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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ELIER ZERMENO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

U.S. FOODSERVICE, INC., a Delaware
corporation with its principal place of business
in Illinois, and DOES 1 to 100, inclusive

Defendants.

CASE NO:

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR**

**(1) FAILURE TO PAY ALL WAGES OWED
(LABOR CODE §§ 1194, 1194.2, 1198, AND
WAGE ORDER NO. 5 AND 9);**

**(2) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS (LABOR CODE §
226 AND 226.3);**

**(3) FAILURE TO PAY ALL WAGES OWED
IN A TIMELY MANNER (LABOR CODE
§204);**

**(4) UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA BUSINESS
& PROFESSIONS CODE §17200, et seq.; AND**

**(5) VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS’
GENERAL ACT OF 2004, LABOR CODE §
2698, et seq.**

**(6) VIOLATIONS OF THE FAIR LABOR
STANDARDS ACT (29 U.S.C. § 201 ET SEQ.)
FOR FAILURE TO PAY ALL WAGES
OWED**

DEMAND FOR JURY TRIAL

Plaintiff Elier Zermeno (“Plaintiff”), on behalf of himself, the State of California, and all others similarly situated (hereinafter “Class Members”) and aggrieved employees pursuant to the California Private Attorneys’ General Act of 2004 (“PAGA”), complains and alleges as follows:

1 **OVERVIEW OF CLAIMS**

2 1. Plaintiff brings this action on behalf of himself and all others similarly situated and
3 aggrieved employees pursuant to PAGA as a class action and representative action on behalf of the
4 California general public, against Defendants U.S. Foodservice, Inc. (“US Foods” and/or
5 “Defendant”) and DOES 1 to 100 (collectively “Defendants”) for their (1) failure to pay Plaintiff
6 and his fellow employees for all hours worked; (2) failure to provide accurate wage statements to
7 Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; (3)
8 failure to pay Plaintiff and his fellow employees all wages owed in a timely manner; (4) PAGA
9 violations based on the foregoing; (5) unfair business practices based on the foregoing; and (6)
10 violations of the Fair Labor Standards Acts (“FLSA”) for failure to pay all wages owed. As a
11 result of the foregoing, Defendants have violated California statutory laws as described below.

12 2. The “Class Period” is designated as the period from four years prior to the filing of
13 this Complaint through the trial date. Defendants’ violations of California’s wage and hour laws and
14 unfair competition laws, as described more fully below, have been ongoing throughout the Class
15 Period.

16 **VENUE**

17 3. Venue is proper in this Court under 28 U.S.C. § 1391(b). Many, if not all, of the
18 putative Class Members and aggrieved employees were employed and/or performed work during
19 the Class Period by Defendants in San Joaquin County, which is in the Eastern District of
20 California. The acts alleged herein occurred in San Joaquin County. Venue is therefore proper in
21 the U.S. District Court for the Eastern District of California.

22 **JURISDICTION**

23 4. Defendants are within the jurisdiction of this Court. Defendants transact millions of
24 dollars as one of America's leading food distributors servicing restaurants, the healthcare industry,
25 and more. They contract with drivers, such as Plaintiff, to provide delivery services. They operate
26 in various locations throughout the country, including in the State of California and the County of
27 San Joaquin. Thus, Defendants have obtained the benefits of the laws of the State of California.

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
2 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become known.

4 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
8 employer and/or joint employer of Plaintiff and the Class Members.

9 11. California courts have recognized that the definition of “employer” for purposes of
10 enforcement of the California Labor Code goes beyond the concept of traditional employment to
11 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
12 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
13 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
14 person to work or exercises control over the wages, hours, or working conditions of any person,
15 may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558
16 and 558.1.

17 12. California law also permits and recognizes the piercing of a corporate veil between
18 sister companies and under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th
19 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule
20 applies where “there are two or more personalities, there is but one enterprise; and that this
21 enterprise has been so handled that it should respond, as a whole, for the debts of certain
22 component elements of it.” *Hasso* 227 Cal. App. 4th at 155; *Greenspan*, 191 Cal. App. 4th at 512.

23 **FACTUAL ALLEGATIONS**

24 13. Defendant is one of America's leading food distributors servicing restaurants, the
25 healthcare industry, and more. They contract with drivers, such as Plaintiff, the Aggrieved
26 Employees, and the Class to provide delivery services. They operate in various locations
27 throughout the country, including in the State of California.

1 14. Plaintiff began his employment with Defendants on March 15, 2023, when he, like
2 the other Aggrieved Employees and Class Members, was hired as a driver, in which he, and the
3 other Aggrieved Employees and the Class were tasked to deliver and unload food and other
4 products for Defendants. Plaintiff, the Aggrieved Employees, and the Class were compensated on
5 a per mile/per load basis, wherein they are only paid when delivery has been completed.
6 Defendants were supposed to pay Plaintiff around \$30.51 per hour.

7 15. When he was first hired, Plaintiff was given a badge by HR that he would use to
8 clock in and out. Defendants were supposed to pay Plaintiff hourly. However, about a week after
9 he was hired, Plaintiff was asked by his manager to stop clocking in and out using the badge and
10 was instead asked to keep track of his hours on his own. Plaintiff was also informed that he would
11 be paid using "Component Pay" system, where he would be paid per case, per stop, and per mile.

12 16. However, Plaintiff has pre-trip and post-trip tasks such as putting the palette jack
13 and hand cart into his truck, getting paperwork and keys to the store, and checking out that the
14 semi is safe to operate. If it is safe to drive, Plaintiff marks that in a log book that stays with the
15 truck. These pre-trip and post-trip tasks usually take about an hour each time but Defendants
16 refused to pay for these non-productive time since they only paid Plaintiff on a per mile/per load
17 basis.

18 17. California Labor Code §226.2 governs compensation paid to piece-rate employees,
19 like Plaintiff, the Class, and the Aggrieved Employees. It states, in the relevant part:

20 This section shall apply for employees who are compensated on a piece-rate
21 basis for any work performed during a pay period. This section shall not be
22 construed to limit or alter minimum wage or overtime compensation
23 requirements, or the obligation to compensate employees for all hours worked
24 under any other statute or local ordinance. For the purposes of this section,
25 "applicable minimum wage" means the highest of the federal, state, or local
26 minimum wage that is applicable to the employment, and "other
27 nonproductive time" means time under the employer's control, exclusive of
28 rest and recovery periods, that is not directly related to the activity being
compensated on a piece-rate basis.

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

(2) The itemized statement required by subdivision (a) of Section 226 shall, in

1 addition to the other items specified in that subdivision, separately state the
2 following, to which the provisions of Section 226 shall also be applicable:

3 (A) The total hours of compensable rest and recovery periods, the rate of
4 compensation, and the gross wages paid for those periods during the pay
5 period.

6 (B) Except for employers paying compensation for other nonproductive time
7 in accordance with paragraph (7), the total hours of other nonproductive time,
8 as determined under paragraph (5), the rate of compensation, and the gross
9 wages paid for that time during the pay period.

10 18. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta*
11 *v. Osmose, Inc.* (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a
12 piece-rate basis, such as Plaintiff, the Class, and the Aggrieved Employees, must be compensated
13 for all the hours that they work, including non-productive time.

14 19. However, Plaintiff, the Class, and the Aggrieved Employees were not paid for non-
15 productive time while employed by the Defendants. Instead, they only received compensation
16 based on the deliveries provided to Defendants' customers. Thus, time spent on pre-trip and post-
17 trip tasks such as putting the palette jack and hand cart into his truck, getting paperwork and keys
18 to the store, checking out that the semi is safe to operate, and all other nonproductive tasks
19 typically taking up to an hour or more, was not compensated. As a result, Plaintiff, the Class, and
20 the Aggrieved Employees were denied compensation for all hours worked, in violation of Cal.
21 Labor Code §1194, and were denied compensation at the minimum wage in violation of Cal.
22 Labor Code §§1197 and 1199.

23 20. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
24 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the
25 Class, and the Aggrieved Employees are not paid for all hours worked under Labor Code § 1194,
26 the employee may recover minimum wages for the time associated with the overtime for which
27 they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F.
28 Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated
damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord
Andrade v. Arby's Rest. Grp., Inc. (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist.

1 LEXIS 172319, at *20-2 I.) Since Defendants failed to provide Plaintiff, the Class, and all
2 Aggrieved Employees with compensation for all hours worked, each are entitled to recover
3 liquidated damages under Labor Code § 1194.2 through PAGA. Based upon these same factual
4 allegations, Plaintiff also seeks on behalf of all Class Members and Aggrieved Employees
5 penalties under Labor Code §§ 1199 and 1199.5.

6 21. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
7 any employment are due and payable twice during each calendar month, on days designated in
8 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
9 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
10 payroll if the wages are paid not more than seven calendar days following the close of the payroll
11 period.”

12 22. As discussed in detail above, and as a result of Defendants refusal to pay for non-
13 productive time, Defendants failed to pay Plaintiff, the Class, and the other Aggrieved Employees
14 at least twice per month in violation of Labor Code § 204. Defendants regularly and consistently
15 failed to pay Plaintiff, the Class, and the Aggrieved Employees for all of their hours worked.

16 23. Labor Code § 210 provides that “in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
20 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
21 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
22 faulty compensation policies and practices described in detail above, Plaintiff, the Class Members
23 and, the aggrieved employees are entitled to recover penalties under Labor Code § 210.

24 24. As to Plaintiff and all Class Members and aggrieved employees, Defendants also
25 failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2,
26 5, 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to
27 furnish an itemized wage statement in writing showing:

28 (1) gross wages earned;

- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

25. Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

1 26. Defendants do not issue adequate wage statements to its drivers in California, under
2 Labor Code Sections 226(a) and 226.2. Specifically, Defendants have not and do not issue wage
3 statements that include drivers' total hours worked and all applicable hourly rates in effect during
4 the pay period and the corresponding number of hours worked at each hourly rate in violation of
5 Labor Code Section 226(a), including for all time spent on Nonproductive times. See, Labor Code §
6 226.2.

7 27. Courts in California have held, in the summary judgment context, even before the
8 passage of Labor Code Section 226.2, that drivers' hours must be reported on their paystubs, even
9 in cases where drivers are paid on a piece-rate basis. See, *Cicairos v. Summit Logistics* (2005) 133
10 Cal.App.4th 949, 960-961 (“The “Driver Trip Summary—Report of Earnings” statements, which
11 newspaper carriers received with their earnings statements, did not remedy the deficiencies in the
12 earnings statements. The trip summaries showed a time the driver was dispatched, which was one
13 or more times on a working day. After the dispatch time were columns for how many miles
14 traveled, stops, delay minutes, and other categories. The summaries did not, however, show how
15 many hours the driver worked each day or during the pay period. Thus, the defendant failed to
16 provide the Plaintiffs with itemized wage statements that meet the requirements of Labor Code
17 section 226”); *McKenzie v. Federal Express Corp.*, 765 F.Supp.2d 1222, 1229 (C.D.Cal. 2011)
18 (“[T]he Court finds that FedEx violated Section 226(a)(2) by failing to state the “total hours worked
19 by [an] employee” in its wage statements”); *Cornn v. United Parcel Service, Inc.*, 2006 W.L.
20 449138, *2-3 (N.D.Cal. 2006) (denying defendant’s motion for summary judgment on Section 226
21 claim and noting, “[i]nstead, the Court holds that if UPS failed to report the actual number of hours
22 worked on Plaintiff's wage statements, then the company violated section 226.”). This is also now
23 clear from Labor Code Section 226.2(a)(1)-(2).

24 28. Furthermore, for purposes of establishing a claim for PAGA penalties based on
25 Labor Code Section 226, Plaintiff need not establish any “injury” other than showing that the
26 paystubs lacked the hours worked required by Labor Code section 226(a)(2). See, *McKenzie v.*
27 *Fed. Express Corp.*, 765 F.Supp.2d 1222 (C.D. 2011) (holding that newspaper carriers’ wage
28

1 statements were deficient because, inter alia, the statements lacked newspaper carriers’ total hours
2 worked, and also determining that to recover PAGA penalties based on a deficient wage statement,
3 a Plaintiffs need not prove an “injury”, and could move for summary judgment on behalf of other
4 Class Members).

5 29. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
7 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
8 each violation in a subsequent citation, for which the employer fails to provide the employee a
9 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
10 explained in detail above, Defendant failed to provide Plaintiff and the Class Members and
11 aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the Class
12 Members and aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s
13 violations of Labor Code § 226(a). See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No.
14 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that
15 violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No.
16 ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code §
17 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil
18 penalties.”).

19 **CLASS ACTION ALLEGATIONS**

20 30. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
21 a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

22 31. Plaintiff seeks to represent “all employees of US Foods in the State of California
23 from 4 years prior to the filing of the complaint through the date of trial who were employed as
24 drivers and who were paid on per mile/per load basis.”

25 32. This action has been brought and may properly be maintained as a class action
26 under Rule 23 because there is a well-defined community of interest in the litigation, the proposed
27 class is easily ascertainable, and Plaintiff is a proper representative of the Class:
28

1 a. Numerosity: The potential members of the Class as defined are so
2 numerous that joinder of all the members of the Class is impracticable. While the precise number
3 of Class Members has not been determined at this time, Plaintiff is informed and believes that
4 Defendants have, on average, during the Class Period employed over 200 Class Members. The
5 Class Members are dispersed throughout California. Joinder of all members of the proposed
6 classes is therefore not practicable.

7 b. Commonality: There are questions of law and fact common to Plaintiff and
8 the Class that predominate over any questions affecting only individual members of the Class.
9 These common questions of law and fact include, without limitation:

10 i. Whether Defendants violated Labor Code sections 204 and 210 by failing to
11 pay Plaintiff and the Class Members all wages owed with seven days of the close of payroll;

12 ii. Whether Defendants failed to provide Plaintiff and the Class Members
13 complete wage statements in violation of Labor Code Section 226(a);

14 iii. Whether Defendants violated sections 1194, 1194.2, and 1198 of the Labor
15 Code by failing to pay Plaintiff and the members of the Class for all wages owed during the Class
16 Period;

17 iv. Whether Defendants engaged in an unfair practice and violated section
18 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
19 of the Class for all wages owed during the Class Period;

20 v. Whether Plaintiff and the Class are entitled to restitution under Business and
21 Professions Code § 17200;

22 vi. Whether Defendant violated the FLSA by failing to pay Plaintiff and the
23 Class Members all wages owed;

24 vii. The proper formula(s) for calculating damages, interest, and restitution
25 owed to Plaintiff and the Class Members; and

26 viii. The nature and extent of class-wide damages.

27 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
28

1 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
2 belonging to them, arising out of and caused by Defendants' common course of conduct in
3 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

4 d. Adequacy of Representation: Plaintiff is a member of the Class and will
5 fairly and adequately represent and protect the interests of the Class and Class Members.
6 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
7 Plaintiff are competent and experienced in litigating large wage and hour class actions, and other
8 employment class actions, and will devote sufficient time and resources to the case and otherwise
9 adequately represent the Class and Class Members.

10 e. Superiority of Class Action: A class action is superior to other available
11 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
12 Members is not practicable, and questions of law and fact common to the Class predominate over
13 any questions affecting only individual members of the Class. Each Class Member has been
14 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
15 practices. Certification of this case as a class action will allow those similarly situated persons to
16 litigate their claims in the manner that is most efficient and economical for the parties and the
17 judicial system. Certifying this case as a class action is superior because it allows for efficient and
18 full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful
19 meal period and final pay policies and will thereby effectuate California's strong public policy of
20 protecting employees from deprivation or offsetting of compensation earned in their employment.
21 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
22 or most Class Members to bring individual actions to recover monies unlawfully withheld from
23 their lawful compensation due from Defendants, due to the relatively small amounts of such
24 individual recoveries relative to the costs and burdens of litigation.

25 **PAGA ALLEGATIONS**

26 33. At all times herein set forth, PAGA was applicable to Plaintiff's and the aggrieved
27 employees' respective employments with Defendant.

1 basis for any work performed during a pay period. This section shall not be
2 construed to limit or alter minimum wage or overtime compensation
3 requirements, or the obligation to compensate employees for all hours worked
4 under any other statute or local ordinance. For the purposes of this section,
5 “applicable minimum wage” means the highest of the federal, state, or local
6 minimum wage that is applicable to the employment, and “other
7 nonproductive time” means time under the employer’s control, exclusive of
8 rest and recovery periods, that is not directly related to the activity being
9 compensated on a piece-rate basis.

6 (a) For employees compensated on a piece-rate basis during a pay period, the
7 following shall apply for that pay period:

8 (1) Employees shall be compensated for rest and recovery periods and other
9 nonproductive time separate from any piece-rate compensation.

9 (2) The itemized statement required by subdivision (a) of Section 226 shall, in
10 addition to the other items specified in that subdivision, separately state the
11 following, to which the provisions of Section 226 shall also be applicable:

10 (A) The total hours of compensable rest and recovery periods, the rate of
11 compensation, and the gross wages paid for those periods during the pay
12 period.

12 (B) Except for employers paying compensation for other nonproductive time
13 in accordance with paragraph (7), the total hours of other nonproductive time,
14 as determined under paragraph (5), the rate of compensation, and the gross
15 wages paid for that time during the pay period.

15 40. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta*
16 *v. Osmose, Inc.* (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a
17 piece-rate basis, such as Plaintiff, the Class, and the Aggrieved Employees, must be compensated
18 for all the hours that they work, including non-productive time.

19 41. However, Plaintiff, the Class, and the Aggrieved Employees were not paid for non-
20 productive time while employed by the Defendants. Instead, they only received compensation
21 based on the deliveries provided to Defendants’ customers. Thus, time spent on pre-trip and post-
22 trip tasks such as putting the palette jack and hand cart into his truck, getting paperwork and keys
23 to the store, checking out that the semi is safe to operate, and all other nonproductive tasks
24 typically taking up to an hour or more, was not compensated. As a result, Plaintiff, the Class, and
25 the Aggrieved Employees were denied compensation for all hours worked, in violation of Cal.
26 Labor Code §1194, and were denied compensation at the minimum wage in violation of Cal.
27 Labor Code §§1197 and 1199.

1 deductions, provided that all -deductions made on written orders of the
2 employee may be aggregated and shown as one item, (5) net wages earned,
3 (6) the inclusive dates of the period for which the employee is paid, (7) the
4 name of the employee and only the last four digits of his or her social security
5 number or an employee identification number other than a social security
6 number, (8) the name and address of the legal entity that is the employer and
7 (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee...

6 47. As set forth above, during the Class Period, due to, *inter alia*, its unlawful policies,
7 Defendants failed to issue wage statements to its employees in California, including Plaintiff, that
8 complied with Labor Code Section 226(a).

9 48. Defendants' "wage statements" failed to comply with either section 226 or 226.2.
10 First, Defendants failed to identify themselves as the employer. Second, Defendants' "wage
11 statements" also did not include total hours worked, the total amount of time spent on rest periods
12 and other nonproductive tasks, and all applicable hourly rates in effect during the pay period and
13 the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections
14 226(a) and 226.2.

15 49. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
16 and intentional, particularly following the issuance of *McKenzie v. Federal Express Corp.*, 765
17 F.Supp.2d 1222, 1229 (C.D.Cal. 2011) and/or the passage of Section 226.2.

18 50. As a result of Defendants' issuance of inaccurate itemized wage statements to
19 Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
20 who were employed by Defendants during the actionable period for this cause of action) in
21 violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to
22 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
23 an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendants
24 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

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26 //

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1
2 **THIRD CAUSE OF ACTION**
3 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**
4 **[Cal. Labor Code §§ 204]**
5 **On behalf of Plaintiff, and the Class Against All Defendants**

6 51. Plaintiff incorporates by this reference, as though fully set forth herein, the
7 preceding paragraphs of this Complaint.

8 52. Cal. Lab. Code § 200 provides that “‘wages’ include all amounts for labor
9 performed by employees of every description, whether the amount is fixed or ascertained by the
10 standard of time, task, pieces, commission basis, or other method of calculation.”

11 53. Cal. Labor Code § 204 states that all wages earned by any person in any
12 employment are payable twice during the calendar month, and must be paid not more than seven
13 days following the close of the period when the wages were earned.

14 54. Cal. Lab. Code § 216 establishes that it is a misdemeanor for any person, with
15 regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with
16 intent to secure himself, his employer or other person, any discount upon such indebtedness, or
17 with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
18 indebtedness is due.”

19 55. Defendants, as a matter of established company policy and procedure, in the State
20 of California, scheduled, required, suffered, and/or permitted Plaintiff and other members of the
21 Class, to work during pay periods, and not compensate them for their work within seven days of
22 the close of payroll.

23 56. As discussed in detail above, and as a result of Defendants refusal to pay for non-
24 productive time, Defendants failed to pay Plaintiff, the Class, and the other Aggrieved Employees
25 at least twice per month in violation of Labor Code § 204. Defendants regularly and consistently
26 failed to pay Plaintiff, the Class, and the Aggrieved Employees for all of their hours worked.

27 57. Defendants, as a matter of established company policy and procedure in the State of
28 California, falsely deny they owe Plaintiff and the other members of the Class these wages, with
the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,

1 hinder, delay, and/or defraud Plaintiff and the Class Members.

2 58. Defendants' pattern, practice and uniform administration of its corporate policy of
3 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff
4 and members of the Class, to recover, pursuant to Cal. Lab. Code § 218, the unpaid balance of the
5 compensation owed to them in a civil action.

6 59. Pursuant to Cal. Lab. Code § 218.6 and to Cal. Civ. Code §§ 3287 (b) and 3289,
7 Plaintiff and members of the Class, seek to recover pre-judgment interest on all amounts recovered
8 herein.

9 60. Pursuant to Cal. Lab. Code § 218.5, Plaintiff and members of the Class, request that
10 the Court award them reasonable attorneys' fees and the costs incurred by them in this action, as
11 well as any statutory penalties Defendants' may owe under the California Labor Code and/or any
12 other statute.

13 **FOURTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION LAW VIOLATIONS**
15 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
16 **On Behalf of Plaintiff and the Class Against All Defendants**

17 61. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 62. Section 17200 of the California Business & Professions Code prohibits any
20 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
21 "any person who has suffered injury in fact and has lost money or property" to prosecute a civil
22 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
23 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

24 63. Under section 17208 of the California Business and Professions Code, the statute of
25 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
26 this cause of action is four years prior to the filing of the initial Complaint through the present, and
27 on-going until the violations are corrected, or the Class is certified.

28 64. Section 90.5(a) of the Labor Code states that it is the public policy of California to
enforce vigorously minimum labor standards in order to ensure employees are not required to work

1 under substandard and unlawful conditions, and to protect employers who comply with the law
2 from those who attempt to gain competitive advantage at the expense of their workers by failing to
3 comply with minimum labor standards.

4 65. As a direct and proximate result of Defendants' unlawful business practices,
5 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
6 their unlawful, unfair, and/or fraudulent acts and practices.

7 66. Plaintiff and similarly situated Class Members are entitled to monetary relief
8 pursuant to Business & Professions Code §§ 17203 and 17208 for, *inter alia*, all unpaid wages,
9 due and interest thereon, from at least four years prior to the filing of this complaint through to the
10 date of such restitution, at rates specified by law. Defendants should be required to disgorge all
11 the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class
12 Members, from whom they were unlawfully taken.

13 67. Through its actions alleged herein, Defendants have engaged in unfair competition
14 within the meaning of section 17200 of the California Business & Professions Code, because
15 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by, *inter*
16 *alia*, wrongfully denying them wages for all hours worked, and therefore was substantially
17 injurious to Plaintiff and the Class Members.

18 68. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
19 the California Business & Professions Code by violating Sections §§ 204, 210, 226(a) and (e),
20 226.2, 226.3, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1199.5, as well as IWC Wage
21 Orders 5-2001 and 9-2001.

22 69. Defendants' course of conduct, act and practice in violation of the California laws
23 mentioned above constitute independent violations of sections 17200 et seq. of the California
24 Business and Professions Code.

25 70. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
26 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

27 71. Plaintiff has assumed the responsibility of enforcement of the laws and public
28

1 policies specified herein by suing on behalf of himself and other similarly situated Class Members
2 previously or presently employed by Defendants in California. Plaintiff's success in this action
3 will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
4 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
5 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code § 1194.

6 **FIFTH CAUSE OF ACTION**
7 **(Violation of PAGA, Labor Code §§ 2698, et seq.)**
8 **On Behalf of Plaintiff and Aggrieved Employees Against All Defendants**

9 72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
10 in the preceding paragraphs.

11 73. PAGA expressly establishes that any provision of the California Labor Code which
12 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
13 divisions, commissions, boards, agencies, or employees for a violation of the California Labor
14 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
15 himself or herself, and other current or former employees.

16 74. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
17 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
18 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
19 a civil penalty.

20 75. Plaintiff and the other hourly-paid, non-exempt employees are "aggrieved
21 employees" as defined by California Labor Code § 2699(c) in that they are all current or former
22 employees of Defendants, and one or more of the alleged violations was committed against them.

23 76. ***Failure to Pay for All Hours Worked.*** Defendant's failure to pay legally required
24 minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders
25 and constitutes unlawful or unfair activity prohibited by California Labor Code §§ 1194, 1197, and
26 1197.1.

27 77. ***Failure to Timely Pay Wages.*** Defendant's failure to timely pay wages to Plaintiff
28 and the other aggrieved employees in accordance with Labor Code § 204 constitutes unlawful

1 and/or unfair activity prohibited by California Labor Code § 204.

2 78. ***Failure to Provide Complete and Accurate Wage Statements.*** Defendant’s failure
3 to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees
4 in accordance with Labor Code § 226(a) constitutes unlawful and/or unfair activity prohibited by
5 California Labor Code § 226(a).

6 79. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of
7 all aggrieved employees, requests and is entitled to recover from Defendant business expenses,
8 unpaid wages, and/or untimely wages according to proof, interest, attorneys’ fees, and costs
9 pursuant to California Labor Code § 218.5, as well as all statutory penalties against Defendant.

10 **SIXTH CAUSE OF ACTION**
11 **VIOLATIONS OF THE FAIR LABOR STANDARDS ACT**
12 **(29 U.S.C. § 201 ET SEQ.)**
13 **On Behalf of Plaintiff and the Class Against All Defendants**

14 80. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 81. At all times material herein, Plaintiff and members of the Class have been entitled
17 to the rights, protections and benefits provided under the FLSA, 29 U.S.C. § 201, et seq.

18 82. During the times where Plaintiff and the Class Members have worked hours in
19 excess of their regular schedules, they have been entitled to overtime compensation at a rate of one
20 and one-half times their regular rate of pay for each additional hour or fraction thereof worked. 29
21 U.S.C. § 207; 29 C.F.R. § 553.230.

22 83. The “regular rate” of pay from which the premium overtime rate of pay for Plaintiff
23 and the Class is derived must include “all remuneration for employment.” 29 U.S.C. § 207(e).

24 84. At all times material herein, the Defendant has failed and refused to provide
25 Plaintiff and the Class Members with minimum wages.

26 85. The Defendant’s refusal to provide minimum wages to Plaintiff and the Class
27 Members for the hours they have worked wrongfully deprives Plaintiff and the Class Members of the
28 FLSA minimum wage that is due to them at times material herein.

86. At all times material herein, the Defendant has failed and refused to provide

1 Plaintiff and the Class Members with overtime compensation at a rate of one and one-half times
2 their regular rate of pay for the hours they worked over eight hours in a day or more than 40 hours
3 in a week.

4 87. The Defendant's refusal to provide overtime pay at the proper rate to Plaintiff and
5 the Class Members for the hours they have worked in excess of their regular schedules wrongly
6 deprives Plaintiff and the Class Members of the FLSA overtime compensation that is due to them
7 at times material herein.

8 88. At all relevant times, the Defendant has been aware of the provisions of the FLSA.
9 The Defendant's actions and omissions as alleged herein were knowing, willful, bad faith, and
10 reckless violations of 29 U.S.C. section 207 within the meaning of 29 U.S.C. section 255(a).

11 89. As a result of the aforesaid willful violations of the FLSA, minimum wages and
12 overtime compensation has been unlawfully withheld by Defendant from Plaintiff and the Class
13 Members for which the Defendant is liable pursuant to 29 U.S.C. sections 216(b) and 255, together
14 with an additional equal amount as liquidated damages, interest, reasonable attorneys' fees and the
15 costs of this action.

16 90. The employment and work records for the Plaintiff and the Class Members are in
17 the exclusive possession, custody and control of the Defendant, and the Plaintiff is unable to state
18 at this time the exact amounts owing to them. The Defendant is under a duty imposed by the
19 FLSA, 29 U.S.C. § 211(c), and the regulations of the United States Department of Labor to
20 maintain and preserve payroll and other employment records.

21 **JURY DEMAND**

22 91. Plaintiff hereby demands trial by jury of his and the Class's claims against
23 Defendants.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff, on behalf of himself and the members of the Class and aggrieved
26 employees, pray for judgment against Defendants as follows:

- 27 1. A declaratory judgment that the actions, conduct, and practices of Defendant
28

1 complained of herein violated the laws of the United States and the State of California;

2 2. An injunction and order permanently restraining Defendant from engaging in such
3 unlawful conduct;

4 3. An order that the action be certified as a class action;

5 4. An order that the named Plaintiff herein be appointed class representative;

6 5. An order that counsel for Plaintiff be appointed class counsel;

7 6. An award of damages in an amount to be determined at trial, plus prejudgment
8 interest, to compensate Plaintiff for all monetary and/or economic hardship, including, but
9 not limited to, the loss of past and future income, wages, compensation, and other benefits
10 of employment;

11 7. An award of damages in an amount to be determined at trial, plus prejudgment
12 interest, to compensate Plaintiff for all non-monetary and compensatory harm;

13 8. An award of damages for any and all other monetary and/or non-monetary losses
14 suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

15 9. For reasonable attorneys' fees and costs, including expert witness fees;

16 10. For costs of suit herein incurred; and

17 11. For such other and further relief as the Court deems just and proper.

18
19 Dated: November 16, 2023

Respectfully,

20 POTTER HANDY LLP.

21
22 *James Treglio*

23
24 By: James M. Treglio
25 Counsel for Plaintiff and the Putative Class
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27
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