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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

TERRANCE LOVETT, as an individual and
on behalf of all others similarly situated,
ROBERT PARSONS, as an individual and on
behalf of all others similarly situated,
JAVIER CUEVAS MAGANA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

ESTENSON LOGISTICS, LLC, a Delaware
limited liability company; HUB GROUP
TRUCKING, INC., a Delaware corporation,
and DOES 1 through 50, inclusive,

Defendants.

Case No. **34-2020-00285865**

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR
CODE §§ 226.7 AND 512;
- (2) VIOLATION OF CAL. LABOR
CODE § 226.7;
- (3) VIOLATION OF CAL. LABOR
CODE §§ 510, 558, AND 1194;
- (4) VIOLATION OF CAL. LABOR
CODE § 226(a);
- (5) VIOLATION OF CAL. BUS. &
PROF. CODE § 17200, *ET SEQ.*;
- (6) VIOLATION OF CAL. LABOR
CODE § 2698, *ET SEQ.*

Plaintiffs ROBERT PARSONS, TERRANCE LOVETT, and JAVIER CUEVAS
MAGANA ("Plaintiffs") hereby submit this Complaint against Defendants ESTENSON



COPY

LOGISTICS, LLC, a Delaware limited liability company; HUB GROUP TRUCKING, INC., a Delaware corporation, and DOES 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of themselves and a class of all other similarly situated current and former employees of Defendants for unpaid wages, penalties and/or damages under the California Labor Code, and for restitution as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-203, 226, 226.7, 510, 558, 512, 1194, 2698, *et seq.*, the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”), and the California Unfair Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*

2. This complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code and the UCL against individuals who worked for Defendants.

3. Plaintiffs are informed and believe, and based thereon allege, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in receiving proper meal and rest breaks, payment of proper overtime wages, complete and accurate wage statements, timely payment of wages, and payment of all wages due and owing.

4. Plaintiffs are informed and believe, and based thereon allege, that Defendants have engaged in, among other things, a system of willful violations of the California Labor Code, the applicable IWC wage orders, and the UCL by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

5. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and the UCL.

7. Venue is proper because the Defendants do business in Sacramento County, and Plaintiff Parsons performed his work in Sacramento County.

PARTIES

8. Plaintiff Parsons was hired by Defendants on or about 2013, as a driver. Plaintiff is a non-exempt employee.

9. Plaintiff Magana was hired by Defendants on or about November 2015, as a driver. Plaintiff is a non-exempt employee.

10. Plaintiff Lovett was hired by Defendants on or about July 2018, as a driver. Plaintiff is a non-exempt employee.

11. Plaintiffs were the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived them of the rights guaranteed to them by California Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, and 1194 and the UCL.

12. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Defendant Estenson Logistics, LLC was and is a limited liability company under the laws of the State of Delaware, and doing business in the State of California.

13. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Defendant Hub Group Trucking, Inc. was and is a corporation under the laws of the State of Delaware, and doing business in the State of California.

14. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Defendants and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, and the UCL.

15. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint when the true names and capacities are known. Plaintiffs are informed and believe,

1 and based thereon allege, that each of said fictitious Defendants was responsible in some way for
2 the matters alleged herein and proximately caused Plaintiffs and members of the general public
3 and class to be subject to the illegal employment practices, wrongs and injuries complained of
4 herein.

5 16. At all times herein mentioned, each of said Defendants participated in the doing
6 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
7 Defendants, and each of them, were the agents, servants and employees of each of the other
8 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
9 acting within the course and scope of said agency and employment.

10 17. Plaintiffs are informed and believe, and based thereon allege, that at all times
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
12 joint venture of, or working in concert with each of the other co-Defendants and was acting
13 within the course and scope of such agency, employment, joint venture, or concerted activity.
14 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
15 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
16 Defendants.

17 18. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 19. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
26 the damages as herein alleged.

27 **CLASS ACTION ALLEGATIONS**

28 20. **Definition:** The named individual Plaintiff seeks class certification, pursuant to

1 California Code of Civil Procedure § 382, of the following Class:

2 a. All current and former non-exempt employees who worked for
3 Defendants in the State of California at any time from April 6, 2016, through the present (the
4 “Class”).

5 Plaintiff further proposes the following Sub-Classes:

6 a. All current and former non-exempt employees who worked for
7 Defendants in the State of California as drivers at any time from April 6, 2016, through the
8 present, and who worked shifts greater than or equal to 3.5 hours; (the “Driver Rest Period Sub-
9 Class”).

10 b. All current and former non-exempt employees who worked for
11 Defendants in the State of California as drivers at any time from April 6, 2016, through the
12 present, and who worked shifts greater than or equal to 5 hours; (the “Driver Rest Period Sub-
13 Class”).

14 c. All current and former non-exempt employees who worked for
15 Defendants in the State of California as office employees at any time from April 6, 2016, through
16 the present, and who worked shifts greater than or equal to 3.5 hours; (the “Office Employee
17 Rest Period Sub-Class”).

18 d. All current and former non-exempt employees who worked for
19 Defendants in the State of California as office employees at any time from April 6, 2016, through
20 the present, and who worked shifts greater than or equal to 5 hours; (the “Office Employee Meal
21 Period Sub-Class”).

22 e. All current and former non-exempt employees who worked for
23 Defendants in the State of California from April 6, 2016, through the present, and who
24 Defendants paid overtime wages; (the “Overtime Sub-Class”).

25 f. All current and former non-exempt employees who worked for
26 Defendants in the State of California From April 6, 2019, through the present, who Defendants
27 paid overtime wages; (the “Wage Statement Sub-Class”).

28 21. **Numerosity:** The members of the Class are so numerous that joinder of all

members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants' records, including payroll records.

22. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the class and the individual Plaintiffs. Plaintiffs' attorneys have prosecuted and settled employment class actions in the past and currently have a number of employment class actions pending in California courts.

23. Defendants uniformly administered a corporate policy and practice of: (a) failing to provide timely and duty-free meal periods; (b) failing to provide duty-free rest periods; (c) failing to pay all wages owed upon separation of employment; (d) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); (e) failing to properly pay overtime wages to employees; and (f) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

24. Plaintiffs are informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and the UCL.

25. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the class concerning Defendants' policy and practice of: ((a) failing to provide timely and duty-free meal periods; (b) failing to provide duty-free rest periods; (c) failing to pay all wages owed upon separation of employment; (d) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); (e) failing to properly pay overtime wages to employees; and (f) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

26. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the class in that Plaintiffs have suffered the harms alleged in this Complaint in a similar and typical manner as the class members. Defendants failed to provide Plaintiffs duty-free meal and

1 rest periods. Specifically, Defendants required Plaintiffs and other employees to be “on call”
2 during meal and rest breaks. Plaintiffs were regularly required to work through their meal and
3 rest breaks and/or not able to take any breaks, but Defendants did not pay Plaintiffs a meal-
4 period premium. Defendants also failed to properly compensate employees like Plaintiffs when
5 they earned overtime wages. Consequently, Defendants are liable for waiting time penalties as
6 per Labor Code §§ 201-203 for failing to pay wages due to Plaintiffs in a timely manner.
7 Additionally, Plaintiffs did not receive accurate wage statements that identified accurate gross
8 and net wages earned for the above-listed wage violations, and did not list the proper rate of pay
9 when Plaintiffs earned overtime wages. As such, Plaintiffs are members of the Class and have
10 suffered the alleged violations of California Labor Code §§ 201-203, 226, 226.7, and 510, 512,
11 558, and 1194.

12 27. The California Labor Code upon which Plaintiffs base these claims is broadly
13 remedial in nature. These laws and labor standards serve an important public interest in
14 establishing minimum working conditions and standards in California. These laws and labor
15 standards protect the average working employee from exploitation by employers who may seek
16 to take advantage of superior economic and bargaining power in setting onerous terms and
17 conditions of employment.

18 28. The nature of this action and the format of laws available to Plaintiffs and
19 members of the class identified herein make the class action format a particularly efficient and
20 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
21 file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since
22 it would be able to exploit and overwhelm the limited resources of each individual plaintiff with
23 their vastly superior financial and legal resources. Requiring each class member to pursue an
24 individual remedy would also discourage the assertion of lawful claims by employees who
25 would be disinclined to file an action against their former and/or current employer for real and
26 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

27 29. The prosecution of separate actions by the individual class members, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect

1 to individual class members against the Defendants and which would establish potentially
2 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
3 individual class members which would, as a practical matter, be dispositive of the interest of the
4 other class members not parties to the adjudications or which would substantially impair or
5 impede the ability of the class members to protect their interests. Further, the claims of the
6 individual members of the class are not sufficiently large to warrant vigorous individual
7 prosecution considering all of the concomitant costs and expenses.

8 30. Such a pattern, practice, and uniform administration of corporate policy
9 regarding illegal employee compensation described herein is unlawful and creates an entitlement
10 to recovery by Plaintiffs and the Class identified herein, in a civil action, for applicable penalties,
11 reasonable attorney's fees, and costs of suit according to the mandate of California Labor Code
12 §§ 201-203, 218.5, 226, 1194, and Code of Civil Procedure § 1021.5.

13 31. Proof of a common business practice or factual pattern, which the named
14 Plaintiffs experienced and are representative of, will establish the right of each of the members of
15 the class to recovery on the causes of action alleged herein.

16 32. The Class is commonly entitled to a specific fund with respect to the
17 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
18 restitution of those funds being improperly withheld by Defendants. This action is brought for
19 the benefit of the entire Class and will result in the creation of a common fund.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE §§ 226.7 AND 512 FOR**

22 **FAILURE TO PROVIDE PROPER MEAL BREAKS**

23 **(BY PLAINTIFFS, THE CLASS AND THE DRIVER AND OFFICE EMPLOYEE MEAL**
24 **PERIOD SUB-CLASSES AGAINST ALL DEFENDANTS)**

25 33. Plaintiffs re-allege and incorporate by reference the paragraphs above, as though
26 fully set forth herein.

27 34. At all relevant times, Defendants failed in their affirmative obligation to ensure
28 that Plaintiffs, and other Class Members, had the opportunity to take and were provided with off-

1 duty meal periods in accordance with the mandates of the California Labor Code and the
2 applicable IWC Wage Order. Specifically, Defendants required Plaintiffs and Class Members to
3 be “on call” during their meal breaks. Defendants regularly required Plaintiffs and Class
4 Members to work through their meal breaks. Thus, Plaintiffs and Class Members were denied
5 their right to 30-minute off-duty meal breaks for any and all shifts in which they worked 5 hours
6 or longer and/or a second 30-minute off-duty meal break for any and all shifts in which they
7 worked 10 hours or longer. In other words, Plaintiffs and Class Members were suffered and
8 permitted to work through legally required meal breaks and were denied the opportunity to take
9 their full 30-minute off-duty meal breaks because they remained under Defendants’ control. As
10 such, Defendants are responsible for paying premium compensation for missed meal periods
11 pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Defendants, as a
12 matter of corporate policy and procedure, regularly failed to pay such premium compensation for
13 each full 30-minute duty-free meal period Plaintiffs and the Class Members missed. Defendants
14 also regularly failed to pay such premium compensation for each second full 30-minute duty-free
15 meal period that Plaintiffs and the Class Members missed on days where they worked more than
16 10 hours.

17 35. This policy of requiring employees to work through their legally mandated meal
18 periods and not allowing them to take proper off-duty meal periods is a violation of California
19 law.

20 36. Plaintiffs are informed and believe and based thereon allege that Defendants
21 willfully failed to pay employees who were not provided the opportunity to take meal breaks the
22 premium compensation set forth in Labor Code §§ 226.7 and 512, and the applicable IWC Wage
23 Order, and that Plaintiffs and similarly situated employees are owed wages for the meal period
24 violations set forth above.

25 37. Plaintiffs and Class Members whose employment ended are also entitled waiting-
26 time penalties pursuant to Labor Code §§ 201-203. Labor Code § 201 provides that all wages
27 earned and unpaid at the time of an employee’s discharge are due and payable immediately.
28 Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages

1 must be paid not later than 72 hours thereafter, unless the employee has given 72 hours' previous
2 notice, in which case the employee must be paid all wages due and earned at the time of quitting.
3 Labor Code § 203 provides that an employer who willfully fails to pay such wages due to an
4 employee who is discharged or quits must pay that employee waiting-time penalties in the form
5 of a day's wages up to 30 days until all of the wages owed are paid. As a pattern and practice,
6 Defendants regularly and willfully failed and refused to pay all wages due and earned to
7 discharged employees at the time of their termination, or within 72 hours of employees who quit
8 and/or have resigned, or at the time of termination for those employees who gave 72 hours'
9 notice.

10 38. Such a pattern, practice and uniform administration of corporate policy as
11 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and Class
12 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
13 compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order,
14 including interest thereon, penalties, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 226.7 FOR**

17 **FAILURE TO PROVIDE PROPER REST BREAKS**

18 **(BY PLAINTIFFS, THE CLASS, AND THE DRIVER AND OFFICE EMPLOYEE REST**
19 **PERIOD SUB-CLASSES AGAINST ALL DEFENDANTS)**

20 39. Plaintiffs re-alleges and incorporates by reference the paragraphs above, as
21 though fully set forth herein.

22 40. At all relevant times, Defendants failed in their affirmative obligation to ensure
23 that Plaintiffs, and other Class Members, had the opportunity to take and were provided with off-
24 duty 10-minute rest periods in accordance with the mandates of the California Labor Code and
25 the applicable IWC Wage Order. Specifically, Defendants required Plaintiffs and Class
26 Members to be "on call" during their rest breaks. Defendants regularly required Plaintiffs and
27 Class Members to work through their rest breaks. Thus, Plaintiffs and Class Members were
28 denied their right to 10-minute, off-duty rest breaks for any and all shifts in which they worked

1 3.5 hours or longer. In other words, Plaintiffs and Class Members were suffered and permitted
2 to work through legally required rest breaks and were denied the opportunity to take their full 10-
3 minute off-duty rest breaks because they remained under Defendants' control by virtue of having
4 to continue working. As such, Defendants are responsible for paying premium compensation for
5 missed rest periods pursuant to Labor Code § 226.7 and the applicable IWC Wage Order.
6 Defendants, as a matter of corporate policy and procedure, regularly failed to pay such premium
7 compensation for each full 10-minute duty-free rest period Plaintiffs and the Class Members
8 missed.

9 41. This policy of requiring employees to work through their legally mandated rest
10 periods and not allowing them to take proper off-duty rest periods is a violation of California
11 law.

12 42. Plaintiffs are informed and believe and based thereon allege that Defendants
13 willfully failed to pay employees who were not provided the opportunity to take rest breaks the
14 premium compensation set out in Labor Code § 226.7, and the applicable IWC Wage Order and
15 that Plaintiffs and those employees similarly situated as them are owed wages for the rest period
16 violations set forth above.

17 43. Plaintiffs and Class Members whose employment ended are also entitled waiting-
18 time penalties pursuant to Labor Code §§ 201-203. Labor Code § 201 provides that all wages
19 earned and unpaid at the time of an employee's discharge are due and payable immediately.
20 Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages
21 must be paid not later than 72 hours thereafter, unless the employee has given 72 hours' previous
22 notice, in which case the employee must be paid all wages due and earned at the time of quitting.
23 Labor Code § 203 provides that an employer who willfully fails to pay such wages due to an
24 employee who is discharged or quits must pay that employee waiting-time penalties in the form
25 of a day's wages up to 30 days until all of the wages owed are paid. As a pattern and practice,
26 Defendants regularly and willfully failed and refused to pay all wages due and earned to
27 discharged employees at the time of their termination, or within 72 hours of employees who quit
28 and/or have resigned, or at the time of termination for those employees who gave 72 hours'

1 notice.

2 44. Such a pattern, practice and uniform administration of corporate policy as
3 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and Class
4 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
5 compensation pursuant to Labor Code § 226.7 and the applicable IWC Wage Order, including
6 interest thereon, penalties, and costs of suit.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

9 **(BY PLAINTIFFS AND THE OVERTIME SUB-CLASS AGAINST ALL DEFENDANTS)**

10 45. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
11 fully set forth herein.

12 46. At all relevant times, Defendants were required to compensate their employees
13 proper overtime wages for overtime hours worked pursuant to California Labor Code §§ 510,
14 558, and 1194. Plaintiffs and the Class were and are employed by Defendants as non-exempt
15 employees and are thus entitled to overtime wages. During their employment with Defendants,
16 Plaintiffs and the Class worked overtime hours. Specifically, Plaintiffs and the Class worked
17 more than 8 hours in a workday and/or 40 hours in a workweek, without being paid the proper
18 amount of overtime pay. During their employment with Defendants, Defendants did not
19 properly compensate employees for overtime wages. For example, for Plaintiff Magana, during
20 the pay period ending July 4, 2020, he worked a total of 13.62 overtime hours. While the wage
21 statement does not display his overtime rate of pay, based on his base hourly rate of pay of
22 \$20.94, his overtime wages earned should have been \$427.80. However, he was only paid
23 \$427.64 as overtime wages. Defendants, as a corporate-wide practice and policy, did not
24 properly calculate overtime pay, and as such, owes Plaintiffs and the Class additional overtime
25 pay.

26 47. Plaintiffs are informed and believe and based thereon allege that Defendants'
27 policy and practice of requiring overtime work and not paying for said work according to the
28 overtime mandates of California law is, and at all times herein mentioned was in violation of

1 California Labor Code §§ 510, 558, and 1194 and the IWC Wage Order(s). Defendants'
2 employment policies and practices wrongfully and illegally failed to compensate Plaintiffs and
3 the Class for overtime compensation earned as required by California law.

4 48. Plaintiffs are informed and believe and based thereon allege that Defendants
5 willfully failed to pay employees proper compensation for all hours worked. Plaintiffs are
6 informed and believe and based thereon allege that Defendants' willful failure to provide all
7 wages due and owing them upon separation from employment results in a continued payment of
8 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and other
9 members of the Class who have separated from employment are entitled to compensation
10 pursuant to Labor Code § 203.

11 49. Such a pattern, practice and uniform administration of corporate policy regarding
12 illegal employee compensation as described herein is unlawful and creates an entitlement to
13 recovery by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of
14 overtime premiums owing, including interest thereon, penalties, attorneys' fees, and costs of suit
15 according to the mandate of California Labor Code §§ 558 and 1194.

16 **FOURTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 226(a)**

18 **(BY PLAINTIFFS, THE CLASS AND ALL SUB-CLASSES AGAINST ALL DEFENDANTS)**

19 50. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
20 fully set forth herein.

21 51. Defendants failed in their affirmative obligation to provide accurate itemized
22 wage statements. Defendants did not provide accurate records in violation of Labor Code § 226
23 by failing as a matter of policy and practice to provide accurate payroll records for Plaintiffs and
24 the Class.

25 52. In particular, Defendants violated Labor Code § 226(a) because the wage
26 statements issued to Plaintiffs and the Class failed to identify accurate gross and net wages
27 earned as a result of Defendants' afore-referenced wage violations. As an independent violation
28 of Labor Code § 226(a), Defendants listed the improper base hourly rate of pay, instead of the

1 overtime rate, on Plaintiffs and the Class Members' wages statements whenever they received
2 overtime pay.

3 53. Such a pattern, practice and uniform administration of corporate policy as
4 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class
5 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
6 thereon, attorney's fees, and costs of suit according to the mandate of Labor Code § 226.

7 **FIFTH CAUSE OF ACTION**

8 **VIOLATIONS OF THE UCL, BUSINESS AND PROFESSIONS CODE § 17200 *ET SEQ.***
9 **(BY PLAINTIFFS, THE CLASS, THE DRIVER AND OFFICE EMPLOYEE MEAL**
10 **PERIOD SUB-CLASSES, THE DRIVER AND OFFICE EMPLOYEE REST PERIOD**
11 **SUB-CLASSES, AND THE OVERTIME SUB-CLASS AGAINST ALL DEFENDANTS)**

12 54. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
13 fully set forth herein.

14 55. Defendants, and each of them, have engaged and continue to engage in unfair and
15 unlawful business practices in California by practicing, employing, and utilizing the employment
16 practices outlined above, inclusive, to wit, by failing to provide employees timely and off-duty
17 meal and rest periods in violation of Labor Code §§ 226.7 and 512, and failing to properly
18 compensate employees for overtime in violation of Labor Code §§ 510, 558, and 1194.

19 56. Defendants' utilization of such unfair and unlawful business practices constitutes
20 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

21 57. Plaintiffs seek, on behalf of themselves and other members of the Class similarly
22 situated, full restitution of monies, as necessary and according to proof, to restore any and all
23 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
24 complained of herein.

25 58. Plaintiffs are informed and believe, and on that basis allege, that at all times
26 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
27 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
28 forth herein above thereby depriving Plaintiffs and other members of the Class the minimum

1 working condition standards and conditions due to them under the California laws as specifically
2 described therein.

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5 **SIXTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

7 **(BY PLAINTIFFS, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
8 **AGAINST ALL DEFENDANTS)**

9 59. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
10 though fully set forth herein.

11 60. Plaintiffs bring this cause of action as a proxy for the State of California and in
12 this capacity, seek penalties on behalf of all Aggrieved Employees from April 6, 2019, through
13 the present, for Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, and
14 1194 arising from Defendants' failure to properly calculate the overtime rate of pay for its
15 employees, failure to provide duty-free meal and/or rest periods, and provide accurate itemized
16 wage statements.

17 61. On or about August 31, 2020, Plaintiff Magana sent written notice to the
18 California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of
19 Labor Code §§ 201-203, 226, 510, 512, 558, and 1194 pursuant to Labor Code § 2698, et seq.,
20 the Private Attorneys General Act ("PAGA"). On August 28, 2020, Plaintiff Lovett sent written
21 notice to the LWDA of Defendants' violations of Labor Code §§ 201-203, 226, 510, 512, 558,
22 and 1194 pursuant to the PAGA. On May 21, 2019, Plaintiff Parsons sent written notice to the
23 LWDA of Defendants' violations of Labor Code §§ 226, 226.7, and 512. To date, the LWDA
24 has not responded to Plaintiffs' written notice.

25 62. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all
26 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226, 226.7, 510,
27 512, 558, and 1194 for the time period described above, on behalf of themselves and other
28 Aggrieved Employees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose
3 behalf this suit is brought against Defendants as follows:

- 4 1. For an order certifying the proposed classes;
- 5 2. For an order appointing Plaintiffs as the representatives of the classes as described
6 herein;
- 7 3. For an order appointing Counsel for Plaintiffs as Class Counsel;
- 8 4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute
9 as set forth in Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
11 Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
- 12 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to statute
13 as set forth in Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;
- 14 7. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to statute
15 as set forth in Labor Code § 226, and for costs and attorneys' fees;
- 16 8. Upon the Fifth Cause of Action, for restitution to Plaintiffs and other similarly
17 affected members of the general public of all funds unlawfully acquired by Defendants by means
18 of any acts or practices declared by this Court to be in violation of California Business &
19 Professions Code § 17200, *et seq.*, and for costs and attorneys' fees;
- 20 9. Upon the Sixth Cause of Action, for civil penalties according to proof pursuant to
21 Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees
- 22 10. On all causes of action for attorneys' fees and costs as provided by California
23 Labor Code §§ 218.5, 226, and Code of Civil Procedure § 1021.5; and

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1 11. For such other and further relief as the Court may deem just and proper.

2 DATED: September 25, 2020

DIVERSITY LAW GROUP, P.C.

3
4 By: _____



5 Larry W. Lee

6 Max Gavron

7 Attorneys for Plaintiffs