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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ADEOYE FADIYA, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

**COURIERRX, LLC; ANCILLARY
PROVIDER SERVICES, INC.; and DOES
1-50,**

Defendants.

Case No.: 20STCV07220

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND
RESTITUTION**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Rest Periods
4. Failure to Provide Meal Periods
5. Failure to Provide Proper Itemized Wage Statements
6. Failure to Timely Pay Wages Upon Cessation of Employment
7. Failure to Reimburse Business Related Expenses
8. Unfair Competition
9. Violation of Lab. Code § 2810.3
10. Penalties pursuant to Private Attorneys General Act, Labor Code §§ 2698 et seq.

DEMAND FOR JURY TRIAL

Plaintiffs Adeoye Fadiya and Steven Dear (“Plaintiffs”) on behalf of themselves and all
others similarly situated complain and allege as follows:

1 **INTRODUCTION**

2 1. Defendant SNP Pharmacy, LLC (“SNP”)¹ owns Skilled Nursing Pharmacy
3 facilities throughout California. Defendant SNP’s Skilled Nursing Pharmacies are closed-door
4 pharmacies, meaning that they provide pharmaceutical services exclusively to patients residing at
5 its customers’ long term care facilities and is not open for dispensing to the general patient
6 population. SNP’s pharmacies use pharmacy couriers to deliver their customers’ prescription drugs
7 and other pharmacy products from their pharmacies to their customers’ long term care facilities.
8 SNP contracts with Defendant CourierRx, LLC (“CourierRx”) to perform the deliveries.
9 CourierRx is in the business of delivering prescription drugs and other pharmaceutical products
10 from Defendant SNP pharmacies to long-term care facilities throughout California. This case
11 arises out of the failure of CourierRx and SNP to treat, as their employees, the workers who
12 perform the courier services for them in California, and the resulting failure by CourierRx and
13 SNP to comply with the California Labor Code. It also arises out of the status of SNP as a “Client
14 Employer” under Labor Code section 2810.3.

15 2. In an effort to avoid its obligations as an employer of pharmacy couriers in
16 California, SNP attempts to insulate itself from exposure by retaining CourierRx to hire and pay
17 the pharmacy couriers that perform SNP deliveries from its Skilled Nursing Pharmacies, the details
18 of which are controlled and directed by SNP. In turn, CourierRx treated and paid Plaintiffs and
19 other pharmacy couriers as “independent contractors” for the courier work they perform on behalf
20 of CourierRx and SNP’s Skilled Nursing Pharmacies.

21 3. The California Supreme Court in *Dynamex v. Superior Court* (2018) 4 Cal. 5th 903
22 made the following point which should inform analysis in this case:

23 Under both California and federal law, the question whether an individual worker
24 should properly be classified as an employee or, instead, as an independent
25 contractor has considerable significance for workers, businesses, and the public

26 ¹ Plaintiffs erroneously identified SNP Pharmacy, LLP as Ancillary Provider Services, Inc. (or
27 APS) in the original complaint. On March 16, 2020, Plaintiff filed a form LASC LACIV 105 to
28 correct this error. Plaintiff updated the allegations in the First Amended Complaint accordingly.

generally. On the one hand, if a worker should properly be classified as an employee, the hiring business bears the responsibility of paying federal Social Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing worker's compensation insurance, and, most relevant for the present case, complying with numerous state and federal statutes and regulations governing the wages, hours, and working conditions of employees. The worker then obtains the protection of the applicable labor laws and regulations. On the other hand, if a worker should properly be classified as an independent contractor, the business does not bear any of those costs or responsibilities, the worker obtains none of the numerous labor law benefits, and the public may be required under applicable laws to assume additional financial burdens with respect to such workers and their families.

Although in some circumstances classification as an independent contractor may be advantageous to workers as well as to businesses, the risk that workers who should be treated as employees may be improperly misclassified as independent contractors is significant in light of the potentially substantial economic incentives that a business may have in mischaracterizing some workers as independent contractors. Such incentives include the unfair competitive advantage the business may obtain over competitors that properly classify similar workers as employees and that thereby assume the fiscal and other responsibilities and burdens that an employer owes to its employees. In recent years, the relevant regulatory agencies of both the federal and state governments have declared that the misclassification of workers as independent contractors rather than employees is a very serious problem, depriving federal and state governments of billions of dollars in tax revenue and millions of workers of the labor law protections to which they are entitled.

Id., 4 Cal. 5th at 912-913.

4. To carry out its pharmacy delivery business in California, SNP contracts with CourierRx – a “person” as defined in Labor Code Section 18 – to provide the actual pharmacy couriers who carry out its deliveries. CourierRx did not treat the SNP pharmacy couriers as their “employees” until January 1, 2020, classifying them instead as “independent contractors,” despite their legal status as “employees” jointly employed by SNP.

5. The pharmacy couriers who perform SNP deliveries in California are suffered and permitted by SNP, CourierRx, and DOES 1-50 (collectively “Defendants”) to do so. In *Dynamex*, 4 Cal. 5th at 953, the Supreme Court pointed out:

Given the intended expansive reach of the suffer or permit to work standard as reflected by its history, along with the more general principle that wage orders are the type of remedial legislation that must be liberally construed in a manner that serves its remedial purposes [cite omitted] , as our decision in *Martinez*

1 recognized, the suffer or permit to work standard must be interpreted and applied
2 broadly to include within the covered “employee” category ***all individual***
3 ***workers who can reasonably be viewed as “working in the [hiring entity’s]***
4 ***business.”*** (*Martinez, supra*, 49 Cal.4th at p. 69, 109 Cal.Rptr.3d 514, 231 P.3d
5 259), italics added [“A proprietor ***who knows that persons are working in his***
6 ***or her business without having been formally hired***, or while being paid less
7 than the minimum wage, clearly suffers or permits that work by failing to prevent
8 it, while having the power to do so” (italics added)].) Under the suffer or permit
9 to work standard, an individual worker who has been hired by a company can
properly be viewed as the type of independent contractor to which the wage order
was not intended to apply only if the worker is the type of traditional independent
contractor—such as an independent plumber or electrician—who would *not*
reasonably have been viewed as working *in the hiring business*. Such an
individual would have been realistically understood, instead, as *working only in*
his or her own independent business.

10 *Id.*, 4 Cal. 5th at 953 (emphasis added).

11 6. The Supreme Court went on to hold:

12 [W]e conclude it is appropriate, and most consistent with the history and purpose
13 of the suffer or permit to work standard in California’s wage orders, to interpret
14 that standard as: (1) placing the burden on the hiring entity to establish that the
15 worker is an independent contractor who was not intended to be included within
16 the wage order’s coverage; and (2) requiring the hiring entity, in order to meet
17 this burden, to establish *each* of the three factors embodied in the ABC test—
18 namely (A) that the worker is free from the control and direction of the hiring
entity in connection with the performance of the work, both under the contract for
the performance of the work and in fact; *and* (B) that the worker performs work
that is outside the usual course of the hiring entity’s business; *and* (C) that the
worker is customarily engaged in an independently established trade, occupation,
or business of the same nature as the work performed.

19 *Id.*, 4 Cal. 5th at 956-957.

20 7. Defendant CourierRx was and is a “proprietor” who knows pharmacy couriers are
21 working in its business in California and is a “hiring entity” who hires pharmacy couriers to
22 provide the courier workforce.

23 8. Defendant SNP was and is a “proprietor” who knows pharmacy couriers are
24 working in its business in California and is a “hiring entity” who hires pharmacy couriers through
25 CourierRx to provide the courier workforce.

26 9. Defendants’ California pharmacy couriers:

27 A. are not free from Defendants’ “control and direction in connection with” the
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1 inspections they perform;

2 B. perform work that is in the “usual course” of the Defendants’ businesses;

3 C. are not engaged “in an independently established trade, occupation, or
4 business of the same nature as the work performed.”

5 10. Defendants failed to (1) pay their pharmacy couriers all minimum and overtime
6 wages owed as required by Labor Code Sections 510, 1194, 1197 and the applicable Wage Order
7 of the Industrial Welfare Commission, including Wage Order 7; (2) pay pharmacy couriers all
8 wages owed as required by Labor Code Sections 201, 202, and 204; (3) provide pharmacy couriers
9 timely paid rest periods and timely unpaid meal periods of sufficient length as required by the
10 Labor Code and applicable Wage Orders of the Industrial Welfare Commission, including Wage
11 Order 7; (4) reimburse pharmacy couriers for business related expenses as required by Labor Code
12 Section 2802; (5) pay pharmacy couriers additional pay for rest period and meal period violations
13 as required by Labor Code Section 226.7; (6) provide pharmacy couriers with itemized wage
14 statements in compliance with Labor Code Section 226(a); and (7) provide paid sick leave and
15 Workers Compensation benefits as required Labor Code Sections 245.5(b), 246, and 3700.
16 Defendants’ violations of the Labor Code also constitute unfair competition in violation of
17 Business and Professions Code Section 17200. Plaintiffs seek damages and statutory penalties
18 under the Labor Code and restitution under Business and Professions Code Section 17203. As to
19 the sick leave claim, Plaintiffs seek injunctive relief and pay for sick days.

20 11. Plaintiffs and members of the proposed Class are current and former employees of
21 Defendants who worked as non-exempt pharmacy couriers in California performing the service
22 that Defendants sell to their customers – pharmacy-related deliveries (“deliveries”). Plaintiffs and
23 members of the proposed Class are also “workers” as the term is defined in Labor Code section
24 2810.3(5).

25 12. California recognizes that working men and women can be jointly employed by
26 more than one employer. *Martinez v. Combs* (2010) 49 Cal.4th 34.

27 13. Additionally, under California law, once a plaintiff comes forward with evidence
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1 that he provided services for an employer, the employee has established a prima facie case that the
2 relationship was one of employer/employee. *Robinson v. George* (1940) 16 Cal.2d 238. Further,
3 “employers” are defined in the Wage Orders of the Industrial Welfare Commission, including
4 Wage Order 7, as “any person as defined in Section 18 of the Labor Code, who directly or
5 indirectly, or through an agent or any other person, employs or exercises control over the wages,
6 hours, or working conditions of any person.”

7 14. SNP jointly employs the class members, like Plaintiffs, with CourierRx, the entity
8 that provides the pharmacy couriers who perform the deliveries. And, CourierRx is an agent of
9 SNP, through which SNP employs CourierRx’s pharmacy couriers. Defendants pay pharmacy
10 couriers on piece rate – either a flat amount per delivery or by the mile. Defendant SNP is also a
11 “Client employer,” as that term is defined in Labor Code section 2810.3, that is provided workers
12 by a “Labor Contractor”, such as CourierRx, as defined in Labor Code section 2810.3.

13 15. Class members make pharmacy deliveries to from SNP’s Skilled Nursing
14 Pharmacies to SNP’s customers, long-term care facilities in California. SNP exercises control over
15 the class of pharmacy couriers by dictating precise instructions regarding where pharmacy couriers
16 are to go, when they are to go, by when they must arrive and the routes they are to take to get there.
17 SNP also dictates how pharmacy couriers are to conduct themselves when they arrive and are on
18 SNP’s customers’ premises.

19 16. Despite the degree of control exercised by SNP and the fact that SNP suffers and
20 permits the pharmacy couriers to carry out the service it provides its customers, SNP and
21 CourierRx characterize their pharmacy couriers as “independent contractors”.

22 17. Plaintiffs typically received a flat rate for a delivery or was paid by the mile. When
23 Plaintiffs were paid by the mile, the payment was based on the driving route determined by
24 Defendants. Plaintiffs are informed and believe that other pharmacy couriers were paid on the
25 same piece rate bases. SNP and CourierRx do not withhold money from the payments to pharmacy
26 couriers for payment to taxing authorities, nor pay employer burdens associated with wage
27 payments such as Social Security contributions, or Employment Development Department
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1 contributions to fund California unemployment system obligations.

2 18. Plaintiffs and proposed Class members are not paid for the time they spend for SNP
3 in other than actual deliveries. Defendants do not pay their pharmacy couriers for rest breaks,
4 actual travel time, waiting time between deliveries, nor are they paid for other non-delivery work
5 such as time spent maintaining and fueling the personal vehicles they utilize to make Defendants'
6 pharmacy deliveries and time spent interacting with SNP's customers.

7 19. Defendants' pharmacy couriers, at times, work over four hours in a day performing
8 pharmacy deliveries. When they do so, they are not provided paid rest breaks as required by law.

9 20. Defendants' pharmacy couriers, at times, work over five hours in a day performing
10 pharmacy deliveries. When they do so, they are not provided paid rest breaks and/or meal periods
11 as required by law.

12 21. Defendants do not reimburse pharmacy couriers for costs pharmacy couriers incur
13 attributable to Defendants' work, such as costs they incur in utilizing their personal vehicles,
14 mobile phones, data plans, and \$50-\$60 per pay period to Openforce, a third party subscription
15 provider of independent contractor services Defendants require their pharmacy couriers to
16 subscribe to in order to perform Defendants' pharmacy deliveries.

17 22. Plaintiffs and proposed Class members do not receive premium pay as required by
18 law on account of Defendants' non-compliance with rest break and meal break requirements.

19 23. Defendants do not communicate or maintain a meal break policy applicable to its
20 pharmacy couriers.

21 24. Plaintiffs and proposed Class members do not receive accurate, itemized wage
22 statements reflecting the hours they actually work, the amount of wages to which they are entitled,
23 deductions required by law, premium wages, and a proper itemization of piecework earnings.

24 25. Class members are not paid all wages owed following their voluntary or involuntary
25 employment separations.

26 26. Plaintiffs and the proposed Class members are not provided paid sick leave as
27 required by Labor Code § 246.

27. Plaintiffs and the proposed Class members are not provided Workers Compensation Benefits as required by Labor Code § 3700.

28. As a result of these violations, s seek on behalf of themselves and all others similarly situated, compensation, damages, penalties, and interest to the full extent permitted by the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, including Wage Order 7.

29. Defendants are also liable for violation of the Unfair Business Practices Act, California Business and Professions Code §§ 17200, *et seq.* (“UCL”).

30. Plaintiffs amend their complaint to add a claim for penalties under California's Private Attorney General Act, Labor Code Section 2698 *et seq.* ("PAGA").

31. Plaintiffs also seek injunctive relief and restitution.

32. Plaintiffs seek reasonable attorneys' fees and costs under the Labor Code and California Code of Civil Procedure § 1021.5.

JURISDICTION AND VENUE

33. This Court currently has jurisdiction over Defendants because Defendants do business in California, and Plaintiffs and the class members are residents of California.

34. Venue is proper in this Court because the work performed that gives rise to the causes of action was performed by Plaintiffs and a number of other class members in Los Angeles County. Wage and hour obligations of Defendants under the Labor Code arose and were breached throughout California, including within Los Angeles County.

THE PARTIES

A. Plaintiffs

35. Plaintiffs Adeoye Fadiya and Steven Dear are over the age of eighteen, and at times mentioned in this complaint, were residents of Los Angeles County. During the four-year period preceding the filing of the complaint, Plaintiffs were jointly employed by Defendants with respect to pharmacy deliveries generated by SNP and outsourced to CourierRx. Within the joint employer relationship, Plaintiffs were treated as independent contractors. They were paid for their work on

1 a piece rate basis, and there were no withholdings from the payments he received.

2 36. Plaintiffs seek to represent similarly situated pharmacy couriers (the “Class,”
3 described more fully below) who suffered the same violations of rights that they endured.

4 37. As such, Plaintiffs appear in this action on behalf of themselves and on behalf of
5 all others similarly situated.

6 **B. Defendants**

7 38. Plaintiffs are informed and believe, and thereon allege, that Defendant CourierRx,
8 LLC is a limited liability company that does business in California, including in Los Angeles
9 County, California. At all times relevant to this action, CourierRx has been in the business of
10 performing deliveries for pharmacies.

11 39. Plaintiffs is informed and believe, and thereon allege, that Defendant SNP
12 Pharmacy, LLC, is a limited liability company that owns Skilled Nursing Pharmacies throughout
13 California that exclusively provides its customers, long-term care facilities, with prescription drugs
14 and other pharmacy products through a delivery service. SNP contracts with CourierRx to provide
15 its pharmacy delivery services to SNP’s customers.

16 40. At all times relevant to this action, Defendants have jointly employed Plaintiffs and
17 similarly situated pharmacy couriers with respect to pharmacy deliveries generated by SNP.
18 CourierRx supplied the pharmacy couriers to SNP’s Skilled Nursing Pharmacies to perform the
19 deliveries. SNP utilized Plaintiffs and similarly situated pharmacy couriers to provide the services
20 that it sells its customers. Furthermore, Defendants directly suffered and permitted Plaintiffs and
21 similarly situated pharmacy couriers to carry out the deliveries SNP generated for work in
22 California. Defendants controlled the manner and means by which the delivery services were
23 performed.

24 41. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
25 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
26 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
27 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiffs
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1 will amend this complaint to allege the true names and capacities of the DOE Defendants when
2 ascertained.

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

7 **CLASS ACTION ALLEGATIONS**

8 43. Plaintiffs bring this action on behalf of themselves and all other similarly situated
9 persons as a class action pursuant to Code of Civil Procedure Section 382. The members of the
10 Class are:

11 All persons who performed courier services on behalf of Defendants in California
12 at any time from four years before the filing of this complaint through the date the
13 Court grants preliminary approval of the settlement, or if there is no Settlement,
14 through the date Notice is mailed to the Class in a non-Settlement context.

15 44. This action has been brought and may be maintained as a class action pursuant to
16 California Code of Civil Procedure Section 382 because there is a well-defined community of
17 interest among many persons who comprise a readily ascertainable class:

18 a. The Class members are so numerous that the individual joinder of all of
19 them as plaintiffs is impractical. While the exact number of Class members is unknown to
20 Plaintiffs at this time, Plaintiffs are informed and believe and thereon allege that there are
21 over 50 members in the Class. Therefore, joinder of all Class members as individual
22 plaintiffs is impractical.

23 b. Common questions of law and fact exist as to members of the Class and
24 predominate over any questions which affect only individual members of the Class. These
25 common questions include, but are not limited to:

- 26 1) Did Defendants misclassify members of the Class as independent
27 contractors?
28 2) Are Defendants joint employers of members of the Class?

- 3) Did Defendants directly or indirectly employ the members of the Class?
- 4) Did Defendants directly or indirectly control and/or direct work engaged in by members of the Class?
- 5) Did Defendants suffer and permit members of the Class to perform pharmacy deliveries in California?
- 6) Is CourierRx in the pharmacy delivery business, and does it carry out its business through the members of the Class?
- 7) Is SNP in the pharmacy delivery business, and does it carry out its business through the members of the Class?
- 8) Does *Dynamex Operations v. Superior Court* (2018) 4 Cal.5th 903 apply in a context where pharmacy couriers are jointly employed by more than one entity, and none of the entities in the relationship treat the pharmacy couriers as employees, and the entity that directly pays the pharmacy couriers pays them as though they are independent contractors?
- 9) Does *Dynamex Operations v. Superior Court* (2018) 4 Cal.5th 903 apply in a context where pharmacy couriers are jointly employed by more than one entity, and the entity that directly pays the pharmacy couriers pays them as though they are employees?
- 10) Is CourierRx an agent of SNP under California law?
- 11) Does *Dynamex Operations v. Superior Court* (2018) 4 Cal.5th 903 apply in a context where the pharmacy couriers are employed through an agent of SNP?
- 12) Does SNP's utilization of CourierRx to recruit pharmacy couriers and to perform SNP pharmacy deliveries pursuant to SNP's directions insulate SNP from liability to the pharmacy couriers as an employer or joint employer?

- 1 13) Did Defendants fail to pay class members all minimum wages they were
2 entitled to by virtue of their piece work pay system?
- 3 14) Did Defendants fail to provide class members with paid rest breaks?
- 4 15) Are Class Members entitled to one hour of extra pay for each work day they
5 worked more than 4 hours and did not receive a paid rest break?
- 6 16) Are Class Members entitled to one hour of extra pay for each work day they
7 worked more than 5 hours and did not receive a meal break?
- 8 17) Did Defendants violate Labor Code Section 226(a) by failing to provide
9 members of the Class with itemized wage statements that complied with
10 Labor Code Section 226(a)?
- 11 18) Did Defendants violate Labor Code Section 2802 by failing to reimburse
12 members of the Class for business related expenses?
- 13 19) Did Defendants fail to provide Class Members with paid sick leave as
14 required by law?
- 15 20) Did Defendants fail to provide Class Members with Workers Compensation
16 Benefits as required by law?
- 17 21) Do any of the unlawful practices of Defendants constitute unfair
18 competition in violation of Business & Professions Code Section 17200?
- 19 22) Are Defendants liable to members of the Class for damages under the Labor
20 Code?
- 21 23) Are Defendants liable to members of the Class for statutory penalties under
22 the Labor Code?
- 23 24) Did Defendants violate Labor Code Sections 201, 202 and 203?
- 24 25) Are Defendants liable to members of the Class for restitution under
25 Business and Professions Code Section 17203?
- 26 26) Are any of Defendants "Client Employers" as that term is used in Labor
27 Code Section 2810.3?

1 27) Are Class members entitled to attorney's fees?

2 28) Are Class members entitled to interest?

3 c. Plaintiffs are members of the Class, and their claims are typical of the claims
4 of other Class members. The injuries allegedly suffered by Plaintiffs as a result of not
5 being treated as employees of Defendants are the same or substantially similar to the
6 injuries allegedly suffered by other members of the Class.

7 d. Plaintiffs will adequately and fairly protect the interests of the members of
8 the Class. Plaintiffs have no interest adverse to the interests of absent Class members.
9 Plaintiffs are represented by legal counsel who have substantial class action experience in
10 civil litigation and employment law.

11 e. A class action is superior to other available means for the fair and efficient
12 adjudication of the claims of the Class and would be beneficial for the parties and the court.
13 Class action treatment will allow a large number of similarly situated persons to prosecute
14 their common claims in a single forum, simultaneously, efficiently, and without the
15 unnecessary duplication of effort and expense that numerous individual actions would
16 require. Further, the monetary amounts due to many individual Class members are likely
17 to be relatively small, and the burden and expense of individual litigation would make it
18 difficult or impossible for individual members of the Class to seek and obtain relief. A
19 class action will serve an important public interest by permitting such individuals to
20 effectively pursue recovery of the sums owed to them. Further, class litigation prevents
21 the potential for inconsistent or contradictory judgments raised by individual litigation.

22 45. Plaintiffs are not aware of any difficulties that are likely to be encountered in the
23 management of this action that would preclude its maintenance as a class action. Plaintiffs,
24 however, reserve the right to modify the definition of the Class or seek issue certification, as future
25 circumstances may dictate.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(By Plaintiffs on behalf of themselves and the Class Against All Defendants)**

4 46. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully
5 alleged herein.

6 47. At all relevant times, Plaintiffs and the other members of the Class were employees
7 of Defendants under Labor Code Section 1197 and applicable Wage Orders, including Wage Order
8 7.

9 48. Plaintiffs and the other members of the class were paid per delivery or by the mile.
10 Pursuant to Labor Code Section 1197 and applicable Wage Orders, including Wage Order 7,
11 Plaintiffs and the other members of the Class were entitled to receive minimum wages for all hours
12 worked, including rest breaks that were unpaid.

13 49. The number of hours Plaintiffs and other class members worked for Defendants on
14 any given day during the class period varied from day to day.

15 50. Although Plaintiffs and other members of the Class were paid for some of their
16 work, Defendants failed to pay Plaintiffs and other members of the Class minimum wages for all
17 hours worked, including unpaid rest breaks, in violation of Labor Code Section 1197 and
18 applicable Wage Orders, including Wage Order 7. Defendants did not pay pharmacy couriers for
19 non-delivery work. As a consequence, Plaintiffs is informed and believes and thereon alleges that
20 at all relevant times Plaintiffs and the other members of the Class did not receive minimum wages
21 for all hours worked.

22 51. As a result of Defendants' unlawful conduct, Plaintiffs and other members of the
23 Class have suffered damages in an amount, subject to proof, to the extent they were not paid
24 minimum wages for all hours worked, including unpaid rest breaks.

25 52. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiffs and other members of
26 the Class are entitled to recover the full amount of unpaid minimum wages, prejudgment interest,
27 liquidated damages, reasonable attorney's fees and costs of suit.

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1 proof at trial and within the jurisdictional limitations of this Court.

2 59. Plaintiffs, on behalf of themselves and the Class, request the unpaid wages, all
3 penalties to which they may recover interest, attorneys' fees, costs, and any other remedies
4 allowed by law in an amount to be proven at trial.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE PAID REST PERIODS**

7 **(By Plaintiffs on behalf of Themselves and the Class Against All Defendants)**

8 60. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully
9 alleged herein.

10 61. At all relevant times, Plaintiffs and the Class were employees of Defendants
11 covered by Labor Code § 226.7 and Wage Orders of the Industrial Welfare Commission, including
12 Wage Order 7.

13 62. Pursuant to Labor Code § 226.7 and the applicable Wage Orders, including Wage
14 Order 7, Plaintiffs and the other Class Members were entitled to paid rest periods of at least 10
15 minutes for each period of four hours or a major fraction of 4 hours, and one hour of additional
16 pay for every day a paid rest period was not authorized or permitted.

17 63. At times during the class period, Plaintiffs and the other Class Members worked for
18 Defendants over 4 hours on workdays.

19 64. On account of their per delivery or per mile pay practices, when Plaintiffs and the
20 other Class Members worked for Defendants over 4 hours on workdays, Defendants failed to
21 provide Plaintiffs and other members of the Class paid rest break time in accordance with Labor
22 Code § 226.7 and the applicable Wage Orders, including Wage Order 7.

23 65. Pursuant to Labor Code § 226.7, Plaintiffs and other members of the Class are
24 entitled to damages in an amount equal to one (1) hour of wages for each day they were not
25 provided compliant rest breaks.

26 66. Pursuant to Labor Code § 218, Plaintiffs and the other members of the Class are
27 entitled to recover wages owing for unpaid rest break time, and attorney's fees incurred in securing
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1 those wages, as well as the break violation premium pay. Pursuant to Labor Code § 218.6 or Civil
2 Code § 3287(a), Plaintiffs and other members of the Class are entitled to recover prejudgment
3 interest on the wages owed for rest break violations.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO MAKE COMPLIANT UNPAID MEAL PERIODS AVAILABLE**

6 **(By Plaintiffs on behalf of Themselves and the Class Against All Defendants)**

7 67. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully
8 alleged herein.

9 68. At all relevant times, Plaintiffs and the other members of the Class were employees
10 of Defendants covered by Labor Code Sections 226.7 and 512, and the applicable Wage Orders,
11 including Wage Order 7.

12 69. Pursuant to Labor Code Sections 226.7 and 512, and Wage Order 7-2001, Plaintiffs
13 and the other members of the Wage and Break Class were entitled to a meal period of at least 30
14 minutes for each workday they worked more than 5 hours in any workday, and one additional hour
15 of pay for every day that a timely meal period was not provided.

16 70. At times during the class period, Plaintiffs and the other Class Members worked for
17 Defendants over 5 hours on workdays.

18 71. On account of their per delivery or per mile pay practices, when Plaintiffs and the
19 other Class Members worked for Defendants over 5 hours on workdays, Defendants failed to make
20 available to Plaintiffs and other members of the Class meal periods in accordance with Labor Code
21 § 226.7 and the applicable Wage Orders, including Wage Order 7. In addition, Defendants did not
22 make legally compliant meals available by not communicating or otherwise providing a compliant
23 meal break policy to Plaintiffs and the Class. Employees are entitled to a meal period of at least
24 thirty (30) minutes per five (5) hour work period.

25 72. Pursuant to Labor Code §226.7 and Wage Order 7, Plaintiffs and the class are
26 entitled to damages in an amount equal to one (1) hour of wages per work day during which
27 Defendants did not provide a compliant meal break or have a compliant meal break policy.

73. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiffs request that the court award prejudgment interest on the premium wages owing on account of meal break violations.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS

(By Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

74. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully alleged herein.

75. At all relevant times, Plaintiffs and the other members of the Class were employees of Defendants under Labor Code Section 226, and Labor Code 226.2

76. Pursuant to Labor Code Section 226(a), Plaintiffs and the other members of the Class were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized wage statement showing: a) gross wages earned; b) total hours worked; c) the number of piece rate units earned and applicable piece rates; d) all deductions; and e) net wages earned.

77. Defendants failed to provide Plaintiffs and members of the Class with itemized wage statements in accordance with Labor Code Sections 226(a) and 226.2(a)(2). Plaintiffs are informed and believe and thereon allege that at all relevant times within the one-year limitations period applicable to this cause of action (the “Penalty Period”), Defendants had a policy or practice of not providing pharmacy couriers with compliant itemized wage statements by not accurately setting forth a) gross wages earned; b) total hours worked; c) the number of piece rate units earned and applicable piece rates; d) total hours of compensable rest and recovery periods; (e) total hours of other nonproductive time; (f) all deductions; and e) net wages earned.

78. Defendants' failure to provide Plaintiffs and members of the Class with compliant itemized wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and members of the Class with accurate itemized wage statements but, because pharmacy couriers were treated as independent contractors, knowingly and intentionally failed to keep accurate payroll records for pharmacy couriers necessary for providing them accurate itemized

1 wage statements.

2 79. As a result of Defendants' conduct, Plaintiffs and members of the Class have
3 suffered injury. The lack of accurate complete itemized wage statements has prevented timely
4 challenges to some of Defendants' unlawful pay practices, required discovery and mathematical
5 computations to determine the amount of wages owed, caused difficulty and expense in attempting
6 to reconstruct time and pay records, and/or led to the submission of inaccurate information about
7 wages to state and federal government agencies.

8 80. Pursuant to Labor Code Section 226(e), Plaintiffs and members of the Class are
9 entitled to recover fifty dollars for the initial pay period during the Penalty Period in which a
10 knowing and intentional violation of Labor Code Section 226(a) occurred and one hundred dollars
11 for each knowing and intentional violation of Labor Code Section 226 in a subsequent pay period,
12 not to exceed an aggregate statutory penalty of four thousand dollars per employee.

13 81. Pursuant to Labor Code Sections 218 and 226(e), Plaintiffs and members of the
14 Class are entitled to recover the full amount of statutory penalties due under Labor Code Section
15 226(e), reasonable attorney's fees and costs of suit.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**

18 **(By Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

19 82. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully
20 alleged herein.

21 83. Plaintiffs and the other members of the Class, whose employment by Defendants
22 ended within three years of the filing of this complaint, were employees of Defendants covered
23 by Labor Code Section 201 or 202.

24 84. Pursuant to Labor Code Sections 201 or 202, Plaintiffs and other members of the
25 Class were entitled upon cessation of employment with Defendants to timely payment of all
26 wages earned and unpaid prior to termination. Discharged employees were entitled to payment
27 of all wages earned and unpaid prior to discharge immediately upon termination. Employees
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1 who resigned were entitled to payment of all wages earned and unpaid prior to resignation within
2 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were
3 entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

4 85. Defendants failed to pay Plaintiffs and other members of the Class, whose
5 employment ended within three years of the filing of this complaint, all wages earned and unpaid
6 prior to termination timely in accordance with Labor Code Section 201 or 202. Plaintiffs are
7 informed and believe and thereon allege that at all relevant times within the applicable
8 limitations period, Defendants maintained and continues to maintain a policy or practice of not
9 paying terminated employees all their final wages earned before termination due under Labor
10 Code Section 201 or 202.

11 86. Defendants' failure to pay Plaintiffs and members of the Class all wages earned
12 prior to termination in accordance with Labor Code Sections 201 or 202 was willful. Defendants
13 had the ability to pay all wages earned by employees prior to termination in accordance with
14 Labor Code Sections 201 or 202, but intentionally adopted policies or practices incompatible
15 with the requirements of Labor Code Sections 201 or 202.

16 87. Pursuant to Labor Code Section 201 or 202, Plaintiffs and other members of the
17 Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

18 88. Pursuant to Labor Code Section 203, Plaintiffs and other members of the Class
19 are entitled to continuation of their wages, from the day their earned and unpaid wages were due
20 upon termination until paid, up to a maximum of 30 days.

21 89. As a result of Defendants' conduct, Plaintiffs and other members of the Class
22 have suffered damages in an amount, subject to proof, to the extent they were not paid for all
23 wages earned prior to termination.

24 90. As a result of Defendants' conduct, Plaintiffs and members of the Class have
25 suffered damages in an amount, subject to proof, to the extent they were not paid all continuation
26 wages owed under Labor Code Section 203.

91. Pursuant to Labor Code Sections 218 and 218.5, Plaintiffs and other members of the Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiffs and other members of the Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid continuation wages.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS RELATED EXPENSES

(By Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

92. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully alleged herein.

93. At all relevant times, Plaintiffs and the other members of the Class were employees of Defendants entitled to the benefit of Labor Code Section 2802.

94. Pursuant to Labor Code Section 2802, Plaintiffs and other members of the Class were entitled to indemnification for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties.

95. Defendants failed to indemnify Plaintiffs and other members of the Class for all their business expenses in accordance with Labor Code Section 2802. Plaintiffs are informed and believe and thereon allege that at all relevant times within the applicable limitations period, Defendants maintained a policy or practice of not reimbursing pharmacy couriers for the expenses they incurred for work related purposes on account of their position that their pharmacy couriers were not their employees.

96. As a result of Defendants' conduct, Plaintiffs and other members of the Class have suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all the expenses they incurred for work related purposes.

97. Pursuant to Labor Code Section 2802, Plaintiffs and other members of the Class are entitled to recover reimbursement for their business-related expenses, reasonable attorney's

1 fees and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.)**

5 **(By Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

6 98. Plaintiffs incorporates all of the foregoing paragraphs of this complaint as if fully
7 alleged herein.

8 99. The unlawful conduct of Defendants alleged herein constitutes unfair competition
9 within the meaning of Business and Professions Code Section 17200.

10 100. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and
11 members of the Class have suffered injury in fact and lost money or property. Plaintiffs and other
12 members of the Class were deprived of their rights under the Labor Code to minimum and overtime
13 wages for all hours worked, pay for rest periods, additional pay for rest period and meal period
14 violations, and other monies owed to them under the Labor Code.

15 101. Pursuant to Business and Professions Code Section 17203, Plaintiffs and members
16 of the Class are entitled to restitution of all the money owed to them and interest thereon rightfully
17 belonging to them that Defendants failed to pay to them and wrongfully retained for themselves
18 by means of their unlawful and unfair business practices. Plaintiffs and members of the Class have
19 a vested property interest in all the money that Defendants were legally required to pay to them
20 under the Labor Code and Defendants would be unjustly enriched if allowed to keep for itself any
21 of the money or interest thereon that Plaintiffs and members of the Class had the right to possess.

22 102. Plaintiffs and members of the Class are entitled to recover reasonable attorney's
23 fees in connection with their unfair competition claims pursuant to CCP Section 1021.5, the
24 substantial benefit and/or the common fund doctrine.

1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTION 2810.3**

3 **(By Plaintiffs on Behalf of Themselves and the Class Against Defendant SNP)**

4 103. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully
5 alleged herein.

6 104. Defendant SNP is a “Client Employer” as that term is defined in Labor Code section
7 2810.3.

8 105. Defendant SNP is supplied pharmacy couriers as “Workers” to perform pharmacy
9 deliveries picked up from SNP’s Skilled Nursing Pharmacies (“work sites”) and delivered to its
10 customers in California by CourierRx, a “Labor Contractor” as that term is used in Labor Code
11 section 2810.3.

12 106. Pharmacy deliveries are within the usual course of SNP’s business of operating
13 closed-door pharmacies.

14 107. Pursuant to Labor Code Section 2810.3(b), SNP is liable, irrespective of whether
15 there is an employer-employee relationship between SNP and the Class, to Plaintiffs and the Class
16 for the unlawful conduct of Defendants alleged above to the extent that conduct has resulted in an
17 underpayment of straight time, minimum, overtime, violation premium, and waiting time wages,
18 and to the extent that SNP’s failure to reimburse for expenses has resulted in an unlawful reduction
19 of actual wages, for those wages as well.

20 108. Plaintiffs exhausted the requirement, contained in Labor Code Section 2810.3 (d)
21 to notify SNP of the violation of 2810.3 alleged herein, and waited in excess of 30 days after that
22 notification to commence this action.

23 109. As a result of SNP’s unlawful conduct in violation of Labor Code Section
24 2810.3(b), Plaintiffs and other members of the Class have suffered damages in an amount, subject
25 to proof, to the extent they were not paid all wages owed to them.

26 110. Plaintiffs and other members of the Class are entitled to recover the full amount of
27 their unpaid wages, prejudgment interest, reasonable attorney’s fees pursuant to Civil Procedure
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1 Section 1021.5, and costs of suit.

2 **TENTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE SECTION 2810.3**

4 **(By Plaintiffs on Behalf of Themselves, the State and Aggrieved Employees Against All**
5 **Defendants)**

6 111. Plaintiffs incorporate all of the foregoing paragraphs of this complaint as if fully
7 alleged herein.

8 112. At all times relevant to this action, Plaintiff Dear and other Aggrieved Employees
9 were “aggrieved employees” within the meaning of Labor Code Section 2699.

10 113. Defendants’ conduct as described herein, arising from Defendants’
11 misclassification of Plaintiff Dear and other Aggrieved Employees as independent contractors,
12 constitute violations of Labor Code Sections 201, 202, 203, 226, 226.7, 245.5, 246, 510, 512,
13 1182.12, 1194, 2802, 3700 and the relevant sections of the applicable Wage Orders of the
14 Industrial Welfare Commission, including Wage Order 7.

15 114. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
16 of himself and other current or former employees, to bring a civil action to recover civil penalties
17 pursuant to the procedures specified in Labor Code Section 2699.3.

18 115. Plaintiff Dear has complied with the procedures for bringing suit specified in Labor
19 Code Section 2699.3. By letter dated January 24, 2020, Plaintiff Dear gave written notice to the
20 Labor and Workforce Development Agency (“LWDA”) via its online filing system and by
21 certified mail to Defendant CourierRx, LLC, of the specific provisions of the Labor Code alleged
22 to have been violated, including the facts and theories to support the alleged violations. A true and
23 correct copy of the January 24, 2020, letter is attached hereto as **Exhibit 1**. To date, more than 65
24 days after the postmark date of January 24, 2020 have passed, and the LWDA has not advised
25 Plaintiff Dear that it intends to investigate Plaintiff Dear's allegations.²

26 _____
27 ² After a representative for SNP Pharmacy, LLC, informed Plaintiff Dear’s counsel that it had
28 (footnote continued)

116. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff Dear and other Aggrieved Employees are entitled to civil penalties for Defendants' violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 7, in the amount 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. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

117. Pursuant to Labor Code Section 2699(g), Plaintiff Dear is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

WHEREFORE, Plaintiffs on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendants as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiffs be appointed representatives of the Class;
3. An order that counsel for Plaintiffs be appointed as counsel for the Class;

On the First Cause of Action

1. Unpaid minimum wages;
2. Liquidated damages;
3. Attorneys' Fees;
4. Prejudgment interest.

On the Second Cause of Action

1. Unpaid overtime wages; Prejudgment interest

identified SNP Pharmacy, LLC, in error as Ancillary Provider Services, Inc. ("APS"), Plaintiff Dear submitted an amended notice letter to the LWDA and to Defendants on March 18, 2020, replacing SNP for APS. To date, more than 65 days after the postmark date of March 18, 2020 have passed, and the LWDA has not advised Plaintiff Dear that it intends to investigate Plaintiff Dear's allegations..

2. Attorneys' Fees;
3. Prejudgment interest.

On the Third Cause of Action

1. Wages owing on account of unpaid rest breaks;
2. Rest Break Violation Premium Pay pursuant to Labor Code Section 226.7;
3. Attorney's fees on the recovery of pay for the unpaid time;

On the Fourth Cause of Action

1. Meal Break violation premium pay pursuant to Labor Code Section 226.7;

On the Fifth Cause of Action

1. Penalties pursuant to Labor Code Section 226;
2. Attorney's fees and costs;

On the Sixth Cause of Action

1. Damages for unpaid wages earned prior to termination of employment;
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

On the Seventh Cause of Action

1. Damages according to proof;
2. Reimbursement for business related expenses;
3. Attorney's fees;

On the Eighth Cause of Action

1. Restitution of all unpaid wages and other monies owed and belonging to Class members that Defendant unlawfully withheld from them and retained for itself;
2. Prejudgment interest;

On the Ninth Cause of Action

1. Unpaid wages including but not limited to premium wages according to proof;
2. Attorney's fees;

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On the Tenth Cause of Action

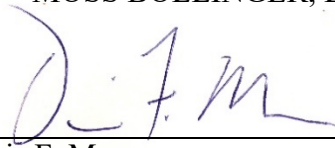
- 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
- 2. Attorney’s fees;

On All Causes of Action

- 1. Judgment in favor of Plaintiffs, the putative Classes, Aggrieved Employees and the State of California, and against Defendants;
- 2. Pre-judgment interest;
- 3. Costs of suit; and
- 4. Such other relief as this Court deems just and proper.

Dated: October 14, 2020

MOSS BOLLINGER, LLP

By: 
Dennis F. Moss
Attorney for Plaintiffs ADEOYE FADIYA
and STEVEN DEAR

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and the Class on all claims so triable.

Dated: October 14, 2020

MOSS BOLLINGER, LLP

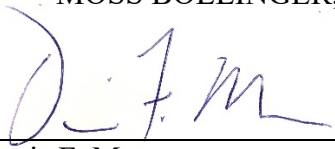
By: 
Dennis F. Moss
Attorney for Plaintiffs ADEOYE FADIYA
and STEVEN DEAR

EXHIBIT 1

to

Second Amended Complaint

Fadiya v. CourierRx, LLC et al.

LA Sup. Ct. Case No. 20STCV07220



Moss Bollinger
LLP

Jeremy F. Bollinger
310.982.2984/fax: 818.963.5954
jeremy@mossbollinger.com

January 24, 2020

VIA PAGA ONLINE FILING

Secretary David Lanier
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

CourierRx LLC
c/o Mike Chavez
16839 Gale Ave., Suite 202
City of Industry, CA 91745

Conrad Doss, President
CourierRx LLC
8350 Ashlane Way, Suite 202
The Woodlands, Texas 77382

Ancillary Provider Services, Inc.
c/o Ben Mendelbaum, Agent for Process
16644 E Johnson Dr., Unit A
City of Industry, CA 91745

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer: Ancillary Provider Services, Inc., CourierRx LLC and Conrad Doss

Employee: Steven Dear, on behalf of himself and on behalf of all delivery drivers classified as independent contractors by CourierRx LLC and Ancillary Provider Services, Inc. in California.

Dear Secretary Lanier:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Steven Dear ("Plaintiff") on behalf of himself and on behalf of all delivery drivers for CourierRx LLC ("CourierRx"), Conrad Doss and Ancillary

Provider Services, Inc. (“APS”), collectively, “Defendants”, in California, alleges that Defendants violated the California Labor Code throughout Plaintiff’s employment and within the one year prior to the mailing of this letter.

General Facts

CourierRx is a company that provides courier services from pharmacies to long-term care facilities and consumers throughout California, including in the Los Angeles, San Diego, San Francisco and Fresno areas. Conrad Doss is the President of Courier Rx. During the relevant period, Mr. Doss was an “other person acting on behalf of” CourierRx for the purposes of Labor Code section 558.1. During the one year preceding the date of this letter through the end of December 2019, CourierRx contracted with drivers, including Plaintiff, to perform its courier services. CourierRx paid its drivers either a flat fee based on geographic destinations of its courier deliveries, or by the mile. The drivers are not paid for all the work activities they perform. For example, those drivers who were paid by the mile were only paid one way, even when they were required to return to their point of origin, unless the driver was required to bring back something from a delivery location. The drivers did not have the opportunity to negotiate their rates of pay.

Ancillary Provider Services, Inc. (“APS”) is a full service provider specializing in Long Term Care and extended care. It owns and operates a company known as Skilled Nursing Pharmacy. Skilled Nursing Pharmacy provides pharmacy services to Long-Term Care facilities and their patients. APS and Skilled Nursing Pharmacy are collectively referred to herein as APS.

Plaintiff is a resident of California and has worked as a driver for CourierRx and APS’s Skilled Nursing Pharmacy in the City of Industry, Los Angeles County, during the one year period preceding the date of this letter. At times, Plaintiff was paid \$0.95 per mile. At other times, he was paid a flat rate to make multiple deliveries to clients in certain geographic areas in California. APS (and Skilled Nursing Pharmacy) contract with CourierRx to hire drivers to act as couriers for the delivery of Skilled Nursing Pharmacy’s pharmaceuticals to its clients (Long-Term Care facilities).

Until January 1, 2020, CourierRx (and APS) treated its drivers as independent contractors to perform its pharmaceutical courier services. Yet, CourierRx required Plaintiff and other similarly aggrieved drivers to follow detailed protocols in performing the core function of its business, delivering product from pharmacies to long-term care facilities. It required drivers to wear shirts with CourierRx’s logo, identifying them as CourierRx representatives. It provided pre-determined delivery routes on which CourierRx based the drivers’ per mile compensation.

Many requirements and instructions that Plaintiff and other couriers had to follow were dictated by APS. In fact, APS determined and controlled whether Plaintiff would be paid, and how much he would be paid, for certain trips he made on APS's behalf. For example, APS determined that Plaintiff and other couriers would not be paid for the drive time to return from a delivery for APS if the courier was not carrying something back to APS

Irrespective of the degree of control they exercised over its drivers, which was substantial, CourierRx and APS were their employers pursuant to *Dynamex v. Superior Court* (2018) 4 Cal. 5th 903 *reh'g denied* (June 20, 2018), and California Assembly Bill 5 (AB 5), as well as under the tests articulated by *Martinez v. Combs* (2010) 49 Cal.4th 35, 52 (2010).

The drivers who performed courier services for CourierRx in California were suffered and permitted by CourierRx to do so. In *Dynamex*, 4 Cal. 5th at 953, the Supreme Court pointed out:

Given the intended expansive reach of the suffer or permit to work standard as reflected by its history, along with the more general principle that wage orders are the type of remedial legislation that must be liberally construed in a manner that serves its remedial purposes [cite omitted] , as our decision in *Martinez* recognized, the suffer or permit to work standard must be interpreted and applied broadly to include within the covered “employee” category ***all individual workers who can reasonably be viewed as “working in the [hiring entity’s] business.”*** (*Martinez, supra*, 49 Cal.4th at p. 69, 109 Cal.Rptr.3d 514, 231 P.3d 259), italics added [“A proprietor **who knows that persons are working in his or her business without having been formally hired**, or while being paid less than the minimum wage, clearly suffers or permits that work by failing to prevent it, while having the power to do so” (italics added)].) Under the suffer or permit to work standard, an individual worker who has been hired by a company can properly be viewed as the type of independent contractor to which the wage order was not intended to apply only if the worker is the type of traditional independent contractor—such as an independent plumber or electrician—who would not reasonably have been viewed as working in the hiring business. Such an individual would have been realistically understood, instead, as working only in his or her own independent business.

Id., 4 Cal. 5th at 953 (emphasis added).

Because CourierRx drivers were classified and treated as independent contractors, CourierRx and APS did not reimburse the drivers for many of the expenses related to their work as drivers, including expenses they incur in using their own vehicles, phone and data plan expenses, and other equipment and material expenses incurred as a direct consequence of carrying out their

delivery duties. Likewise, CourierRx did not compensate its drivers for rest breaks and it did not provide for off-duty meal periods. Drivers were required to remain on-call when they returned to their delivery origin points. CourierRx did not pay minimum wages or overtime wages.

As of January 1, 2020, CourierRx converted its independent contractor-classified drivers to be CourierRx employees. In doing so, its President Conrad Doss issued the following statement to its drivers as part of the package of documents drivers were required to fill out in order to become employees: “Thank you for the positive response we have received regarding the recent announcement of CourierRx having to comply with the new California Assembly Bill 5 (AB5) the legislation passed recently.” AB 5 codified into law the test for determining independent contractor status that had been clarified by the California Supreme Court in *Dynamex* on April 30, 2018, well over a year before CourierRx made its decision to comply with the law.

PLAINTIFF’S CLAIMS

Plaintiff claims that throughout his employment by CourierRx and APS, he and other similarly situated courier drivers were misclassified as independent contractors exempt from California’s labor laws. In *Dynamex Operations v. Superior Court*, the California Supreme Court articulated the test for whether a worker is properly classified as an independent contractor to whom California’s wage orders do not apply. There, the Court held that the hiring entity must establish:

(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity’s business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Dynamex, 4 Cal. 5th at 964. If the hiring entity fails to meet any one of the criteria above, the classification fails and the worker is deemed an employee. As discussed above, CourierRx is in the business of providing delivery services and that is the service that CourierRx drivers provide. The drivers’ services are fully integrated into CourierRx’s business, and without the drivers, CourierRx’s business would not exist. Moreover, CourierRx dictates and controls what and how its drivers perform their work. Under *Dynamex*, Plaintiff and all similarly situated drivers of CourierRx in California are CourierRx’s employees.

Likewise, APS, and more specifically Skilled Nursing Pharmacy, is in the business of providing pharmaceuticals to Long-Term Care facilities. These pharmacies exclusively deliver their pharmaceuticals to their clients and patients. They do not offer walk-in services. Accordingly, the delivery of pharmaceuticals, the service provided by Plaintiff and other couriers, is within the

course of Skilled Nursing Pharmacy's business. Moreover, Plaintiff and other CourierRx couriers provided their services exclusively to Skilled Nursing Pharmacy. Nevertheless, CourierRx and APS treated Plaintiff and other CourierRx couriers as independent contractors.

In light of CourierRx and APS's misclassification of its couriers, Plaintiff and other similarly situated couriers have been regularly subjected to the following violations of California law for which they are entitled to PAGA penalties.

Non-Reimbursement of Business Related Expenses

Pursuant to Labor Code § 2802, CourierRx and APS are required to fully reimburse Plaintiff and other similarly paid couriers for all expenses incurred by them in direct consequence of the discharge of their job duties or obedience to the directions of CourierRx and APS. The elements of a claim under Section 2802 are: (1) the employee made expenditures or incurred losses; (2) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (3) the expenditures or losses were reasonable and necessary. *Marr v. Bank of Am.*, No. 09–CV–05978 WHA, 2011 WL 845914, at *1 (N.D. Cal. Mar. 8, 2011) citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007).

Courts have held an employer must reimburse its employee if it either knows or has reason to know that the employee has incurred an expense. *Stuart v. RadioShack Corp.*, 641 F.Supp.2d 901, 904 (N.D. Cal. 2009). "Once the employer has such knowledge, then it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid the expense." *Id.* The Court in *Stuart* further explained, "The employer must take any and all steps practicably available to reimburse the employee for the expense." *Stuart v. Radioshack Corp.*, No. C-07-4499 EMC, 2009 WL 10658336, at *1 (N.D. Cal. Sept. 2, 2009).

Here, CourierRx hired Plaintiff and others as courier drivers to perform APS deliveries, knowing that they would need to use their personal vehicles (including insurance, gas, and maintenance) to perform delivery services, and use their personal equipment in connection with their deliveries, including personal cell phones and data plans. CourierRx knew Plaintiff and others would need to use their personal cell phones because, as stated on their website's page for recruiting new drivers, drivers "[m]ust be able to use an Android based tablet for scanning technology." If the driver did not have one, the driver "will be charged a \$7.50 a month tablet rental fee." APS likewise knew that the couriers CourierRx hired to perform APS deliveries would need to incur these expenses.

CourierRx also required Plaintiff and other couriers to join a third party subscription provider of independent contractor services, as established with CourierRx. The cost associated with the

third party subscription provider was \$50-\$60 a settlement period. If the independent contractor driver provided its own workers compensation insurance the subscription fee was reduced to \$8.50 per settlement period. In other words, CourierRx required its couriers to assume costs that should have been borne by their employers, CourierRx and APS. Neither CourierRx nor APS reimbursed Plaintiff and other similarly paid couriers for these expenses.

Unpaid Minimum Wages

Under California Labor Code Section 1182.12 and Section 4 of the applicable wage orders of the Industrial Welfare Commission, CourierRx and APS were required to pay their couriers the minimum wage in effect at the time its California couriers performed their work.

Plaintiff and other similarly paid couriers were compensated with a per mile fee or a per delivery fee that did not pay them for non-delivery time, such as return travel time back (unless they were to bring back something from the long-term care facility), time spent waiting at the Skilled Nursing Pharmacy, or other pharmacies, time spent fueling their vehicles, or rest periods. If a court were to improperly treat the per mile or delivery payments (i.e., piece rate) as including the non-inspection work, often times the piece rate payments were below the minimum wage. In addition, because Plaintiff and similarly paid drivers had to bear the costs of using their own vehicles, and other costs such as phones and data plans, even when the per mile payments or flat rate payments may have equaled or exceeded the minimum wage, expenses caused their actual compensation to drop below the minimum wage.

An employee who has ostensibly been paid the minimum wage but has been required to make an expenditure which reduces the employee's net income below the minimum wage is, in essence, in the same position as an employee who was paid less than the minimum wage at the outset. Both have been required to satisfy their living expenses with less than the minimum wage. In light of these factors, the Court believes that [Cal. Code Civ. Proc.] Sections 1194, 1194.2, 1197, and 1197.1 should be construed as permitting a cause of action where an employee has been required to bear expenses which effectively cause the employee's wages to fall below the minimum wage.

Sanchez v. Aerogroup Retail Holdings, Inc., No. 12-CV-05445-LHK, 2013 WL 1942166, at *10 (N.D. Cal. May 8, 2013).

Unpaid Overtime Wages

In California, the general overtime provisions require that an employer shall not employ any person for more than eight hours in any workday or more than 40 hours in any workweek unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over

eight hours in any workday and over 40 hours in the workweek. Lab Code § 510. Plaintiff and other couriers for CourierRx and APS at times worked more than 8 hours in a day or 40 hours in a week. Because CourierRx and APS misclassified them as independent contractors, they violated Labor Code § 1194 by failing to pay Plaintiff and other drivers for all hours worked in excess of the overtime limits imposed by California law and the applicable wage orders.

Rest Period Violations

California law requires that employers must authorize and permit non-exempt employees to take a paid rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. *Id.* at 1029.

The plain language of California's Wage Orders relating to rest periods requires employers to count "rest period time" as "hours worked for which ***there shall be no deduction from wages.***" See, e.g., Cal. Code Regs. tit. 8, § 11040 subd. 12(A), italics added.¹ In *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013), the court interpreted this language to require employers to "separately compensate[]" employees for rest periods where the employer uses an "activity based compensation system" that does not directly compensate for rest periods. *Id.* at 872. In *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98 (2017), as modified (Mar. 20, 2017), *review denied* (June 21, 2017), the Court of Appeal held that the wage order requirement that employees be separately paid for rest periods "applies equally to commissioned employees". *Id.* at 111. CourierRx paid Plaintiff and other drivers on a piece rate (per mile) or flat rate basis. It did not separately pay Plaintiff and other similarly paid drivers for their rest periods in conformity with California law within the last year.

Furthermore, on those shifts when Plaintiff and other aggrieved couriers were not provided uninterrupted rest breaks of at least 10 minutes in compliance with California law, they were entitled to recovery under Labor Code § 226.7 in the amount of one additional hour of pay at the employee's regular rate of compensation. See also Cal. Code Regs. tit. 8, § 11040 subd. 12(B). Because CourierRx and APS treated the couriers as independent contractors, they neither provided the required breaks or paid the break premiums to Plaintiff and other couriers. CourierRx and APS have no policies regarding the provision of paid rest breaks for their couriers.

¹ The other Wage Orders contain the same provision.

Meal Period Violations

In California, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Cal. Labor Code § 512; Cal. Code Regs. tit. 8, § 11040, subd. 11. The applicable wage orders further provide: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.” Cal. Code Regs. tit. 8, § 11040, subd. 11(D).

Neither CourierRx nor APS provided a meal period policy to Plaintiff. Because they treated their couriers as independent contractors, they did not provide the required meal periods to Plaintiff and other couriers. Accordingly, neither CourierRx nor APS ever paid Plaintiff or other similarly paid couriers meal period premiums (“one (1) hour of pay at the employee’s regular rate of compensation”) for meal period violations.

Inaccurate Wage Statements

Plaintiff and similarly aggrieved drivers did not receive wage statements that complied with Labor Code § 226. This claim is derivative of Plaintiff’s unpaid wages claims. If CourierRx and/or APS is found to have misclassified Plaintiff and other couriers as independent contractors, then they will have violated section 226’s requirements to provide a wage statement that lists the employee’s wages, hourly rates, etc. As the above infractions explain, Plaintiff and similarly employed persons were entitled to overtime and premium wages that were not paid or listed on their wage statements and, therefore, are entitled to penalty payments pursuant to section 226.

Personal Liability of President Conrad Doss

Labor Code section 558,1 subdivision (a) provides that an employer “or other person acting on behalf of an employer” who violates or causes a violation of the state’s applicable overtime laws shall be subject to a civil penalty. Similarly, section 1197.1, subdivision (a) provides that an employer “or other person acting either individually or as an officer, agent, or employee of another person” who pays or causes to pay an employee less than the state’s applicable minimum wage shall be subject to a civil penalty.

In *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (Ct. App. 2018), review denied (Jan. 16, 2019), the court found that a corporate agent, such as CourierRx's President Doss, can be held liable for the civil penalties sought by Plaintiff here:

Under sections 558(a) and 1197.1(a), can an individual officer or agent of a corporate employer be personally liable to an employee of the corporate employer for the civil penalties authorized for overtime pay and minimum wage violations, where there is no allegation or finding of either an alter ego relationship between the individual officer or agent and the corporate employer or acts by the individual officer or agent outside the scope of the agency for the corporate employer?

Based on the unchallenged evidentiary showing and related findings as to Pedrazzani's participation in the payment of wages in violation of the overtime pay and minimum wage laws in this case, **the answer is "yes."** At part II.A.2., post, we explain that sections 558 and 1197.1 authorize the Labor Commissioner to recover the civil penalties from Pedrazzani; and at part II.A.3., post, we explain that section 2699, subdivision (a) authorized Plaintiffs, in place of the Labor Commissioner, to recover the sections 558(a) and 1197.1(a) civil penalties from Pedrazzani.

Atempa, 27 Cal. App. 5th at 817 (emphasis added).

As President of CourierRx, Conrad Doss is personally liable under Sections 558(a) and 1197.1(a) for civil penalties arising from the minimum and overtime wage violations suffered by Plaintiff and all other aggrieved drivers of CourierRx.

Violation of California Paid Sick Leave

Because Defendants misclassified Plaintiff and other couriers as independent contractors, Defendants failed to comply with California law requiring employers to provide paid sick leave and Workers Compensation to employees. All employers in California are required to provide paid sick leave to all employees, unless the employee is exempt from coverage as discussed above. Labor Code § 245.5(b). Employees who work in California for 30 or more days within a year from the commencement of employment are eligible for paid sick leave. Labor Code § 246. Plaintiff worked more than 30 days for Defendants and never accrued or was provided the required sick leave. None of his wage statements indicated accrual of the sick leave hours.

Failure to Provide Workers' Compensation Benefits

All California employers must provide workers' compensation benefits to their employees under California Labor Code Section 3700. Defendants failed to provide any workers' compensation benefits to Plaintiff or other couriers in violation of the Labor Code and workers' compensation provisions.

Civil Penalties

As a result of the foregoing, CourierRx, Doss and APS are liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other aggrieved couriers for CourierRx and APS are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Conclusion

CourierRx, Doss and APS violated and continue to violate the California law as described above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP

A handwritten signature in blue ink, appearing to read 'J. Bollinger', with a stylized flourish extending to the right.

Jeremy F. Bollinger

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is: 15300 Ventura Blvd, Suite 207, Sherman
Oaks, CA 91403. On October 14, 2020, I served the foregoing document(s) described as:

5 **SECOND AMENDED COMPLAINT**

6 on the interested party(ies) below, using the following means:

7 Barbra A. Arnold
8 Patricia Belton
9 Jeffer Mangels Butler & Mitchell LLP
10 1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
11 Email: BArnold@JMBM.com; pbelton@JMBM.com
ATTORNEYS FOR DEFENDANT COURRIERRX, LLC
and SNP PHARMACY, LLC

12 ☐ BY UNITED STATES MAIL. I enclosed the documents in a sealed envelope or package addressed to the
13 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
14 mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. On the same day that correspondence is placed
15 for collection and mailing, it is deposited in the ordinary course of business with the United States
Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

16 ☒ BY ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service
17 by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail
address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

18 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct.

20 Executed on November 5, 2020 at Los Angeles, California.

21 Lea Garbe

22 [Print Name of Person Executing Proof]



23 [Signature]