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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 VICTOR MBISE, on behalf of the State of
15 California, as a private attorney general,

16 Plaintiff,

17 vs.

18 AXLEHIRE, INC., a Corporation; and
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. **RG20075115**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802, California
Code of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B).

ENDORSED

FILED

ALAMEDA COUNTY

SEP 24 2020

CLERK OF THE SUPERIOR COURT

By *Chobins*

Deputy

1 Plaintiff Victor Mbise ("PLAINTIFF"), on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Axlehire, Inc. (referred to as
8 "DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California**
11 **Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and
16 sole nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA –
19 that is, penalties and any other relief the Court deems proper pursuant to the PAGA.
20 Nothing in this complaint should be construed as attempting to obtain any relief that would
21 not be available in a PAGA-only action.

22 4. Defendant Axlehire, Inc. ("DEFENDANT") in order to service customers hires
23 workers to aid DEFENDANT in providing grocery shopping and delivery services to their
24 clients. The cost, as proscribed by law, of the personnel hired to work for DEFENDANT,
25 includes not only the pay of these employees but the cost of the employer's share of tax
26 payments to the federal and state governments for income taxes, social security taxes, medicare
27 insurance, unemployment insurance and payments for workers' compensation insurance. To
28 avoid the payment of these legally proscribed expenses to the fullest extent possible,

1 DEFENDANT devised a scheme to place the responsibility for the payment of these costs and
2 expenses of DEFENDANT on the shoulders of PLAINTIFF and other employees. As
3 employer, DEFENDANT is legally responsible for the payment of all these expenses.

4 5 **THE PARTIES**

6 5. DEFENDANT at all relevant times mentioned herein conducted and continues
7 to conduct substantial and regular business in the State of California.

8 6. DEFENDANT provides courier services. The Company offers hauling,
9 merchandising, same day shipping, as well as shipping services for refrigerated loads, parcels,
10 and pallets.

11 7. PLAINTIFF worked for DEFENDANT as a Courier from March of 2020 to April
12 24, 2020 and was classified by DEFENDANT as an independent contractor during his entire
13 employment with DEFENDANT.

14 8. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
15 or employer to engage in . . . [w]illful misclassification of an individual as an independent
16 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
17 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
18 each violation, in addition to any other penalties or fines permitted by law.” It is further
19 provided that, in the event that an employer is found to have engaged in “a pattern or practice
20 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
21 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
22 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

23 9. Here, DEFENDANT has willfully misclassified PLAINTIFF and other Couriers
24 as described in Cal. Labor Code § 226.8 and Section 2750.3 *et seq.*, and further, that
25 DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated by the
26 California Labor Code. PLAINTIFF was not free from the control and direction of
27 DEFENDANT in connection with the performance of the work, both under the contract for the
28 performance of the work and in fact. PLAINTIFF performed work that was not outside the

1 usual course of the DEFENDANT's business, which is courier services. Further, PLAINTIFF
2 was not customarily engaged in an independently established trade, occupation, or business of
3 the same nature as that involved in the work performed.

4 10. Upon hire, the position of a Courier was represented by DEFENDANT to
5 PLAINTIFF and the other Couriers as an independent contractor position capable of paying a
6 flat rate per assignment. PLAINTIFF and other Couriers were not compensated overtime wages
7 for any of their time spent working in excess of eight (8) hours in a workday, twelve (12) hours
8 in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and other Couriers were
9 paid the flat rate to perform shopping and delivery services on DEFENDANT's behalf
10 regardless of how long they worked. PLAINTIFF and other Couriers were not compensated any
11 other wages besides the non-negotiable service fee per delivery and they were not allowed to
12 record their time while they waited for DEFENDANT to give them work. DEFENDANT did
13 not pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the time spent driving to and
14 from stores, to and from customers' homes, and all the other non-shopping or non-delivery work
15 tasks. The finite set of tasks required to be performed by the Couriers is, when notified via cell
16 phone, travel to stores, pick up the product requested by customers, and deliver said items to
17 DEFENDANT's customers all in accordance with DEFENDANT's business practices and
18 policies.

19 11. To perform their job duties, PLAINTIFF and the other Couriers performed work
20 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
21 complete control over the work performed and the manner and means in which the work was
22 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
23 as to how to perform the driving services.

24 12. California Labor Code § 3357 defines "employee" as "every person in the service
25 of an employer under any appointment or contact of hire or apprenticeship, express or implied,
26 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
27 Code's presumption that workers are employees, the California Supreme Court has determined
28 the most significant factor to be considered in distinguishing an independent contractor from

1 an employee is whether the *employer or principal has control or the right to control the work*
2 *both as to the work performed and the manner and means in which the work is performed.*

3 DEFENDANT heavily controlled both the work performed and the manner and means in which
4 the PLAINTIFF and the other Couriers performed their work in that:

5 (a) PLAINTIFF and other Couriers were not involved in a distinct business,
6 but instead were provided with instructions as to how to perform their work and the manner and
7 means in which the work was to be performed by means of DEFENDANT's manuals and
8 written instructions;

9 (b) PLAINTIFF and other Couriers were continuously provided with training
10 and supervision, including following DEFENDANT's company documents and received
11 training from DEFENDANT as to how and in what way to perform the courier services;

12 (c) DEFENDANT set the requirements as to what policies and procedures all
13 of the Couriers were to follow;

14 (d) PLAINTIFF and other Couriers had no opportunity for profit or loss
15 because DEFENDANT only paid these workers a flat rate per assignment. DEFENDANT
16 controlled and assigned the Couriers which tasks were to be performed;

17 (e) PLAINTIFF and other Couriers performed shopping and delivery services
18 which are part of DEFENDANT's principal business and is closely integrated with and essential
19 to the employer's business of providing courier services to their customers;

20 (f) PLAINTIFF and other Couriers performed the work themselves and did
21 not hire others to perform their work for them;

22 (g) PLAINTIFF and other Couriers did not have the authority to make
23 employment-related personnel decisions;

24 (h) PLAINTIFF and other Couriers performed their work in a particular order
25 and sequence in accordance with DEFENDANT's company policy; and,

26 (i) DEFENDANT had the "right" to control every critical aspect of
27 DEFENDANT's delivery operations in that DEFENDANT provided the customer, assigned
28 where the Couriers were to go, and step-by-step instructions to PLAINTIFF and other Couriers

1 as to the entire process of picking up and dropping off goods at their assigned locations.
2 PLAINTIFF and other Couriers provided delivery services ONLY for DEFENDANT's
3 customers, which DEFENDANT controlled via the company's mobile application.

4 13. As a result, stripped of all the legal fictions and artificial barriers to an honest
5 classification of the relationship between PLAINTIFF and all the other Couriers on the one
6 hand, and DEFENDANT on the other hand, PLAINTIFF and all the other Couriers are and were
7 employees of DEFENDANT and not independent contractors of DEFENDANT and should
8 therefore be properly classified as non-exempt, hourly employees.

9 14. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, brings this Representative Action on behalf of the State of California with respect to
12 himself and all individuals who are or previously were employed by DEFENDANT in
13 California as Couriers and who were classified as independent contractors ("AGGRIEVED
14 EMPLOYEES") during the time period of June 18, 2019 until a date as determined by the Court
15 (the "PAGA PERIOD").

16 15. As a matter of company policy, practice and procedure, DEFENDANT has
17 unlawfully, unfairly and/or deceptively classified every AGGRIEVED EMPLOYEE as
18 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
19 and state laws that require payment for all time worked, business expenses, and the employer's
20 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
21 and state governments and the AGGRIEVED EMPLOYEES, PLAINTIFF and the
22 AGGRIEVED EMPLOYEES were underpaid throughout their employment with
23 DEFENDANT.

24 16. The true names and capacities, whether individual, corporate, associate or
25 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
26 to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal.
27 Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that
28 each of the Defendants designated herein is legally responsible in some manner for the unlawful

1 acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect
2 the true names and capacities of the Defendants when they have been ascertained and become
3 known.

4 17. The agents, servants and/or employees of the Defendants and each of them
5 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
6 as the agent, servant and/or employee of the Defendants, and personally participated in the
7 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
8 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
9 all Defendants are jointly and severally liable to the PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
11 agents, servants and/or employees.

12 **THE CONDUCT**

13 18. The finite set of tasks required of PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES as defined by DEFENDANT was executed by them through the performance of
15 non-exempt labor.

16 19. Although PLAINTIFF and the other AGGRIEVED EMPLOYEES performed
17 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
18 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
19 by which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors"
20 exempt from compensation for overtime worked, meal breaks and rest breaks, and
21 reimbursement for business related expenses. By reason of this uniform misclassification, the
22 AGGRIEVED EMPLOYEES were also required to pay DEFENDANT's share of payroll taxes
23 and mandatory insurance premiums. As a result of this uniform misclassification practice,
24 policy and procedure applicable to PLAINTIFF and the other AGGRIEVED EMPLOYEES
25 who performed this work for DEFENDANT, DEFENDANT engaged in a company-wide
26 policy, practice and procedure which uniformly failed to properly classify PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES as employees and thereby failed to pay them wages for all
28 time worked, reimbursement of business related expenses, failed to provide them with meal and

1 rest breaks, and failed to reimburse these employees for the employer's share of payroll taxes
2 and mandatory insurance. The proper classification of these employees is DEFENDANT's
3 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
4 burden, DEFENDANT violated the California Labor Code and regulations promulgated
5 thereunder as herein alleged.

6 20. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
8 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
9 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
10 for more than five (5) hours during some shifts without receiving a meal break. Further,
11 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
12 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
13 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
14 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
15 and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT
16 failed to maintain adequate staffing levels while increasing the production levels for each
17 employee at the busy work sites they provided services for.

18 21. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were also required from time to time to work in excess of four (4) hours without being provided
20 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
22 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
24 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
26 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
28 DEFENDANT and DEFENDANT's managers.

1 22. DEFENDANT, as a matter of law, has the burden of proving that employees are
2 properly classified and that DEFENDANT otherwise complies with applicable laws.
3 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
4 AGGRIEVED EMPLOYEES as independent contractors.

5 23. PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were uniformly
6 classified and treated by DEFENDANT as independent contractors at the time of hire and
7 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
8 the AGGRIEVED EMPLOYEES are properly classified under the applicable Industrial Welfare
9 Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable labor
10 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and
11 AGGRIEVED EMPLOYEES in compliance with California labor laws, DEFENDANT's
12 practices violated and continue to violate California law. In addition, DEFENDANT acted
13 deceptively by falsely and fraudulently classifying PLAINTIFF and each AGGRIEVED
14 EMPLOYEE as independent contractors when DEFENDANT knew or should have known that
15 this classification was false and not based on known facts. In doing so, DEFENDANT cheated
16 the competition by paying the AGGRIEVED EMPLOYEES less than the amount competitors
17 paid who complied with the law and cheated the AGGRIEVED EMPLOYEES by not paying
18 them in accordance with California law.

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

1 be unlawful."

2 25. In the course of their employment PLAINTIFF and other AGGRIEVED
3 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
4 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
5 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
6 the personal cellular phones for DEFENDANT's benefit. In order to work as a Courier for
7 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use
8 DEFENDANT's mobile application and as such it is mandatory to have a cell phone that is
9 compatible with DEFENDANT's mobile application. As a result, in the course of their
10 employment with DEFENDANT PLAINTIFF and other AGGRIEVED EMPLOYEES incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to the use
12 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Further,
13 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not reimbursed or indemnified
14 by DEFENDANT for the cost associated with using their personal vehicles while performing
15 for DEFENDANT. Moreover, PLAINTIFF and other AGGRIEVED EMPLOYEES were also
16 required from time to time to pay for parking costs at certain shopping centers and delivery
17 locations. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and
18 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included,
19 but were not limited to, costs related to travel all on behalf of and for the benefit of
20 DEFENDANT.

21 26. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
22 employees with an accurate itemized wage statement in writing showing, among other things,
23 gross wages earned and all applicable hourly rates in effect during the pay period and the
24 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
25 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
26 gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to
27 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
28 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and

1 the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code
2 § 226.

3 27. By reason of this conduct applicable to PLAINTIFF and all the AGGRIEVED
4 EMPLOYEES, DEFENDANT engaged in a company-wide policy, practice and procedure
5 which failed to correctly classify PLAINTIFF and the AGGRIEVED EMPLOYEES as
6 employees. The proper classification of these employees is DEFENDANT's burden. As a result
7 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
8 failed to pay all required wages for work performed by PLAINTIFF and other AGGRIEVED
9 EMPLOYEES and violated the California Labor Code and regulations promulgated thereunder
10 as herein alleged.

11 28. All of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
13 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
14 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
15 AJDAR 12157 (Certified for Publication 12/19/18).

16
17
18 **JURISDICTION AND VENUE**

19 29. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10.

21 30. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
22 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its
23 principal offices and facilities in this County and/or conducts substantial business in this
24 County, and (ii) committed the wrongful conduct herein alleged in this County against
25 PLAINTIFF and the AGGRIEVED EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

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

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

17 33. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to
20 himself and all individuals who are or previously were employed by DEFENDANT in
21 California as Couriers and who were classified as independent contractors ("AGGRIEVED
22 EMPLOYEES") during the time period of June 18, 2019 until a date as determined by the Court
23 (the "PAGA PERIOD").

24 34. On June 18, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
25 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
26 the specific provisions of this code alleged to have been violated as required by Labor Code §
27 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The
28 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.

1 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
2 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
3 to all AGGRIEVED EMPLOYEES as herein defined.

4 35. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
8 to pay overtime wages, (e) failed to pay wages when due, and (f) failed to reimburse employees
9 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
10 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
11 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
12 (B) and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
13 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
14 Code Private Attorney General Act of 2004 as the representative of the State of California for
15 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

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

20 1. On behalf of the State of California and with respect to all AGGRIEVED
21 EMPLOYEES:

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

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

25 ///

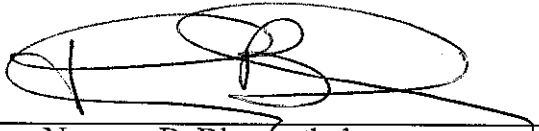
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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.
2

3 Dated: September 23, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

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6 By: 

Norman B. Blumenthal
Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

June 18, 2020

CA2161

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Axlehire, Inc.
Certified Mail #70191120000066524684
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Axlehire, Inc. in California and classified as independent contractors and/or non-exempt employees during the time period of June 18, 2019 until a date as determined by the Court. Our offices represent Plaintiff Victor Mbise (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Axlehire, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a independent contractor from March of 2020 to April 24, 2020. At all times, Plaintiff was entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As independent contractors, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment or all time worked under Defendant’s control. Regardless of Defendant’s classification of Plaintiff and Aggrieved Employees, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s

usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF ALAMEDA**

10 VICTOR MBISE, an individual, on behalf
11 of himself, on behalf of all persons similarly
situated,

12 Plaintiff,

13 vs.

14 AXLEHIRE, INC., a Corporation; and
15 DOES 1 through 50, inclusive,

16 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 & 1198, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Victor Mbase ("PLAINTIFF"), an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 his own acts and knowledge, the following:

4 5 **INTRODUCTION**

6 1. Defendant Axlehire, Inc. ("DEFENDANT") in order to service customers hires
7 workers to aid DEFENDANT in providing grocery shopping and delivery services to their
8 clients. The cost, as proscribed by law, of the personnel hired to work for DEFENDANT,
9 includes not only the pay of these employees but the cost of the employer's share of tax
10 payments to the federal and state governments for income taxes, social security taxes, medicare
11 insurance, unemployment insurance and payments for workers' compensation insurance. To
12 avoid the payment of these legally proscribed expenses to the fullest extent possible,
13 DEFENDANT devised a scheme to place the responsibility for the payment of these costs and
14 expenses of DEFENDANT on the shoulders of PLAINTIFF and other employees. As
15 employer, DEFENDANT is legally responsible for the payment of all these expenses. This
16 lawsuit is brought on behalf of these Shoppers who worked for DEFENDANT in California and
17 were classified as independent contractors, in order to collect the wages due them as employees
18 of DEFENDANT, the cost of the employer's share of payments to the federal and state
19 governments for income taxes, social security taxes, medicare insurance, unemployment
20 insurance and payments for workers' compensation insurance, plus penalties and interest.

21 22 **THE PARTIES**

23 2. DEFENDANT at all relevant times mentioned herein conducted and continues
24 to conduct substantial and regular business in the State of California.

25 3. DEFENDANT provides courier services. The Company offers hauling,
26 merchandising, same day shipping, as well as shipping services for refrigerated loads, parcels,
27 and pallets.

28 4. PLAINTIFF worked for DEFENDANT as a Courier from March of 2020 to April

1 24, 2020 and was classified by DEFENDANT as an independent contractor during his entire
2 employment with DEFENDANT.

3 5. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
4 or employer to engage in . . . [w]illful misclassification of an individual as an independent
5 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
6 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
7 each violation, in addition to any other penalties or fines permitted by law.” It is further
8 provided that, in the event that an employer is found to have engaged in “a pattern or practice
9 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
10 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
11 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

12 6. Here, DEFENDANT has willfully misclassified PLAINTIFF and other Couriers
13 as described in Cal. Labor Code § 226.8 and Section 2750.3 *et seq.*, and further, that
14 DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated by the
15 California Labor Code. PLAINTIFF was not free from the control and direction of
16 DEFENDANT in connection with the performance of the work, both under the contract for the
17 performance of the work and in fact. PLAINTIFF performed work that was not outside the
18 usual course of the DEFENDANT’s business, which is courier services. Further, PLAINTIFF
19 was not customarily engaged in an independently established trade, occupation, or business of
20 the same nature as that involved in the work performed.

21 7. Upon hire, the position of a Courier was represented by DEFENDANT to
22 PLAINTIFF and the other Couriers as an independent contractor position capable of paying a
23 flat rate per assignment. PLAINTIFF and other Couriers were not compensated overtime wages
24 for any of their time spent working in excess of eight (8) hours in a workday, twelve (12) hours
25 in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and other Couriers were
26 paid the flat rate to perform shopping and delivery services on DEFENDANT’s behalf
27 regardless of how long they worked. PLAINTIFF and other Couriers were not compensated any
28 other wages besides the non-negotiable service fee per delivery and they were not allowed to

1 record their time while they waited for DEFENDANT to give them work. DEFENDANT did
2 not pay PLAINTIFF and other CALIFORNIA CLASS Members for the time spent driving to
3 and from stores, to and from customers' homes, and all the other non-shopping or non-delivery
4 work tasks. The finite set of tasks required to be performed by the Couriers is, when notified
5 via cell phone, travel to stores, pick up the product requested by customers, and deliver said
6 items to DEFENDANT's customers all in accordance with DEFENDANT's business practices
7 and policies.

8 8. To perform their job duties, PLAINTIFF and the other Couriers performed work
9 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
10 complete control over the work performed and the manner and means in which the work was
11 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
12 as to how to perform the driving services.

13 9. California Labor Code § 3357 defines "employee" as "every person in the service
14 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
15 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
16 Code's presumption that workers are employees, the California Supreme Court has determined
17 the most significant factor to be considered in distinguishing an independent contractor from
18 an employee is whether the *employer or principal has control or the right to control the work*
19 *both as to the work performed and the manner and means in which the work is performed.*
20 DEFENDANT heavily controlled both the work performed and the manner and means in which
21 the PLAINTIFF and the other Couriers performed their work in that:

22 (a) PLAINTIFF and other Couriers were not involved in a distinct business,
23 but instead were provided with instructions as to how to perform their work and the manner and
24 means in which the work was to be performed by means of DEFENDANT's manuals and
25 written instructions;

26 (b) PLAINTIFF and other Couriers were continuously provided with training
27 and supervision, including following DEFENDANT's company documents and received
28 training from DEFENDANT as to how and in what way to perform the courier services;

1 (c) DEFENDANT set the requirements as to what policies and procedures all
2 of the Couriers were to follow;

3 (d) PLAINTIFF and other Couriers had no opportunity for profit or loss
4 because DEFENDANT only paid these workers a flat rate per assignment. DEFENDANT
5 controlled and assigned the Couriers which tasks were to be performed;

6 (e) PLAINTIFF and other Couriers performed shopping and delivery services
7 which are part of DEFENDANT's principal business and is closely integrated with and essential
8 to the employer's business of providing courier services to their customers;

9 (f) PLAINTIFF and other Couriers performed the work themselves and did
10 not hire others to perform their work for them;

11 (g) PLAINTIFF and other Couriers did not have the authority to make
12 employment-related personnel decisions;

13 (h) PLAINTIFF and other Couriers performed their work in a particular order
14 and sequence in accordance with DEFENDANT's company policy; and,

15 (i) DEFENDANT had the "right" to control every critical aspect of
16 DEFENDANT's delivery operations in that DEFENDANT provided the customer, assigned
17 where the Couriers were to go, and step-by-step instructions to PLAINTIFF and other Couriers
18 as to the entire process of picking up and dropping off goods at their assigned locations.
19 PLAINTIFF and other Couriers provided delivery services ONLY for DEFENDANT's
20 customers, which DEFENDANT controlled via the company's mobile application.

21 10. As a result, stripped of all the legal fictions and artificial barriers to an honest
22 classification of the relationship between PLAINTIFF and all the other Couriers on the one
23 hand, and DEFENDANT on the other hand, PLAINTIFF and all the other Couriers are and were
24 employees of DEFENDANT and not independent contractors of DEFENDANT and should
25 therefore be properly classified as non-exempt, hourly employees.

26 11. PLAINTIFF brings this Class Action on behalf of himself and a California class,
27 defined as all individuals who worked for DEFENDANT in California as Couriers and who
28 were classified as independent contractors (the "CALIFORNIA CLASS") at any time during

1 the period beginning four (4) years prior to the filing of this Complaint and ending on the date
2 as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
3 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
4 dollars (\$5,000,000.00).

5 12. As a matter of company policy, practice and procedure, DEFENDANT has
6 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as
7 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
8 and state laws that require payment for all time worked, business expenses, and the employer's
9 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
10 and state governments and the CALIFORNIA CLASS Members, PLAINTIFF and the
11 CALIFORNIA CLASS Members were underpaid throughout their employment with
12 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
13 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
14 to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal.
15 Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that
16 each of the Defendants designated herein is legally responsible in some manner for the unlawful
17 acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect
18 the true names and capacities of the Defendants when they have been ascertained and become
19 known.

20 13. The agents, servants and/or employees of the Defendants and each of them
21 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
22 as the agent, servant and/or employee of the Defendants, and personally participated in the
23 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
24 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
25 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the
26 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,
27 servants and/or employees.

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1 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
2 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
3 which these employees were required by DEFENDANT to work ten (10) hours of work.
4 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
5 without additional compensation and in accordance with DEFENDANT's strict corporate policy
6 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
7 production levels for each employee at the busy work sites they provided services for.

8 17. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
9 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
10 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
11 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
12 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
13 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
14 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
15 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
16 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
17 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
18 proper rest periods by DEFENDANT and DEFENDANT's managers.

19 16. DEFENDANT, as a matter of law, has the burden of proving that employees are
20 properly classified and that DEFENDANT otherwise complies with applicable laws.
21 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
22 CALIFORNIA CLASS Members as independent contractors.

23 17. PLAINTIFF and all the CALIFORNIA CLASS Members are and were uniformly
24 classified and treated by DEFENDANT as independent contractors at the time of hire and
25 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
26 the CLASS Members are properly classified under the applicable Industrial Welfare
27 Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable labor
28 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and

1 CALIFORNIA CLASS Members in compliance with California labor laws, DEFENDANT's
2 practices violated and continue to violate California law. In addition, DEFENDANT acted
3 deceptively by falsely and fraudulently classifying PLAINTIFF and each CALIFORNIA
4 CLASS Member as independent contractors when DEFENDANT knew or should have known
5 that this classification was false and not based on known facts. DEFENDANT also acted
6 deceptively by violating the California labor laws, and as a result of this policy and practice,
7 DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by
8 paying the CALIFORNIA CLASS less than the amount competitors paid who complied with
9 the law and cheated the CALIFORNIA CLASS by not paying them in accordance with
10 California law.

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

22 19. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
23 Members as a business expense, were required by DEFENDANT to use personal cellular
24 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
25 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
26 the personal cellular phones for DEFENDANT's benefit. In order to work as a Courier for
27 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members were required to use
28 DEFENDANT's mobile application and as such it is mandatory to have a cell phone that is

1 compatible with DEFENDANT's mobile application. As a result, in the course of their
2 employment with DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS
3 incurred unreimbursed business expenses which included, but were not limited to, costs related
4 to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.
5 Further, PLAINTIFF and other CALIFORNIA CLASS Members were also not reimbursed or
6 indemnified by DEFENDANT for the cost associated with using their personal vehicles while
7 performing for DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA CLASS
8 Members were also required from time to time to pay for parking costs at certain shopping
9 centers and delivery locations. As a result, in the course of their employment with
10 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to travel
12 all on behalf of and for the benefit of DEFENDANT.

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

23 21. By reason of this uniform conduct applicable to PLAINTIFF and all the
24 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
25 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
26 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to
27 correctly classify PLAINTIFF and the CALIFORNIA CLASS Members as employees. The
28 proper classification of these employees is DEFENDANT's burden. As a result of

1 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
2 failed to pay all required wages for work performed by PLAINTIFF and other CALIFORNIA
3 CLASS Members and violated the California Labor Code and regulations promulgated
4 thereunder as herein alleged.

5 22. Specifically as to PLAINTIFF, he worked for DEFENDANT in California as a
6 Courier and was classified by DEFENDANT as an independent contractor from March of 2020
7 to April 24, 2020. Upon hire, the position of a Courier was represented by DEFENDANT to
8 PLAINTIFF as an independent contractor position capable of paying a flat rate per assignment
9 worked for DEFENDANT. PLAINTIFF as a Courier, was classified by DEFENDANT as an
10 independent contractor and thus did not receive pay for all time worked, including minimum
11 and overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also
12 required to perform work as ordered by DEFENDANT for more than five (5) hours during a
13 shift without receiving a meal break as evidenced by daily time reports for PLAINTIFF.
14 PLAINTIFF was also not afforded timely off duty paid rest periods by DEFENDANT.
15 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
16 accordance with DEFENDANT's strict corporate policy and practice which did not provide for
17 mandatory meal and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFF all
18 wages still owed to him or any penalties owed to him under California Labor Code § 203. The
19 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
20 \$75,000.

21 22 **THE CALIFORNIA CLASS**

23 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
26 individuals who worked for DEFENDANT in California as Couriers and who were classified
27 as independent contractors (the "CALIFORNIA CLASS") at any time during the period
28 beginning four (4) years prior to the filing of this Complaint and ending on the date as

1 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
2 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
3 (\$5,000,000.00).

4 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
5 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
6 accordingly.

7 25. All CALIFORNIA CLASS Members who performed and continue to perform this
8 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in
9 that they are subject to DEFENDANT's uniform policy and systematic practice that required
10 them to perform work without compensation as required by law.

11 26. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in
12 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
13 Wage Order requirements, and the applicable provisions of California law, intentionally,
14 knowingly and willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and
15 deceptively instituted a practice to ensure that all individuals employed as independent
16 contractors were not properly classified as non-exempt employees from the requirements of
17 California Labor Code §§ 510, *et seq.*

18 27. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated
19 the rights of the PLAINTIFF and the CALIFORNIA CLASS Members under California law,
20 without limitation, in the following manners:

- 21 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
23 employer, devised and implemented a scheme whereby PLAINTIFF and
24 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
25 and deceptively shoulder the cost of DEFENDANT's wages for all unpaid
26 wages, business related expenses, and DEFENDANT's share of
27 employment taxes, social security taxes, unemployment insurance and
28 workers' compensation insurance;

- 1 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
3 having in place company policies, practices and procedures that uniformly
4 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
5 independent contractors;
- 6 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
7 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
8 failing to have in place a company policy, practice and procedure that
9 accurately determined the amount of working time spent by PLAINTIFF
10 and the CALIFORNIA CLASS Members performing non-exempt
11 employee labor;
- 12 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
13 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
14 other members of the CALIFORNIA CLASS with all legally required
15 meal and rest breaks;
- 16 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
17 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by
18 failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members
19 with necessary expenses incurred in the discharge of their job duties; and,
- 20 (f) Committing an act of unfair competition in violation of the UCL, by
21 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
22 overtime pay to PLAINTIFF and the members of the CALIFORNIA
23 CLASS who were improperly classified as exempt, and retaining the
24 unpaid overtime to the benefit of DEFENDANT.

25 28. As a result of DEFENDANT's uniform policies, practices and procedures, there
26 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who
27 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not
28 limited, to the following:

- 1 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were
2 misclassified as independent contractors by DEFENDANT;
- 3 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members all
4 afforded all the protections of the California Labor Code that apply when
5 properly classified as non-exempt employees;
- 6 (c) Whether DEFENDANT's policies, practices and pattern of conduct
7 described in this Complaint was and is unlawful;
- 8 (d) Whether DEFENDANT unlawfully failed to pay their share of state and
9 federal employment taxes as required by state and federal tax laws;
- 10 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
11 CALIFORNIA CLASS Members as independent contractors exempt from
12 hourly wages laws for all time worked and failing to pay the
13 CALIFORNIA CLASS Members all amounts due violates applicable
14 provisions of California State law;
- 15 (f) Whether DEFENDANT unlawfully failed to keep and furnish the
16 CALIFORNIA CLASS Members with accurate records of all time
17 worked;
- 18 (g) Whether DEFENDANT has engaged in unfair competition by the
19 above-listed conduct; and,
- 20 (h) Whether DEFENDANT's conduct was willful.

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

23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
24 that the joinder of all such persons is impracticable and the disposition of their claims as a class
25 will benefit the parties and the Court;

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
27 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply
28 uniformly to every CALIFORNIA CLASS Member;

1 (c) The claims of the representative PLAINTIFF are typical of the claims of
2 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS
3 Members, was classified as an independent contractor upon hiring based on the defined
4 corporate policies and practices and labors under DEFENDANT's systematic procedure that
5 failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS Members.
6 PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices.
7 PLAINTIFF and the CALIFORNIA CLASS Members were and are similarly or identically
8 harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged
9 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS Members that they
10 were not entitled to minimum wages, the employer's share of payment of payroll taxes and
11 mandatory insurance, and reimbursement for business expenses based on the defined corporate
12 policies and practices, and unfairly failed to pay these employees who were improperly
13 classified as independent contractors; and,

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

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

22 (a) Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution of separate actions by
24 individual members of the CALIFORNIA CLASS will create the risk of:

25 (i) Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA CLASS which would establish incompatible standards of
27 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

28 (ii) Adjudication with respect to individual members of the

1 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
2 other members not party to the adjudication or substantially impair or impeded their ability to
3 protect their interests.

4 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
5 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
6 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
7 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter,
8 uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members
9 were properly classified as independent contractors, and thereby denied these employees wages
10 and payments for business expenses and the employer's share of payroll taxes and mandatory
11 insurance as required by law.

12 (i) With respect to the First Cause of Action, the final relief on behalf
13 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through
14 this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and
15 practices constitute unfair competition, along with incidental equitable relief as may be
16 necessary to remedy the conduct declared to constitute unfair competition.

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

22 (i) The interest of the CALIFORNIA CLASS Members in individually
23 controlling the prosecution or defense of separate actions;

24 (ii) The extent and nature of any litigation concerning the controversy
25 already commenced by or against members of the CALIFORNIA CLASS;

26 (iii) In the context of wage litigation because as a practical matter a
27 substantial number of individual CALIFORNIA CLASS members will avoid asserting their
28 legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an

1 individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only
2 means to assert their claims through a representative;

3 (iv) The desirability or undesirability of concentration the litigation of
4 the claims in the particular forum;

5 (v) The difficulties likely to be encountered in the management of a
6 Class Action; and,

7 (vi) The basis of DEFENDANT's policies and practices uniformly
8 applied to all the CALIFORNIA CLASS Members.

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

11 (a) The questions of law and fact common to the CALIFORNIA CLASS
12 predominate over any question affecting only individual members;

13 (b) A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

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

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

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

23 (f) There is a community of interest in ensuring that the combined assets and
24 available insurance of DEFENDANT are sufficient to adequately compensate the
25 CALIFORNIA CLASS Members for any injuries sustained;

26 (g) DEFENDANT has acted or has refused to act on grounds generally
27 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
28 with respect to the CLASS as a whole;

1 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
2 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
3 DEFENDANT's Couriers in California classified as independent contractors during the
4 CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies, practices and
5 procedures as herein alleged; and,

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

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

25 34. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
26 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
27 Commission ("IWC") Wage Order requirements intentionally, knowingly, and wilfully, on the
28 basis of job title alone and without regard to the actual overall requirements of the job,

1 systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS as independent contractors in order to avoid the payment of all wages, and in
3 order to avoid the obligations under the applicable California Labor Code provisions. To the
4 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
5 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
6 accordingly.

7 35. DEFENDANT maintains records from which the Court can ascertain and identify
8 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS
9 Members have been systematically, intentionally and uniformly misclassified as independent
10 contractors as a matter of DEFENDANT's corporate policy, practices and procedures.
11 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
12 they have been identified.

13 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
14 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

15 37. DEFENDANT, as a matter of corporate policy, practice and procedure,
16 erroneously classified all Couriers as independent contractors making these employees exempt
17 from California labor laws. All Couriers, including PLAINTIFF, performed the same finite set
18 of tasks and were paid by DEFENDANT according to uniform and systematic company
19 procedures, which, as alleged herein above, failed to correctly pay minimum wage
20 compensation. This business practice was uniformly applied to each and every member of the
21 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
22 adjudicated on a class-wide basis.

23 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
24 under California law by:

- 25 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by
26 misclassifying and thereby failing to pay PLAINTIFF and the members of
27 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for
28 which DEFENDANT is liable;

- 1 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
2 failing to pay PLAINTIFF and the members of the CALIFORNIA
3 LABOR SUB-CLASS the correct overtime pay for a workday longer than
4 eight (8) hours and/or a workweek longer than forty (40) hours for which
5 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 6 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
7 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
8 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
9 the legally required rest breaks;
- 10 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS who were
12 improperly classified as independent contractors with an accurate itemized
13 statement in writing showing the gross wages earned, the net wages
14 earned, all applicable hourly rates in effect during the pay period and the
15 corresponding amount of time worked at each hourly rate by the
16 employee;
- 17 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
18 the CALIFORNIA CLASS members with necessary expenses incurred in
19 the discharge of their job duties; and,
- 20 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
21 when an employee is discharged or quits from employment, the employer
22 must pay the employee all wages due without abatement, by failing to
23 tender full payment and/or restitution of wages owed or in the manner
24 required by California law to the members of the CALIFORNIA LABOR
25 SUB-CLASS who have terminated their employment.

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

- 28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are

1 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
2 Members is impracticable and the disposition of their claims as a class will
3 benefit the parties and the Court;

4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the CALIFORNIA
6 LABOR SUB-CLASS and will apply uniformly to every member of the
7 CALIFORNIA LABOR SUB-CLASS;

8 (c) The claims of the representative PLAINTIFF are typical of the claims of
9 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
10 like all other members of the CALIFORNIA LABOR SUB-CLASS was
11 improperly classified as an independent contractor and was thus denied
12 minimum wage pay and meal and rest breaks, among other things, as a
13 result of DEFENDANT's systematic classification practices. PLAINTIFF
14 and all other members of the CALIFORNIA LABOR SUB-CLASS
15 sustained economic injuries arising from DEFENDANT's violations of the
16 laws of California; and,

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

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

27 (a) Without class certification and determination of declaratory, injunctive,
28 statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR
2 SUB-CLASS will create the risk of:

- 3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the parties
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,
7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a practical
9 matter be dispositive of interests of the other members not party to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests.

12 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
13 or refused to act on grounds generally applicable to the CALIFORNIA
14 LABOR SUB-CLASS, making appropriate class-wide relief with respect
15 to the CALIFORNIA LABOR SUB-CLASS as a whole in that the
16 DEFENDANT uniformly classified and treated the members of the
17 CALIFORNIA LABOR SUB-CLASS as independent contractors and,
18 thereafter, uniformly failed to take proper steps to determine whether the
19 CALIFORNIA LABOR SUB-CLASS Members were properly classified
20 as independent contractors, and thereby denied these employees the
21 protections afforded to them under the California Labor Code;

22 (c) Common questions of law and fact predominate as to the members of the
23 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
24 violations of California law as listed above, and predominate over any
25 question affecting only individual CALIFORNIA LABOR SUB-CLASS
26 Members, and a Class Action is superior to other available methods for the
27 fair and efficient adjudication of the controversy, including consideration
28 of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation

1 that is likely to result in the absence of certification of this action
2 pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

4 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANT. The
6 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
7 CLASS Members who are or previously were employed by DEFENDANT
8 in California as Couriers and classified as independent contractors during
9 the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

13
14 **JURISDICTION AND VENUE**

15 42. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
17 Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated
18 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

19 43. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
20 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its
21 principal offices and facilities in this County and/or conducts substantial business in this
22 County, and (ii) committed the wrongful conduct herein alleged in this County against members
23 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

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

3 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CLASS and Against All Defendants)**

5 44. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
6 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 45. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code
8 § 17021.

9 46. Section 17200 of the California Business & Professions Code defines unfair
10 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200
11 applies to violations of labor laws in the employment context. Section 17203 authorizes
12 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
13 follows:

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

18 California Business & Professions Code § 17203.

19 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to the
21 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221,
22 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2750.3 & 2802, and California Code of
23 Regulations § 11090, for which this Court should issue declaratory, injunctive, and other
24 equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and
25 remedy the conduct held to constitute unfair competition, including restitution of wages
26 wrongfully withheld, business expenses wrongfully withheld and for the payment of the
27 employer's share of income taxes, social security taxes, unemployment insurance and workers'
28 compensation insurance.

1 48. By the conduct alleged herein DEFENDANT has obtained valuable property,
2 money, and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS,
3 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment
4 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.
5 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and
6 pecuniary compensation alone would not afford adequate and complete relief.

7 49. All the acts described herein as violations of, among other things, the California
8 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
9 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
10 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive,
11 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

12 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
13 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the
14 CALIFORNIA CLASS Members that they were not entitled to overtime and minimum wages,
15 payment for payroll taxes or mandatory insurance and other benefits as required by California
16 law, when in fact these representations were false and likely to deceive and for which this
17 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
18 including restitution of wages wrongfully withheld.

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

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

28 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are further

1 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
2 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
3 engaging in any unlawful and unfair business practices in the future.

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

8 55. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
9 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll
10 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
11 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
12 for each workday in which a second off-duty meal period was not timely provided for each ten
13 (10) hours of work.

14 56. PLAINTIFF further demands on behalf of Courier and each member of the
15 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
16 period was not timely provided as required by law.

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

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

28 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,

1 and do, seek such relief as may be necessary to restore to them the money and property which
2 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
3 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
4 unfair business practices.

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

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

16
17 **SECOND CAUSE OF ACTION**

18 **For Failure To Pay Minimum Wages**

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

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

21 **and Against All Defendants)**

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

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

1 Members.

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

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

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

9 67. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
10 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
11 amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice
12 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

25 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
27 the correct minimum wage compensation for their time worked for DEFENDANT.

28 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
2 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

25 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
27 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
28 by the California Labor Code and/or other applicable statutes. To the extent minimum wage

1 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
2 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
3 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
4 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
5 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
6 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Wages**

11 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

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

14 76. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
15 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

16 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed
17 to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages
18 for the time they worked in excess of the maximum hours permissible by law as required by Cal.
19 Lab. Code §§ 510 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS Members were regularly required to work, and did in fact work, overtime that
21 DEFENDANT never recorded as evidenced by DEFENDANT's business records and witnessed
22 by DEFENDANT's employees.

23 78. By virtue of DEFENDANT's unlawful failure to pay compensation to
24 PLAINTIFF and the CALIFORNIA CLASS Members for all overtime worked by these
25 employees, PLAINTIFF and CALIFORNIA CLASS Members have suffered, and will continue
26 to suffer, an economic in amounts which are presently unknown to them and which can be
27 ascertained according to proof at trial.

28 79. DEFENDANT knew or should have known that PLAINTIFF and the

1 CALIFORNIA CLASS Members were misclassified as independent contractors and
2 DEFENDANT's systematically elected, either through intentional malfeasance or gross
3 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice
4 and procedure.

5 80. PLAINTIFF and the CALIFORNIA CLASS Members therefore request recovery
6 of all compensation according to proof, interest, costs, as well as the assessment of any statutory
7 penalties against DEFENDANT in a sum as provided by the California Labor Code and/or other
8 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
9 CLASS Members who have terminated their employment, these employees would also be
10 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
11 Further, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members are entitled to
12 seek and recover statutory costs.

13 81. In performing the acts and practices herein alleged in violation of California labor
14 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
15 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
16 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
17 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
18 disregard for their legal rights, or the consequences to them, and with the despicable intent of
19 depriving them of their property and legal rights, and otherwise causing them injury in order to
20 increase corporate profits at the expense of these employees.

21
22 **FOURTH CAUSE OF ACTION**

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

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

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

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

1 of this Complaint.

2 83. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
3 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
4 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
5 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
6 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
7 duties for the legally required off-duty meal periods. As a result of their rigorous work
8 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often
9 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
10 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
11 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
12 by DEFENDANT's business records. As a result, PLAINTIFF and other members of the
13 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
14 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

24 ///

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

9 87. Form time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-
10 CLASS Members were required to work in excess of four (4) hours without being provided
11 ten (10) minute rest periods. Further, these employees were denied their first rest periods of
12 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first
13 and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
14 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
15 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA
16 LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof.
17 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
18 SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
19 and DEFENDANT's managers.

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

25 89. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28 suit.

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

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

22
23 **SEVENTH CAUSE OF ACTION**

24 **For Failure to Reimburse Employees for Required Expenses**

25 **[Cal. Lab. Code § 2802]**

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

28 94. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members

1 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
2 through 79 of this Complaint.

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

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

9 96. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
10 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
11 CLASS members for required expenses incurred in the discharge of their job duties for
12 DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and
13 the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were
14 not limited to, the cost associated with the use of their personal cellular phones for
15 DEFENDANT's benefit. In order to work as a Courier for DEFENDANT, PLAINTIFF and
16 other CALIFORNIA CLASS Members were required to use DEFENDANT's mobile
17 application and as such it is mandatory to have a cell phone that is compatible with
18 DEFENDANT's mobile application. As a result, in the course of their employment with
19 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
20 CLASS incurred unreimbursed business expenses which included, but were not limited to,
21 the costs related to the use of their personal cellular phones all on behalf of and for the
22 benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
23 CLASS Members are also not reimbursed or indemnified by DEFENDANT for the cost
24 associated with using their personal vehicles while driving for DEFENDANT. Moreover,
25 PLAINTIFF and other CALIFORNIA CLASS Members were also required from time to
26 time to pay for parking costs at certain shopping centers and delivery locations. As a result,
27 in the course of their employment with DEFENDANT, PLAINTIFF and other members of
28 the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
were not limited to, costs related to travel all on behalf of and for the benefit of
DEFENDANT. These expenses are necessary to complete their principal job duties.

1 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
2 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and
3 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
4 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
5 expenses as an employer is required to do under the laws and regulations of California.

6 97. PLAINTIFF therefore demands reimbursement for expenditures or losses
7 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
8 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
9 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

10
11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

19 99. Cal. Lab. Code § 200 states that:

20 As used in this article:

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

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

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

101. Cal. Lab. Code § 202 states, in relevant part, that:

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

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

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

12 103. Cal. Lab. Code § 203 states:

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

19 104. The employment of PLAINTIFF and many other CALIFORNIA LABOR
20 SUB-CLASS Members has terminated, yet as to those individuals whose employment
21 terminated, DEFENDANT did not timely tender payment of all wages owed as required by
22 law.

23 105. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
24 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
25 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
26 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
27 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
28 statutory costs as allowed.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 1 B) An order temporarily, preliminarily and permanently enjoining and restraining
2 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
3 C) An order requiring DEFENDANT to pay minimum and overtime wages and
4 all sums unlawfully withheld from compensation due to PLAINTIFF and the
5 other members of the CALIFORNIA CLASS; and,
6 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
7 fund for restitution of the sums incidental to DEFENDANT's violations due to
8 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

9 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 10 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and
11 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
12 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
13 B) Compensatory damages, according to proof at trial, including compensation
14 due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
16 plus interest thereon at the statutory rate;
17 C) The wages of all terminated individuals in the CALIFORNIA LABOR
18 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
19 or until an action therefore is commenced, in accordance with Cal. Lab. Code
20 § 203;
21 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
22 period in which a violation occurs and one hundred dollars (\$100) per each
23 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
24 subsequent pay period, not exceeding an aggregate penalty of four thousand
25 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
26 E) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
27 the other members of the CALIFORNIA CLASS with all legally required off-duty,
28 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

1 F) The amount of the expenses PLAINTIFF and each member of the
2 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
3 plus interest, and costs of suit; and,

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

6 3. On all claims:

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

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

9 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
10 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
11 §2802.

12
13 Dated: June 18, 2020
14 LLP

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW

15
16 By: /s/ Norman Blumenthal
17 Norman B. Blumenthal
18 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: June 18, 2020 BLUMENTHAL, NORDREHAUG, BHOWMIK DE BLOUW
LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

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