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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ALAMEDA**

12 JONATHAN BUCKNER, on behalf of himself
13 and all others similarly situated,

14 Plaintiff,

15 v.

16 XPRESS GLOBAL SYSTEMS, LLC., a
Georgia Limited Liability Company; and
17 DOES 1-50, inclusive.

18 Defendants.

CASE NO.:

**CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT:**

- (1) MINIMUM WAGE VIOLATIONS;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) LATE PAYMENT OF WAGES IN VIOLATION OF LABOR CODE § 204;
- (4) MEAL PERIOD VIOLATIONS;
- (5) REST PERIOD VIOLATIONS;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) UNFAIR COMPETITION; and
- (9) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

ENDORSED
FILED
AT ALAMEDA COUNTY
JUL 10 2020
CLERK OF THE SUPERIOR COURT
JERRIE MOYER Deputy

FILED

1 Plaintiff Jonathan Buckner (“Plaintiff”) on behalf of himself, and all other similarly situated
2 non-exempt employees brings this Class and PAGA Representative action against defendant Xpress
3 Global Systems, LLC. (“Defendant”), and DOES 1-50, inclusive (collectively “Defendants”), and
4 complains and alleges as follows:

5 **INTRODUCTION**

6 1. Defendants provide expedited less-than-truckload (“LTL”) freight transportation,
7 and other logistics services from a network of more than 40 facilities located throughout the United
8 States and across California. Plaintiff brings this class action against Defendants for violations of
9 the California Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges
10 that Defendants failed to pay him and all others similarly situated for all hours worked, including,
11 all minimum and overtime wages due to Defendants’ uniform payroll policy of rounding/shaving
12 non-exempt employees’ time entries. Plaintiff further alleges that Defendants failed and continue to
13 fail to timely pay him and all other non-exempt employees whom Defendants pay on a bi-weekly
14 basis in violation of Labor Code § 204. Plaintiff further alleges that Defendants’ meal and rest period
15 policies and practices failed to provide him and all other similarly situated employees with
16 compliant timely meal periods, and compliant off-duty rest periods, or premium wages in lieu
17 thereof. Plaintiff finally alleges Defendants failed to timely pay all wages owed upon separation of
18 employment and that as a result of the above referenced violations, Defendants failed to issue
19 accurate itemized wage statements in conformance with Labor Code § 226(a). Based on these
20 violations, Plaintiff now brings this class and PAGA representative action to recover unpaid wages,
21 civil penalties, restitution, and other related relief on behalf of himself and all others similarly
22 situated employees.

23 **JURISDICTION AND VENUE**

24 2. Plaintiff, on behalf of himself and all other similarly situated employees hereby
25 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
26 201-203, 204, 226a, 226.7, 510, 516, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and
27 applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking
28 declaratory relief and restitution pursuant to California Business and Professions Code § 17200 *et*.

1 *seq.* This class action is brought pursuant to California Code of Civil Procedure § 382. This Court
2 has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage
3 Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

4 3. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
5 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
6 Hayward, County of Alameda. Defendants own, maintain offices, transact business, have an agent
7 or agents within the County of Alameda, and/or otherwise are found within the County of Alameda,
8 and Defendants are within the jurisdiction of this Court for purposes of service of process.

9 **PARTIES**

10 4. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
11 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
12 exempt employee in the County of Alameda.

13 5. Plaintiff was, and is, subject to Defendants' uniform policies and/or practices
14 complained of herein and has been deprived of the rights guaranteed to him by California Labor
15 Code §§ 201-203, 204, 210, 226(a), 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1197.1,
16 1198, amongst others, and California Business and Professions Code § 17200 *et seq.* (Unfair
17 Competition), and applicable Wage Orders.

18 6. Plaintiff is informed and believes, and based thereon alleges, that during the four
19 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
20 continue to do) business in the State of California, County of Alameda.

21 7. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
23 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
24 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
25 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
26 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
27 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices,
28 wrongs, injuries and damages complained of herein.

1 8. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
2 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
3 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
4 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
5 them, were the agents, servants, and employees of each and every one of the other Defendants, as
6 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
7 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
8 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9 9. At all times mentioned herein, Defendants, and each of them, were members of and
10 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
11 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
12 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
13 members of the Classes.

14 **COMMON FACTUAL ALLEGATIONS**

15 10. Defendant Xpress Global Solutions, LLC provides expedited less-than-truckload
16 (“LTL”) freight transportation, mainly for companies in the floor coverings industry. In addition to
17 LTL freight hauling, the company offers logistics services such as transportation arrangement,
18 warehousing, and distribution mainly to the floor coverings industry. The company operates from a
19 network of more than 40 facilities located throughout the United States and across California. In
20 addition to LTL freight hauling, the company offers logistics services such as transportation
21 arrangement, warehousing, and distribution. Defendant was acquired in 2018 by private investment
22 firm, Aterian Investment Partners.

23 11. Plaintiff worked for Defendants as a non-exempt dockworker at its Hayward,
24 California location starting on or about November 2017 until his termination on November 4, 2020.
25 Plaintiff and other non-exempt employees (including local drivers, route drivers, dockworkers and
26 other transportation management professionals) were responsible for transporting/delivering and the
27 loading/unloading of freight, sorting product and ensuring that trailers are properly and accurately
28 loaded, amongst other tasks.

1 12. At all relevant times, Defendants have had a uniform payroll policy of
2 rounding/shaving Plaintiff and other non-exempt employees' time entries to the nearest 15 minutes.
3 Plaintiff alleges that this rounding policy is not fair or neutral on its face, and that as a result of this
4 practice non-exempt employees are not compensated for all the hours that they work and all of the
5 overtime hours they work in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and
6 applicable Wage Orders. California courts have held that "rounding time policies can be lawful, "if
7 the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not
8 result, over a period of time, in failure to compensate the employees properly for all the time they
9 have actually worked." (*See's Candy Shops v. Superior Court* (2012) 210 Cal. App. 4th 889, 907;
10 See also 29 C.F.R. § 785.48; see also DLSE Manual, *supra*, §§ 47.1, 47.2.)

11 13. Notably, Defendants' rounding time policy is not neutral on its face as Plaintiff and
12 other non-exempt employees are subject to discipline, including termination for being tardy in
13 reporting to work. Thus, Plaintiff and other non-exempt employees were consistently on time or
14 early to work but were not paid for all hours actually worked. Moreover, because Defendants are
15 capable of tracking the time worked by non-exempt employees to the minute, the policy itself exists
16 not for the convenience or benefit of the employees who are reporting their time accurately on
17 timecards or otherwise, but for Defendants' benefit. As a result, over a period of time, Plaintiff and
18 other non-exempt employees were not properly paid for all hours worked, including overtime hours,
19 in violation of Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

20 14. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
21 fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution
22 of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally
23 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
24 the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense,
25 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
26 employee is underpaid regardless of whether the initial violation is intentionally committed.

27 15. As set forth above, Defendants failed and continue to fail to compensate Plaintiff and
28 other non-exempt employees for all hours worked, including all minimum and overtime wages, by

1 unlawful rounding/shaving of non-exempt employees' time entries.

2 16. Moreover, at all relevant times, Defendants failed and continue to fail to pay Plaintiff
3 and other non-exempt employees who it paid on a bi-weekly basis within seven (7) days of the close
4 of the payroll period as required by Labor Code § 204(d). Labor Code § 204 expressly requires that
5 "[a]ll wages...earned by any person in any employment are due and payable twice during each
6 calendar month, on days designated in advance by the employer as the regular paydays."

7 17. As a result of its policy and practices, Defendants frequently paid Plaintiff and other
8 non-exempt employees eight (8) or more days after the close of the payroll period in violation of
9 Labor Code § 204(d). For instance, for the pay period 09/17/2020-09/30/2020 Plaintiff was paid late
10 on 10/09/2020. (Attached hereto as **Exhibit "A"** is a true and correct copy of Plaintiff's wage
11 statement showing that Plaintiff was paid on the 9th day after the end of the pay period.)

12 18. Labor Code § 210 provides that "in addition to, an entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Section[] 204 shall be subject to a civil penalty as follows: (1) For any
15 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
16 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
17 failure to pay each employee, plus 25% of the amount unlawfully withheld."

18 19. As a result of the faulty compensation policies and practices described in detail above
19 and Defendants' failure to pay Plaintiff and other non-exempt employees within seven (7) days of
20 the close of the payroll period, Plaintiff and other non-exempt employees are entitled to recover
21 penalties under Labor Code § 210.

22 20. Moreover, at all relevant times, Defendants had and continue to have a uniform
23 payroll policy that automatically deducts 30-minutes for meal periods from Plaintiff and other non-
24 exempt employees' time entries, notwithstanding the fact that they were not on all occasions
25 provided with complaint, timely and uninterrupted 30-minute meal periods as required by the
26 California Labor Code. Indeed, Defendants frequently failed (and continue to fail) to provide
27 Plaintiff and other non-exempt employees with uninterrupted meal periods of exactly thirty (30)
28 minutes before the end of the fifth (5th) hour of work, and second meal period before the end of the

1 tenth (10th) hour of work due to Defendants' meal period scheduling practices and policies that
2 required Plaintiff and non-exempt employees to work and finish preventing non-exempt employees
3 from taking timely complaint meal periods.

4 21. Labor Code § 512 requires employers to provide employees with a thirty (30) minute
5 uninterrupted and duty-free meal period within the first five hours of work. An employee who works
6 more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and
7 duty-free meal period. (*Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1042
8 ("Accordingly, first meal periods must start after no more than five hours."); see also *Munoz v.*
9 *Giumarra Vineyards Corp.*, 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal
10 periods must be taken within the first five hours of work.)

11 22. Labor Code § 226.7 provides "an employer shall not require an employee to work
12 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
13 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). (See *Brinker*
14 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-1017 ("[T]he wage order's meal
15 period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free
16 to leave the premises, and (3) is relieved of all duty for the entire period. . .The employer satisfies
17 the [meal period] obligation if it relieves its employees of all duty, relinquishes control over their
18 activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and
19 does not impede or discourage them from doing so")(emphasis added).

20 23. Pursuant to Labor Code § 226.7 and the applicable Wage Orders, each failure to
21 provide a complaint off-duty meal period entitles Plaintiff and other non-exempt employees to
22 receive an additional compensation premium equal to one hour of pay. Additionally, Defendants
23 failed to maintain a mechanism for the payment of meal period premium payments as required by
24 Labor Code § 226.7.

25 24. As a result of Defendants' scheduling policies and payroll practices, Plaintiff seeks
26 to recover on behalf of himself and all non-exempt employees, meal period premiums and penalties.
27 Consequently, Defendants have violated Labor Code §§ 226.7, 512 and applicable Wage Orders.

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1 25. Furthermore, Plaintiff and non-exempt employees were not provided with rest
2 periods of at least ten (10) ten minutes for each four (4) hour work period, or major fraction thereof
3 due to Defendants' non-compliant rest period policies/practices and demands of the job, which
4 resulted in Plaintiff and other non-exempt employees frequently not being permitted to take their
5 rest periods. Although Defendants claim to allow and permit non-exempt employees to take rest
6 periods, in practice, Plaintiff and other non-exempt employees were frequently unable to take legally
7 complaint rest periods due to the demands of the job, which often required Plaintiff and other non-
8 exempt employees to remain working on their respective job sites during rest periods. Thus,
9 Defendants prevented Plaintiff and other non-exempt employees from taking timely and legally
10 complaint rest periods. This also includes failing to permit non-exempt employees from taking a
11 third rest period for shifts in excess of ten (10) hours in a workday.

12 26. Under the applicable Wage order, an employer must authorize and permit all
13 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
14 worked. This includes a third rest period for shifts in excess of 10.0 hours in a workday. (See
15 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
16 periods employers must relieve employees of all duties and relinquish control over how employees
17 spend their time.”].) In *Augustus*, the court expressly rejected the employer’s assertion that it could
18 provide an on-duty rest period to employees who worked as security guards and further explained
19 “that employers [must] relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties.” (*Id.* at 273.)

21 27. Plaintiff and other non-exempt employees could not take their rest periods
22 “relinquished from all duties” as required by Labor Code § 226.7. On occasion when non-exempt
23 employees worked in excess of ten (10) hours in a workday, the were not permitted to take an
24 uninterrupted third rest period of ten (10) minutes. Additionally, Defendants also failed to maintain
25 any mechanism for the payment of rest period premium payments as required by Labor Code §
26 226.7. As a result of Defendants' unlawful rest period policies and practices, Plaintiff seeks to
27 recover on behalf of himself and all non-exempt employees rest period premiums and penalties.
28 Consequently, Defendants have violated Labor Code §§ 226.7, 512 and applicable Wage Orders.

28. As a result of Defendants' failure to provide Plaintiff and other non-exempt employees with all minimum and overtime wages, meal and rest periods or compensation in lieu thereof, Defendants intentionally failed and continue to fail to furnish non-exempt employees with itemized wage statements that accurately reflect the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and premium wages due for missed meal and rest periods as required by Labor Code § 226(a)(1)(2)(5)(9). Consequently, because Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

29. As a result of Defendants' failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Indeed, after Plaintiff was terminated on November 4, 2020, he was not provided his final paycheck in a timely manner. As such, Plaintiff and other non-exempt employees would be entitled to recover waiting time penalties under Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

“The Class”: all non-exempt individuals who are or were employed by Defendants in California from four years prior to the filing of this complaint through the date of trial.

“The Late Payment Subclass”: all non-exempt individuals who are or were employed by Defendants in California from four years prior to the filing of this complaint through the date of trial.

“The Meal Period Subclass”: all non-exempt individuals who are or were employed by Defendants in California who worked at least one shift in excess of 6 hours from four years prior to the filing of this

complaint through the date of trial.

“The Rest Period Subclass”: all non-exempt individuals who are or were employed by Defendants in California who worked at least one shift in excess of 3.51 hours from four years prior to the filing of this complaint through the date of trial.

“The Waiting Time Penalty Subclass”: all non-exempt individuals who were employed by Defendants in California whose employment with Defendants ended from three years prior to the filing of this complaint through the date of trial.

(collectively the “Classes” and “Subclasses” and their members are collectively referred to as the “Class Members.”)

31. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

32. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants’ pay policies/practices resulted in a failure to pay members of the Classes for all hours worked, including all minimum and overtime wages;
2. Whether Defendants timely paid members of the Late Payment Subclass their wages in conformance with Labor Code Section 204;
3. Whether Defendants’ rest period policies/practices afforded legally compliant rest periods or compensation in lieu thereof to members of the Rest Period Subclass;
4. Whether Defendants’ meal period policies/practices afforded legally compliant meal periods or compensation in lieu thereof to members of the Meal Period Subclass;

5. Whether Defendants timely pay all wages owed upon separation of employment;
6. Whether Defendants furnished legally compliant wage statements to members of the Classes pursuant to Labor Code § 226; and
7. Whether Defendants timely paid all wages upon separation of employment to members of the Waiting Time Penalty Subclass.

33. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' uniform policies and/or practices applicable to each individual class member, such as Defendants' uniform policy/practice of unfair rounding of time entries thereby failing to pay for all hours worked, Defendants' uniform late payment of wages in violation of Labor Code Section 204, Defendants' uniform policies/practices which failed to provide complaint meal and rest periods or compensation in lieu thereof, Defendants' failure to provide accurate itemized wage statements, and Defendants' failure to timely pay all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

34. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of minimum, regular and overtime wages as a result of Defendants' unlawful timekeeping rounding policy/practices, was uniformly paid his wages late, was deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest period policies/practices, was not provided accurate itemized wage statements, and was not paid all wages due at termination of his employment.

35. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Class Counsel is ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and

1 federal court in the past and are committed to vigorously prosecuting this action on behalf of the
2 members of the Classes.

3 36. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
4 important public interest in establishing minimum working conditions and standards in California.
5 These laws and labor standards protect the average working employee from exploitation by
6 employers who have the responsibility to follow the laws and who may seek to take advantage of
7 superior economic and bargaining power in setting onerous terms and conditions of employment.
8 The nature of this action and the format of laws available to Plaintiff and members of the Classes
9 make the class action format a particularly efficient and appropriate procedure to redress the
10 violations alleged herein. If each employee were required to file an individual lawsuit, Defendants
11 would necessarily gain an unconscionable advantage since they would be able to exploit and
12 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
13 legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy
14 would also discourage the assertion of lawful claims by employees who would be disinclined to file
15 an action against their former and/or current employer for real and justifiable fear of retaliation and
16 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
17 actions by the individual class members, even if possible, would create a substantial risk of
18 inconsistent or varying verdicts or adjudications with respect to the individual class members against
19 Defendants herein; and which would establish potentially incompatible standards of conduct for
20 Defendants; and/or legal determinations with respect to individual class members which would, as
21 a practical matter, be dispositive of the interest of the other class members not parties to
22 adjudications or which would substantially impair or impede the ability of the class members to
23 protect their interests. Further, the claims of the individual members of the Classes are not
24 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs
25 and expenses attending thereto. As such, the Classes identified in Paragraph 30 are maintainable as
26 Classes under § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 38. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
6 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in
7 amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has
8 not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid
9 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
10 equal to the unpaid wages and interest accrued thereon.

11 39. At all relevant times herein, Defendants failed to conform their pay practices to the
12 requirements of the law. Plaintiff and members of the Classes were not compensated for all hours
13 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
14 suffered or permitted to work under the California Labor Code and the applicable Wage Orders.

15 40. California Labor Code § 1198 makes unlawful the employment of an employee under
16 conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an
17 employer who has failed to pay its employees the legal minimum wage is liable to pay those
18 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
19 to the wages due and interest thereon.

20 41. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
21 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid
22 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
23 economic and statutory damages and penalties and other appropriate relief as a result of Defendants'
24 violations of the California Labor Code and applicable Wage Orders.

25 42. Defendants' practice and uniform administration of corporate policy regarding
26 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
27 members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated
28 damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according

1 to California Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure §
2 1021.5.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY ALL OVERTIME WAGES**
5 **(AGAINST ALL DEFENDANTS)**

6 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 44. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
8 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
9 hours worked and provide a private right of action for the failure to pay all overtime compensation
10 for overtime work performed.

11 45. At all times relevant herein, Defendants were required to properly pay Plaintiff and
12 members of the Classes for all overtime wages earned pursuant to California Labor Code § 1194
13 and applicable Wage Orders. Section 3 of the applicable Wage Orders require an employer to pay
14 an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess
15 of eight (8) hours per workday and/or in excess of 40 hours of work in the workweek. The same
16 section also requires an employer to pay an employee double the employee’s regular rate of pay for
17 work in excess of twelve hours each workday and/or for work in excess of eight (8) hours on the
18 seventh consecutive day of work in the workweek. Defendants caused Plaintiff and members of the
19 Classes to work overtime hours but did not compensate Plaintiff and members of the Classes at one
20 and one-half times their regular rate of pay for such hours in accordance with California law.

21 46. Defendants failed to conform their pay practices to the requirements of California
22 law. This unlawful conduct includes but is not limited to Defendants’ uniform and unlawful pay
23 policies/practices of failing to pay for all hours worked at which time non-exempt employees were
24 under the supervision and control of Defendants. The foregoing policies and practices are unlawful
25 and allow Plaintiff and the members of the Classes in a civil action for the unpaid amount of
26 overtime premiums owing, including interest thereon, statutory penalties, attorney’s fees, and costs
27 of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, applicable Wage
28 Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES
(AGAINST ALL DEFENDANTS)

47. At all relevant times, Defendants paid Plaintiff and other non-exempt on a bi-weekly basis. Under Labor Code § 204(d), for the payment of wages for “weekly, biweekly, or semimonthly payroll” California employers are required to pay non-exempt employees not more than seven (7) calendar days following the close of the payroll period.

48. At all relevant times, Defendants’ uniform payroll policies/practices failed and continues to fail to timely pay Plaintiff and other non-exempt employees in violation of Labor Code § 204. Plaintiff and other non-exempt employees were routinely paid on a “weekly, biweekly, or semimonthly” payroll, but Defendants regularly failed to pay all wages within 7 calendar days of the close of the payroll period.

49. For instance, for the pay period 09/17/2020-09/30/2020 Plaintiff was paid late on 10/09/2020. (Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s wage statement showing that Plaintiff was paid on the 9th day after the end of the pay period.)

50. Labor Code § 204 “pertains to the timing of wage payments” and serves a very important public policy objective. “It has long been recognized that wages are not ordinary debts, . . . and that, because of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay when it is due.” (See *In re Trombley* (1948) 31 Cal. 2d 801, 810-11 (citing *In re Moffett* (1937) 19 Cal.App.2d 7, 19). The penalties for violating Labor Code § 204 are set forth in Labor Code section 210(a) as follows: [E]very person who fails to pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

51. Due to their uniform policies/practices of paying Plaintiff and the other non-exempt employees late, Defendants violated the provisions of Labor Code § 204 and the applicable Wage

1 Orders. Accordingly, Plaintiff and other aggrieved employees are entitled to recover penalties
2 pursuant to Labor Code §§ 204 and/or 210(a).

3 **FOURTH CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
8 in their affirmative obligation to provide all of their hourly non-exempt employees, including
9 Plaintiff and members of the Meal Period Subclass, with all required meal periods in accordance
10 with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth
11 herein above.

12 54. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
14 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

15 **FIFTH CAUSE OF ACTION**

16 **REST PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 56. Section 12 of the applicable Wage Orders, and Labor Code §§ 226.7 and 516
20 establish the right of employees to be provided with a rest period of at least ten (10) minutes for
21 each four (4) hour period worked, or major fraction thereof.

22 57. Due to Defendants' unlawful rest period policies and practices, Defendants did not
23 authorize and permit Plaintiff and members of the Rest Period Subclass to take all rest periods to
24 which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
25 additional hour of pay to Plaintiff and members of the Rest Period Subclass at their respective
26 regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

27 58. The foregoing violations create an entitlement to recovery by Plaintiff and members
28 of the Rest Period Subclass in a civil action for the unpaid amount of rest period premiums owing,

1 including interest thereon, statutory penalties, and costs of suit pursuant to applicable Wage Orders,
2 California Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**
5 **(AGAINST ALL DEFENDANTS)**

6 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 60. Labor Code § 226(a) states in pertinent part the following:

8 “(a) An employer, semimonthly or at the time of each payment of wages,
9 shall furnish to his or her employee, either as a detachable part of the check,
10 draft, or voucher paying the employee’s wages, or separately if wages are
11 paid by personal check or cash, an accurate itemized statement in writing
12 showing (1) gross wages earned, (2) total hours worked by the employee,
13 except as provided in subdivision (j), (3) the number of piece-rate units
14 earned and any applicable piece rate if the employee is paid on a piece-rate
15 basis, (4) all deductions, provided that all deductions made on written orders
16 of the employee may be aggregated and shown as one item, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee is paid,
18 (7) the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social
20 security number, (8) the name and address of the legal entity that is the
21 employer and, if the employer is a farm labor contractor, as defined in
22 subdivision (b) of Section 1682, the name and address of the legal entity
23 that secured the services of the employer, and (9) all applicable hourly rates
24 in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee. . .”

26 61. As set forth above, Defendants issued and continue to issue wage statements to its
27 employees including Plaintiff, members of the Classes that are inadequate under Labor Code § 226(a).
28 Here, by failing to pay Plaintiff and members of the Classes for all hours worked, including, but not
limited to, all minimum and overtime wages, and missed meal and rest period premiums, Defendants
failed to include required information on Plaintiff and the Classes’ wage statements, including, but
not limited to, the gross wages earned, the net wages earned in violation of Labor Code § 226(a).

62. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
and intentional.

///

63. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the Classes in violation of section 226(a) of the Labor Code, Plaintiff, members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each member of the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

65. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the class is certified.

66. Sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Timeline Penalty Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

67. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

68. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty Subclass for all hours worked, including minimum and overtime wages, and their meal/rest period premiums, prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

69. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. (See, e.g. DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time

1 penalties.)

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION BUSINESS & PROFESSIONS CODE § 17200 *et seq.***

4 **(AGAINST ALL DEFENDANTS)**

5 70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 71. Defendants have engaged and continue to engage in unfair and/or unlawful business
7 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
8 failing to pay for all hours worked, by failing to timely pay all wages, by failing to provide all legally
9 required meal and rest periods or make premium payments in lieu thereof, by failing to provide
10 accurate wage statements and by failing to timely pay all wages due upon termination, to Plaintiff
11 and members of the Classes.

12 72. Defendants' utilization of these unfair and/or unlawful business practices deprived
13 and continued to deprive Plaintiff and members of the Classes of compensation to which they are
14 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
15 over Defendants' competitors who have been and/or are currently employing workers and
16 attempting to do so in honest compliance with applicable wage and hour laws.

17 73. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
18 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
19 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
20 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

21 74. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of the Complaint in this action.

23 75. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
25 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
26 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
27 he is entitled to recover under Code of Civil Procedure § 1021.5.

1 **NINTH CAUSE OF ACTION**

2 **(PRIVATE ATTORNEYS GENERAL ACT LABOR CODE § 2698 *et seq.*)**

3 **(AGAINST ALL DEFENDANTS)**

4 76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 77. Defendants have committed several Labor Code violations against Plaintiff and other
6 similarly non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
7 Code § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved situated employees,
8 brings this representative action against Defendants to recover the civil penalties due to Plaintiff,
9 other similarly non-exempt employees, and the State of California pursuant to Labor Code § 2699
10 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each
11 subsequent violation per employee per pay period for those violations of the Labor Code for which
12 no civil penalty is specifically provided based on the following Labor Code violations:

13 a. Failing to provide Plaintiff and other non-exempt employees all minimum wages in
14 violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197;

15 b. Failing to provide Plaintiff and other aggrieved employees all overtime compensation
16 at the appropriate premium rate in violation of Labor Code § 204, 510, 1194 & 1198;

17 c. Failing to timely pay Plaintiff and other aggrieved employees in violation of Labor
18 Code Section 204(d);

19 d. Failing to provide Plaintiff and other aggrieved employees with all of their statutorily
20 mandated meal periods in violation of Labor Code §§ 204, 210, 510, 1194 and 1198;

21 e. Failing to authorize and permit Plaintiff and other aggrieved employees with all of their
22 statutorily mandated rest periods in violation of Labor Code §§ 226.7, and 516;

23 f. Failing to compensate Plaintiff and aggrieved employees with all earnings at their
24 separation of employment in violation of Labor Code §§ 201-203;

25 g. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
26 itemized wage statements in violations of Labor Code § 226(a).

27 78. Pursuant to Labor Code § 2699.3(a), on November 9, 2020, Plaintiff gave written
28 notice via electronic filing to the Labor and Workforce Development Agency and by certified mail

1 to Defendant Xpress Global Solutions, LLC (“Defendant”) of the specific provisions of the Labor
2 Code alleged to have been violated, including the facts and theories to support the alleged violations.
3 Therefore, once more than sixty-five (65) days have passed since that date, Plaintiff will have fully
4 satisfied the administrative prerequisites to suit under the PAGA and this Complaint will be deemed
5 amended to include the PAGA cause of action. Once this occurs, Plaintiff seeks to recover all
6 applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees,
7 costs, and/or other damages as permitted by PAGA through a representative action pursuant to the
8 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff
9 is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil
10 Procedure § 382.

11 79. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect his interests and the interests of other similarly non-exempt employees, and to assess and
13 collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and
14 costs, which he is entitled to receive under California Labor Code § 2699.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
17 this suit is brought against Defendants, as follows:

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for compensatory, consequential, general and special
22 damages according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197;
- 23 5. Upon the Second Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 25 6. Upon the Third Cause of Action, penalties pursuant to Labor Code §§ 204 and/or
26 210(a), and reasonable attorneys’ fees and costs;
- 27 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

1 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special
2 damages according to proof pursuant to Labor Code §§ 226.7 and 516;

3 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
4 reasonable costs and attorneys' fees;

5 10. Upon the Seventh Cause of action, for statutory waiting time penalties pursuant to
6 Labor Code §§ 201-203;

7 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

10 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
11 non-exempt employees, and the State of California according to proof pursuant to Labor Code §
12 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for which
14 no civil penalty is specifically provided under the Labor Code;

15 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;

17 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226, and Code of Civil Procedure § 1021.5; and

19 15. For such other and further relief, the Court may deem just and proper.

20 Dated: November 9, 2020

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C

21
22
23 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff, the Putative Classes and
Aggrieved Employees

EXHIBIT “A”

CO. FILE DEPT. CLOCK VCHR. NO. 052
X6V 001604 DCK000 0000410073 1

XPRESS GLOBAL SYSTEMS LLC
6137 SHALLOWFORD RD
CHATTANOOGA, TN 37421

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
CA: 0

Social Security Number: XXX-XX-7661

Earnings	rate	hours	this period	year to date
Regular	18.3000	63.50	1,162.05	20,660.75
Overtime	27.4500	.25	6.86	2,175.44
Ca Pto				456.77
Ca Vacation				585.60
Holiday				585.60
Pto				183.00
Sick				439.20
Gross Pay			\$1,168.91	25,086.36

Deductions	Statutory		
Federal Income Tax	-115.13	2,543.04	
Social Security Tax	-72.47	1,555.35	
Medicare Tax	-16.95	363.75	
CA State Income Tax	-22.35	596.45	
CA SUI/SDI Tax	-11.69	250.86	
Other			
Admin Fee	-1.50	28.50	
Support	-84.46	996.77	
Child Support		591.22	
Net Pay	\$844.36		
Checking	-844.36		
Net Check	\$0.00		

Earnings Statement



Period Beginning: 09/17/2020
Period Ending: 09/30/2020
Pay Date: 10/09/2020

JONATHAN BERNARD BUCKNER
14400 EAST 14TH ST 33
SAN LEANDRO CA 94578

Your federal taxable wages this period are
\$1,168.91

Other Benefits and Information

	this period	total to date
Toll Hrs Worked	63.75	

Important Notes

ER PHONE: 844-947-7447

BASIS OF PAY: HOURLY

© 2000 ADP, LLC

XPRESS GLOBAL SYSTEMS LLC
6137 SHALLOWFORD RD
CHATTANOOGA, TN 37421

Advice number: 00000410073
Pay date: 10/09/2020

Deposited to the account of	account number	transit ABA	amount
JONATHAN BERNARD BUCKNER	xxxxxx5427	xxxx xxxx	\$844.36

THIS IS NOT A CHECK

NON-NEGOTIABLE