
20 paid proper wages they earned for all hours they worked; (2) were not permitted to
21 take their full statutorily authorized rest and meal periods, or had their rest and
22 meal periods shortened or provided to them late due to the scheduling and work
23 load and time requirements placed upon them by Defendants. Defendants failed to
24 pay such employees one (1) hour of pay at the employees regular rate of
25 compensation for each workday that the meal period and/or rest period that was not
26 properly provided; and employees were not properly reimbursed for out-of-pocket
27 expenses.

28 3. During the liability period, Defendants have failed to reimburse

1 Plaintiffs and Class Members for business expenses incurred in the performance of
2 their job duties.

3 4. During the liability period, Defendants have also failed to maintain
4 accurate itemized records reflecting total hours worked and have failed to provide
5 Non Exempt Employees with accurate, itemized wage statements reflecting total
6 hours worked and appropriate rates of pay for those hours worked.

7 5. Plaintiffs, on behalf of themselves and all Class Members, bring this
8 action pursuant to Labor Code sections 201, 202, 203, 204, 210, 221, 225, 226,
9 226.7, 246, 510, 512, 1194, 1198, 1199, 2802, California Code of Regulations,
10 Title 8, section 11040 et seq. and any other applicable Industrial Welfare
11 Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and
12 meal period compensation, penalties and other equitable relief, and reasonable
13 attorneys’ fees and costs.

14 6. Plaintiffs, on behalf of themselves and all Class Members, pursuant
15 to Business and Professions Code sections 17200-17208, also seek restitution from
16 Defendants for their failure to pay all overtime wages and rest and meal period
17 premiums to each of their Non-Exempt Employees.

18 7. Plaintiffs also bring this action under the Labor Code Private
19 Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, et seq., on
20 behalf of themselves and all persons who were employed by PTL in California in
21 an hourly-paid position including, but not limited to, hourly and component-pay
22 truck drivers, at any time during the PAGA Period (“Aggrieved Employees”).

23 8. PAGA, specifically Section 2699, subdivision (a) of the California
24 Labor Code, permits an aggrieved employee to recover civil penalties set forth
25 within the California Labor Code for violations of the California Labor Code. In
26 addition, Section 2699(f) establishes civil penalties for violations of California
27 Labor Code provisions that do not contain their own civil penalties. Employees
28 bring this civil action to recover civil penalties for the violations identified below,

1 including civil penalties pursuant to Section 2699, subdivision (f) as well as those
2 civil penalties specifically set forth within the text of the California Labor Code.
3 Those civil penalties are sought for violations committed against the Aggrieved
4 Employees.

5 9. Plaintiffs have exhausted all applicable administrative procedures
6 with the California Labor and Workforce Development Agency (“LWDA”)
7 providing notice of their intent to bring a private attorneys general action for
8 recovery of penalties under the PAGA. To the extent any violations were curable,
9 Defendants failed to cure within the time prescribed by law.

10 **II. VENUE**

11 10. Venue as to all Defendants is proper in this judicial district pursuant
12 to Code of Civil Procedure section 395. Defendants substantial and continuous
13 commercial activities in Los Angeles County, California and each Defendant is
14 within the jurisdiction of this Court for service of process purposes. Defendants
15 employ numerous Class Members in Los Angeles County, California.

16 **III. PARTIES**

17 11. Plaintiffs Claiborne, Hernandez, Rodriguez, and Avalos are, and at
18 all times mentioned in this complaint were, residents of California.

19 12. Defendant PTL is a California limited liability company.

20 13. Defendant PFG is a Colorado corporation with its principal place of
21 business and corporate headquarters in Virginia.

22 14. The true names and capacities of Defendants, whether individual,
23 corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are
24 currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious
25 names under Code of Civil Procedure section 474. Plaintiffs are informed and
26 believe, and based thereon allege that each of the Defendants designated herein as a
27 DOE is legally responsible in some manner for the unlawful acts referred to herein.
28 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names

1 and capacities of the Defendants designated hereinafter as DOES when such
2 identities become known.

3 15. Plaintiffs are informed and believe, and based thereon allege, that
4 Defendants acted in all respects pertinent to this action as the agent of the other
5 Defendants, carried out a joint scheme, business plan or policy in all respects
6 pertinent hereto, and the acts of each Defendant are legally attributable to the other
7 Defendants.

8 **IV. FACTUAL BACKGROUND**

9 16. Plaintiff Claiborne was employed by PTL from approximately May
10 2021 through on or about September 29, 2021. During his employment with
11 Defendants, Plaintiff occupied the non-exempt position of Class A Truck Driver.
12 His duties and responsibilities included, but were not limited to, delivering and
13 picking up goods at various locations within California only.

14 17. During the liability period, Defendants implemented policies and
15 practices which resulted in Plaintiff Claiborne and Non Exempt Employees not
16 receiving minimum wage for all hours worked. For instance, Plaintiffs would
17 regularly work more than eight hours in one day, and more than forty hours in one
18 week, but would not always receive overtime pay at one-and-a-half times the
19 regular rate for their overtime hours. Furthermore, Plaintiff Claiborne, and, on
20 information and belief, other Non-Exempt Employees, would frequently be
21 required to conduct work off-the-clock and without pay. For instance, Plaintiff
22 Claiborne would often be required to conduct post-trip inspections after clocking
23 out, spending twenty (20) to sixty (60) minutes inspecting the vehicle. Plaintiff
24 Claiborne, and, on information and belief, other Non-Exempt Employees, were
25 required to make certain deliveries off the clock using his personal vehicle,
26 spending twenty (20) to thirty (30) minutes making these deliveries off the clock
27 and without pay.

28 18. During the liability period, due to the work load requirements and

1 time constraints imposed by Defendants during each shift, Plaintiffs and Class
2 Members were required to work in excess of five (5) hours without a minimum,
3 uninterrupted thirty (30) minute meal period, and in excess of ten (10) hours
4 without a minimum, uninterrupted thirty (30) minute meal period, and were not
5 compensated one (1) hour of pay at their regular rate of compensation for each
6 workday that a compliant meal period was not provided, in violation of California
7 labor laws, regulations and IWC Wage Order. For instance, Plaintiffs and, on
8 information and belief, other Non-Exempt Employees were required to continue
9 working through their meal breaks. When Plaintiffs were able to take a meal break,
10 it was regularly interrupted and cut short due to the demands of their respective job
11 positions. Plaintiffs and, on information and belief, other Non-Exempt Employees
12 were encouraged to work through their meal breaks in order to make timely
13 deliveries. Plaintiffs and other Non-Exempt Employees rarely, if ever, received an
14 uninterrupted thirty (30) minute meal break when required.

15 **19.** Due to the workload requirements and time constraints imposed by
16 Defendants, Plaintiffs and Class Members were required to work without being
17 permitted or authorized a minimum ten (10) minute rest period for every four hours
18 or major fraction thereof. Plaintiffs and Class Members were not compensated one
19 (1) hour of pay at their regular rate of compensation for each workday that a rest
20 period was not provided, in violation of California labor laws, regulations, and
21 IWC Wage Orders. For instance, Plaintiffs rarely, if ever, received any rest breaks
22 due to the job demands.

23 **20.** During the liability period, Defendants failed to lawfully reimburse
24 Plaintiffs and Non-Exempt employees for all business expenses necessarily
25 incurred by Plaintiffs and Non-Exempt Employees. For instance, Plaintiffs and, on
26 information and belief, other Non-Exempt Employees were required to utilize their
27 personal cell phones at all times throughout their shift for navigation and
28 communication with colleagues, supervisors, and customers. Furthermore, Plaintiff

1 Claiborne and, on information and belief, other Non-Exempt Employees, were
2 required to utilize their personal vehicles to make deliveries and bring parts or
3 forgotten goods to their required destination. Defendants did not reimburse Plaintiff
4 Claiborne or Non-Exempt Employees for any of these necessary expenses.

5 21. Defendants have also failed to maintain accurate itemized records
6 reflecting total hours worked and have failed to provide Non Exempt Employees
7 with accurate, itemized wage statements reflecting total hours worked and
8 appropriate rates of pay for those hours worked.

9 22. On Plaintiff Claiborne's day of termination, he did not receive his
10 final paycheck and was not compensated for waiting to receive his final paycheck.

11 23. Plaintiffs are informed and believe, and based thereon allege, that
12 Defendants currently employ and during the relevant period have employed over
13 one hundred (100) employees in the State of California in non-exempt hourly
14 positions.

15 24. On or about October 28, 2019, Plaintiff Hernandez began working
16 for Defendants as a California-based delivery driver. Plaintiff Hernandez last day
17 of employment was on or about April 13, 2021.

18 25. Plaintiff Rodriguez was employed by Defendants as a yard driver
19 from approximately August 18, 2021 until November 3, 2022, and was at all times
20 classified as an hourly, non-exempt employee.

21 26. Plaintiff Victor Avalos was employed by Defendants as a delivery
22 driver from approximately November 22, 2021 until January 20, 2023, and was at
23 all times classified as an hourly, non-exempt employee.

24 27. Defendants operated under the legally mistaken belief that, because
25 it was exempt from California overtime pay and meal/rest laws, it was legal to
26 work its drivers to the point of exhaustion (occasionally over 20-hour days) without
27 legal consequences. Defendants' excessive work demands created a working
28 environment that was unsafe for drivers and needlessly exposed them to increased

1 risk of accidents and injuries. OSHA has “issued citations to companies when they
2 ignored the human factor of employee fatigue from excessive overtime.” See U.S.
3 Occupational Safety and Health Administration Letter of Interpretation dated July
4 12, 2016, available at [https://www.osha.gov/laws-](https://www.osha.gov/laws-regs/standardinterpretations/2016-07-12)
5 [regs/standardinterpretations/2016-07-12](https://www.osha.gov/laws-regs/standardinterpretations/2016-07-12). Penalties are, likewise, appropriate here.

6 **28.** Expectations were so extreme that drivers were regularly required to
7 perform driving and loading duties during meal periods, which were supposedly
8 “off duty.” Defendants failed to pay for this time, although they had reason to
9 believe drivers drove and performed loading and unloading duties during these
10 times.

11 **29.** Even when drivers were not performing driving or loading duties,
12 Defendants required drivers to perform other incidental duties and retained control
13 over them, even during their meal periods. Drivers were permitted to pull over and
14 turn off the truck during their meal periods, during which drivers clocked out, but
15 Defendants continually required drivers to observe their trucks at all times. Drivers
16 could, therefore, sit in a restaurant, but could not keep their eyes off Defendants’
17 trucks and products. Sales representatives would also regularly interrupt drivers’
18 meals with work calls, without paying for this time. Despite drivers remaining on-
19 duty during their meals, Defendants deducted this time from drivers’ pay in
20 violation of applicable minimum wage laws.

21 **30.** Defendants also maintain its payroll data in a manner that deprives
22 its drivers of access to information they have a right to receive, including records of
23 all deductions from wages (§ 226(a)(4)), records of net wages earned (§ 226(a)(4)),
24 the name and address of the legal entity that is the employer (§ 226(a)(8)), and all
25 applicable hourly rates in effect during each pay period and the corresponding
26 number of hours worked at each hourly rate (§ 226(a)(9)). The wage statement and
27 payroll information made available to the drivers upon request was limited to the
28 following fields of data, which for example was provided to Plaintiff Hernandez

upon request:

Empl ID	Last Name	First Na	EE Status	Check Date	Pay Period Begi	Pay Period End	Earnings Cc	Earnings Descript	Hours	Earnings	Location Cc	Job Title
358239	Campos-Hernandez	Pablo	Active	11/15/2019	10/27/2019	11/09/2019	REG	Regular	91.43	2441.18	1013	Driver, Hourly CDL-A

31. Defendants violated the Class Members' rights by denying Class Members access to all of the records required to be provided to employees upon request as provided by law. Defendants failed to afford current and former employees the right to inspect or receive a copy of all of the data required to be kept under Section 226.

32. Defendants also violated Class Members' rights under Labor Code section 1198 by denying them access to their daily time records. Under the applicable IWC Wage Order, "Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded." "An employee's records shall be available for inspection by the employee upon reasonable request." Defendants violated Class Members' rights by denying them access to inspect their time records.

33. The Non-Exempt Employees, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V. CLASS ALLEGATIONS

34. Plaintiffs seek to represent a Class comprised of and defined as: All current and former non-exempt, hourly-paid employees (including but not limited to hourly and component-pay truck drivers) who performed work for PTL in California at any time during the Class Period from September 1, 2018, through March 18, 2024 (collectively referred to as the "Settlement Class" and/or Settlement Class Members").

1 **35.** Plaintiffs also seek to represent Subclasses which are composed of
2 persons satisfying the following definitions:

3 **a.** All Class Members who were not
4 accurately and fully paid all lawful wages owed to them
5 including proper minimum wages and overtime wages for all
6 their hours worked;

7 **b.** All Class Members who, within the
8 liability period, have not been provided an uninterrupted 30-
9 minute meal period when they worked over five hours in a
10 work shift and were not provided compensation in lieu
11 thereof;

12 **c.** All Class Members who, within the
13 liability period, have not been provided an uninterrupted 30-
14 minute meal period when they worked over ten hours in a
15 work shift and were not provided compensation in lieu
16 thereof;

17 **d.** All Class Members who, within the
18 liability period, have not been provided a minimum ten (10)
19 minute rest period for every four (4) hours or major fraction
20 thereof worked per day and were not provided compensation
21 in lieu thereof;

22 **e.** All Class Members who, within the
23 liability period, were not provided with accurate and
24 complete itemized wage statements;

25 **f.** All Class Members who, within the
26 liability period, were not timely paid all wages due and owed
27 to them during their employment with Defendant;

28 **g.** All Class Members who, within the

1 liability period, were not timely paid all wages due and owed
2 to them upon the termination of their employment with
3 Defendant;

4 h. All Class Members who, within the
5 liability period, did not receive full reimbursement for
6 employee expenses; and

7 i. All Class Members who, within the
8 liability period, were not paid all sick pay due to them at the
9 correct rate of pay;

10 36. Plaintiffs reserve the right under Rule 3.765, California Rules of
11 Court, to amend or modify the class description with greater specificity or further
12 division into subclasses or limitation to particular issues.

13 37. This action has been brought and may properly be maintained as a
14 class action under the provisions of section 382 of the Code of Civil Procedure
15 because there is a well-defined community of interest in the litigation and the
16 proposed Class is easily ascertainable.

17 A. **Numerosity**

18 38. The potential members of the Class as defined are so numerous that
19 joinder of all the members of the Class is impracticable. While the precise number
20 of Class Members has not been determined at this time, Plaintiffs are informed and
21 believe that Defendants currently employ, and/or during the relevant time period
22 employed, approximately over 100 Non-Exempt Employees in California who are
23 or have been affected by Defendants' unlawful practices as alleged herein.

24 B. **Commonality**

25 39. There are questions of law and fact common to the Class
26 predominating over any questions affecting only individual Class Members. These
27 common questions of law and fact include, without limitation:

28 a. Whether Defendants also violated

1 Labor Codes §§ 200, 510, 1194, and 1197 for failing to pay
2 (or correctly pay) minimum and/or overtime wages for time
3 spent under the Defendants' control;

4 **b.** Whether Defendants violated Labor
5 Code §§ 226.7, 512 and applicable IWC Wage Order by
6 failing to provide statutorily compliant 30-minute meal
7 periods to Non-Exempt Employees on days in which they
8 worked more than 5 hours and failing to compensate said
9 employees one hour's wages in lieu of meal periods;

10 **c.** Whether Defendants violated Labor
11 Code §§ 226.7, 512 and applicable IWC Wage Order by
12 failing to provide statutorily compliant 30-minute meal
13 periods to Non-Exempt Employees on days in which they
14 worked more than 10 hours and failing to compensate said
15 employees one hour's wages in lieu of meal periods;

16 **d.** Whether Defendants violated Labor
17 Code § 226.7 and applicable IWC Wage Orders by failing to
18 authorize and permit minimum 10-minute rest periods to
19 Non-Exempt Employees for every four hours or major
20 fraction thereof worked and failing to compensate said
21 employees one hour's wages in lieu of rest periods;

22 **e.** Whether Defendants violated Labor
23 Code § 226 and applicable IWC Wage Orders by failing to,
24 among other violations, maintain accurate records of Non-
25 Exempt Employees' earned wages, work periods, meal
26 periods and deductions;

27 **f.** Whether Defendant violated Labor
28 Code §§ 201-203 by failing to pay all earned wages and/or

premium wages due and owing at the time that any Class Members' employment with Defendant terminated;

g. Whether Defendant violated Labor Code § 246 by failure to properly pay Class Members' for sick leave;

h. Whether Defendant violated Labor Code § 2802 and applicable IWC Wage Orders for failing to indemnify employees for the expenditures incurred in the performances of their job duties;

i. Whether Defendant violated section 210 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing when such wages were due and payable;

j. Whether Defendants violated section 17200 et seq. of the Business and Professions Code and Labor Code sections §§ 201, 202, 203, 204, 221, 225, 226, 226.7, 246, 510, 512, 1194, 1199, 2802, and applicable IWC Wage Orders, violation of which constitutes a violation of fundamental public policy;

C. Typicality

40. The claims of the named Plaintiffs are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

41. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represent Plaintiffs are competent and experienced in litigating large employment class actions.

1 **E. Superiority of Class Action**

2 **42.** A class action is superior to other available means for the fair and
3 efficient adjudication of this controversy. Individual joinder of all Class Members
4 is not practicable, and questions of law and fact common to the Class predominate
5 over any questions affecting only individual members of the Class. Each member
6 of the Class has been damaged and is entitled to recovery by reason of Defendants'
7 unlawful policy and/or practice herein complained of.

8 **43.** Class action treatment will allow those similarly situated persons to
9 litigate their claims in the manner that is most efficient and economical for the
10 parties and the judicial system. Plaintiffs are unaware of any difficulties that are
11 likely to be encountered in the management of this action that would preclude its
12 maintenance as a class action.

13
14 **VI. CAUSES OF ACTION**

15 **First Cause of Action**

16 Failure to Pay Lawful Wages Including Overtime
17 (Lab. Code §§ 510, 1194, 1199)
18 (Against All Defendants)

19 **44.** Plaintiffs repeat and incorporate herein by reference each and every
20 allegation set forth above, as though fully set forth herein.

21 **45.** During the liability period, Defendants' policies and/or practices
22 resulted in Plaintiffs and Non-Exempt Employees not receiving minimum wages
23 for time spent working off the clock while subject to the control of Defendant all
24 without pay. Labor Code § 1197 provides that employees are to be paid minimum
25 wage for each hour worked.

26 **46.** During the liability period, Defendants' policies and/or practices
27 resulted in Plaintiffs and Non-Exempt Employees not receiving all lawful wages at
28 the regular rate of pay when working overtime and double-time hours under
29 Defendant's control. Labor Code § 510 provides that employees are to be paid one-
30 half times and twice the regular rate of pay when working overtime hours.

1 47. During the liability period, Defendants did not have in place an
2 immutable timekeeping system to accurately record and pay Plaintiffs and the Class
3 for the actual time these employees worked each day, including overtime hours.
4 Specifically, Defendants had in place an unlawful rounding policy and practice that
5 resulted in Plaintiffs and the Class being undercompensated for all of their time
6 worked. As a result, Defendants were able to and did in fact unlawfully, and
7 unilaterally round the time recorded in Defendants' timekeeping system for
8 Plaintiffs and the Class in order to avoid paying these employees for all their time
9 worked, including the applicable overtime compensation for overtime worked. As a
10 result, Plaintiffs and the Class, from time to time, forfeited compensation for their
11 time worked by working without their time being accurately recorded and without
12 compensation at the applicable overtime rates.

13 48. As a result of the unlawful acts of Defendants, Plaintiffs and the
14 Class they seek to represent have been deprived of compensation for all earned
15 wages including minimum wage and overtime compensation in amounts to be
16 determined at trial, and are entitled to recovery of such amounts, plus interest and
17 penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194 .

18 49. WHEREFORE, Plaintiffs and the Class they seek to represent
19 request relief as described herein and below.

20 **Second Cause of Action**
21 Failure to Provide Lawful Meal Periods
22 Or Compensation in Lieu Thereof
23 (Lab. Code §§ 226.7, 512, IWC Wage Orders)
24 (Against All Defendants)

25 50. Plaintiffs repeat and incorporate herein by reference each and every
26 allegation set forth above, as though fully set forth herein.

27 51. By failing to provide 30-minute uninterrupted meal periods for days
28 on which Non-Exempt employees work(ed) work periods more than 5 hours and
more than 10 hours and failing to provide compensation for such statutorily non-
compliant meal periods, Defendants violated the provisions of Labor Code § 512

1 and applicable IWC Wage Orders.

2 52. By failing to record and maintain adequate and accurate time records
3 according to sections 226 and 1174(d) of the Labor Code, Defendants have injured
4 Plaintiffs and Class Members and made it difficult to calculate the unpaid meal
5 period compensation due Plaintiffs and Class Members.

6 53. As a result of the unlawful acts of Defendants, Plaintiffs and the
7 Class they seek to represent, have been deprived of premium wages in amounts to
8 be determined at trial, and are entitled to recovery of such amounts, plus interest
9 and penalties thereon under Labor Code § 226.7.

10 54. WHEREFORE, Plaintiffs and the Class they seek to represent
11 request relief as described herein and below.

12 **Third Cause of Action**
13 Failure to Provide Rest Periods
14 Or Compensation in Lieu Thereof
(Lab. Code §§ 226.7, IWC Wage Orders)
(Against All Defendants)

15 55. Plaintiffs repeat and incorporate herein by reference each and every
16 allegation set forth above, as though fully set forth herein.

17 56. By failing to provide a minimum ten (10) minute rest period for
18 every four hours or major fraction thereof worked per day by Non-Exempt
19 Employees, and failing to provide compensation for such non-compliant rest
20 periods, as alleged above, Defendants willfully violated the provisions of Labor
21 Code § 226.7 and IWC applicable Wage Orders.

22 57. As a result of the unlawful acts of Defendants, Plaintiffs and the
23 Class they seek to represent have been deprived of premium wages in amounts to
24 be determined at trial, and are entitled to recovery of such amounts, plus interest
25 and penalties thereon under Labor Code § 226.7.

26 58. WHEREFORE, Plaintiffs and the Class they seek to represent
27 request relief as described herein and below.

28 **Fourth Cause of Action**

Failure to Reimburse Employee Expenses
(Lab. Code § 2802)
(Against All Defendants)

59. Plaintiffs repeat and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

60. By their policy of requiring Plaintiffs and the Class to utilize their personal cell phones and personal vehicles and failing to reimburse Plaintiffs and the Class for utilizing their personal cell phones and personal vehicles, Defendants willfully violated the provision of Labor Code § 2802 and IWC applicable Wage Orders.

61. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent are entitled to recovery of the full amount of expenses incurred plus interest, attorneys' fees, and costs, under Labor Code § 2802.

62. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described herein and below.

Fifth Cause of Action

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)
(Against All Defendants)

63. Labor Code § 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, 1197 and other sections became due and payable to Plaintiffs and Class Members in each month that he or she was not paid all lawful wages owed or provided with lawful meal period or rest period to which he or he was entitled. Defendants violated Lab. Code § 204 by failing to pay said wages when they were due and payable.

64. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

65. For any initial violation, one hundred dollars (\$100) for each failure

1 to pay each employee.

2 66. For each subsequent violation, or any willful or intentional violation,
3 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
4 of the amount unlawfully withheld.

5 67. As a result of the unlawful acts of Defendants alleged herein,
6 Plaintiffs and the Class they seek to represent have been deprived of wages in
7 amounts to be determined at trial, and are entitled to recovery of such amounts,
8 plus interest and penalties.

9 68. WHEREFORE, Plaintiffs and the Class they seek to represent
10 request relief as described herein and below.

11 **Sixth Cause of Action**
12 Failure to Timely Pay Wages Due at Termination
(Lab. Code §§ 201-203)
(Against All Defendants)

13 69. Plaintiffs repeat and incorporate herein by reference each and every
14 allegation set forth above, as though fully set forth herein.

15 70. Sections 201 and 202 of the California Labor Code require
16 Defendants to pay its employees all wages due within 72 hours of termination of
17 employment. Section 203 of the Labor Code provides that if an employer willfully
18 fails to timely pay such wages the employer must, as a penalty, continue to pay the
19 subject employees' wages until the back wages are paid in full or an action is
20 commenced. The penalty cannot exceed 30 days of wages.

21 71. As alleged herein, affected class members are entitled to
22 compensation for all forms of wages earned, including, overtime compensation,
23 minimum wage, correct sick pay wages and compensation for non-provided rest
24 and meal periods but to date have not received such compensation therefore
25 entitling them Labor Code section 203 penalties.

26 72. More than 30 days have passed since Plaintiffs and affected Class
27 Members have left Defendants' employ, and on information and belief, have not
28 received payment pursuant to Labor Code § 203. As a consequence of Defendants'

1 willful conduct in not paying all earned wages, certain Class Members are entitled
2 to 30 days' wages as a penalty under Labor Code section 203 for failure to pay
3 legal wages.

4 73. WHEREFORE, Plaintiffs and the Class they seek to represent
5 request relief as described herein and below.

6 **Seventh Cause of Action**
7 Knowing and Intentional Failure to Comply With Itemized Employee
8 Wage Statement Provisions
(Lab. Code § 226(b))
(Against All Defendants)

9 74. Plaintiffs repeat and incorporate herein by reference each and every
10 allegation set forth above, as though fully set forth herein

11 75. Section 226(a) of the California Labor Code requires Defendants to
12 itemize in wage statements all deductions from payment of wages and to accurately
13 report total hours worked by Plaintiffs and the members of the proposed class. IWC
14 Wage Orders require Defendants to maintain time records showing, among others,
15 when the employee begins and ends each work period, meal periods, split shift
16 intervals and total daily hours worked in an itemized wage statement, and must
17 show all deductions and reimbursements from payment of wages, and accurately
18 report total hours worked by Plaintiffs and the members of the proposed class. On
19 information and belief, Defendants have failed to record all or some of the items
20 delineated in Industrial Wage Orders and Labor Code § 226.

21 76. Plaintiffs and Class Members have been injured by Defendants'
22 actions by rendering them unaware of the full compensation to which they were
23 entitled under applicable provisions of the California Labor Code and applicable
24 IWC Wage Orders.

25 77. Pursuant Labor Code § 226, Plaintiffs and Class Members are
26 entitled up to a maximum of \$4,000.00 each for record-keeping violation.

27 78. WHEREFORE, Plaintiffs and the Class they seek to represent
28 request relief as described herein and below.

Eighth Cause of Action
Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

79. Plaintiffs repeat and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

80. Business & Professions Code Section 17200 provides:
As used in this chapter, unfair competition shall mean and include any **unlawful, unfair** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

81. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

82. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code section 17200, et seq.

83. Plaintiffs and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

84. As a direct and proximate result of the unfair business practices of Defendant, and each of them, Plaintiffs, individually and on behalf of all employees similarly situated, are entitled to restitution of all wages which have been unlawfully withheld from Plaintiffs and members of the Class as a result of the business acts and practices described herein.

85. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described herein and below.

Ninth Cause of Action
Failure to Establish, Implement, and Maintain Effective Injury Prevention Program
(Against All Defendants)

86. Plaintiff Hernandez incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

87. “Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements: (1) Identification of the person or persons responsible for implementing the program. (2) The employer’s system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. (3) The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment. (5) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. (6) The employer’s system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.” Lab. Code, 6401.7, subd. (a). “The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.” Lab. Code, 6401.7, subd. (b).

88. “The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.” Lab. Code, 6401.7, subd. (c). “The employer shall keep

1 appropriate records of steps taken to implement and maintain the program.” Lab.
2 Code, 6401.7, subd. (d). The standards board shall adopt a standard setting forth
3 the employer’s duties under this section...” Lab. Code, 6401.7, subd. (e)(1).

4 **89.** To substantially comply with Section 6401.7, the employer must
5 provide adequate “meetings, training programs, posting, written communications, a
6 system of anonymous notification by employees about hazards, labor/management
7 safety and health committees, or any other means that ensures communication with
8 employees.” Cal. Code Regs., tit. 8, § 3203, subd. (a)(3).

9 **90.** “Records of the steps taken to implement and maintain the Program
10 shall include: (1) Records of scheduled and periodic inspections required by
11 subsection (a)(4) [of § 3203] to identify unsafe conditions and work practices,
12 including person(s) conducting the inspection, the unsafe conditions and work
13 practices that have been identified and action taken to correct the identified unsafe
14 conditions and work practices. These records shall be maintained for at least one
15 (1) year; and ... (2) Documentation of safety and health training required by
16 subsection (a)(7) for each employee, including employee name or other identifier,
17 training dates, type(s) of training, and training providers. This documentation shall
18 be maintained for at least one (1) year.” Cal. Code Regs., tit. 8, § 3203, subd. (b).

19 **91.** Throughout the Statutory Period, Employer subjected all
20 Employees, including Plaintiff Hernandez, to working conditions that exposed
21 them to hazards from the lack of a legally mandated compliant injury prevention
22 program, specifically one designed to properly mitigate the risk of accidents due to
23 driver fatigue and excessive overtime. Employer was subject to all of the foregoing
24 requirements with regard to all of its operations. Employer failed to establish,
25 implement, and maintain an effective injury prevention program. Employer failed
26 to perform periodic inspections to identify unsafe conditions and work practices,
27 and failed to provide occupational health and safety training designed to instruct
28 Employees in general safe and healthy work practices and to provide specific

1 instruction with respect to hazards specific to each Employee’s job assignment with
2 respect to driver fatigue and excessive overtime.

3 92. Employer is subject to civil penalties as provided by law.

4 **Tenth Cause of Action**

5 Permitting Unsafe Work and Failure to Provide
6 Safe Workplace, Practices, and Processes
7 (Against All Defendants)

8 93. Plaintiffs incorporate by reference and reallege each and every
9 allegation contained above, as though fully set forth herein.

10 94. By committing the acts and omissions described above throughout
11 the Statutory Period, Employer also violated Labor Code, §§ 6400, 6401, 6402,
12 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe
13 workplaces, practices, and processes to its Employees, including Plaintiff
14 Hernandez.

15 95. Employer is subject to additional civil penalties as provided by law.

16 **Eleventh Cause of Action**

17 Failure to Pay Minimum Wages Owed
18 (Against All Defendants)

19 96. Plaintiffs incorporate by reference and reallege each and every
20 allegation contained above, as though fully set forth herein.

21 97. Section 1197 provides that “[t]he minimum wage for employees
22 fixed by the commission or by any applicable state or local law, is the minimum
23 wage to be paid to employees, and the payment of a lower wage than the minimum
24 so fixed is unlawful.” “[O]n and after January 1, 2016, the minimum wage for all
25 industries shall be not less than ten dollars (\$10) per hour.” Cal. Lab. Code, §
26 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be less than
27 the amounts set forth in this subdivision (1) For any employer who employs 26
28 or more employees, the minimum wage shall be as follows: (A) From January 1,
2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per
hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars
(\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—

1 twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020,
2 inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12, subd. (b).

3 **98.** Pursuant to Section 1197.1, “(a) Any employer or other person
4 acting either individually or as an officer, agent, or employee of another person,
5 who pays or causes to be paid to any employee a wage less than the minimum fixed
6 by an applicable state or local law, or by an order of the commission shall be
7 subject to a civil penalty, restitution of wages, liquidated damages payable to the
8 employee, and any applicable penalties imposed pursuant to Section 203 as
9 follows: (1) For any initial violation that is intentionally committed, one hundred
10 dollars (\$100) for each underpaid employee for each pay period for which the
11 employee is underpaid. This amount shall be in addition to an amount sufficient to
12 recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
13 applicable penalties imposed pursuant to Section 203. (2) For each subsequent
14 violation for the same specific offense, two hundred fifty dollars (\$250) for each
15 underpaid employee for each pay period for which the employee is underpaid
16 regardless of whether the initial violation is intentionally committed. This amount
17 shall be in addition to an amount sufficient to recover underpaid wages, liquidated
18 damages pursuant to Section 1194.2, and any applicable penalties imposed
19 pursuant to Section 203.”

20 **99.** Throughout the Statutory Period, Employer failed to pay Employees
21 at least minimum wage for all time worked, which must be paid at a rate of not less
22 than minimum wage pursuant to California law. Employer paid zero dollars for
23 time worked by Employees during their meal periods. Consequently, Employer
24 violated the foregoing minimum wage laws.

25 **Twelfth Cause of Action**
26 **Failure to Provide Time Records**
(Against All Defendants)

27 **100.** Plaintiffs incorporate by reference and reallege each and every
28 allegation contained above, as though fully set forth herein.

1 **101.** “The maximum hours of work and the standard conditions of labor
2 fixed by the commission shall be the maximum hours of work and the standard
3 conditions of labor for employees. The employment of any employee for longer
4 hours than those fixed by the order or under conditions of labor prohibited by the
5 order is unlawful.” Lab. Code, § 1198.

6 **102.** Throughout the Statutory Period, Employer violated Employees
7 rights under Labor Code section 1198 by denying them access to their daily time
8 records, maintaining the position that Employees are not entitled to review such
9 records or receive a copy of same. Under the applicable IWC Wage Order, “Time
10 records showing when the employee begins and ends each work period. Meal
11 periods, split shift intervals and total daily hours worked shall also be recorded.
12 Meal periods during which operations cease and authorized rest periods need not be
13 recorded.” “An employee’s records shall be available for inspection by the
14 employee upon reasonable request.” Employer violated Employees’ rights by
15 denying them access to inspect their time records.

16 **Thirteenth Cause of Action**
17 Failure to Pay Correct Sick Pay Compensation
18 (Lab. Code §246, 218.5 IWC Wage Orders)
 (Against All Defendants)

19 **103.** Plaintiffs incorporate by reference and reallege every allegation
20 contained above, as though fully set forth herein.

21 **104.** Labor Code section 246(l) requires that employers pay sick time pay
22 to non-exempt employees at the employee’s regular rate of pay.

23 **105.** As alleged herein, Defendants failed to compute the correct amount
24 of sick pay paid to Plaintiffs and Class Members in conformance with Lab. Code
25 246(1) by paying at the employee’s base hourly rate and not the regular rate of pay;
26 thus paying a lower rate of sick pay compensation.

27 **106.** Under California law, sick pay is considered wages and Defendants
28 owe Plaintiffs and affected Class Members unpaid sick pay wages.

1 **107.** WHEREFORE, Plaintiffs and the Class they seek to represent,
2 request relief as described herein and below.

3 **Fourteenth Cause of Action**
4 Labor Code Private Attorneys General Act
5 (Cal. Labor Code § 2699 *et seq.*)
6 (Against All Defendants)

7 **108.** Plaintiffs repeat and incorporate herein by reference each and every
8 allegation set forth above, as though fully set forth herein.

9 **109.** Plaintiffs bring these claims for civil penalties as a representative
10 action on behalf of themselves and all Non-Exempt Employees employed by, or
11 formerly employed by Defendants in the state of California during the applicable
12 liability period under Lab. Code § 2699.

13 **110.** Plaintiffs gave written timely notice by certified mail to the Labor
14 and Workforce Development Agency (the “Agency”) and the employer of the
15 specific provisions of the California Labor Code alleged to have been violated as
16 required by Lab. Code § 2699.3. Plaintiffs did not receive a response from the
17 Agency within the proscribed time period.

18 **111.** The policies, acts and practices of Defendants, heretofore described
19 give rise to statutory penalties including but not limited to Labor Code Section 201,
20 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510,
21 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.5, 1197.14, 1198, 1198.5,
22 1199, 2800, 2802 and 2804 .

23 **112.** Plaintiffs as aggrieved employees hereby seek recovery of civil
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on
25 behalf of themselves and other current and former employees of Defendants against
26 whom one or more of the violations of the Labor Code was committed during the
27 applicable period.

28 **113.** To the extent that any of the conduct and violations alleged herein
did not affect Plaintiffs personally, they seeks penalties for those violations that
affected other aggrieved employees (Carrington v. Starbucks Corp. (2018) 30

Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

VII. PRAYER

WHEREFOR, Plaintiffs pray for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
5. For civil penalties pursuant to Labor Code sections 2698 et seq. in an amount to be ascertained at trial exceeding \$25,000;
6. For premium pay and penalties pursuant to Labor Code § 203;
7. For attorneys’ fees, interests and costs of suit under Labor Code §§ 226, 1194;
8. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: August 28, 2024

JAMES HAWKINS APLC


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On August 28, 2024, I served on the interested parties in this action the following document(s) entitled:

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address irma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.


Irma Ceja

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