

COPY

1 Marc S. Williams (Bar No. 198913)
E-mail: mwilliams@cohen-williams.com
2 Kathleen M. Erskine (Bar No. 223218)
E-mail: kerskine@cohen-williams.com
3 COHEN WILLIAMS LLP
4 724 South Spring Street, Ninth Floor
Los Angeles, CA 90014
5 Telephone: (213) 232-5160
6 Facsimile: (213) 232-5167

7 Julie Gutman Dickinson (Bar No. 149267)
E-mail: jgutmandickinson@bushgottlieb.com
8 Kiel B. Ireland (Bar No. 316287)
E-mail: kireland@bushgottlieb.com
9 BUSH GOTTLIEB, A Law Corporation
10 801 N. Brand Blvd., Suite 950
Glendale, CA 91203
11 Telephone: (818) 973-3200
12 Facsimile: (818) 973-3201

13 Attorneys for Plaintiff,
JOEL DE JESÚS MEJIA

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

16 JOEL DE JESÚS MEJIA, an individual,

17 Plaintiff,

18 vs.

19 PACIFIC GREEN TRUCKING, INC., a
20 California corporation; VICENTE ZARATE,
21 an individual; HUGO SANCHEZ, an
22 individual; and DOES 1-20, inclusive,

23 Defendants.
24
25
26
27
28

CONFORMED COPY
ORIGINAL FILED
Superior Court Of California

SEP 04 2018

Sherril N. Saito, Executive Officer/Clerk
By: Cristina Grijalva, Deputy

Case No.

BC 7 2 0 5 5 5

BY FAX

COMPLAINT FOR:

- (1) RETALIATION (CAL. LAB. CODE § 98.6);
 - (2) ASSAULT;
 - (3) BATTERY;
 - (4) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
 - (5) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
 - (6) VIOLATION OF THE RALPH CIVIL RIGHTS ACT;
 - (7) WAGE AND HOUR VIOLATIONS;
 - (8) UNFAIR BUSINESS PRACTICES
- JURY TRIAL DEMANDED**

1 Plaintiff Joel de Jesús Mejia (“Plaintiff”) hereby alleges:

2 **INTRODUCTION**

3 1. Joel Mejia is a 61-year-old Guatemalan-born American citizen and father of five. He
4 has worked in the port trucking industry for 25 years. Mejia worked for Defendant Pacific Green
5 Trucking, Inc. (“PGT”), until PGT summarily fired him on August 2, 2018 in retaliation for
6 complaining that PGT was stealing from him by deducting five hours of pay every five-day
7 workweek.

8 2. The retaliation by PGT did not end with the wrongful termination, however. In the
9 course of the termination, Mejia’s boss and co-owner of the company, Defendant Vicente Zarate
10 (“Zarate”) brutally beat Mejia, with the help of his Director of Operations, Hugo Sanchez
11 (“Sanchez”), kicking him and threatening to kill Mejia and his family. Zarate then watched as
12 Sanchez dragged Mejia 25 feet across the office floor, and threw Mejia’s backpack at him, causing
13 his cell phone to come apart. Zarate made another death threat by gesturing with his hand in the
14 form of a gun, pointing it at Mejia, and making sounds to mimic shots, as Mejia struggled to put the
15 pieces of his phone back together to call the police and paramedics. Mejia sustained a broken facial
16 bone, several hematomas to his scalp and legs, and neck and back injuries in the beating. Since the
17 vicious attack, he has also suffered from constant ringing in the ears, severe headaches, and
18 psychological torment out of fear for his safety and the safety of his family. Mejia brings this action
19 for damages to seek redress for Zarate and PGT’s brazen, brutal retaliation against an employee who
20 dared to stand up for himself.

21 **PARTIES**

22 3. Plaintiff is a resident of the State of California and County of Los Angeles.

23 4. Defendant PGT is a California corporation with a principal place of business at 512
24 East C Street, Wilmington, California, in the County of Los Angeles. PGT engages in the business
25 of freight shipping and hauling between the Ports of Los Angeles and Long Beach and retailers or
26 railyards in Southern California.

27 5. Plaintiff is informed and believes, and based thereon alleges, that Defendant Vicente
28 Zarate is and was at all relevant times a resident of the State of California, and the County of Los

1 Angeles. Plaintiff is further informed and believes, and on that basis alleges, that at all relevant
2 times herein, Zarate was an owner and principal of PGT.

3 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant Hugo
4 Sanchez is and was at all relevant times PGT's Director of Operations and a resident of the State of
5 California, and the County of Los Angeles.

6 7. The true names and capacities, whether individual, corporate, or otherwise, of
7 Defendants named as DOES 1 through 20, inclusive, are unknown to Plaintiff, who therefore sues
8 said Defendants by such fictitious names pursuant to section 474 of the California Code of Civil
9 Procedure. Plaintiff will amend his Complaint to set forth the true names and capacities of said
10 Defendants when they are ascertained. Plaintiff is informed and believes, and on that basis alleges,
11 that each of said Defendants participated in all or some of the acts as alleged herein and are liable
12 to Plaintiff.

13 8. Plaintiff is informed and believes, and on that basis alleges, that at all material times
14 herein, each of the Defendants was the agent, servant, and/or employee of each remaining defendant,
15 and in doing the things hereinafter alleged, was acting in the course and scope of said agency and
16 employment, with the consent and permission of his/her/its co-Defendants, and is responsible in
17 some manner for the acts alleged herein and thereby proximately caused injuries and damages to
18 Plaintiff as alleged herein.

19 **JURISDICTION AND VENUE**

20 9. This Court has jurisdiction over Defendants because, in the case of individual
21 Defendants Zarate and Sanchez, they reside in the State of California. The Court has jurisdiction
22 over Defendant PGT because it has a principal place of business in the County of Los Angeles.

23 10. Venue is proper in this judicial district pursuant to subdivision (a) of section 395 of
24 the California Code of Civil Procedure, because Defendants Zarate and Sanchez reside in the County
25 of Los Angeles. Venue is proper under section 395.5 of the Code of Civil Procedure, because PGT's
26 principal place of business is located in, and PGT's liability arose in, Los Angeles County.

27 ///

28 ///

1 **GENERAL ALLEGATIONS**

2 11. Mejia started working for PGT as a truck driver in October, 2017. Zarate hired him.
3 At the time of hire, Zarate advised Mejia he would make \$21.00 per hour to start, and promised
4 Mejia that every three months, he would raise Mejia’s pay by \$1.00 per hour.

5 12. Mejia’s job involved transporting containers arriving on container ships to the Ports
6 of Los Angeles and Long Beach to destinations within Southern California, and typically returning
7 empty containers back to the terminal at the Ports.

8
9 **Mejia Regularly Performed Work that PGT Failed and Refused to Compensate**

10 13. Mejia reported to work each day at or shortly before 7:00 a.m. Mejia would check the
11 tires, fuel level, and oil for the truck he would drive that day, and report to the office to be dispatched
12 by PGT’s dispatchers, Sanchez and Gustavo (last name unknown). Mejia and the other PGT drivers
13 would begin taking jobs from the dispatchers at 7:00 a.m.

14 14. At some point after Mejia started working, Sanchez instructed him not to write “7:00”
15 on his manifests as his start time, and directed him to write “7:30” instead. The company did not
16 pay Mejia for his time worked between 7:00 a.m. and 7:30 a.m. Mejia is informed and believes and
17 on that basis alleges, that PGT had a policy and practice of not paying any employee for the 30
18 minutes worked prior to 7:30 a.m., despite the fact that the vast majority of employees arrived and
19 started taking on work before 7:30 a.m.

20 15. At the end of Mejia’s shift, he would return to the yard, park his truck, store the
21 container, complete paperwork, and walk to the office to submit his manifest, which documented
22 the trips he had made and cargo hauled in that workday (referred to herein as “Post-Driving Work”).
23 Mejia typically spent approximately 20 minutes performing this Post-Driving Work.

24 16. In his entire tenure at PGT, Mejia did not take a meal break of 30 minutes during
25 which he was relieved of all duty. In the 10 months he worked for the company, Mejia took only
26 one 30-minute break when he stopped and ate inside his truck, but on that occasion he was not
27 relieved of all duty or free to leave the premises, because he was responsible for the container he
28 was hauling. After that one occasion when he stopped for a break to eat in his truck, Zarate was

1 angry with him and asked him why he had been stopped for so long. Zarate had seen Mejia's stop
2 reflected on the computerized "electronic books" that track each stop the truck makes. Mejia never
3 took another break to eat in his truck after that encounter with Zarate.

4 17. Including all the time Mejia worked, spent preparing for work, waiting for the first
5 assignment, and performed Post-Driving Work, Mejia typically worked from 7:00 a.m. to 5:20 p.m.,
6 or 10.3 hours, daily. Instead of paying Mejia for all of this work time, however, PGT failed and
7 refused to pay Mejia (a) for the 30 minutes he spent preparing his truck and waiting for or taking
8 orders from the dispatcher; and (b) for the 20 minutes he spent performing Post-Driving Work.

9
10 **PGT's Unlawful Deductions from Wages**

11 18. In addition to its failure to pay Mejia for all of his time worked, PGT also *deducted*
12 one hour of pay for each workday, and sometimes more, on the fraudulent basis that Mejia had taken
13 a one-hour meal break, despite the fact that Mejia complained to the company that he believed the
14 deductions were wrongful because he was not actually able to take meal breaks.

15 19. Soon after Mejia started working for PGT, he noticed that his paycheck was short
16 by several hours. Mejia went to discuss the matter with Zarate. Mejia asked Zarate why his
17 paycheck was short. Zarate told Mejia that it was for a one-hour lunch break. Mejia explained
18 that it was impossible for him to take a break. Zarate told Mejia that "by law" Mejia had to take
19 a lunch break.

20 20. After this first conversation with Zarate, Mejia began to put down an extra hour of
21 time on his manifests each day, because he was unable to take a lunch break and he knew Zarate
22 would deduct one hour of pay regardless of his inability to take a break.

23 21. In or around January, 2018, Zarate approached Mejia and asked why Mejia was
24 putting down on his time sheet that he worked until 6:00 p.m. when he returned to the yard with
25 the truck at 5:00 p.m. Mejia told Zarate it was because of the fact that Zarate was deducting an
26 hour of his pay every day despite the fact that Mejia could not take a lunch break. Zarate directed
27 Mejia to stop noting any time after he entered the yard. Zarate further stated that PGT would start
28 to deduct only 30 minutes, instead of one hour, from that point on.

1 22. Mejia complied with Zarate’s directive and stopped noting time after returning to
2 the yard on his time sheet, even though he was not taking lunches, and even though he was
3 performing compensable Post-Driving Work. For approximately four to six weeks after his
4 conversation with Zarate, PGT deducted 30 minutes from his pay each day, despite the fact that
5 Mejia continued to forgo his meal breaks due to the impossibility of taking them. After that short
6 period, PGT returned to the practice of fraudulently deducting an hour of pay per day.

7 23. In or around April 2018, Mejia went again to complain to Zarate that his paycheck
8 was consistently short by one hour each day he worked. Zarate again said it was due to Mejia’s
9 lunch break. Mejia reminded Zarate that he was not able to take a lunch break and that he was
10 performing Post-Driving Work once he arrived with the truck in the port terminal.

11 24. When he complained to Zarate that his paychecks were still short, Zarate became
12 very angry. Zarate was red in the face and appeared to have tears in his eyes. He yelled at Mejia,
13 “You’re always coming in here with the same thing. I don’t want to keep talking to you about
14 this!”¹ Mejia left Zarate’s office as directed. Because Zarate had reacted so intensely and angrily
15 to Mejia’s complaint, Mejia avoided talking to Zarate for several months.

16
17 **August 2, 2018 Retaliatory Termination, Assault, and Battery**

18 25. In or around May 2018, Mejia took a one-month unpaid leave of absence to visit
19 his son in Guatemala who had a medical emergency. When Mejia returned in or around late June,
20 he noticed that his paycheck for the week prior to his leave was short again by five hours. The
21 first week Mejia worked after his return, he worked for three days, yet PGT deducted four hours’
22 worth of compensation from his paycheck.

23 26. In the same time period, Mejia spoke to some of the new, younger drivers at PGT
24 and learned that they had been hired at hourly rates higher than his current rate. Mejia felt Zarate’s
25 more favorable treatment of the younger and less experienced drivers was unfair and that the
26 deductions from his pay amounted to wage theft. He decided to approach Zarate to discuss both
27

28 ¹ Conversations quoted in the complaint were in Spanish and have been translated.

1 the disparate treatment and the wage theft against him. It took several weeks for Mejia to find an
2 available time to discuss the matter with Zarate. Each time he approached Zarate, he found that
3 Zarate was occupied or talking with others. On the afternoon of August 2, 2018, Mejia finally
4 had the opportunity.

5 27. Mejia entered Zarate's office and asked to speak to him. Mejia sat in a chair situated
6 in an "L" shape in relation to Zarate's desk, against a wall. Zarate said, "Why do you want to talk
7 to me?" Mejia asked him why he was paying the new, younger drivers more than Mejia. Zarate
8 replied that it was because, when Mejia started working for PGT he was "stealing from [Zarate]."
9 Mejia said he had never stolen anything from the company and reiterated what he had told Zarate
10 at their prior meetings on the subject months earlier -- that he was not able to take a meal break
11 and that he was performing Post-Driving work, so when the company was deducting an hour of
12 his pay for each day worked, he put down the time after he returned to the yard to reflect the hour
13 he was actually working and not taking a lunch break.

14 28. Zarate became belligerent, stood up, and said he didn't want to see Mejia anymore,
15 again called Mejia a thief, and started swearing at Mejia in Spanish, saying derogatory things
16 about Mejia's mother. Zarate then fired Mejia, telling him that he didn't want to see Mejia
17 anymore. Mejia told Zarate that his mother had passed away in 2016 and he did not appreciate
18 Zarate's talking about her in that way. Zarate told Mejia to get him the paperwork for the week so
19 he could pay Mejia his final paycheck and he wanted Mejia to get out.

20 29. Mejia went to retrieve the daily manifest from another area in the office, and brought
21 it back to Zarate. Zarate went to retrieve the manifests from the other days in the pay period in a
22 different part of the office, all the while yelling pejorative statements about Mejia and his mother,
23 and saying that Mejia was a thief. After Zarate returned to the office, and as he was going through
24 the stack, he continued to yell obscenities about Mejia's mother.

25 30. Mejia said, "You are the thief, because you are stealing from us." Zarate threw
26 down the stack of papers and said, "I'm going to kick your ass" ("*te voy a partir a tu madre*"),
27 which Mejia understood to be a real, credible threat of bodily harm. As Zarate said this, he walked
28 around the desk to where Mejia was standing, with his fists raised, poised to assail Mejia. When

1 Zarate was immediately in front of Mejia, Mejia put his arms up to protect himself and defensively
2 punched Zarate in the left cheek with his right hand. Zarate then turned around, walked back
3 around his desk to his computer. He then turned around, again walked back around that desk to
4 Mejia, and yelled, "I'm going to kill you." As Zarate came back toward Mejia, Zarate again raised
5 his fists.

6 31. Mejia then heard the voice of Sanchez, who entered the room and yelled to Mejia,
7 "You hit him; I'll kick your ass. I've got nothing to lose."

8 32. Mejia then felt Sanchez grab either side of his neck with both of his hands and throw
9 him down to the floor. Mejia's face and head hit something hard, which Mejia is informed and
10 believes was the floor, and he lost consciousness briefly. When he came to, he was on the floor
11 in a fetal position, and he felt Zarate and Sanchez kicking him in the head, legs, and back.

12 33. After kicking Mejia repeatedly for a substantial period, Sanchez grabbed Mejia by
13 the back of his shirt and safety vest and his pants waistband, and dragged Mejia along the carpet
14 for approximately 25 to 30 feet to the front door of the office. Zarate again threatened Mejia,
15 saying, "If I don't kill you here today, I can pay somebody to kill you and your family at your
16 house."

17 34. Zarate or Sanchez then threw Mejia's backpack at him so hard that his cell phone
18 flew out onto the floor and came apart. Mejia was unable to get himself off the floor because of
19 the harm Zarate and Sanchez had inflicted on him. As he struggled from his position on the floor
20 to put his phone back together, he heard, "*Ch-ch-ch*." When he looked up, Zarate was holding his
21 hand pointing his finger at Mejia as if to mimic shooting him with a gun several times while
22 making the clicking sound.

23 35. Mejia called 9-1-1 and asked for a paramedic and the police. Paramedics arrived
24 and transported Mejia to the emergency room. He sustained a facial bone fracture and hematomas
25 to his scalp and leg, as well as neck and spinal column injuries that make it difficult for him to
26 walk and impossible for him to drive a truck. He cannot sleep, has a constant ringing in his ears,
27 and experiences intense pain to his legs, back, and head daily. His vision has been impaired, and
28 he cannot consistently maintain his balance when standing due to vertigo.

1 36. Due to the termination of his employment and the brutal assault, Mejia has been
2 rendered incapable of providing for his family. Due to Zarate's death threats, he and his family
3 live in constant fear that they will be further assaulted or killed by an agent of PGT.
4

5 **Exhaustion of Administrative Remedies under the Private Attorneys General Act, Cal. Lab.**
6 **Code §2698 et seq.**

7 37. On September 4, 2018, Plaintiff filed notice with the California Labor and
8 Workforce Development Agency ("LWDA"), and sent a copy by certified mail to Defendants
9 PGT and Zarate, of the wage and hour violations set forth in this complaint that he has suffered
10 and on information and belief other employees at the company have suffered. In the event that
11 the LWDA declines to investigate or otherwise does not respond within the statutory period,
12 Plaintiff intends to investigate and amend his Complaint to seek penalties on behalf of all
13 aggrieved employees who have been similarly harmed by the violations.
14

15 **FIRST CAUSE OF ACTION**

16 (Retaliation for Complaining About Labor Code Violations [Cal. Lab. Code § 98.6])

17 Against Defendant PGT and Does 1-20)

18 38. Plaintiff incorporates by reference as if fully set forth here the allegations of
19 Paragraphs 1 through 37.

20 39. Plaintiff was employed by Defendant PGT at all times referenced herein until PGT
21 terminated his employment on August 2, 2018.

22 40. Zarate was at all relevant times a supervisor of Plaintiff, and a managing agent of
23 PGT.

24 41. Sanchez, PGT's Director of Operations, was at all relevant times a supervisor of
25 Plaintiff and a managing agent for PGT.

26 42. Plaintiff engaged in activities protected against retaliation by section 98.6 of the
27 California Labor Code, when he complained orally to Zarate on three separate occasions, including
28

1 but not limited to August 2, 2018, that Zarate and PGT were stealing wages from him by making
2 unlawful deductions from their paychecks.

3 43. On two prior occasions, in or around January and April 2018, Plaintiff had also
4 engaged activity protected by section 98.6 of the Labor Code when he complained that PGT was
5 withholding wages from his paycheck and that he was never able to take a meal break; and when he
6 advised Zarate that he believed he was performing work for which he was not getting paid after
7 driving back to the terminal with his truck.

8 44. Defendant PGT, acting through Zarate, retaliated against Plaintiff for his complaints
9 by:

- 10 a. Failing to give Plaintiff raises of \$1.00 per hour after his sixth and ninth month of
11 work, as Zarate had promised, because Mejia had engaged in protected activities in
12 January and April 2018;
- 13 b. Terminating Plaintiff's employment on August 2, 2018 in direct response to Plaintiff's
14 complaints that Zarate and PGT were committing wage theft; and
- 15 c. Assaulting Plaintiff by making threats that Zarate would "kick [Mejia's] ass,"
16 immediately after Mejia complained that Zarate and PGT were committing wage theft.

17 45. Defendant PGT, acting through Zarate and Sanchez, further retaliated against Plaintiff
18 by brutally beating Mejia immediately after Mejia attempted to defend himself from what he
19 reasonably apprehended to be an imminent threat of battery, by striking Zarate in a defensive act,
20 after Zarate threatened to "kick [Mejia's] ass" in response to his complaints of wage theft.

21 46. Plaintiff is informed and believes, and on that basis alleges, that Defendant PGT took
22 the action of assaulting and brutally beating Plaintiff because Defendant (a) wanted to suppress any
23 future complaints by other employees; and/or (b) believed it could act with impunity in assaulting a
24 complaining employee.

25 47. The above-described conduct was carried out by managing agents of PGT in
26 conscious disregard of Plaintiff's rights, and with malice, fraud, and oppression, and entitles Plaintiff
27 to seek punitive damages against Defendant PGT.

1 48. Plaintiff was harmed by Defendant's retaliatory acts, and Defendant's retaliation was
2 a substantial factor in causing harm to Plaintiff.

3 **SECOND CAUSE OF ACTION**

4 (Assault Against All Defendants and Does 1-20)

5 49. Plaintiff incorporates by reference as if fully set forth here the allegations of
6 Paragraphs 1 through 48.

7 50. Immediately after Plaintiff complained that Zarate was stealing from him, Zarate
8 threw down a stack of papers and walked aggressively toward Plaintiff with his arms raised in a
9 fighting position, while stating, "*Te voy a partir a tu madre,*" which expresses an immediate
10 intention to beat someone up.

11 51. Plaintiff is informed and believes, and on that basis alleges, that at the time Zarate
12 uttered the threat and engaged in the conduct, Zarate had an intent to engage in harmful or offensive
13 contact toward Plaintiff.

14 52. Plaintiff reasonably believed, at the time Zarate was approaching him and uttering the
15 threat, that Zarate was about to carry out the threat.

16 53. Plaintiff did not consent to Zarate's conduct.

17 54. Plaintiff was harmed by Zarate's conduct.

18 55. Zarate's conduct was willful and unprovoked.

19 56. Sanchez's conduct in walking aggressively toward Plaintiff while stating, "I'll kick
20 your ass. I have nothing to lose," placed Plaintiff reasonably in fear that Sanchez was about to carry
21 out the threat.

22 57. Plaintiff is informed and believes, and on that basis alleges, that at the time Sanchez
23 uttered the threat and engaged in the conduct, he had an intent to engage in harmful or offensive
24 contact toward Plaintiff.

25 58. At the time Zarate and Sanchez engaged in the conduct, each was acting as Defendant
26 PGT's agent, and PGT ratified and was a joint participant in the conduct of each of Zarate and
27 Sanchez.

1 75. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged
2 in the extreme and outrageous conduct with the intent to cause Plaintiff emotional distress.

3 76. At the time Zarate and Sanchez engaged in the extreme and outrageous conduct, each
4 was acting as Defendant PGT's agent, and PGT ratified and was a willing and joint participant in
5 the misconduct of Zarate and Sanchez.

6 77. Plaintiff has suffered, and continues to suffer, emotional distress.

7 78. Defendants' conduct described above proximately caused Plaintiff's emotional
8 distress.

9 79. Each of the individual Defendants, Zarate and Sanchez, engaged in the above-
10 described conduct in conscious disregard of Plaintiff's rights, and with malice, fraud, and
11 oppression, entitling Plaintiff to seek punitive damages against each Defendant.

12 80. Defendant PGT engaged in the above-described conduct through its managing agents,
13 in conscious disregard of Plaintiff's rights and with malice, fraud, and oppression, entitling Plaintiff
14 to seek punitive damages against PGT.

15 **FIFTH CAUSE OF ACTION**

16 (Wrongful Termination in Violation of Public Policy Against Defendant PGT and Does 1-20)

17 81. Plaintiff incorporates by reference as if fully set forth here the allegations of
18 Paragraphs 1 through 80.

19 82. Plaintiff was employed by Defendant PGT at all times referenced herein until his
20 employment was terminated on August 2, 2018.

21 83. PGT terminated Plaintiff's employment on August 2, 2018.

22 84. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff's exercising
23 his legal right to make oral complaints to his employer regarding what he reasonably believed to be
24 violations of the California Labor Code was a substantial motivating reason for his termination.

25 85. PGT's wrongful termination of Plaintiff has caused Plaintiff harm.

26 86. Defendant PGT engaged in the above-described conduct through its managing agents,
27 in conscious disregard of Plaintiff's rights and with malice, fraud, and oppression, entitling Plaintiff
28 to seek punitive damages against PGT.

1 **SIXTH CAUSE OF ACTION**

2 (Violation of the Ralph Civil Rights Act

3 [Cal. Civ. Code § 51.7] Against All Defendants and Does 1-20)

4 87. Plaintiff incorporates by reference as if fully set forth here the allegations of
5 Paragraphs 1 through 86.

6 88. Defendants committed several acts of violence against Plaintiff on August 2, 2018.

7 89. The acts of violence immediately followed Plaintiff's complaint that Defendants PGT
8 and Zarate were committing wage theft.

9 90. Defendant Zarate and Plaintiff had discussed and disputed the matter of the deductions
10 and missed meal breaks in the past.

11 91. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 committed the above-described violent acts based on the position Plaintiff took in a labor dispute
13 within the meaning of the Ralph Civil Rights Act, Cal. Civ. Code § 51.7.

14 92. As a direct and proximate result of Defendants' wrongful and violent acts, Plaintiff
15 has suffered and will continue to suffer harm.

16 93. Each of the individual Defendants, Zarate and Sanchez, engaged in the above-
17 described conduct in conscious disregard of Plaintiff's rights, and with malice, fraud, and
18 oppression, entitling Plaintiff to seek punitive damages against each Defendant.

19 94. Defendant PGT engaged in the above-described conduct through its managing agents,
20 in conscious disregard of Plaintiff's rights and with malice, fraud, and oppression, entitling Plaintiff
21 to seek punitive damages against PGT.

22 **SEVENTH CAUSE OF ACTION**

23 (Failure to Provide Meal Breaks [Cal. Lab. Code §§ 226.7, 512, IWC Wage Order 9-2001]

24 Against Defendants PGT and Zarate and Does 1-20)

25 95. Plaintiff incorporates by reference as if fully set forth here the allegations of
26 Paragraphs 1 through 94.

27 96. Defendant PGT systematically failed and refused to provide Plaintiff and other truck
28 drivers off-duty uninterrupted meal periods of thirty minutes in the first five hours of a shift, as

1 required by Industrial Welfare Commission (“IWC”) Wage Order 9-2001, and sections 227.6 and
2 512 of the California Labor Code.

3 97. Subdivision (b) of section 226.7 of the Labor Code and Wage Order 9-2001, ¶11
4 require an employer to pay one hour of pay to each employee for each day the employee misses a
5 legally required meal period.

6 98. At all relevant times herein, Defendant PGT has failed and refused to pay Plaintiff and
7 other truck drivers one hour of pay for each missed meal period.

8 99. Zarate, as an owner, director, and/or a managing agent of Defendant PGT, is
9 personally liable to Plaintiff as an employer under section 558.1 of the Labor Code.

10 100. Defendants are liable to Plaintiff for premium pay of one hour of wages for each shift
11 in which a mandated meal break was not taken.

12 **EIGHTH CAUSE OF ACTION**

13 (Failure to Provide Rest Breaks [Cal. Lab. Code §226.7 and IWC Order 9-2001])

14 Against Defendants PGT and Zarate and Does 1-20)

15 101. Plaintiff incorporates by reference as if fully set forth here the allegations of
16 Paragraphs 1 through 100.

17 102. Defendants PGT and Zarate systematically failed and refused to provide Plaintiff and
18 other truck drivers off-duty uninterrupted rest periods of ten (10) minutes for each four hours
19 worked, as required by IWC Wage Order 9-2001, and Labor Code section 227.6.

20 103. Subdivision (b) of section 226.7 of the California Labor Code and Wage Order 9-
21 2001, ¶11, require an employer to pay one hour of pay to each employee for each day the employee
22 misses a legally required rest period.

23 104. At all relevant times herein, Defendant PGT has failed and refused to pay Plaintiff and
24 other truck drivers one hour of pay for each missed rest period.

25 105. Zarate, as an owner, director, and/or a managing agent of Defendant PGT, is
26 personally liable to Plaintiff as an employer under section 558.1 of the Labor Code.

27 106. Defendants are liable to Plaintiff for premium pay of one hour of wages for each shift
28 in which a mandated meal break was not taken.

1 **NINTH CAUSE OF ACTION**

2 (Failure to Pay Wages Owed [Cal. Lab. Code §§ 1194, 1194.2, 1197])

3 Against Defendants PGT and Zarate and Does 1-20)

4 107. Plaintiff incorporates by reference as if fully set forth here the allegations of
5 Paragraphs 1 through 106.

6 108. Section 1197 of the California Labor Code makes it unlawful to pay an employee less
7 than the minimum wage, as established by the IWC, for each hour worked.

8 109. Section 1194 of the California Labor Code allows an employee receiving less than the
9 minimum wage to bring a civil action to recover the unpaid minimum wages owed, plus interest,
10 reasonable attorneys' fees, and costs.

11 110. Section 1194.2 of the Labor Code provides that an employee receiving less than the
12 minimum wage may recover liquidated damages in an amount equal to the unpaid minimum wages,
13 with interest.

14 111. Defendant PGT had a practice and policy of employing Plaintiff and other drivers
15 starting at or before 7:00 a.m. each day, but refusing to pay them for time worked until 7:30 a.m.

16 112. Defendant PGT, through Zarate, expressly prohibited Plaintiff from writing the
17 accurate time he started work on his manifests, which were used to calculate Plaintiff's pay, and
18 required Plaintiff to write "7:30" instead.

19 113. Defendant PGT also had a practice and policy of using the time Plaintiff and other
20 drivers entered the terminal with their truck at the end of a shift as the end of the work day, despite
21 the fact that Plaintiff and other drivers performed Post-Driving Work.

22 114. The above-described practices and policies of Defendant PGT deprived Plaintiff and
23 other drivers of any compensation at all for the time they worked before 7:30 a.m. and after they
24 entered the terminal gate with their trucks.

25 115. Zarate, as an owner, director, and/or a managing agent of Defendant PGT, is
26 personally liable to Plaintiff as an employer under Section 558.1 of the Labor Code.

27 116. PGT and Zarate's willful failure to pay Plaintiff and other drivers makes these
28 Defendants liable for unpaid minimum wage compensation, and/or unpaid overtime compensation,

1 as well as liquidated damages in an amount equal to the unpaid wages, plus interest and attorneys'
2 fees.

3 **TENTH CAUSE OF ACTION**

4 (Failure to Pay Timely All Wages Owed [Cal. Lab. Code § 204]

5 Against Defendant PGT and Does 1-20)

6 117. Plaintiff incorporates by reference as if fully set forth here the allegations of
7 Paragraphs 1 through 116.

8 118. Labor Code § 204 requires employers to pay employees at least twice a month for all
9 wages earned during the preceding pay period and sets times within which wages must be paid.

10 119. PGT repeatedly failed to pay Plaintiff on his regular scheduled paydays for all work
11 performed at his regular rate of pay during the preceding pay periods.

12 120. Specifically, PGT and Zarate regularly required Mejia to work off-the-clock without
13 compensation and required Mejia to work through required meal breaks without compensation.

14 121. PGT and Zarate further failed to pay Mejia premium wages for all meal periods that
15 were not provided.

16 122. PGT is liable to Plaintiff under Labor Code section 204 for payment of all wages not
17 paid in a timely manner at Plaintiff's regular rate of pay, as well as statutory penalties.

18 **ELEVENTH CAUSE OF ACTION**

19 (Failure to Furnish Accurate Wage Statements [Cal. Lab. Code § 226]

20 Against Defendants PGT and Zarate and Does 1-20)

21 123. Plaintiff incorporates by reference as if fully set forth here the allegations of
22 Paragraphs 1 through 122.

23 124. Subdivision (a) of Section 226 of the Labor Code and paragraph 7(B) of IWC Wage
24 Order 9-2001 require an employer, semi-monthly or at the time of each payment of wages, to furnish
25 each employee with a statement itemizing, among other things, the total hours worked by the
26 employee.

27 125. Subdivision (b) of section 226 of the Labor Code provides that, if an employer
28 knowingly and intentionally fails to provide a statement itemizing the total hours worked by the

1 employee and the other information required by section 226(a), then the employee is entitled to
2 recover the greater of all actual damages or fifty dollars (\$50) for the initial violation, and one
3 hundred (\$100) dollars for each subsequent violation, up to four thousand dollars (\$4,000).

4 126. Zarate, as an owner, director, and/or a managing agent of Defendant PGT, is
5 personally liable to Plaintiff as an employer under section 558.1 of the Labor Code.

6 127. Defendant PGT and Zarate willfully and intentionally failed to furnish itemized wage
7 statements that showed the true number of hours Plaintiff worked each day. In fact, Defendant and
8 PGT furnished false wage statements, in that each wage statement with an unlawful deduction
9 implied that Plaintiff had taken a meal break when Plaintiff had not. The wage statements furnished
10 to Plaintiff were also inaccurate in failing to reflect premium pay owed to Plaintiff for missed meal
11 breaks.

12 128. Defendants PGT and Zarate are liable to Plaintiff for the amounts provided for by
13 Labor Code Section 226(b).

14 **TWELFTH CAUSE OF ACTION**

15 (Failure to Pay Final Wages Against Defendants PGT and Zarate and Does 1-20)

16 129. Plaintiff incorporates by reference as if fully set forth here the allegations of
17 Paragraphs 1 through 128.

18 130. Section 201 of the California Labor Code requires that, when an employer discharges
19 an employee, the employer must pay the employee all wages owing immediately.

20 131. Section 203 of the Labor Code provides for a “waiting time penalty” where an
21 employer willfully fails to pay the wages due under Section 201, in the amount continuing daily
22 wages for up to 30 days of the employee’s wages.

23 132. Zarate, as an owner, director, and/or a managing agent of Defendant PGT, is
24 personally liable to Plaintiff as an employer under section 558.1 of the Labor Code.

25 133. Defendant PGT, through Zarate, started the process of calculating Plaintiff’s final
26 paycheck when Zarate fired him on August 2, 2018. However, Zarate interrupted that process by
27 assaulting and then beating Plaintiff after Plaintiff stated that Zarate was stealing from him and never
28 paid Plaintiff his final wages.

1 134. Defendants' conduct in continuing to fail and refuse to pay Plaintiff his final wages
2 was willful, making Defendants PGT and Zarate liable to Plaintiff for the maximum waiting time
3 penalties payable under section 203 of the Labor Code, plus interest and attorneys' fees.

4 **THIRTEENTH CAUSE OF ACTION**

5 (Unfair Business Practices [Cal. Bus. & Prof. Code § 17200 *et seq.*]

6 Against Defendants PGT and Zarate and Does 1-20)

7 135. Plaintiff incorporates by reference as if fully set forth here the allegations of
8 Paragraphs 1 through 134.

9 136. Plaintiff is informed and believes, and based thereon alleges, that Defendants PGT
10 and Zarate are "persons" within the meaning of section 17201 of the California Business and
11 Professions Code.

12 137. Defendants PGT and Zarate's willful violations of California law, including but not
13 limited to their violation of sections 98.6, 226, 226.7, 512, 1194, and 1197 of the Labor Code,
14 constitute unfair business practices as defined by section 17200 *et seq.* of the California Business
15 and Professions Code.

16 138. By engaging in the above-described unfair business practices, Defendants have sought
17 to avoid, and successfully avoided, their obligations to meet minimum employee-protection
18 standards established by the California legislature. Defendants have thereby shifted the burden that
19 should appropriately be imposed on Defendants onto (a) Plaintiff and other employees; and (b)
20 other, law-abiding businesses.

21 139. Defendants' unfair business practices have unjustly enriched Defendants at the
22 expense of Plaintiff.

23 140. Pursuant to sections 17200 *et seq.* of the California Business and Professions Code,
24 Plaintiff is entitled to injunctive relief and for an accounting for and restitution of the monies
25 unlawfully withheld and retained by Defendants.

26
27 **PRAYER FOR RELIEF**

28 Plaintiff prays for judgment as follows:

1 1. On the First Cause of Action for Retaliation Under California Labor Code section
2 98.6 against Defendant PGT:

- 3 a. For general damages in an amount according to proof;
- 4 b. For special damages in an amount according to proof;
- 5 c. For punitive damages; and
- 6 d. For statutory penalties in the amount of \$10,000 for each violation, pursuant
7 to California Labor Code section 98.6(a)(3).

8 2. On the Second Cause of Action for Assault against all Defendants, and each of
9 them:

- 10 a. For general damages according to proof;
- 11 b. For special damages according to proof; and
- 12 c. For punitive damages.

13 3. On the Third Cause of Action for Battery against all Defendants, and each of them:

- 14 a. For general damages according to proof;
- 15 b. For special damages according to proof; and
- 16 c. For punitive damages.

17 4. On the Fourth Cause of Intentional Infliction of Emotional Distress against all
18 Defendants, and each of them:

- 19 a. For general damages according to proof;
- 20 b. For special damages according to proof; and
- 21 c. For punitive damages.

22 5. On the Fifth Cause of Action for Wrongful Termination in Violation of Public
23 Policy against Defendant PGT as follows:

- 24 a. For general damages according to proof;
- 25 b. For special damages according to proof; and
- 26 c. For punitive damages.

27 6. On the Sixth Cause of Action for Violation of the Ralph Civil Rights Act against all
28 Defendants, and each of them:

- a. For general damages according to proof;
- b. For special damages according to proof;
- c. For punitive damages; and
- d. For statutory penalties.

7. On the Seventh Cause of Action for Missed Meal Breaks against Defendants PGT and Zarate, and each of them:

- a. For premium pay according to proof; and
- b. For attorneys' fees pursuant to Labor Code section 218.5.

8. On the Eighth Cause of Action for Failure to Provide Rest Breaks against Defendants PGT and Zarate, and each of them:

- a. For premium pay according to proof; and
- b. For attorneys' fees pursuant to Labor Code section 218.5.

9. On the Ninth Cause of Action for Failure to Pay Wages Owed against Defendants PGT and Zarate, and each of them:

- a. For the amount of unpaid minimum wages owed;
- b. For liquidated damages in an amount equal to the unpaid wages owed;
- c. For statutory penalties; and
- d. For attorneys' fees and costs pursuant to Labor Code sections 1194 and 1194.2.

10. On the Tenth Cause of Action for Failure Timely to Pay All Wages Owed against Defendants PGT and Zarate, and each of them:

- a. For actual damages; and
- b. For statutory penalties.

11. On the Eleventh Cause of Action Failure to Furnish Accurate Wage Statements against Defendants PGT and Zarate, and each of them:

- a. For statutory penalties under Labor Code section 226(b); and
- b. For attorneys' fees under Labor Code section 226(e)(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. For attorneys' fees under Labor Code section 226(e)(1).

12. On the Twelfth Cause of Action for Failure to Pay Final Wages Against Defendant

PGT:

a. For Plaintiff's unpaid wages, continuing for the thirty days following August 2, 2018.

13. On the Thirteenth Cause of Action for Unfair Business Practices Against Defendants

PGT and Zarate, and each of them:

a. Injunctive relief;

b. An accounting of all amounts unlawfully retained by Defendants; and

c. Restitution.

14. For costs of suit.

15. For prejudgment interest, as permitted by law.

16. For attorneys' fees and costs, as permitted by law.

17. For such other and further relief that the Court deems proper.

Dated: September 4, 2018

COHEN WILLIAMS LLP

By: 

Kathleen M. Erskine
Attorneys for Plaintiff,
JOEL DE JESÚS MEJIA

Dated: September 4, 2018

BUSH GOTTLIEB, A LAW CORPORATION

By: 


Julie Gutman Dickinson
Kiel B. Ireland
Attorneys for Plaintiff,
JOEL DE JESÚS MEJIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

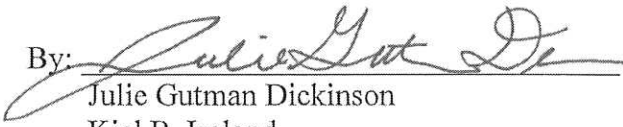
DEMAND FOR JURY TRIAL

Plaintiff Joel de Jesús Mejia hereby demands a jury trial on all claims to which a jury trial is available as a matter of right.

Dated: September 4, 2018 COHEN WILLIAMS LLP

By: 
Kathleen M. Erskine
Attorneys for Plaintiff,
JOEL DE JESÚS MEJIA

Dated: September 4, 2018 BUSH GOTTLIEB, A LAW CORPORATION

By: 
Julie Gutman Dickinson
Kiel B. Ireland
Attorneys for Plaintiff,
JOEL DE JESÚS MEJIA