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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

13 JEAN-LOUIS CHALAYE, an individual,
14 on behalf of himself, and on behalf of all
15 persons similarly situated,

16 Plaintiff,

17 vs.

18 PRIDE TRANSPORT, INC., a
19 Corporation; and Does 1 through 50,
20 Inclusive,

21 Defendants.

FILED

21 MAR 30 PM 1:22

BRANDON E. RILEY, CLERK

BY JESSICA CAYO
DEPUTY

Case No. STK-CV-1106-2021-2766

CLASS ACTION COMPLAINT

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
8. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*].

DEMAND FOR A JURY TRIAL

FILE BY FAX

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1 Plaintiff Jean Louis-Chalaye ("PLAINTIFF") an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges upon information and belief,
3 except for his own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. PLAINTIFF at all relevant time periods mentioned herein worked and drove a
7 truck in California for Defendant Pride Transport, Inc. ("DEFENDANT") from April of 2020
8 to August 17, 2020. As a Truck Driver, PLAINTIFF's work required the performance of
9 manual labor consisting of driving DEFENDANT's trucks and transporting goods within the
10 State of California. In performing these duties, PLAINTIFF did not utilize any independent
11 discretion, judgment, or management decisions with respect to matters of significance. To the
12 contrary, the work of PLAINTIFF as a Truck Driver was to provide on a daily basis the
13 transportation of goods in accordance with the management decisions and business policies
14 established by DEFENDANT. As a result, PLAINTIFF was entitled to be paid minimum
15 wages, accurate wage statements, and meal and rest periods as required by California law.
16 PLAINTIFF was paid by piece-rate only while he was employed as a Truck Driver for
17 DEFENDANT. Importantly, he was not provided with minimum wages for her non-production
18 work time. PLAINTIFF also did not receive paid rest breaks as required by California law and
19 DEFENDANT failed to provide PLAINTIFF with the legally required meal periods.
20 DEFENDANT failed to pay PLAINTIFF the correct amount of compensation because
21 DEFENDANT established an illegal pay practice of paying PLAINTIFF on a piece rate basis
22 when delivering loads at the locations assigned by DEFENDANT. DEFENDANT however
23 failed to pay minimum wages for compensable time worked. To date, DEFENDANT has not
24 fully paid PLAINTIFF for all his wages still owed to him or any penalties owed to her under
25 California Labor Code § 203. The amount in controversy for PLAINTIFF individually does not
26 exceed the sum or value of \$75,000.

27 2. Defendant Pride Transport, Inc. is a corporation that at all relevant times
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1 mentioned herein conducted and continues to conduct substantial and regular business
2 throughout the State of California. DEFENDANT provides truck transportation services. The
3 Company provides distribution of food grade materials, expedited shipping, lift gate pick-ups
4 and delivery, real-time load tracking, and 24/7 client care center services.

5 3. PLAINTIFF brings this class action on behalf of himself and a California class,
6 defined as all individuals who are or previously were employed by DEFENDANT in California
7 as a Truck Driver employee (the "CALIFORNIA CLASS") at any time during the period
8 beginning on the date four (4) years prior to the filing of this Complaint and ending on the date
9 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
10 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
11 (\$5,000,000.00).

12 4. The true names and capacities, whether individual, corporate, associate or
13 otherwise of the Defendants sued herein as DOES 1 through 50, inclusive, are presently
14 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names
15 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based
16 thereon, alleges that each of the Defendants designated herein is legally responsible in some
17 manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend
18 this Complaint to reflect the true names and capacities of the Defendants when they have been
19 ascertained and become known.

20 21 THE CONDUCT

22 5. The work required to be performed by PLAINTIFF and the other CALIFORNIA
23 CLASS Members was manual labor consisting of driving DEFENDANT's trucks and
24 transporting goods within the State of California in accordance with DEFENDANT's policies
25 and practices. As a result of this work, PLAINTIFF and the other CALIFORNIA CLASS
26 Members were involved in providing day to day routine transportation of goods as specified by
27 DEFENDANT and this work was executed by the performance of manual labor within a defined
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1 skill set. PLAINTIFF and CALIFORNIA CLASS Members were not compensated through a
2 monthly salary. PLAINTIFF and the other CALIFORNIA CLASS Members employed by
3 DEFENDANT performed these manual tasks but were not paid the minimum wages to which
4 they were entitled because of DEFENDANT's systematic policies and practices of failing to
5 correctly record all time worked, including, but not limited to, time spent during pre and post
6 trip inspections of DEFENDANT's trucks and time spent waiting for DEFENDANT's loads to
7 be ready for transport. DEFENDANT failed to correctly pay minimum wages to PLAINTIFF
8 and the other CALIFORNIA CLASS Members in accordance with California law, and thereby
9 systematically underpaid minimum compensation to PLAINTIFF and the other CALIFORNIA
10 CLASS Members for their documented time worked.

11 6. Individuals in these Truck Driver positions are and were employees who are
12 entitled to minimum wage compensation and prompt payment of amounts that the employer
13 owes an employee when the employee quits or is terminated, and other compensation and
14 working conditions that are prescribed by law.

15 7. Industrial Welfare Commission Wage Order 4-2001 provides: "Every employer
16 shall pay to each employee, on the established payday for the period involved, not less than the
17 applicable minimum wage for all hours worked in the payroll period, whether the remuneration
18 is measured by time, piece, commission, or otherwise." "Hours worked" is defined in the Wage
19 Order as "the time during which an employee is subject to the control of an employer, and
20 includes all the time the employee is suffered or permitted to work, whether or not required to
21 do so." Here, PLAINTIFF and CALIFORNIA CLASS Members are entitled to separate hourly
22 compensation for time spent performing other non-driving tasks, including but not limited, to
23 pre and post trip inspections of DEFENDANT's vehicles, fueling DEFENDANT's vehicles and
24 waiting for DEFENDANT's trucks to be ready to transport the product. DEFENDANT failed
25 to correctly pay minimum wages to PLAINTIFF and the other CALIFORNIA CLASS Members
26 in accordance with California law, and thereby systematically underpaid minimum wage
27 compensation to PLAINTIFF and the other CALIFORNIA CLASS Members for their
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1 documented time worked. Specifically, DEFENDANT only paid PLAINTIFF and other Truck
2 Drivers a flat amount per mile the Truck Drivers drove on behalf of DEFENDANT.
3 PLAINTIFF and other Truck Drivers were not compensated for any of their time spent working
4 other than the flat piece rate for each mile driven on DEFENDANT's behalf. DEFENDANT
5 suffered and permitted PLAINTIFF and other CALIFORNIA CLASS Members to work and
6 required these employees to remain under DEFENDANT's control without paying them, which
7 resulted in PLAINTIFF and other CALIFORNIA CLASS Members earning less than the legal
8 minimum wage in the State of California. PLAINTIFF and other CALIFORNIA CLASS
9 Members performed a variety of work-related tasks for which they were not paid.

10 8. In addition, DEFENDANT failed to provide all the legally required unpaid, off-
11 duty meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFF and
12 the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor
13 Code. DEFENDANT did not have a policy or practice which provided or recorded all the legally
14 required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to
15 the PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's
16 failure to provide the PLAINTIFF and the CALIFORNIA CLASS Members with all the legally
17 required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is
18 evidenced by DEFENDANT's business records. DEFENDANT had a pattern and practice of
19 establishing and scheduling routes to be completed in overly demanding time frames which
20 resulted in DEFENDANT pressuring, discouraging, and impeding PLAINTIFF and other
21 CALIFORNIA CLASS Members to complete their routes within the rigorous time frames and
22 not take meal breaks. Because of DEFENDANT's demanding policies on route completion
23 times, PLAINTIFF and other CALIFORNIA CLASS Members felt that breaking route to
24 exercise their rights to take meal and/or rest periods would sacrifice their jobs with
25 DEFENDANT. As such, PLAINTIFF and other CALIFORNIA CLASS Members routinely
26 worked through their meal periods.

27 9. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
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1 employees with an accurate itemized wage statement in writing showing, among other things,
2 gross wages earned and all applicable hourly rates in effect during the pay period and the
3 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
4 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
5 gross wages earned. Additionally, Defendant failed to list the inclusive dates of the period for
6 which PLAINTIFF and other CALIFORNIA Class Members were paid in violation of Cal. Lab.
7 Code 226(a)(6). Aside from the violations listed above, DEFENDANT failed to issue to
8 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
9 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
10 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
11 Code § 226.

12 10. DEFENDANT as a matter of corporate policy, practice and procedure,
13 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
14 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
15 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
16 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
17 are required to indemnify employees for all expenses incurred in the course and scope of their
18 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
19 her employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
21 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
22 believed them to be unlawful."

23 11. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
24 Members as a business expense, were required by DEFENDANT to use their own personal
25 cellular phones as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
27 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
28 result, in the course of their employment with DEFENDANT the PLAINTIFF and other

1 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
2 included, but were not limited to, costs related to the use of their personal cellular phones all
3 on behalf of and for the benefit of DEFENDANT.

4 12. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA CLASS,
5 seeks to recover all the compensation that DEFENDANT is required by law to provide, but
6 failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS Members. PLAINTIFF
7 also seeks penalties and all other relief available to her and other CALIFORNIA CLASS
8 Members under California law. Finally, PLAINTIFF seeks declaratory relief finding that the
9 employment practices and policies of the DEFENDANT violated California law and injunctive
10 relief to enjoin the DEFENDANT from continuing to engage in such employment practices.

11 13. In performing the conduct herein alleged, the DEFENDANT's wrongful conduct
12 and violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFF and the
13 other members of the CALIFORNIA CLASS of money and career opportunities to which they
14 were lawfully entitled. DEFENDANT engaged in such wrongful conduct by failing to have
15 adequate employment policies and maintaining adequate employment practices consistent with
16 such policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged
17 caused the money belonging to the PLAINTIFF and the other members of the CALIFORNIA
18 CLASS to be kept by DEFENDANT and thereby converted by DEFENDANT for
19 DEFENDANT's own use.

20 14. DEFENDANT's practices violated and continue to violate the law, regardless
21 of whether the employees' work is paid by commission, by salary, by piece rate, or by part
22 commission, part piece rate, and/or part salary. As a result of this policy and practice,
23 DEFENDANT failed to pay minimum wage pay in accordance with applicable law.

24 15. Accordingly, DEFENDANT committed acts of unfair competition in violation
25 of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* by
26 engaging in company-wide policies that violated the California Labor Code and regulations
27 promulgated thereunder as herein alleged.

THE CALIFORNIA CLASS

16. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California as a Truck Driver employee (the "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

17. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order Requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT used an unlawful, unfair and deceptive method to calculate minimum, and payment for missed meal periods and off-duty rest breaks owed to the PLAINTIFF and the other members of the CALIFORNIA CLASS.

18. All CALIFORNIA CLASS Members, including the PLAINTIFF, performed the same manual labor and were paid by DEFENDANT according to uniform and systematic company procedures, which, as alleged herein above, and failed to correctly pay minimum wages. This business practice is uniformly applied to each and every member of the CALIFORNIA CLASS, and therefore, the propriety of these business practices can be adjudicated on a class-wide basis.

19. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under California law by:

- (a) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and deceptively having in place company policies,

1 practices and procedures that uniformly denied PLAINTIFF and the
2 members of the CALIFORNIA CLASS the correct minimum wages and
3 otherwise violated applicable law;

- 4 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
6 having in place company policies, practices and procedures that uniformly
7 and systematically fail to provide and record all the legally required
8 unpaid, off-duty meal periods and all the legally required paid, off-duty
9 rest periods to the PLAINTIFF and the CALIFORNIA CLASS members;
- 10 (c) Committing an act of unfair competition in violation of the California
11 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
12 violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
13 and the CALIFORNIA CLASS members with necessary expenses
14 incurred in the discharge of their job duties.

15 20. This Class Action meets the statutory prerequisites for the maintenance of a Class
16 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 17 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
18 that the joinder of all CALIFORNIA CLASS Members is impracticable
19 and the disposition of their claims as a class will benefit the parties and the
20 Court;
- 21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
22 that are raised in this Complaint are common to the CALIFORNIA
23 CLASS and will apply uniformly to every member of the CALIFORNIA
24 CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims of
26 each member of the CALIFORNIA CLASS. PLAINTIFF, like all other
27 members of the CALIFORNIA CLASS, was subjected to
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1 DEFENDANT's illegal practice of failing to pay minimum wages for all
2 time worked by the PLAINTIFF and other members of the CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members
5 of the CALIFORNIA CLASS were and are similarly or identically harmed
6 by the same unlawful, deceptive, unfair and pervasive pattern of
7 misconduct engaged in by the DEFENDANT; and,

- 8 (d) The representative PLAINTIFF will fairly and adequately represent and
9 protect the interest of the CALIFORNIA CLASS, and has retained
10 counsel who are competent and experienced in Class Action litigation.
11 There are no material conflicts between the claims of the representative
12 PLAINTIFF and the members of the CALIFORNIA CLASS that would
13 make class certification inappropriate. Counsel for the CALIFORNIA
14 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
15 Members.

16 21. In addition to meeting the statutory prerequisites to a Class Action, this action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
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dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that the DEFENDANT subjects these employees to DEFENDANT's systematic practices with respect to non-payment of wages for all time worked;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim Plaintiff seeks declaratory relief holding that the DEFENDANT's policies and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions;

2) The extent and nature of any litigation concerning the controversy

1 already commenced by or against members of the CALIFORNIA
2 CLASS;

- 3 3) The desirability or undesirability of concentrating the litigation of
4 the claims in the particular forum;
5 4) The difficulties likely to be encountered in the management of a
6 Class Action; and,
7 5) The basis of DEFENDANT's conduct towards PLAINTIFF and
8 the CALIFORNIA CLASS.

9 22. This Court should permit this action to be maintained as a Class Action pursuant
10 to Cal. Code of Civ. Proc. § 382 because:

- 11 (a) The questions of law and fact common to the CALIFORNIA CLASS
12 predominate over any question affecting only individual CALIFORNIA
13 CLASS Members because the DEFENDANT's employment practices are
14 uniform and systematically applied with respect to the CALIFORNIA
15 CLASS;
16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 CLASS because in the context of employment litigation a substantial
19 number of individual CALIFORNIA CLASS members will avoid
20 asserting their rights individually out of fear of retaliation or adverse
21 impact on their employment;
22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before the
24 Court;
25 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be
26 able to obtain effective and economic legal redress unless the action is
27 maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring
15 a efficient and rapid conclusion to all litigation of all wage and hour
16 related claims arising out of the conduct of DEFENDANT as to the
17 members of the CALIFORNIA CLASS.

18 23. DEFENDANT maintains records from which the Court can ascertain and identify
19 by name and job title, each of DEFENDANT's employees who have been systematically,
20 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
22 any additional job titles of similarly situated employees when they have been identified.

23
24 **THE CALIFORNIA LABOR SUBCLASS**

25 24. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
26 Causes of Action on behalf of a California subclass, defined as all members of the
27 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California

1 as a Truck Driver employee (the “CALIFORNIA LABOR SUBCLASS”) at any time during
2 the period three (3) years prior to the filing of the complaint and ending on the date as
3 determined by the Court (the “CALIFORNIA LABOR SUBCLASS PERIOD”) pursuant to Cal.
4 Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA
5 SUBCLASS Members is under five million dollars (\$5,000,000.00).

6 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 LABOR SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS
8 PERIOD should be adjusted accordingly.

9 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
10 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
11 requirements, and the applicable provisions of California law, intentionally, knowingly, and
12 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
13 compensation for the time worked by the PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
15 work, required employees to perform this work and permitted or suffered to permit this work.
16 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
17 wages to which these employees are entitled in order to unfairly cheat the competition and
18 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
19 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
20 PERIOD should be adjusted accordingly.

21 27. Common questions of law and fact exist as to members of the CALIFORNIA
22 LABOR SUBCLASS, including, but not limited, to the following:

- 23 (a) Whether DEFENDANT unlawfully failed to pay minimum wage
24 compensation to members of the CALIFORNIA LABOR SUBCLASS in
25 violation of the California Labor Code and applicable regulations;
- 26 (b) Whether DEFENDANT’s policy and practice of failing to pay
27 CALIFORNIA LABOR SUBCLASS Members wages, including
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1 minimum wages for all time worked, violates applicable provisions of
2 California law;

3 (c) Whether DEFENDANT unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA LABOR SUB-
5 CLASS for missed meal and rest breaks in violation of the California
6 Labor Code and California regulations and the applicable California Wage
7 Order;

8 (d) Whether DEFENDANT unlawfully failed to keep and furnish
9 CALIFORNIA LABOR SUBCLASS Members with accurate records of
10 time worked;

11 (e) Whether DEFENDANT failed to reimburse CALIFORNIA LABOR
12 SUB-CLASS Members for business expenses incurred that were
13 necessary to perform their job duties for DEFENDANT; and,

14 (f) Whether DEFENDANT's conduct was willful.

15 28. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS
16 under California law by:

17 (a) Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording tall
18 time worked and thereby failing to pay PLAINTIFF and the members of
19 the CALIFORNIA LABOR SUBCLASS the correct minimum wage pay
20 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1197;

21 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
22 PLAINTIFF and the other members of the CALIFORNIA CLASS with
23 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
24 and the legally required paid rest breaks;

25 (c) Violating Cal. Lab. Code § 226(a) by failing to provide the PLAINTIFF
26 and the CALIFORNIA LABOR SUBCLASS Members with an accurate
27 itemized statement in writing showing the gross wages earned, the net
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1 wages earned, all applicable hourly rates in effect during the pay period
2 and the corresponding amount of time worked at each hourly rate by the
3 employee; and,

- 4 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
5 when an employee is discharged or quits from employment, the employer
6 must pay the employee all wages due without abatement, by failing to
7 tender full payment and/or restitution of wages owed or in the manner
8 required by California law to the members of the CALIFORNIA LABOR
9 SUB-CLASS who have terminated their employment;
- 10 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
11 and the CALIFORNIA CLASS members with necessary expenses
12 incurred in the discharge of their job duties.

13 29. This Class Action meets the statutory prerequisites for the maintenance of a Class
14 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 15 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS are
16 so numerous that the joinder of all CALIFORNIA LABOR SUBCLASS
17 members is impracticable and the disposition of their claims as a class will
18 benefit the parties and the Court;
- 19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
20 that are raised in this Complaint are common to the CALIFORNIA
21 LABOR SUBCLASS and will apply uniformly to every member of the
22 CALIFORNIA LABOR SUBCLASS;
- 23 (c) The claims of the representative PLAINTIFF are typical of the claims of
24 each member of the CALIFORNIA LABOR SUBCLASS. PLAINTIFF,
25 like all other members of the CALIFORNIA LABOR SUBCLASS, was
26 denied compensation for all time worked as a result of DEFENDANT's
27 systematic illegal and deceptive pay practices. PLAINTIFF and all other
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1 members of the CALIFORNIA LABOR SUBCLASS sustained economic
2 injuries arising from DEFENDANT's violations of the laws of California.
3 PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS
4 were and are similarly or identically harmed by the same unlawful,
5 deceptive, unfair and pervasive pattern of misconduct engaged in by the
6 DEFENDANT as described above; and,

- 7 (d) The representative PLAINTIFF will fairly and adequately represent and
8 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has
9 retained counsel who are competent and experienced in Class Action
10 litigation. There are no material conflicts between the claims of the
11 representative PLAINTIFF and the members of the CALIFORNIA
12 LABOR SUBCLASS that would make class certification inappropriate.
13 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
14 assert the claims of all CALIFORNIA LABOR SUBCLASS Members.

15 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
16 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 17 (a) Without class certification and determination of declaratory, injunctive,
18 statutory and other legal questions within the class format, prosecution of
19 separate actions by individual members of the CALIFORNIA LABOR
20 SUBCLASS will create the risk of:

- 21 1) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA LABOR SUBCLASS which would
23 establish incompatible standards of conduct for the parties
24 opposing the CALIFORNIA LABOR SUBCLASS; or,
25 2) Adjudication with respect to individual members of the
26 CALIFORNIA LABOR SUBCLASS which would as a practical
27 matter be dispositive of interests of the other members not party to
28

the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUBCLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUBCLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUBCLASS as a whole in that the DEFENDANT fails to pay these employees minimum wage compensation as a result of DEFENDANT's company wide illegal and deceptive pay practices;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA LABOR SUBCLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUBCLASS members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUBCLASS in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA LABOR SUBCLASS;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- 4) The difficulties likely to be encountered in the management of a Class Action; and,
- 5) The basis of DEFENDANT's conduct towards PLAINTIFF and

the CALIFORNIA LABOR SUBCLASS.

31. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUBCLASS predominate over any question affecting only individual members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUBCLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUBCLASS members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUBCLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUBCLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUBCLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUBCLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable

1 to the CALIFORNIA LABOR SUBCLASS, thereby making final class-
2 wide relief appropriate with respect to the CALIFORNIA LABOR
3 SUBCLASS as a whole;

4 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
5 ascertainable from the business records of DEFENDANT. The
6 CALIFORNIA LABOR SUBCLASS consists of those members of the
7 CALIFORNIA CLASS who were subjected to the DEFENDANT's
8 practices as described above during the CALIFORNIA LABOR
9 SUBCLASS PERIOD; and,

10 (i) Class treatment provides manageable judicial treatment calculated to bring
11 a efficient and rapid conclusion to all litigation of all wage and hour
12 related claims arising out of the conduct of DEFENDANT as to the
13 members of the CALIFORNIA LABOR SUBCLASS.

14 32. DEFENDANT maintains records from which the Court can ascertain and identify
15 by name and job title, each of DEFENDANT's employees who have been systematically,
16 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and
17 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
18 any additional job titles of similarly situated employees when they have been identified.

19
20 **JURISDICTION AND VENUE**

21 33. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
23 Action is brought as a Class Action on behalf of similarly situated employees of DEFENDANT
24 pursuant to California Code of Civil Procedure, Section 382.

25 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained their principal place
28

1 of business in this County and/or conducts substantial business in this County.

2 **FIRST CAUSE OF ACTION**

3 **For Unlawful, Unfair and Deceptive Business Practices**

4 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

5 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

6 35. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
7 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
8 Complaint.

9 36. DEFENDANT is a “person” as that term is defined under California Business &
10 Professions Code § 17021.

11 37. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
12 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
13 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
14 competition as follows:

15 Any person who engages, has engaged, or proposes to engage in unfair
16 competition may be enjoined in any court of competent jurisdiction. The court
17 may make such orders or judgments, including the appointment of a receiver, as
18 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

19 California Business & Professions Code § 17203.

20 38. By the conduct alleged herein, DEFENDANT has engaged and continues to
21 engage in a business practice which violates California and Federal law, including but not
22 limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, the
23 California Labor Code including Sections 201, 202, 203, 204, 226.2, 226.7, 512, 558, 1194,
24 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other equitable
25 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy
26 the conduct held to constitute unfair competition, including restitution of wages wrongfully
27 withheld.

1 39. By the conduct alleged herein, DEFENDANT's practices were unlawful and
2 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages wrongfully
6 withheld.

7 40. By the conduct alleged herein, DEFENDANT's practices were deceptive and
8 fraudulent in that DEFENDANT's policy and practice failed to provide the required amount of
9 compensation for missed meal and rest breaks, and failed to adequately compensate
10 PLAINTIFF and CALIFORNIA CLASS Members for all non-production time, due to a
11 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
12 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
13 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
14 & Prof. Code § 17203, including restitution of wages wrongfully withheld. The work schedule
15 for the PLAINTIFF and other CALIFORNIA CLASS Members was set by DEFENDANT.

16 41. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
17 unfair and deceptive in that DEFENDANT's employment practices caused the PLAINTIFF and
18 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
19 DEFENDANT.

20 42. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
21 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
22 all legally required meal and rest breaks to the PLAINTIFF and the other members of the
23 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

24 43. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of each
25 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
26 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
27 for each workday in which a second off-duty meal period was not timely provided for each ten
28

1 (10) hours of work.

2 44. PLAINTIFF further demands on behalf of himself and each member of the
3 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off-
4 duty paid rest period was not timely provided as required by law.

5 45. By and through the unlawful and unfair business practices described herein,
6 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and
7 the other members of the CALIFORNIA CLASS, and has deprived them of valuable rights and
8 benefits guaranteed by law and contract, all to the detriment of these employees and to the
9 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
10 who comply with the law.

11 46. All the acts described herein as violations of, among other things, the Industrial
12 Welfare Commission Wage Orders, the California Code of Regulations, and the California
13 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
14 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
15 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

16 47. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
17 and do, seek such relief as may be necessary to restore to them the money and property which
18 DEFENDANT has acquired, or of which the PLAINTIFF and the other members of the
19 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
20 unfair business practices, including earned but unpaid wages for all time worked.

21 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
22 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
23 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
24 engaging in any unlawful and unfair business practices in the future.

25 49. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
26 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
27 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, the PLAINTIFF and
2 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 50. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
12 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
13 of this Complaint.

14 51. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
15 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
16 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
17 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
18 did not prevent these employees from being relieved of all of their duties for the legally required
19 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA LABOR SUB-CLASS Members from time to time not fully relieved of duty by
21 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
22 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
23 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
24 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore forfeited meal breaks without additional compensation and in accordance with
26 DEFENDANT's strict corporate policy and practice.

27 52. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28

1 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
2 CLASS Members who were not provided a meal period, in accordance with the applicable
3 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
4 each workday that a meal period was not provided.

5 53. As a proximate result of the aforementioned violations, PLAINTIFF and
6 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
7 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
8 suit.

9 **THIRD CAUSE OF ACTION**

10 **For Failure to Provide Required Rest Periods**

11 **[Cal. Lab. Code §§ 226.7 & 512]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

14 54. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
15 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
16 of this Complaint.

17 55. In addition, because of DEFENDANT's compensation pay plan described herein,
18 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
19 Members for their rest periods as required by the applicable Wage Order and Labor Code.
20 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
21 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,
22 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
24 business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members were also required to work in excess of four (4) hours without being provided ten (10)
26 minute rest periods. Further, these employees were denied their first rest periods of at least ten
27 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest

1 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
2 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
3 ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
4 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
5 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
6 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

7 56. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
8 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
9 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
10 Order, one additional hour of compensation at each employee's regular rate of pay for each
11 workday that rest period was not provided.

12 57. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
14 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
15 suit.

16 **FOURTH CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

20 **and Against All Defendants)**

21 58. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein the prior
23 paragraphs of this Complaint.

24 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
26 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
27 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS

Members.

60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

63. DEFENDANT maintained a uniform wage practice of paying the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked, including time spent engaging in non-driving related tasks. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

64. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

65. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculates the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive the correct minimum wage compensation for their time worked for DEFENDANT.

2 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
3 required, permitted or suffered PLAINTIFF and LABOR SUB-CLASS members to work
4 without paying them for all the time they were under DEFENDANT'S control. PLAINTIFF
5 and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
6 worked that they were entitled to, constituting a failure to pay all earned wages.

7 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
8 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS for the true time they worked, the PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
11 injury in amounts which are presently unknown to them and which will be ascertained
12 according to proof at trial.

13 69. DEFENDANT knew or should have known that the PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
15 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
17 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
18 pay the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
19 correct minimum wages for their time worked.

20 70. In performing the acts and practices herein alleged in violation of California labor
21 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
22 all time worked and provide them with the requisite compensation, DEFENDANT acted and
23 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
25 disregard for their legal rights, or the consequences to them, and with the despicable intent of
26 depriving them of their property and legal rights, and otherwise causing them injury in order
27 to increase company profits at the expense of these employees.

1 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
3 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
4 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
5 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
6 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
7 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
8 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
9 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
10 was willful, intentional and not in good faith. Further, the PLAINTIFF and other
11 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

12
13 **FIFTH CAUSE OF ACTION**

14 **For Failure to Provide Accurate Itemized Statements**

15 **[Cal. Lab. Code § 226]**

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS**
17 **and Against All Defendants)**

18 72. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
19 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
20 of this Complaint.

21 73. Cal. Labor Code § 226(a) provides that an employer must furnish employees with
22 an "accurate itemized statement in writing showing:

23 (1) gross wages earned,

24 (2) total hours worked by the employee, except for any employee whose compensation
25 is solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
27 Commission,

- 1 (3) the number of piece-rate units earned and any applicable piece rate if the employee
2 is paid on a piece-rate basis,
3 (4) all deductions, provided that all deductions made on written orders of the employee
4 may be aggregated and shown as one item,
5 (5) net wages earned,
6 (6) the inclusive dates of the period for which the employee is paid,
7 (7) the name of the employee and his or her social security number, except that by
8 January 1, 2008, only the last four digits of his or her social security number or an
9 employee identification number other than a social security number may be shown on
10 the itemized statement,
11 (8) the name and address of the legal entity that is the employer, and
12 (9) all applicable hourly rates in effect during the pay period and the corresponding
13 number of hours worked at each hourly rate by the employee.”

14 74. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
15 her employees with an accurate itemized wage statement in writing showing, among other
16 things, gross wages earned and all applicable hourly rates in effect during the pay period and
17 the corresponding amount of time worked at each hourly rate. Additionally, Defendant failed
18 to list the inclusive dates of the period for which PLAINTIFF and other CALIFORNIA LABOR
19 SUB-CLASS Members were paid in violation of Cal. Lab. Code 226(a)(6). From time to time,
20 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
21 identified the correct gross wages earned. Aside from the violations listed above, DEFENDANT
22 failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
23 California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided
24 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which
25 violated Cal. Lab. Code § 226.

26 75. DEFENDANT knowingly and intentionally failed to comply with Labor Code
27 § 226(a), causing damages to PLAINTIFF, and the other members of the CALIFORNIA
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LABOR SUBCLASS. These damages include, but are not limited to, costs expended calculating the true time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS may recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUBCLASS herein).

SIXTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

76. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

77. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

78. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

79. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or

1 her employment, his or her wages shall become due and payable not later
2 than 72 hours thereafter, unless the employee has given 72 hours previous
3 notice of his or her intention to quit, in which case the employee is entitled
4 to his or her wages at the time of quitting. Notwithstanding any other
5 provision of law, an employee who quits without providing a 72-hour notice
6 shall be entitled to receive payment by mail if he or she so requests and
7 designates a mailing address. The date of the mailing shall constitute the date
8 of payment for purposes of the requirement to provide payment within 72
9 hours of the notice of quitting.

10 80. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
11 CLASS Members' employment contract.

12 81. Cal. Lab. Code § 203 provides, in relevant part, that:

13 If an employer willfully fails to pay, without abatement or reduction, in
14 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
15 employee who is discharged or who quits, the wages of the employee shall
16 continue as a penalty from the due date thereof at the same rate until paid or
17 until an action therefor is commenced; but the wages shall not continue for
18 more than 30 days.

19 82. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
20 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
21 required by law.

22 83. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
23 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and
24 who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay
25 as penalty for not paying all wages due at time of termination for all employees who terminated
26 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an
27 accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

28 **SEVENTH CAUSE OF ACTION**

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)**

84. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs

1 of this Complaint.

2 85. Cal. Lab. Code § 2802 provides, in relevant part, that:

3 An employer shall indemnify his or her employee for all necessary expenditures
4 or losses incurred by the employee in direct consequence of the discharge of his
5 or her duties, or of his or her obedience to the directions of the employer, even
6 though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful.

8 86. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
9 failing to indemnify and reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-
10 CLASS members for required expenses incurred in the discharge of their job duties for
11 DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse the PLAINTIFF and
12 the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
13 limited to, costs related to using their personal cellular phones all on behalf of and for the
14 benefit of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not
15 reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
16 expenses resulting from using their personal cellular phones for DEFENDANT within the
17 course and scope of their employment for DEFENDANT. These expenses were necessary to
18 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to
19 assert any waiver of this expectation. Although these expenses were necessary expenses
20 incurred by the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
21 DEFENDANT failed to indemnify and reimburse the PLAINTIFF and the CALIFORNIA
22 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
23 laws and regulations of California.

24 87. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
25 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
26 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
27 at the statutory rate and costs under Cal. Lab. Code § 2802.

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EIGHTH CAUSE OF ACTION

Violation of the Private Attorneys General Act

[Cal. Lab. Code § 2698 et seq.]

(By PLAINTIFF Against All Defendants)

88. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein the prior paragraphs of this Complaint.

89. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

90. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all of DEFENDANT'S current and former non-exempt employees employed in California ("AGGRIEVED EMPLOYEES") between December 30, 2019 and a future date set by this Court (the "PAGA PERIOD").

91. To the extent equitable tolling operates to toll the claims asserted by the PLAINTIFF against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

92. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of limitation and repose for civil causes of action that are 180 days or less, or (b) October 1, 2020 for statutes of limitation and repose for civil causes of action that

1 exceed 180 days.

2 93. At all relevant times, for the reasons described herein, and others, PLAINTIFF
3 and similarly situated employees were aggrieved employees of DEFENDANT within the
4 meaning of Labor Code Section 2699(c).

5 94. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
6 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
7 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
8 2699.3.

9 95. PLAINTIFF complied with the procedures for bringing suit specified in Labor
10 Code Section 2699.3. By certified letter, return receipt requested, dated December 30, 2020,
11 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
12 and to DEFENDANT of the specific provisions of the Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations. See Exhibit #1,
14 attached hereto and incorporated by this reference herein.

15 96. As of the date of this filing, the LWDA has not provided any notice by
16 certified mail of its intent to investigate the DEFENDANT'S alleged violations as mandated
17 by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
18 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

19 97. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
20 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANT'S violations of
21 Labor Code Section 201, 202, 203, 204, 226(a), 226.2, 226.7, 512, 558, 1194, 1197, 1197.1,
22 1198, and 2802 in the following amounts:

23 a. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and
24 similarly AGGRIEVED EMPLOYEES are entitled to civil penalties for
25 DEFENDANT'S violations of Labor Code Section 201, 202, 203, 204,
26 226(a), 226.2, 226.7, 512, 558, 1194, 1197, 1197.1, 1198, and 2802 in the
27 following amounts:

28 b. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred

1 dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the
2 initial violation and two hundred dollars (\$200) for AGGRIEVED
3 EMPLOYEE per pay period for each subsequent violation [penalty per
4 Labor Code Section 2699(f)(2)];

5 c. For violations of Labor Code Section 226(a), a civil penalty in the amount
6 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE
7 for any initial violation and one thousand dollars for each subsequent
8 violation [penalty per Labor Code Section 226.3];

9 d. For violations of Labor Code Sections 204, a civil penalty in the amount
10 of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for
11 any initial violation and two hundred dollars (\$200) for AGGRIEVED
12 EMPLOYEE for each subsequent violation [penalty per Labor Code
13 Section 210];

14 e. For violations of Labor Code Sections 226.7 and 512, a civil penalty in the
15 amount of fifty dollars (\$50) for each underpaid AGGRIEVED
16 EMPLOYEE for the initial violation and hundred dollars (\$100) for each
17 underpaid AGGRIEVED EMPLOYEE for each subsequent violation
18 [penalty per Labor Code Section 558];

19 f. For violations of Labor Code Section 2269(a), a civil penalty in the
20 amount of two hundred fifty dollars (\$250) per AGGRIEVED
21 EMPLOYEE per violation in an initial citation and one thousand dollars
22 (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation
23 [penalty per Labor Code Section 226.3];

24 g. For violations of Labor Code Sections 1194, 1197, and 1198, a civil
25 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
26 EMPLOYEE per pay period for the initial violation and two hundred
27 dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for
28

each subsequent violation [penalty per Labor Code Section].

98. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

99. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF 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).)

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a Class Action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order requiring DEFENDANT to correctly calculate and pay all wages and all sums unlawfully withheld from compensation due to the PLAINTIFF and the other members of the CALIFORNIA CLASS;
- C) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS

1 according to proof; and,

2 D) An order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

4 2. On behalf of the CALIFORNIA LABOR SUBCLASS:

5 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh
6 Causes of Action asserted by the CALIFORNIA LABOR SUBCLASS as a
7 class action pursuant to Cal. Code of Civ. Proc. § 382;

8 B) Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum compensation due PLAINTIFF and the other members
10 of the CALIFORNIA LABOR SUBCLASS, during the applicable
11 CALIFORNIA LABOR SUBCLASS PERIOD plus interest thereon at the
12 statutory rate;

13 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
14 period in which a violation occurs and one hundred dollars (\$100) per each
15 member of the CALIFORNIA LABOR SUBCLASS for each violation in a
16 subsequent pay period, not exceeding an aggregate penalty of four thousand
17 dollars (\$4,000) for PLAINTIFF and each respective member of the
18 CALIFORNIA LABOR SUBCLASS , and an award of costs for violation of
19 Cal. Lab. Code § 226;

20 D) The wages of all terminated employees in the CALIFORNIA LABOR
21 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
22 or until an action therefore is commenced, in accordance with Cal. Lab. Code
23 § 203;

24 (E) Meal and rest period compensation pursuant to California Labor Code Section
25 226.7 and the applicable IWC Wage Order;

26 (F) The amount of the expenses PLAINTIFF and each member of the
27 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,

plus interest, and costs of suit; and,

G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law.

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Cal. Labor Code §§226, §1194 and/or §2802.

Dated: March 10, 2021

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF demands jury trial on issues triable to a jury.

Dated: March 10, 2021

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorneys for Plaintiff

EXHIBIT #1



Client #34101

December 29, 2020

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

PRIDE TRANSPORT, INCORPORATED
c/o RON CHAUVEL
901 MARINERS ISLAND BLVD STE 400
SAN MATEO CA 94401

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 512, 558, 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Jean-Louis Chalaye ("Plaintiff"), and other aggrieved employees in a lawsuit against Pride Transport, Incorporated ("Defendant"). Plaintiff was employed by Defendant in California from April 2020 to August 2020 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including wages and minimum wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.2, 226.7, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The proposed lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Jean-Louis Chalaye

ZAKAY LAW GROUP, APC
Shani O. Zakay (State Bar #277924)
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San Diego, CA 92110
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Facsimile: (858) 404-9203
Website: www.zakaylaw.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN**

JEAN-LOUIS CHALAYE, an individual,
on behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

PRIDE TRANSPORT, INC., a
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Jean Louis-Chalaye ("PLAINTIFF") an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges upon information and belief,
3 except for his own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. PLAINTIFF at all relevant time periods mentioned herein worked and drove a
7 truck in California for Defendant Pride Transport, Inc. ("DEFENDANT") from April of 2020
8 to August 17, 2020. As a Truck Driver, PLAINTIFF's work required the performance of
9 manual labor consisting of driving DEFENDANT's trucks and transporting goods within the
10 State of California. In performing these duties, PLAINTIFF did not utilize any independent
11 discretion, judgment, or management decisions with respect to matters of significance. To the
12 contrary, the work of PLAINTIFF as a Truck Driver was to provide on a daily basis the
13 transportation of goods in accordance with the management decisions and business policies
14 established by DEFENDANT. As a result, PLAINTIFF was entitled to be paid minimum
15 wages, accurate wage statements, and meal and rest periods as required by California law.
16 PLAINTIFF was paid by piece-rate only while he was employed as a Truck Driver for
17 DEFENDANT. Importantly, he was not provided with minimum wages for her non-production
18 work time. PLAINTIFF also did not receive paid rest breaks as required by California law and
19 DEFENDANT failed to provide PLAINTIFF with the legally required meal periods.
20 DEFENDANT failed to pay PLAINTIFF the correct amount of compensation because
21 DEFENDANT established an illegal pay practice of paying PLAINTIFF on a piece rate basis
22 when delivering loads at the locations assigned by DEFENDANT. DEFENDANT however
23 failed to pay minimum wages for compensable time worked. To date, DEFENDANT has not
24 fully paid PLAINTIFF for all his wages still owed to him or any penalties owed to her under
25 California Labor Code § 203. The amount in controversy for PLAINTIFF individually does not
26 exceed the sum or value of \$75,000.

27 2. Defendant Pride Transport, Inc. is a corporation that at all relevant times
28 mentioned herein conducted and continues to conduct substantial and regular business

1 throughout the State of California. DEFENDANT provides truck transportation services. The
2 Company provides distribution of food grade materials, expedited shipping, lift gate pick-ups
3 and delivery, real-time load tracking, and 24/7 client care center services.

4 3. PLAINTIFF brings this class action on behalf of himself and a California class,
5 defined as all individuals who are or previously were employed by DEFENDANT in California
6 as a Truck Driver employee (the "CALIFORNIA CLASS") at any time during the period
7 beginning on the date four (4) years prior to the filing of this Complaint and ending on the date
8 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
9 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
10 (\$5,000,000.00).

11 4. The true names and capacities, whether individual, corporate, associate or
12 otherwise of the Defendants sued herein as DOES 1 through 50, inclusive, are presently
13 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names
14 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based
15 thereon, alleges that each of the Defendants designated herein is legally responsible in some
16 manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend
17 this Complaint to reflect the true names and capacities of the Defendants when they have been
18 ascertained and become known.

19 20 **THE CONDUCT**

21 5. The work required to be performed by PLAINTIFF and the other CALIFORNIA
22 CLASS Members was manual labor consisting of driving DEFENDANT's trucks and
23 transporting goods within the State of California in accordance with DEFENDANT's policies
24 and practices. As a result of this work, PLAINTIFF and the other CALIFORNIA CLASS
25 Members were involved in providing day to day routine transportation of goods as specified by
26 DEFENDANT and this work was executed by the performance of manual labor within a defined
27 skill set. PLAINTIFF and CALIFORNIA CLASS Members were not compensated through a
28 monthly salary. PLAINTIFF and the other CALIFORNIA CLASS Members employed by

1 DEFENDANT performed these manual tasks but were not paid the minimum wages to which
2 they were entitled because of DEFENDANT's systematic policies and practices of failing to
3 correctly record all time worked, including, but not limited to, time spent during pre and post
4 trip inspections of DEFENDANT's trucks and time spent waiting for DEFENDANT's loads
5 to be ready for transport. DEFENDANT failed to correctly pay minimum wages to PLAINTIFF
6 and the other CALIFORNIA CLASS Members in accordance with California law, and thereby
7 systematically underpaid minimum compensation to PLAINTIFF and the other CALIFORNIA
8 CLASS Members for their documented time worked.

9 6. Individuals in these Truck Driver positions are and were employees who are
10 entitled to minimum wage compensation and prompt payment of amounts that the employer
11 owes an employee when the employee quits or is terminated, and other compensation and
12 working conditions that are prescribed by law.

13 7. Industrial Welfare Commission Wage Order 4-2001 provides: "Every employer
14 shall pay to each employee, on the established payday for the period involved, not less than the
15 applicable minimum wage for all hours worked in the payroll period, whether the remuneration
16 is measured by time, piece, commission, or otherwise." "Hours worked" is defined in the Wage
17 Order as "the time during which an employee is subject to the control of an employer, and
18 includes all the time the employee is suffered or permitted to work, whether or not required to
19 do so." Here, PLAINTIFF and CALIFORNIA CLASS Members are entitled to separate hourly
20 compensation for time spent performing other non-driving tasks, including but not limited, to
21 pre and post trip inspections of DEFENDANT's vehicles, fueling DEFENDANT's vehicles and
22 waiting for DEFENDANT's trucks to be ready to transport the product. DEFENDANT failed
23 to correctly pay minimum wages to PLAINTIFF and the other CALIFORNIA CLASS Members
24 in accordance with California law, and thereby systematically underpaid minimum wage
25 compensation to PLAINTIFF and the other CALIFORNIA CLASS Members for their
26 documented time worked. Specifically, DEFENDANT only paid PLAINTIFF and other Truck
27 Drivers a flat amount per mile the Truck Drivers drove on behalf of DEFENDANT.
28 PLAINTIFF and other Truck Drivers were not compensated for any of their time spent working

1 other than the flat piece rate for each mile driven on DEFENDANT's behalf. DEFENDANT
2 suffered and permitted PLAINTIFF and other CALIFORNIA CLASS Members to work and
3 required these employees to remain under DEFENDANT's control without paying them, which
4 resulted in PLAINTIFF and other CALIFORNIA CLASS Members earning less than the legal
5 minimum wage in the State of California. PLAINTIFF and other CALIFORNIA CLASS
6 Members performed a variety of work-related tasks for which they were not paid.

7 8. In addition, DEFENDANT failed to provide all the legally required unpaid, off-
8 duty meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFF and
9 the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor
10 Code. DEFENDANT did not have a policy or practice which provided or recorded all the legally
11 required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to
12 the PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's
13 failure to provide the PLAINTIFF and the CALIFORNIA CLASS Members with all the legally
14 required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is
15 evidenced by DEFENDANT's business records. DEFENDANT had a pattern and practice of
16 establishing and scheduling routes to be completed in overly demanding time frames which
17 resulted in DEFENDANT pressuring, discouraging, and impeding PLAINTIFF and other
18 CALIFORNIA CLASS Members to complete their routes within the rigorous time frames and
19 not take meal breaks. Because of DEFENDANT's demanding policies on route completion
20 times, PLAINTIFF and other CALIFORNIA CLASS Members felt that breaking route to
21 exercise their rights to take meal and/or rest periods would sacrifice their jobs with
22 DEFENDANT. As such, PLAINTIFF and other CALIFORNIA CLASS Members routinely
23 worked through their meal periods.

24 9. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
25 employees with an accurate itemized wage statement in writing showing, among other things,
26 gross wages earned and all applicable hourly rates in effect during the pay period and the
27 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
28 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct

1 gross wages earned. Additionally, Defendant failed to list the inclusive dates of the period for
2 which PLAINTIFF and other CALIFORNIA Class Members were paid in violation of Cal. Lab.
3 Code 226(a)(6). Aside from the violations listed above, DEFENDANT failed to issue to
4 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
5 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
6 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
7 Code § 226.

8 10. DEFENDANT as a matter of corporate policy, practice and procedure,
9 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
10 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
11 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
12 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
13 are required to indemnify employees for all expenses incurred in the course and scope of their
14 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
15 her employee for all necessary expenditures or losses incurred by the employee in direct
16 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
17 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
18 believed them to be unlawful."

19 11. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
20 Members as a business expense, were required by DEFENDANT to use their own personal
21 cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
24 result, in the course of their employment with DEFENDANT the PLAINTIFF and other
25 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
26 included, but were not limited to, costs related to the use of their personal cellular phones all
27 on behalf of and for the benefit of DEFENDANT.

28 12. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA CLASS,

1 seeks to recover all the compensation that DEFENDANT is required by law to provide, but
2 failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS Members. PLAINTIFF
3 also seeks penalties and all other relief available to her and other CALIFORNIA CLASS
4 Members under California law. Finally, PLAINTIFF seeks declaratory relief finding that the
5 employment practices and policies of the DEFENDANT violated California law and injunctive
6 relief to enjoin the DEFENDANT from continuing to engage in such employment practices.

7 13. In performing the conduct herein alleged, the DEFENDANT's wrongful conduct
8 and violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFF and the
9 other members of the CALIFORNIA CLASS of money and career opportunities to which they
10 were lawfully entitled. DEFENDANT engaged in such wrongful conduct by failing to have
11 adequate employment policies and maintaining adequate employment practices consistent with
12 such policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged
13 caused the money belonging to the PLAINTIFF and the other members of the CALIFORNIA
14 CLASS to be kept by DEFENDANT and thereby converted by DEFENDANT for
15 DEFENDANT's own use.

16 14. DEFENDANT's practices violated and continue to violate the law, regardless
17 of whether the employees' work is paid by commission, by salary, by piece rate, or by part
18 commission, part piece rate, and/or part salary. As a result of this policy and practice,
19 DEFENDANT failed to pay minimum wage pay in accordance with applicable law.

20 15. Accordingly, DEFENDANT committed acts of unfair competition in violation
21 of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* by
22 engaging in company-wide policies that violated the California Labor Code and regulations
23 promulgated thereunder as herein alleged.

24 **THE CALIFORNIA CLASS**

25 16. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of himself and a California class,
28

1 defined as all individuals who are or previously were employed by DEFENDANT in California
2 as a Truck Driver employee (the "CALIFORNIA CLASS") at any time during the period
3 beginning on the date four (4) years prior to the filing of this Complaint and ending on the date
4 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
5 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
6 dollars (\$5,000,000.00).

7 17. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
8 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
9 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
10 wilfully, engaged in a practice whereby DEFENDANT used an unlawful, unfair and deceptive
11 method to calculate minimum, and payment for missed meal periods and off-duty rest breaks
12 owed to the PLAINTIFF and the other members of the CALIFORNIA CLASS.

13 18. All CALIFORNIA CLASS Members, including the PLAINTIFF, performed the
14 same manual labor and were paid by DEFENDANT according to uniform and systematic
15 company procedures, which, as alleged herein above, and failed to correctly pay minimum
16 wages. This business practice is uniformly applied to each and every member of the
17 CALIFORNIA CLASS, and therefore, the propriety of these business practices can be
18 adjudicated on a class-wide basis.

19 19. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 (a) Committing an act of unfair competition in violation of the California
22 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
23 unlawfully, unfairly and deceptively having in place company policies,
24 practices and procedures that uniformly denied PLAINTIFF and the
25 members of the CALIFORNIA CLASS the correct minimum wages and
26 otherwise violated applicable law;
- 27 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
28 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively

1 having in place company policies, practices and procedures that uniformly
2 and systematically fail to provide and record all the legally required
3 unpaid, off-duty meal periods and all the legally required paid, off-duty
4 rest periods to the PLAINTIFF and the CALIFORNIA CLASS members;

- 5 (c) Committing an act of unfair competition in violation of the California
6 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
7 violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
8 and the CALIFORNIA CLASS members with necessary expenses
9 incurred in the discharge of their job duties.

10 20. This Class Action meets the statutory prerequisites for the maintenance of a Class
11 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 12 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
13 that the joinder of all CALIFORNIA CLASS Members is impracticable
14 and the disposition of their claims as a class will benefit the parties and
15 the Court;
- 16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA
18 CLASS and will apply uniformly to every member of the CALIFORNIA
19 CLASS;
- 20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFF, like all other
22 members of the CALIFORNIA CLASS, was subjected to
23 DEFENDANT's illegal practice of failing to pay minimum wages for all
24 time worked by the PLAINTIFF and other members of the CALIFORNIA
25 CLASS. PLAINTIFF sustained economic injury as a result of
26 DEFENDANT's employment practices. PLAINTIFF and the members of
27 the CALIFORNIA CLASS were and are similarly or identically harmed
28 by the same unlawful, deceptive, unfair and pervasive pattern of

misconduct engaged in by the DEFENDANT; and,

- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

21. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that the DEFENDANT subjects these employees to

1 DEFENDANT's systematic practices with respect to non-payment of
2 wages for all time worked;

3 1) With respect to the First Cause of Action, the final relief on behalf
4 of the CALIFORNIA CLASS sought does not relate exclusively to
5 restitution because through this claim Plaintiff seeks declaratory
6 relief holding that the DEFENDANT's policies and practices
7 constitute unfair competition, along with declaratory relief,
8 injunctive relief, and incidental equitable relief as may be
9 necessary to prevent and remedy the conduct declared to constitute
10 unfair competition;

11 (c) Common questions of law and fact exist as to the members of the
12 CALIFORNIA CLASS, with respect to the practices and violations of
13 California Law as listed above, and predominate over any question
14 affecting only individual CALIFORNIA CLASS Members, and a Class
15 Action is superior to other available methods for the fair and efficient
16 adjudication of the controversy, including consideration of:

- 17 1) The interests of the members of the CALIFORNIA CLASS in
18 individually controlling the prosecution or defense of separate
19 actions;
- 20 2) The extent and nature of any litigation concerning the controversy
21 already commenced by or against members of the CALIFORNIA
22 CLASS;
- 23 3) The desirability or undesirability of concentrating the litigation of
24 the claims in the particular forum;
- 25 4) The difficulties likely to be encountered in the management of a
26 Class Action; and,
- 27 5) The basis of DEFENDANT's conduct towards PLAINTIFF and
28 the CALIFORNIA CLASS.

1 22. This Court should permit this action to be maintained as a Class Action pursuant
2 to Cal. Code of Civ. Proc. § 382 because:

3 (a) The questions of law and fact common to the CALIFORNIA CLASS
4 predominate over any question affecting only individual CALIFORNIA
5 CLASS Members because the DEFENDANT's employment practices are
6 uniform and systematically applied with respect to the CALIFORNIA
7 CLASS;

8 (b) A Class Action is superior to any other available method for the fair and
9 efficient adjudication of the claims of the members of the CALIFORNIA
10 CLASS because in the context of employment litigation a substantial
11 number of individual CALIFORNIA CLASS members will avoid
12 asserting their rights individually out of fear of retaliation or adverse
13 impact on their employment;

14 (c) The members of the CALIFORNIA CLASS are so numerous that it is
15 impractical to bring all members of the CALIFORNIA CLASS before the
16 Court;

17 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be
18 able to obtain effective and economic legal redress unless the action is
19 maintained as a Class Action;

20 (e) There is a community of interest in obtaining appropriate legal and
21 equitable relief for the acts of unfair competition, statutory violations and
22 other improprieties, and in obtaining adequate compensation for the
23 damages and injuries which DEFENDANT's actions have inflicted upon
24 the CALIFORNIA CLASS;

25 (f) There is a community of interest in ensuring that the combined assets of
26 DEFENDANT are sufficient to adequately compensate the members of
27 the CALIFORNIA CLASS for the injuries sustained;

28 (g) DEFENDANT has acted or refused to act on grounds generally applicable

1 to the CALIFORNIA CLASS, thereby making final class-wide relief
2 appropriate with respect to the CALIFORNIA CLASS as a whole;

3 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
4 the business records of DEFENDANT; and,

5 (i) Class treatment provides manageable judicial treatment calculated to bring
6 a efficient and rapid conclusion to all litigation of all wage and hour
7 related claims arising out of the conduct of DEFENDANT as to the
8 members of the CALIFORNIA CLASS.

9 23. DEFENDANT maintains records from which the Court can ascertain and identify
10 by name and job title, each of DEFENDANT's employees who have been systematically,
11 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and
12 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
13 any additional job titles of similarly situated employees when they have been identified.

14
15 **THE CALIFORNIA LABOR SUBCLASS**

16 24. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
17 Causes of Action on behalf of a California subclass, defined as all members of the
18 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
19 as a Truck Driver employee (the "CALIFORNIA LABOR SUBCLASS") at any time during
20 the period three (3) years prior to the filing of the complaint and ending on the date as
21 determined by the Court (the "CALIFORNIA LABOR SUBCLASS PERIOD") pursuant to Cal.
22 Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA
23 SUBCLASS Members is under five million dollars (\$5,000,000.00).

24 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 LABOR SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS
26 PERIOD should be adjusted accordingly.

27 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
3 compensation for the time worked by the PLAINTIFF and the other members of the
4 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
5 work, required employees to perform this work and permitted or suffered to permit this work.
6 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
7 wages to which these employees are entitled in order to unfairly cheat the competition and
8 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
10 PERIOD should be adjusted accordingly.

11 27. Common questions of law and fact exist as to members of the CALIFORNIA
12 LABOR SUBCLASS, including, but not limited, to the following:

- 13 (a) Whether DEFENDANT unlawfully failed to pay minimum wage
14 compensation to members of the CALIFORNIA LABOR SUBCLASS in
15 violation of the California Labor Code and applicable regulations;
- 16 (b) Whether DEFENDANT's policy and practice of failing to pay
17 CALIFORNIA LABOR SUBCLASS Members wages, including
18 minimum wages for all time worked, violates applicable provisions of
19 California law;
- 20 (c) Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-
22 CLASS for missed meal and rest breaks in violation of the California
23 Labor Code and California regulations and the applicable California Wage
24 Order;
- 25 (d) Whether DEFENDANT unlawfully failed to keep and furnish
26 CALIFORNIA LABOR SUBCLASS Members with accurate records of
27 time worked;
- 28 (e) Whether DEFENDANT failed to reimburse CALIFORNIA LABOR

1 SUB-CLASS Members for business expenses incurred that were
2 necessary to perform their job duties for DEFENDANT; and,

3 (f) Whether DEFENDANT's conduct was willful.

4 28. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS
5 under California law by:

6 (a) Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording tall
7 time worked and thereby failing to pay PLAINTIFF and the members of
8 the CALIFORNIA LABOR SUBCLASS the correct minimum wage pay
9 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1197;

10 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
11 PLAINTIFF and the other members of the CALIFORNIA CLASS with
12 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
13 and the legally required paid rest breaks;

14 (c) Violating Cal. Lab. Code § 226(a) by failing to provide the PLAINTIFF
15 and the CALIFORNIA LABOR SUBCLASS Members with an accurate
16 itemized statement in writing showing the gross wages earned, the net
17 wages earned, all applicable hourly rates in effect during the pay period
18 and the corresponding amount of time worked at each hourly rate by the
19 employee; and,

20 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
21 when an employee is discharged or quits from employment, the employer
22 must pay the employee all wages due without abatement, by failing to
23 tender full payment and/or restitution of wages owed or in the manner
24 required by California law to the members of the CALIFORNIA LABOR
25 SUB-CLASS who have terminated their employment;

26 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
27 and the CALIFORNIA CLASS members with necessary expenses
28 incurred in the discharge of their job duties.

1 29. This Class Action meets the statutory prerequisites for the maintenance of a Class
2 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

3 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS are
4 so numerous that the joinder of all CALIFORNIA LABOR SUBCLASS
5 members is impracticable and the disposition of their claims as a class will
6 benefit the parties and the Court;

7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
8 that are raised in this Complaint are common to the CALIFORNIA
9 LABOR SUBCLASS and will apply uniformly to every member of the
10 CALIFORNIA LABOR SUBCLASS;

11 (c) The claims of the representative PLAINTIFF are typical of the claims of
12 each member of the CALIFORNIA LABOR SUBCLASS. PLAINTIFF,
13 like all other members of the CALIFORNIA LABOR SUBCLASS, was
14 denied compensation for all time worked as a result of DEFENDANT's
15 systematic illegal and deceptive pay practices. PLAINTIFF and all other
16 members of the CALIFORNIA LABOR SUBCLASS sustained economic
17 injuries arising from DEFENDANT's violations of the laws of California.
18 PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS
19 were and are similarly or identically harmed by the same unlawful,
20 deceptive, unfair and pervasive pattern of misconduct engaged in by the
21 DEFENDANT as described above; and,

22 (d) The representative PLAINTIFF will fairly and adequately represent and
23 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has
24 retained counsel who are competent and experienced in Class Action
25 litigation. There are no material conflicts between the claims of the
26 representative PLAINTIFF and the members of the CALIFORNIA
27 LABOR SUBCLASS that would make class certification inappropriate.
28 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously

1 assert the claims of all CALIFORNIA LABOR SUBCLASS Members.

2 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
3 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

4 (a) Without class certification and determination of declaratory, injunctive,
5 statutory and other legal questions within the class format, prosecution of
6 separate actions by individual members of the CALIFORNIA LABOR
7 SUBCLASS will create the risk of:

8 1) Inconsistent or varying adjudications with respect to individual
9 members of the CALIFORNIA LABOR SUBCLASS which would
10 establish incompatible standards of conduct for the parties
11 opposing the CALIFORNIA LABOR SUBCLASS; or,

12 2) Adjudication with respect to individual members of the
13 CALIFORNIA LABOR SUBCLASS which would as a practical
14 matter be dispositive of interests of the other members not party to
15 the adjudication or substantially impair or impede their ability to
16 protect their interests.

17 (b) The parties opposing the CALIFORNIA LABOR SUBCLASS have acted
18 or refused to act on grounds generally applicable to the CALIFORNIA
19 LABOR SUBCLASS, making appropriate class-wide relief with respect
20 to the CALIFORNIA LABOR SUBCLASS as a whole in that the
21 DEFENDANT fails to pay these employees minimum wage compensation
22 as a result of DEFENDANT's company wide illegal and deceptive pay
23 practices;

24 (c) Common questions of law and fact exist as to the members of the
25 CALIFORNIA LABOR SUBCLASS, with respect to the practices and
26 violations of California Law as listed above, and predominate over any
27 question affecting only individual CALIFORNIA LABOR SUBCLASS
28 members, and a Class Action is superior to other available methods for the

1 fair and efficient adjudication of the controversy, including consideration
2 of:

- 3 1) The interests of the members of the CALIFORNIA LABOR
4 SUBCLASS in individually controlling the prosecution or defense
5 of separate actions;
- 6 2) The extent and nature of any litigation concerning the controversy
7 already commenced by or against members of the CALIFORNIA
8 LABOR SUBCLASS;
- 9 3) The desirability or undesirability of concentrating the litigation of
10 the claims in the particular forum;
- 11 4) The difficulties likely to be encountered in the management of a
12 Class Action; and,
- 13 5) The basis of DEFENDANT's conduct towards PLAINTIFF and
14 the CALIFORNIA LABOR SUBCLASS.

15 31. This Court should permit this action to be maintained as a Class Action pursuant
16 to Cal. Code of Civ. Proc. § 382 because:

- 17 (a) The questions of law and fact common to the CALIFORNIA LABOR
18 SUBCLASS predominate over any question affecting only individual
19 members;
- 20 (b) A Class Action is superior to any other available method for the fair and
21 efficient adjudication of the claims of the members of the CALIFORNIA
22 LABOR SUBCLASS because in the context of employment litigation a
23 substantial number of individual CALIFORNIA LABOR SUBCLASS
24 members will avoid asserting their rights individually out of fear of
25 retaliation or adverse impact on their employment;
- 26 (c) The members of the CALIFORNIA LABOR SUBCLASS are so
27 numerous that it is impractical to bring all members of the CALIFORNIA
28 LABOR SUBCLASS before the Court;

- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS
2 members, will not be able to obtain effective and economic legal redress
3 unless the action is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations and
6 other improprieties, and in obtaining adequate compensation for the
7 damages and injuries which DEFENDANT's actions have inflicted upon
8 the CALIFORNIA LABOR SUBCLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA LABOR SUBCLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally applicable
13 to the CALIFORNIA LABOR SUBCLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA LABOR
15 SUBCLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUBCLASS consists of those members of the
19 CALIFORNIA CLASS who were subjected to the DEFENDANT's
20 practices as described above during the CALIFORNIA LABOR
21 SUBCLASS PERIOD; and,
- 22 (i) Class treatment provides manageable judicial treatment calculated to bring
23 a efficient and rapid conclusion to all litigation of all wage and hour
24 related claims arising out of the conduct of DEFENDANT as to the
25 members of the CALIFORNIA LABOR SUBCLASS.

26 32. DEFENDANT maintains records from which the Court can ascertain and identify
27 by name and job title, each of DEFENDANT's employees who have been systematically,
28 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
2 any additional job titles of similarly situated employees when they have been identified.

3
4 **JURISDICTION AND VENUE**

5 33. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
7 Action is brought as a Class Action on behalf of similarly situated employees of DEFENDANT
8 pursuant to California Code of Civil Procedure, Section 382.

9 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
11 DEFENDANT (i) currently maintains and at all relevant times maintained their principal place
12 of business in this County and/or conducts substantial business in this County.

13
14 **FIRST CAUSE OF ACTION**

15 **For Unlawful, Unfair and Deceptive Business Practices**

16 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

18 35. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
20 Complaint.

21 36. DEFENDANT is a “person” as that term is defined under California Business &
22 Professions Code § 17021.

23 37. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
24 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
25 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
26 competition as follows:

27 Any person who engages, has engaged, or proposes to engage in unfair
28 competition may be enjoined in any court of competent jurisdiction. The court
may make such orders or judgments, including the appointment of a receiver, as

1 may be necessary to prevent the use or employment by any person of any practice
2 which constitutes unfair competition, as defined in this chapter, or as may be
3 necessary to restore to any person in interest any money or property, real or
4 personal, which may have been acquired by means of such unfair competition.

5 California Business & Professions Code § 17203.

6 38. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California and Federal law, including but not
8 limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, the
9 California Labor Code including Sections 204, 226.2, 226.7, 512, 558, 1194, 1197, 1197.1,
10 1198, & 2802, for which this Court should issue declaratory and other equitable relief pursuant
11 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
12 to constitute unfair competition, including restitution of wages wrongfully withheld.

13 39. By the conduct alleged herein, DEFENDANT's practices were unlawful and
14 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
15 unscrupulous or substantially injurious to employees, and were without valid justification or
16 utility for which this Court should issue equitable and injunctive relief pursuant to Section
17 17203 of the California Business & Professions Code, including restitution of wages wrongfully
18 withheld.

19 40. By the conduct alleged herein, DEFENDANT's practices were deceptive and
20 fraudulent in that DEFENDANT's policy and practice failed to provide the required amount of
21 compensation for missed meal and rest breaks, and failed to adequately compensate
22 PLAINTIFF and CALIFORNIA CLASS Members for all non-production time, due to a
23 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
24 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
25 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
26 & Prof. Code § 17203, including restitution of wages wrongfully withheld. The work schedule
27 for the PLAINTIFF and other CALIFORNIA CLASS Members was set by DEFENDANT.

28 41. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
unfair and deceptive in that DEFENDANT's employment practices caused the PLAINTIFF and

1 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 42. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
5 all legally required meal and rest breaks to the PLAINTIFF and the other members of the
6 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

7 43. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of each
8 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
9 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
10 for each workday in which a second off-duty meal period was not timely provided for each ten
11 (10) hours of work.

12 44. PLAINTIFF further demands on behalf of himself and each member of the
13 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off-
14 duty paid rest period was not timely provided as required by law.

15 45. By and through the unlawful and unfair business practices described herein,
16 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and
17 the other members of the CALIFORNIA CLASS, and has deprived them of valuable rights and
18 benefits guaranteed by law and contract, all to the detriment of these employees and to the
19 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
20 who comply with the law.

21 46. All the acts described herein as violations of, among other things, the Industrial
22 Welfare Commission Wage Orders, the California Code of Regulations, and the California
23 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
24 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
25 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

26 47. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which the PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

3 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
4 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
6 engaging in any unlawful and unfair business practices in the future.

7 49. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
8 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
9 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
10 As a result of the unlawful and unfair business practices described herein, the PLAINTIFF and
11 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
12 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
13 engage in these unlawful and unfair business practices.

14
15 **SECOND CAUSE OF ACTION**

16 **For Failure to Provide Required Meal Periods**

17 **[Cal. Lab. Code §§ 226.7 & 512]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

20 50. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
21 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
22 of this Complaint.

23 51. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
24 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
25 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
26 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
27 did not prevent these employees from being relieved of all of their duties for the legally required
28 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other

1 CALIFORNIA LABOR SUB-CLASS Members from time to time not fully relieved of duty by
2 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
4 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
5 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANT's strict corporate policy and practice.

8 52. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
9 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
10 CLASS Members who were not provided a meal period, in accordance with the applicable
11 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
12 each workday that a meal period was not provided.

13 53. As a proximate result of the aforementioned violations, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
15 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
16 suit.

17 **THIRD CAUSE OF ACTION**

18 **For Failure to Provide Required Rest Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 54. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
24 of this Complaint.

25 55. In addition, because of DEFENDANT's compensation pay plan described herein,
26 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
27 Members for their rest periods as required by the applicable Wage Order and Labor Code.
28

1 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
2 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,
3 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
5 business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
6 Members were also required to work in excess of four (4) hours without being provided ten (10)
7 minute rest periods. Further, these employees were denied their first rest periods of at least ten
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
9 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
10 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
11 ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
12 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
13 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
14 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

15 56. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
16 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
17 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
18 Order, one additional hour of compensation at each employee's regular rate of pay for each
19 workday that rest period was not provided.

20 57. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
23 suit.

24 ///

25 ///

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION

For Failure To Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)**

58. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein the prior paragraphs of this Complaint.

59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

63. DEFENDANT maintained a uniform wage practice of paying the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked, including time spent engaging in non-driving related tasks. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

64. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a

1 result of implementing a uniform policy and practice that denied accurate compensation to the
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
3 minimum wage pay.

4 65. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately calculates the correct time worked and consequently underpaid the actual time
6 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
7 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
8 benefits in violation of the California Labor Code, the Industrial Welfare Commission
9 requirements and other applicable laws and regulations.

10 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
12 receive the correct minimum wage compensation for their time worked for DEFENDANT.

13 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
14 required, permitted or suffered PLAINTIFF and LABOR SUB-CLASS members to work
15 without paying them for all the time they were under DEFENDANT'S control. PLAINTIFF
16 and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
17 worked that they were entitled to, constituting a failure to pay all earned wages.

18 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
19 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS for the true time they worked, the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
22 injury in amounts which are presently unknown to them and which will be ascertained
23 according to proof at trial.

24 69. DEFENDANT knew or should have known that the PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
26 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
28 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to

1 pay the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

3 70. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
5 all time worked and provide them with the requisite compensation, DEFENDANT acted and
6 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
8 disregard for their legal rights, or the consequences to them, and with the despicable intent of
9 depriving them of their property and legal rights, and otherwise causing them injury in order
10 to increase company profits at the expense of these employees.

11 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
13 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
14 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
15 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
16 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
17 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
18 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
19 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
20 was willful, intentional and not in good faith. Further, the PLAINTIFF and other
21 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

22
23 **FIFTH CAUSE OF ACTION**

24 **For Failure to Provide Accurate Itemized Statements**

25 **[Cal. Lab. Code § 226]**

26 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS**

27 **and Against All Defendants)**

28 72. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,

1 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
2 of this Complaint.

3 73. Cal. Labor Code § 226(a) provides that an employer must furnish employees with
4 an “accurate itemized statement in writing showing:

5 (1) gross wages earned,

6 (2) total hours worked by the employee, except for any employee whose compensation
7 is solely based on a salary and who is exempt from payment of overtime under
8 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
9 Commission,

10 (3) the number of piece-rate units earned and any applicable piece rate if the employee
11 is paid on a piece-rate basis,

12 (4) all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item,

14 (5) net wages earned,

15 (6) the inclusive dates of the period for which the employee is paid,

16 (7) the name of the employee and his or her social security number, except that by
17 January 1, 2008, only the last four digits of his or her social security number or an
18 employee identification number other than a social security number may be shown on
19 the itemized statement,

20 (8) the name and address of the legal entity that is the employer, and

21 (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee.”

23 74. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
24 employees with an accurate itemized wage statement in writing showing, among other things,
25 gross wages earned and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate. Additionally, Defendant failed to
27 list the inclusive dates of the period for which PLAINTIFF and other CALIFORNIA LABOR
28 SUB-CLASS Members were paid in violation of Cal. Lab. Code 226(a)(6). From time to time,

1 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
2 identified the correct gross wages earned. Aside from the violations listed above,
3 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
4 requirements under California Labor Code 226 *et seq.* As a result, from time to time
5 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS
6 with wage statements which violated Cal. Lab. Code § 226.

7 75. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
8 226(a), causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
9 SUBCLASS. These damages include, but are not limited to, costs expended calculating the true
10 time worked and the amount of employment taxes which were not properly paid to state and
11 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and
12 the other members of the CALIFORNIA LABOR SUBCLASS may recover liquidated damages
13 of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each
14 violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to
15 proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each
16 respective member of the CALIFORNIA LABOR SUBCLASS herein).

17
18 **SIXTH CAUSE OF ACTION**

19 **For Failure to Pay Wages When Due**

20 **[Cal. Lab. Code §§ 201, 202, 203]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

22 **and Against All Defendants)**

23 76. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
24 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of
25 this Complaint.

26 77. Cal. Lab. Code § 200 provides, in relevant part, that:

27 As used in this article:

28 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of

time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

78. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

79. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

80. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

81. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

82. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

83. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

84. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

86. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

1 87. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
2 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
3 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
4 at the statutory rate and costs under Cal. Lab. Code § 2802.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, the PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

- 10 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
11 CLASS as a Class Action pursuant to Cal. Code of Civ. Proc. § 382;
12 B) An order requiring DEFENDANT to correctly calculate and pay all wages and
13 all sums unlawfully withheld from compensation due to the PLAINTIFF and the
14 other members of the CALIFORNIA CLASS;
15 C) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution
16 of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to
17 the other members of the CALIFORNIA CLASS according to proof; and,
18 D) An order temporarily, preliminarily and permanently enjoining and restraining
19 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

20 2. On behalf of the CALIFORNIA LABOR SUBCLASS:

- 21 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
22 of Action asserted by the CALIFORNIA LABOR SUBCLASS as a class action
23 pursuant to Cal. Code of Civ. Proc. § 382;
24 B) Compensatory damages, according to proof at trial, including compensatory
25 damages for minimum compensation due PLAINTIFF and the other members of
26 the CALIFORNIA LABOR SUBCLASS, during the applicable CALIFORNIA
27 LABOR SUBCLASS PERIOD plus interest thereon at the statutory rate;
28 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period

1 in which a violation occurs and one hundred dollars (\$100) per each member of
2 the CALIFORNIA LABOR SUBCLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) for
4 PLAINTIFF and each respective member of the CALIFORNIA LABOR
5 SUBCLASS , and an award of costs for violation of Cal. Lab. Code § 226;

6 D) The wages of all terminated employees in the CALIFORNIA LABOR
7 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
8 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

9 (E) Meal and rest period compensation pursuant to California Labor Code Section
10 226.7 and the applicable IWC Wage Order;

11 (F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
12 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
13 costs of suit; and,

14 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
15 1197.

16 3. On all claims:

17 A) An award of interest, including prejudgment interest at the legal rate;

18 B) Such other and further relief as the Court deems just and equitable; and,

19 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
20 law, including, but not limited to, pursuant to Cal. Labor Code §§226, §1194
21 and/or §2802.

22 Dated: _____

ZAKAY LAW GROUP, APC

23
24 By: _____

25 Shani O. Zakay
26 Attorney for Plaintiff
27
28

DEMAND FOR JURY TRIAL

PLAINTIFF demands jury trial on issues triable to a jury.

Dated: _____

ZAKAY LAW GROUP, APC

By: _____
Shani O. Zakay
Attorney for Plaintiff