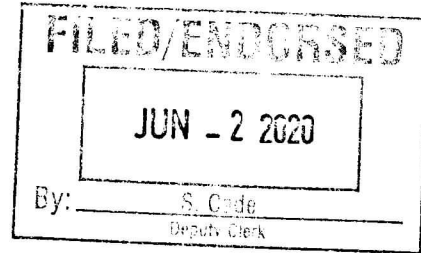


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12 Attorneys for Plaintiff,
13 DIANNE JULIAN and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SACRAMENTO**
(UNLIMITED JURISDICTION)

16 DIANNE JULIAN, on behalf of herself, all
17 others similarly situated, and the general
18 public, and as an "aggrieved employee" on
19 behalf of other "aggrieved employees" under
the Labor Code Private Attorneys General
Act of 2004,

20 *Plaintiff,*

21 vs.
22

23 RIGHT NOW COURIERS, LLC, a
California limited liability company; and
24 DOES 1-50, inclusive,

25 *Defendants.*
26

Case No.: 34-2020-00273797-CU-OE-GDS

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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1 Plaintiff, DIANNE JULIAN (hereafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendant RIGHT
5 NOW COURIERS, LLC, a California limited liability company, and Does 1-50, inclusive
6 (collectively "Defendants") for alleged violations of the California Labor Code, Industrial
7 Welfare Commission Order No. 9-2001 (hereafter "the Wage Order"), and the Business and
8 Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former California-based hourly drivers for unpaid wages
11 and other related relief. These claims are based on Defendants' alleged failures to (1) provide all
12 meal and rest periods in compliance with California law, (2) pay all wages earned for all hours
13 worked at the correct rates of pay, (3) provide accurate written wage statements, (4) timely pay
14 all final wages, and (5) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages
15 and related relief through this class and representative action.

16 JURISDICTION AND VENUE

17 3. This Court has subject matter jurisdiction because the aggregate claims of
18 Plaintiff and Class, inclusive of all relief, place more than \$25,000 in controversy.

19 4. There is no basis for federal question subject matter jurisdiction in this case.
20 Specifically, Plaintiff asserts claims on behalf of herself and Class that solely arise under
21 California law rather than federal law.

22 5. There is no basis for federal diversity jurisdiction in this case.

23 6. Venue is proper in Sacramento pursuant to California Code of Civil Procedure §
24 395(a) and § 395.5 because at least some of the transactions that are the subject matter of this
25 Complaint occurred therein and/or because each defendant is found, maintains offices, transacts
26 business, and/or has an agent therein.

27 PARTIES

28 7. Plaintiff DIANNE JULIAN is a resident of California. At all relevant times,
Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section
11090 and an "aggrieved employee" within the meaning of Labor Code Section 2699(c).

8. Defendant RIGHT NOW COURIERS, LLC is a limited liability company



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1 organized and existing under the laws of California and is citizen thereof.

2 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
3 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
4 is informed and believes and thereon alleges that said Defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
6 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
7 when ascertained.

8 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
9 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
10 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
11 and scope of such agency or employment and with the approval and ratification of each of the
12 other Defendants.

13 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
14 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
15 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
16 described class in accordance with applicable laws as alleged herein.

17 12. Plaintiff is informed and believes and thereon alleges that each and every one of
18 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
19 each acting as agents and/or employees, and/or under the direction and control of each of the other
20 Defendants, and that said acts and failures to act were within the course and scope of said agency,
21 employment, and/or direction and control.

22 CLASS ALLEGATIONS

23 13. This action has been brought and may be maintained as a class action pursuant to
24 California Code of Civil Procedure section 382 because there is a well-defined community of
25 interest among the persons who comprise the readily ascertainable class defined below and
26 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
27 a class action.

28 14. **Class Definition:** The Class is defined as follows: All California based persons
Defendants employed hourly as drivers and in comparable positions at any time during the period
beginning four years prior to the filing of this action and ending on the date that final judgment is
entered in this action ("Class" or "Class Members").



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1 15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
2 right to amend or modify the class definition with greater specificity, by further division into
3 subclasses and/or by limitation to particular issues.

4 16. **Numerosity:** The Class Members are so numerous that the individual joinder of
5 each individual Class Member is impractical. While Plaintiff does not currently know the exact
6 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
7 minimum required for numerosity under California laws.

8 17. **Commonality and Predominance:** Common questions of law and fact exist as to
9 all Class Members and predominate over any questions which affect only individual Class
10 Members. These questions include, but are not limited to:

11 A. Whether Defendants failed to provide the class with all meal and rest
12 periods in compliance with California law;

13 B. Whether Defendants failed to pay all wages earned to Class Members for
14 all hours worked at the correct rates of pay;

15 C. Whether Defendants knowingly and intentionally failed to provide the
16 class with accurate written wage statements;

17 D. Whether Defendants willfully failed to provide the class with timely final
18 wages;

19 E. Whether Defendants engaged in unfair competition within the meaning of
20 Business and Professions Code sections 17200, et seq., with respect to the class; and

21 F. Whether Class Members are entitled to restitution of money or property
22 that Defendants may have acquired from them through alleged Labor Code violations.

23 18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
24 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
25 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
26 Code, the Wage Order, and the Business and Professions Code.

27 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
28 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
Members. Plaintiff will fairly and adequately represent and protect the interests of Class
Members.



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20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

22. Defendants first employed Plaintiff in or around July of 2016 to work as a driver. Plaintiff worked for Defendants from the time of her hire until approximately June 29, 2019, when Defendants terminated her employment.

23. At all relevant times, Defendants provided courier services to other businesses and employed Plaintiff and the other Class Members to complete same day, next day, or emergency deliveries to banks, hospitals, laboratories, pharmacies, title companies, and post offices, among others. Plaintiff and the Class Members earned their wages at an hourly rate and Defendants issued their paychecks on a weekly basis.

24. At all relevant times, Plaintiff and the Class Members have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Defendants' timekeeping system automatically deducted thirty (30) minutes for meal periods, even though Plaintiff and the Class Members were not able to take off-duty meal breaks due to their workloads. Defendants encouraged their drivers to eat their meals while driving. Moreover,



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1 Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and
2 the Class Members with rest and/or meal periods.

3 25. At all relevant times, Defendants required Plaintiff and the Class Members to
4 work as "floaters" and remain on-call (aka stand-by) after a regular shift to accept additional
5 assignments. Such on-call shifts would generally last from about 6:00 p.m. (generally the time a
6 regular shift would end) to midnight. For example, Plaintiff regularly worked Monday through
7 Thursday from 12:00 p.m. – 6:00 p.m. and would be "on-call" from 6:00 p.m. to midnight. On
8 Fridays, Plaintiff would also be "on-call" for a third shift, from midnight to approximately 6:00
9 a.m. the next calendar day. However, Defendants did not pay Plaintiff and the Class Members
10 minimum, overtime, and doubletime wages for such stand-by time during which Defendants
11 required them to be available for such calls. Defendants was aware that Plaintiff and the other
12 Class Members were working regular, overtime, and doubletime hours while on stand-by.
13 Consequently, Defendants failed to pay Plaintiff and the other Class Members for all hours
14 worked at the correct rates of pay. Furthermore, such "on-call" shifts constitute a "report to work"
15 for which Plaintiff and the Class Members were entitled to be paid between two and four hours
16 of "reporting time wages" calculated at their regular rates of pay. Defendants failed to pay
17 Plaintiff and the Class Members the "reporting time" wages they were owed.

18 26. As a result of the practices described above, Defendants failed to provide Plaintiff
19 and the other Class Members with accurate wage statements that properly and accurately itemize
20 Plaintiff and the other Class Members' gross and net wages earned and the total hours worked.
21 As a further result, Defendants failed to timely pay Plaintiff and the other Class Members all
22 earned and unpaid wages during their employment.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS**

25 **(Lab. Code §§ 226.7 and 1198)**

26 **(By Plaintiff and the Class against all Defendants)**

27 27. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 28. At all relevant times during the applicable limitations period, Plaintiff and the
class have been employees of Defendants and entitled to the benefits and protections of
California Labor Code §§ 226.7, 1198, and the Wage Order.

29. Labor Code § 1198 states,



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1 "The maximum hours of work and the standard conditions of labor fixed
2 by the commission shall be the maximum hours of work and the standard
3 conditions of labor for employees. The employment of any employee for
4 longer hours than those fixed by the order or under conditions of labor
5 prohibited by the order is unlawful."

6 30. In relevant part, Section 12 of the Wage Order states:
7 Rest Periods:

8 (A) Every employer shall authorize and permit all employees
9 to take rest periods, which insofar as practicable shall be in the
10 middle of each work period. The authorized rest period time shall
11 be based on the total hours worked daily at the rate often (10)
12 minutes net rest time per four (4) hours or major fraction thereof.
13 However, a rest period need not be authorized for employees
14 whose total daily work time is less than three and one-half (3 1/2)
15 hours. Authorized rest period time shall be counted as hours
16 worked for which there shall be no deduction from wages.

17 (B) If an employer fails to provide an employee a rest period
18 in accordance with the applicable provisions of this Order, the
19 employer shall pay the employee one (1) hour of pay at the
20 employee's regular rate of compensation for each work day that
21 the rest period is not provided.

22 31. In addition, Labor Code Section 226.7 states

23 (b) An employer shall not require an employee to work during a meal
24 or rest or recovery period mandated pursuant to an applicable statute, or
25 applicable regulation, standard, or order of the Industrial Welfare
26 Commission, the Occupational Safety and Health Standards Board, or the
27 Division of Occupational Safety and Health.

28 (c) If an employer fails to provide an employee a meal or rest or
recovery period in accordance with a state law, including, but not limited
to, an applicable statute or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health, the
employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal
or rest or recovery period is not provided.

32. Pursuant to the Wage Order, Plaintiff and the Class were entitled to be provided
with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction
thereof.



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33. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Defendants required Plaintiff and the Class Members to work into and/or through their rest periods. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all rest breaks required by California law.

34. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

35. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

36. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

38. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

39. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”



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1 40. In relevant part, Labor Code Section 512 states

2 "An employer may not employ an employee for a work period of more
3 than five hours per day without providing the employee with a meal
4 period of not less than 30 minutes, except that if the total work period per
5 day of the employee is no more than six hours, the meal period may be
6 waived by mutual consent of both the employer and employee. An
7 employer may not employ an employee for a work period of more than
8 10 hours per day without providing the employee with a second meal
9 period of not less than 30 minutes, except that if the total hours worked
10 is no more than 12 hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal
12 period was not waived."

13 41. In relevant part, Section 11 of the Wage Order states:

14 Meal Periods:

15 (A) No employer shall employ any person for a work period of more
16 than five (5) hours without a meal period of not less than 30
17 minutes, except that when a work period of not more than six (6)
18 hours will complete the day's work the meal period may be
19 waived by mutual consent of the employer and the employee...

20 (B) If an employer fails to provide an employee a meal period in
21 accordance with the applicable provisions of this order, the
22 employer shall pay the employee one (1) hour of pay at the
23 employee's regular rate of compensation for each workday that
24 the meal period is not provided.

25 42. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for
27 each day they worked five or more hours. Pursuant to California Labor Code § 512, they were
28 also entitled to a second 30-minute meal period when they worked more than ten (10) hours in
a workday.

43. During the relevant time period, Defendants failed to provide Plaintiff and the
Class Members with timely, off-duty meal periods in accordance with California Labor Code §
512 and the Wage Order. Defendants' timekeeping system automatically deducted thirty (30)
minutes for meal periods, even though Plaintiff and the Class Members were not able to take
off-duty meal breaks due to their workloads. Defendants encouraged their drivers to eat their
meals while driving. Plaintiff is informed and believes and thereon alleges that, at relevant times
within the applicable limitations period, Defendants maintained a policy, practice, or a lack of



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1 a policy which resulted in Defendants not providing Plaintiff and the class with all timely meal
2 periods required by California Labor Code § 512 and the Wage Order.

3 44. Defendants failed to pay Plaintiff the additional wages required by California
4 Labor Code § 226.7 for all meal periods not provided to her. Plaintiff is informed and believes
5 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
6 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
7 providing the class with additional wages for all meal periods not provided to them as required
8 by California Labor Code § 226.7.

9 45. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
10 damages in amounts subject to proof to the extent they were not paid additional wages owed for
11 all meal periods not provided to them.

12 46. By reason of the above, Plaintiff and the members of the class are entitled to
13 premium wages for workdays in which one or more meal periods were not provided to them
14 pursuant to California Labor Code § 226.7.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

17 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

18 **(Plaintiff and the Class against Defendants)**

19 47. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

20 48. At all relevant times, Plaintiff and the other Class Members have been non-exempt
21 employees of Defendants and entitled to the benefits and protections of California Labor Code
22 sections 510, 1194, 1197, and 1198 and the Wage Order.

23 49. Section 2 of the Wage Order defines "hours worked" as "the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so."

26 50. Section 3 of the Wage Order states:

27 (A) Daily Overtime - General Provisions

28 (1) The following overtime provisions are applicable to employees 18 years of
age or over and to employees 16 or 17 years of age who are not required by law
to attend school and are not otherwise prohibited by law from engaging in the
subject work. Such employees shall not be employed more than eight (8) hours in
any workday or more than 40 hours in any workweek unless the employee



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1 receives one and one-half (1 ½) times such employee's regular rate of pay for all
2 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
3 a day's work. Employment beyond eight (8) hours in any workday or more than
4 six (6) days in any workweek is permissible provided the employee is
5 compensated for such overtime at not less than:

6 (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
7 worked in excess of eight (8) hours up to and including 12 hours in any workday,
8 and for the first eight (8) hours worked on the seventh (7th) consecutive day of
9 work in a workweek.

10 (b) Double the employee's regular rate of pay for all hours worked in excess of
11 12 hours in any workday and for all hours worked in excess of eight (8) hours on
12 the seventh (7th) consecutive day of work in a workweek.

13 (c) The overtime rate of compensation required to be paid to a nonexempt full-
14 time salaried employee shall be computed by using the employee's regular hourly
15 salary as one-fortieth (1/40) of the employee's weekly salary.

16 51. Section 4 of the Wage Order requires an employer to pay non-exempt employees
17 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
18 an employer has actual or constructive knowledge that employees are working.

19 52. Labor Code section 510 states:

20 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
21 in one workday and any work in excess of 40 hours in any one workweek and the
22 first eight hours worked on the seventh day of work in any one workweek shall
23 be compensated at the rate of no less than one and one-half times the regular rate
24 of pay for an employee. Any work in excess of 12 hours in one day shall be
25 compensated at the rate of no less than twice the regular rate of pay for an
26 employee. In addition, any work in excess of eight hours on any seventh day of a
27 workweek shall be compensated at the rate of no less than twice the regular rate
28 of pay of an employee. Nothing in this section requires an employer to combine
more than one rate of overtime compensation in order to calculate the amount to
be paid to an employee for any hour of overtime work.

53. Labor Code section 1194 invalidates any agreement between an employer and an
employee to work for less than the minimum wage required under the applicable Wage Order.

54. Labor Code section 1197 makes it unlawful for an employer to pay an employee
less than the minimum wage required under the applicable Wage Order for all hours worked
during a payroll period.

55. Labor Code section 1198 makes it unlawful for an employer to employ an



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1 employee under conditions that violate the Wage Order.

2 56. In conjunction, these provisions of the Labor Code require employers to pay non-
3 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
4 worked, including unrecorded hours when the employer knew or reasonably should have known
5 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
6 Cal.4th 575, 585.)

7 57. Reporting time pay provides wages to nonexempt employees who report to work
8 but are permitted to work less than half the hours of their regular shift. Employees must be paid
9 for half the usual or scheduled day's work, but in no event for less than two (2) hours or more
10 than four (4) hours, at their regular rate of pay. Wage Order, § 5(A); *Murphy v. Kenneth Cole*
11 *Prods., Inc.* (2007) 40 Cal. 4th 1094, 1111. Reporting time pay constitutes wages required by
12 law. *Kamar v. RadioShack Corp.*, No. CV 07-2252 AHM (AJWx), 2008 U.S. Dist. LEXIS
13 40581, at *15-16 (C.D. Cal. May 15, 2008) (citing *Murphy v. Kenneth Cole Prods., Inc.* (2007)
14 40 Cal. 4th 1094, 1111).

15 58. At all relevant times, Defendants knowingly failed to compensate Plaintiff and the
16 Class Members for all hours worked, including, but not limited to overtime for all hours in excess
17 of forty (40) in a week and in excess of eight (8) in a day, and doubletime wages for all hours in
18 excess of twelve (12) in a day, including on-call hours. Defendants failed to pay Plaintiff and the
19 Class Members at the correct rates of pay, including minimum, regular, overtime and double-time
20 rates, when Defendants directed them to work on standby.

21 59. Furthermore, at all relevant, Plaintiff and the Class Members worked "on-
22 call"/stand-by shifts. Such on-call shifts would generally last from about 6:00 p.m. (generally the
23 time a regular shift would end) to midnight. RNC was aware of this work, and therefore suffered
24 and/or permitted it. These on-call shifts constitute a "report to work" for which Plaintiff and the
25 class members were entitled to be paid between two and four hours of "reporting time wages"
26 calculated at their regular rates of pay. Defendants failed to pay Plaintiff and the Class Members
27 the "reporting time" wages they were owed.

28 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Class Members for all hours worked as required by



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1 California law.

2 61. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
3 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
4 the full amount of wages earned during each pay period during the applicable limitations period,
5 including minimum and overtime wages.

6 62. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
7 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
8 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
9 subject to proof.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

12 **(Lab. Code § 226)**

13 **(Plaintiff and the Class against all Defendants)**

14 63. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

15 64. At all relevant times during the applicable limitations period, Plaintiff and the
16 other Class Members have been employees of Defendants and entitled to the benefits and
17 protections of California Labor Code section 226.

18 65. Pursuant to California Labor Code section 226(a), Plaintiff and the other class
19 members were entitled to receive, semimonthly or at the time of each payment of wages, an
20 accurate itemized statement showing:

- 21 (1) Gross wages earned,
- 22 (2) Total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of overtime under
24 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 25 (3) The number of piece rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis,
- 27 (4) All deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item,
- (5) Net wages earned,
- (6) The inclusive dates of the period for which the employee is paid,
- (7) The name of the employee and his or her social security number, except



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1 that by January 1, 2008, only the last four digits of his or her social security number or an
2 employee identification number other than a social security number may be shown on the itemized
3 statement,

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

5 (9) All applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 66. Pursuant to California Labor Code section 226(e), an employee suffering injury as
8 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
9 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
11 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
12 is entitled to an award of costs and reasonable attorneys' fees.

13 67. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer
14 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
15 injury if the employer fails to provide accurate and complete information as required by California
16 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the
17 wage statement alone one or more of the following:

18 A. The amount of the gross wages or net wages paid to the employee during
19 the pay period or any of the other information required to be provided on the itemized wage
20 statement pursuant to California Labor Code section 226(a);

21 B. Which deductions the employer made from gross wages to determine the
22 net wages paid to the employee during the pay period;

23 C. The name and address of the employer and, if the employer is a farm labor
24 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
25 and address of the legal entity that secured the services of the employer during the pay period;
26 and

27 D. The name of the employee and only the last four digits of his or her social
28 security number or an employee identification number other than a social security number.

68. "Promptly and easily determine," as stated in California Labor Code section
226(e), means a reasonable person would be able to readily ascertain the information without
reference to other documents or information.



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1 69. As alleged herein, Defendants failed to provide Plaintiff and the other Class
2 Members minimum, overtime, and doubletime wages for stand-by time during which Defendants
3 required them to be available for work. Defendants failed to provide Plaintiff and the other Class
4 Members with all meal and rest periods in compliance with California law. Defendants also failed
5 to provide Plaintiff and the other Class Members with premium wages on workdays they failed
6 to provide them with one or more meal or rest periods in compliance with California law.
7 Defendants knowingly and intentionally did not state this worktime and wages earned on the
8 itemized wage statements it issued to Plaintiff and the Class Members. As a result, Defendants
9 have failed to properly itemize Plaintiff and the other Class Members' gross and net wages earned,
10 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
11 rate, and other requirements of California Labor Code § 226. As a result, Defendants have violated
12 California Labor Code § 226.

13 70. Defendants' failure to provide Plaintiff and the other Class Members with accurate
14 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
15 the other Class Members with accurate wage statements but intentionally provided wage
16 statements that Defendants knew were not accurate.

17 71. As a result of being provided with inaccurate wage statements by Defendants,
18 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
19 wage statements were violated and they were misled about the amount of wages they had actually
20 earned and were owed. In addition, the absence of accurate information on their wage statements
21 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
22 and mathematical computations to determine the amounts of wages owed, has caused difficulty
23 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
24 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
25 and the other Class Members were not able to ascertain from the wage statements whether
26 Defendants complied with their obligations under California Labor Code section 226(a).

27 72. Pursuant to California Labor Code section 226(e), Plaintiff and the other class
28 members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
for the initial pay period in which a violation of California Labor Code section 226(a) occurred
and one hundred dollars for each violation of California Labor Code section 226(a) in a
subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per



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1 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

2 73. Accordingly, with respect to this cause of action, on behalf of herself and the other
3 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
4 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
5 proof.

6 **FIFTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(Bus. & Prof. Code §§ 17200, et seq.)**

9 **(Plaintiff and the Class against all Defendants)**

10 74. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

11 75. At all relevant times during the applicable limitations period, Plaintiff and the
12 other Class Members have been employees of Defendants and entitled to the benefits and
13 protections of the Business and Professions Code sections 17200, et seq.

14 76. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code sections 17200,
16 et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
17 unfairly gained a competitive advantage over other comparable companies doing business in
18 California that comply with their legal obligations to, among other things, pay their employees
19 premium wages for workdays in which they did not provide employees with one or more meal
20 and rest periods, and pay them all earned wages for all regular, overtime, and doubletime hours
21 worked, including on-call hours.

22 77. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
23 other Class Members have suffered injuries in fact and lost money or property. Defendants
24 deprived Plaintiff and the other Class Members of minimum, overtime, doubletime, and premium
25 wages.

26 78. Pursuant to California Business & Professions Code section 17203, Plaintiff and
27 the other Class Members are entitled to restitution of all monies rightfully belonging to them that
28 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
and unfair business practices.

79. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
connection with their unfair competition claims pursuant to California Code of Civil Procedure



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1 section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

2 **SIXTH CAUSE OF ACTION**

3 **CIVIL PENALTIES**

4 **(Plaintiff and the Class against all Defendants)**

5 80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 81. The "Aggrieved Employees" are all members of the Class defined above who
7 Defendants employed during the period beginning January 17, 2019 and ending on the date that
8 final judgment is entered in this action.

9 82. Labor Code § 204 states

10 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
11 or 204.2, earned by any person in any employment are due and payable twice
12 during each calendar month, on days designated in advance by the employer as the
13 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
14 calendar month shall be paid for between the 16th and the 26th day of the month
15 during which the labor was performed, and labor performed between the 16th and
16 the last day, inclusive, of any calendar month, shall be paid for between the 1st
17 and 10th day of the following month. ...

18 (b) (1) Notwithstanding any other provision of this section, all wages
19 earned for labor in excess of the normal work period shall be paid no later than the
20 payday for the next regular payroll period.

21 (2) An employer is in compliance with the requirements of subdivision (a) of
22 Section 226 relating to total hours worked by the employee, if hours worked in
23 excess of the normal work period during the current pay period are itemized as
24 corrections on the paystub for the next regular pay period. Any corrections set out
25 in a subsequently issued paystub shall state the inclusive dates of the pay period
26 for which the employer is correcting its initial report of hours worked.

27 (c) However, when employees are covered by a collective bargaining
28 agreement that provides different pay arrangements, those arrangements shall
29 apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment
of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
more than seven calendar days following the close of the payroll period.

83. Defendants paid wages to employees on regular intervals. Defendants failed to pay
Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for



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1 all wages earned and all hours worked.

2 84. During the applicable time period, Defendants violated California Labor Code §§
3 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

4 85. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
5 behalf of him or herself and other current or former employees, to bring a civil action to recover
6 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

7 86. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
8 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable
10 limitations period in the following amounts:

11 A. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
13 (\$200.00) for each Aggrieved Employee (penalty amounts established by California Labor Code
14 § 210).

15 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
16 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
17 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
18 California Labor Code § 226.3).

19 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
20 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
21 each Aggrieved Employee for each subsequent violation per pay period (penalty amounts
22 established by California Labor Code § 558).

23 D. For violations of California Labor Code § 1174, five hundred dollars
24 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
25 California Labor Code § 1174.5).

26 E. For violations of California Labor Code § 1197, one hundred dollars
27 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
28 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
(regardless of whether the initial violations were intentionally committed), in addition to an
amount sufficient to recover unpaid wages (penalty amounts established by California Labor
Code § 1197.1).



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1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
2 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
3 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
4 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

5 87. Plaintiff has complied with the procedures for bringing suit specified in California
6 Labor Code § 2699.3. By letter dated January 17, 2020, Plaintiff filed written notice online with
7 the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified
8 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
9 violated, including the facts and theories to support the alleged violations. A true and correct copy
10 of the notice to the LWDA dated January 17, 2020 is attached as Exhibit A. Plaintiff accompanied
11 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
12 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
13 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
14 these allegations.

15 88. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
16 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
17 connection with their claims for civil penalties.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
20 relief and judgment against Defendants as follows:

- 21 A. An order that the action be certified as a class action;
- 22 B. An order that Plaintiff be appointed class representative;
- 23 C. An order that counsel for Plaintiff be appointed class counsel;
- 24 D. Unpaid Wages;
- 25 E. Actual Damages;
- 26 F. Statutory Damages;
- 27 G. Liquidated Damages;
- 28 H. Restitution;
- I. Declaratory and injunctive relief;
- J. Equitable relief;
- K. Pre-judgment interest;



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- 1 L. Statutory penalties;
2 M. Civil penalties;
3 N. Costs of suit;
4 O. Interest;
5 P. Reasonable attorneys' fees; and
6 Q. Such other relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
9 on all issues so triable.

10 Respectfully submitted,

THE SPIVAK LAW FIRM

11 Dated: March 24, 2020

12 By



13 DAVID SPIVAK
14 MARALLE MESSRELIAN
15 Attorneys for Plaintiff, DIANNE JULIAN, and
16 all others similarly situated
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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

January 17, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Dianne Julian/Right Now Couriers, LLC*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Dianne Julian (hereafter "Julian") provides notice on behalf of herself and all individuals currently and formerly employed in California as drivers, and other comparable positions (hereafter referred to as "Aggrieved Employees"), by Right Now Couriers, LLC, a California limited liability company, (hereafter "RNC") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, and 1198.

At all relevant times, RNC has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Julian and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter "the Wage Order"), section 2, subdivision (F), and "Aggrieved Employees" within the meaning of California Labor Code § 2699(c).

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Statement of Facts

RNC first employed Julian in or around July 2016 to work as a driver in Fresno, California. Julian worked at RNC from the time of her hire until approximately June 29, 2019, when RNC terminated her employment.

At all relevant times, RNC provided courier services to other businesses and employed Julian and the other Aggrieved Employees to complete same day, next day, or emergency deliveries to banks, hospitals, laboratories, pharmacies, title companies, and post offices, among others. At all relevant times, RNC paid Julian and the other Aggrieved Employees on a weekly basis at an hourly rate of pay. At all relevant times, RNC classified Julian and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Julian and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, RNC failed to provide Julian and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. RNC's timekeeping system automatically deducted thirty (30) minutes for meal periods, even though Julian and the Aggrieved Employees were not able to take off-duty meal breaks due to their workloads. RNC encouraged its drivers to eat their meals while driving. Moreover, RNC failed to pay premium wages for days on which it failed to provide Julian and the Aggrieved Employees with rest and/or meal periods.

At all relevant times, RNC required Julian and the Aggrieved Employees to work as "floaters" and remain on-call (aka stand-by) after a regular shift to accept additional assignments. Such on-call shifts would generally last from about 6:00 p.m. (generally the time a regular shift would end) to midnight. For example, Julian regularly worked Monday through Thursday from 12:00 p.m. – 6:00 p.m. and would be "on-call" from 6:00 p.m. to midnight. On Fridays, Julian would also be "on-call" for a third shift, from midnight to approximately 6:00 a.m. the

next calendar day. However, RNC did not pay Julian and the Aggrieved Employees minimum, overtime, and doubletime wages for such on-call/stand-by time during which RNC required them to be available for such calls. RNC was aware that Julian and the other Aggrieved Employees were working regular, overtime, and doubletime hours while on stand-by. Consequently, RNC failed to pay Julian and the other Aggrieved Employees for all hours worked at the correct rates of pay. Moreover, such "on-call" shifts constituted a "report to work" for which Julian and the Aggrieved Employees were entitled to be paid between two and four hours of "reporting time wages" calculated at their regular rates of pay, as discussed more fully below.

As a result of the practices described above, RNC failed to provide Julian and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Julian and the other Aggrieved Employees' gross and net wages earned and the total hours worked. As a further result, RNC failed to timely pay Julian and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

For the reasons herein, Julian alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and Aggrieved Employees:

- a) RNC failed to pay Julian and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum, overtime and doubletime wages;
- b) RNC failed to pay Julian and the Aggrieved Employees the "reporting time" wages they were owed;
- c) RNC failed to provide Julian and the Aggrieved Employees with all meal periods;
- d) RNC failed to pay Julian and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;

- e) RNC failed to provide Julian and Aggrieved Employees with all rest breaks;
- f) RNC failed to pay Julian and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- g) RNC failed to provide Julian and the Aggrieved Employees with accurate itemized wage statements;
- h) RNC failed to timely pay Julian and the Aggrieved Employees all earned and unpaid wages during their employment at RNC and at the time such employment ended; and
- i) RNC failed to maintain accurate employment records.

Accordingly, Julian now seeks civil penalties on behalf of herself and Aggrieved Employees based on RNC's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Transportation Industry" to include:

"any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles."

§ 2(P). At all relevant times during the applicable limitations period, RNC provided transportation services to its customers. Accordingly, Julian and the

Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "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."

In relevant part, section 2 of the Wage Order states,

"Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for

an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

At all relevant times during the applicable limitations period, RNC knowingly failed to compensate Julian and the other Aggrieved Employees for all hours worked, including, but not limited to overtime wages and doubletime wages for

all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in a day, including on-call hours. RNC failed to pay Julian and the other Aggrieved Employees at the correct rates of pay, including minimum, regular, overtime and double-time rates, when RNC directed them to work on standby.

Accordingly, Julian now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

///

Failure to Pay "Reporting Time Pay"
(Lab. Code § 1198)

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Reporting time pay provides wages to nonexempt employees who report to work but are permitted to work less than half the hours of their regular shift. Employees must be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours or more than four (4) hours, at their regular rate of pay. Wage Order, § 5(A); *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1111. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, the employee must be paid for 2 hours at the employee's regular rate of pay. *Id.*, § 5(B). Reporting time pay is not counted as hours worked for purposes of determining overtime. *See* DLSE Policies and Interpretations Manual §46.7.3. California's reporting time pay is penalty pay intended to compensate employees for the inconvenience and expense of setting aside their day for this particular employer, foregoing other employment opportunities, arranging transportation, child and elder care, and reporting to work when no work was available. Reporting time pay constitutes wages required by law. *Kamar v. RadioShack Corp.*, No. CV 07-2252 AHM (AJWx), 2008 U.S. Dist. LEXIS 40581, at *15-16 (C.D. Cal. May 15, 2008) (citing *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1111).

As described above, at all relevant times during the applicable limitations period, Julian and the other Aggrieved Employees worked "on-call"/stand-by shifts. Such on-call shifts would generally last from about 6:00 p.m. (generally the time a regular shift would end) to midnight. RNC was aware of this work, and therefore suffered and/or permitted it. These on-call shifts constitute a "report to work" for which Julian and Aggrieved Employees were entitled to be paid between two and four hours of "reporting time wages" calculated at their regular rates of pay.

Accordingly, on behalf of herself and the Aggrieved Employees, Julian seeks

against RNC civil penalties as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

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 30 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. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, 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 the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not

more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, 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 the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) 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.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the

Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, at all relevant times during the applicable time period, RNC failed to provide Julian and the Aggrieved Employees with all duty-free meal periods. RNC's timekeeping system automatically deducted thirty (30) minutes for meal periods, even though Julian and the Aggrieved Employees were not able to take off-duty meal and rest breaks due to their workloads. RNC encouraged its drivers to eat their meals while driving. Moreover, RNC failed to compensate Julian and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely meal periods as provided by California law.

Accordingly, Julian seeks civil penalties for these Labor Code violations that RNC has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition

to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized

rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest 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 work day that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, at all relevant times during the applicable limitations period, RNC failed to provide Julian and the Aggrieved Employees with all duty-free rest periods. RNC required Julian and the Aggrieved Employees to work into and/or through their rest periods. Moreover, RNC failed to compensate Julian and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Julian seeks civil penalties for these Labor Code violations that RNC has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

RNC did not pay Julian and the Aggrieved Employees minimum, overtime, and doubletime wages for stand-by time during which RNC required them to be available for work. RNC failed to provide Julian and the Aggrieved Employees with all meal and rest periods in compliance with California law. RNC also failed to provide Julian and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. RNC knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Julian and the Aggrieved Employees. As a result, RNC has failed to properly itemize Julian and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, RNC has violated California Labor Code § 226.

Accordingly, Julian seeks civil penalties for the Labor Code violations that RNC has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

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

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As a result of the above described violations, including its failures to pay Julian and the Aggrieved Employees all minimum, overtime, double time and premium wages within the time periods set by California Labor Code section 204, RNC failed to timely pay all wages due during employment.

Accordingly, Julian now seeks civil penalties for the Labor Code violations that RNC has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, 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.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, 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.

RNC did not pay Julian and the Aggrieved Employees minimum, overtime, and doubletime wages for stand-by time during which RNC required them to be available for work. RNC failed to provide Julian and the Aggrieved Employees with meal and rest periods in compliance with California law. RNC also failed to provide Julian and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, doubletime, and premium wages earned to Julian and the Aggrieved Employees at the time of termination, RNC is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Julian now seeks civil penalties for these Labor Code violations that RNC has committed against her and the other Aggrieved Employees as follows:

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));

2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be

provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

As a result of the above described violations, RNC failed to maintain accurate records of Julian and the Aggrieved Employees' total hours worked, rate of compensation for the hours worked, and gross and net wages paid for each pay period.

Accordingly, Julian seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Maralle Messrelian, Esq.
maralle@spivaklaw.com

cc: Dianne Julian
Walter Haines, Esq.

Right Now Couriers, LLC
c/o Mike Richards, agent for service of process
96 S. West Ave.
Fresno, CA 93706

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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

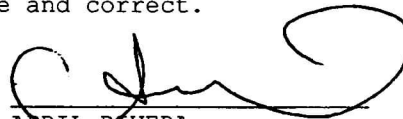
On Tuesday, March 24, 2020, I served the foregoing document described as **CLASS ACTION FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Michael S. Helsley, Esq.
Stephanie Hosman, Esq.
Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, CA 93270
mhelsley@wjhattorneys.com
shosman@wjhattorneys.com

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address april@spivaklaw.com.

EXECUTED on Tuesday, March 24, 2020, at Encino, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


APRIL RIVERA