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Kern County Superior Court

By Vickie Fogerson, Deputy

Attorneys for Plaintiffs, IVAN HERNANDEZ, JESUS MENDOZA, and NICHOLAS ORTIZ, each as an individual and on behalf of all others similarly situated

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

IVAN HERNANDEZ, an individual, JESUS
MENDOZA, an individual, NICHOLAS ORTIZ,
an individual, each as an individual and on
behalf of all others similarly situated

Plaintiff,

v.

PENINSULA MESSENGER SERVICE OF
CENTRAL CALIFORNIA, INC., a California
corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: BCV-21-102620

**CLASS AND REPRESENTATIVE
ACTION**

- 1) FAILURE TO PAY REPORTING TIME
PAY (IWC No. 9, Section 5)**
- 2) FAILURE TO PROVIDE MEAL
PERIODS (Labor Code §§ 226.7, 512, And
1198);**
- 3) FAILURE TO PROVIDE REST PERIODS
(Labor Code §§ 226.7, 1198, IWC No. 9-
2001);**
- 4) FAILURE TO PAY OVERTIME (Labor
Code § 510);**
- 5) FAILURE TO MAINTAIN ACCURATE
RECORDS (Labor Code §1174(d));**
- 6) FAILURE TO PAY ALL WAGES WHEN
DUE (Labor Code § 204);**
- 7) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(Labor Code § 226, 226.3);**
- 8) FAILURE TO REIMBURSE WORK
EXPENSES (Labor Code § 2802);**
- 9) FAILURE TO TIMELY PAY WAGES
UPON TERMINATION (Labor Code §§
201-203);**

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) **10) UNFAIR BUSINESS PRACTICES (In**
) **Violation of Bus. & Prof. Code §17200);**
) **11) VIOLATION OF THE PRIVATE**
) **ATTORNEY GENERALS ACT OF 2004,**
) **Labor Code §2698 et seq.**
)
) **{JURY TRIAL DEMANDED}**
)
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)

1 Plaintiffs IVAN HERNANDEZ (“HERNANDEZ”), JESUS MENDOZA (“MENDOZA”),
2 and NICHOLAS ORTIZ (“ORTIZ”), each as an individual and on behalf of all others similarly
3 situated (collectively “Plaintiffs”), hereby brings this Complaint (“Complaint”) against Defendant
4 PENINSULA MESSENGER SERVICE OF CENTRAL CALIFORNIA, INC. (“Defendant”), and
5 DOES 1-50, Plaintiffs hereby allege as follows:

6 **INTRODUCTION**

7 1. Plaintiffs bring this class action pursuant to California Code of Civil Procedure § 382
8 against Defendant for, among other things: failure to pay reporting time pay; failure to provide
9 complaint rest and meal breaks; failure to pay overtime wages; failure to maintain accurate records of
10 hours worked and wages earned; failure to pay wages when due; failure to furnish accurate wage
11 statement; failure to reimburse work-related expenses incurred in the discharge of job duties; and
12 failure to pay all wages due upon termination. By failing to lawfully pay the Plaintiffs all wages they
13 are/were owed, Defendant also engaged in unfair, fraudulent and deceptive business practices within
14 the meaning of Business and Professions Code §§ 17200 et seq.

15 2. Plaintiffs thus bring this action on behalf of themselves and other individuals similarly
16 situated pursuant to Labor Code §§ 200-203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 2802 and
17 Industrial Wage Commission (“IWC”) Wage Order No. 9-2001 (“IWC No. 9”) for unpaid reporting
18 time, unpaid overtime compensation, unpaid premiums for rest-and-meal break violations; applicable
19 penalties, injunctive and other relief and reasonable attorneys’ fees and costs. Pursuant to Business
20 and Professions Code §§ 17200, Plaintiffs on behalf of themselves and putative classes also seek
21 injunctive relief and restitution from Defendant for unlawful withholding of wages, meal and rest
22 period premiums and reimbursement of expenses that lawfully belong to the Plaintiffs and the putative
23 Class/Subclasses.

24 **THE PARTIES**

25 **Plaintiff IVAN HERNANDEZ**

26 3. Plaintiff IVAN HERNANDEZ is and was, at all times relevant to this Complaint, an
27 adult individual who lived in Bakersfield, California and worked for Defendant in the City of

1 Bakersfield in the County of Kern, California. He was employed by Defendant as a Delivery Driver
2 from in or about March 2017 to on or about February 5, 2020.

3 **Plaintiff JESUS MENDOZA**

4 4. Plaintiff JESUS MENDOZA is and was, at all times relevant to this Complaint, an adult
5 individual who lived in Bakersfield, California and worked for Defendant in the City of Bakersfield
6 in the County of Kern, California. He was employed by Defendant as a Delivery Driver from in or
7 about April 2019 to in or about January 2021.

8 **Plaintiff NICHOLAS ORTIZ**

9 5. Plaintiff NICHOLAS ORTIZ is and was, at all times relevant to this Complaint, an
10 adult individual who lived in Bakersfield, California and worked for Defendant in the City of
11 Bakersfield in the County of Kern, California. He was employed by Defendant as a Delivery Driver
12 from on or about September 16, 2019, to on or about December 31, 2020.

13 **Defendant PENINSULA MESSENGER SERVICE OF CENTRAL CALIFONRIA, INC.**

14 6. At all times relevant to this Complaint, Defendant was a California corporation, doing
15 business and employing persons throughout California, where it employed Plaintiffs.

16 7. Defendant is a delivery company and maintains its principal executive offices in
17 California at 6639 West Pershing Avenue, Visalia, California 93291.

18 8. At all time relevant to this Complaint, Defendant employed Plaintiffs at their main
19 operations office in Bakersfield, California.

20 9. At all times mentioned in this Complaint, Defendant was Plaintiffs “employer,” and
21 Plaintiffs were its “employee” as defined by California law.

22 10. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under
23 the fictitious names DOES 1–50, inclusive, but prays for leave to amend and serve such fictitiously-
24 named Defendants pursuant to California Code of Civil Procedure § 474 once their names and
25 capacities become known.

26 11. Plaintiffs are informed and believes, and thereon alleges, that DOES 1–50, inclusive,
27 are the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or
and were acting on behalf of Defendant.

12. Plaintiffs are informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by or is attributable to Defendant, each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendant was in accordance with, and represent the policy of, Defendant.

13. At all times herein mentioned, Defendant, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendant, aided and abetted the acts and omissions of each and all of the other Defendant in proximately causing the damages herein alleged.

14. Plaintiffs are informed and believes, and thereon alleges, that Defendant is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

JURISDICTION AND VENUE

15. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the Kern County Superior Court and will be established according to proof at trial.

16. This Court has jurisdiction of this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action was brought do not specify any other basis for jurisdiction.

17. This Court has jurisdiction over the violations alleged herein and over Defendant and Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum contacts in California or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice. Defendant at all times relevant employed Plaintiffs while Plaintiffs were domiciled in and performing their work duties in the State of California, in the County of Kern. Plaintiffs maintained and worked out of the city of Bakersfield, in the County of Kern.

18. Venue is proper in this Court because, upon information and belief, the named Defendant employed Plaintiffs, who are residents of this county and the acts and omissions alleged herein took place in this county.

GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS

1 19. Plaintiffs allege that they and the Class/Subclass Members are individuals who
2 currently work or formerly worked for Defendant in the State of California as regular, hourly
3 nonexempt employees at any given time during the four years prior to the filing of this complaint (the
4 “Class Period”) who are/were entitled to reporting time pay, overtime compensation, labor code
5 compliant rest and meal breaks, accurate wage statements, timely payment of wages when due, and
6 reimbursement of work related expenses incurred in the discharge of their job duties. Plaintiffs and
7 such Class/Subclass Members work/worked in non-exempt, hourly-paid delivery driver positions for
8 Defendant, which is courier and delivery services company. Plaintiffs and those who were employed
9 by Defendant in California during the Class Period’s primary job duties were including, but not limited
10 to, couriers and delivery drivers.

11 20. The duties of delivery drivers and couriers are virtually identical. Any differences in
12 the job activities between the different individuals in these positions were and are legally insignificant
13 to the issues presented by this action. The same policies, procedures, employee handbooks and
14 manuals and compensation plans and training modules were uniformly applied to the nonexempt
15 Plaintiffs and Class/Subclass Members, which means individual issues will not predominate, and in
16 fact, all issues are systematically linked, related and common, both in terms of facts and law for
17 Plaintiff and each of the members of the Class/Subclasses during the Class Period.

18 21. *Labor Code* § 1194 provides that employees must be separately paid an hourly wage
19 for each and every hour worked.

20 22. Plaintiffs and the Class/Subclass Members were at all times subject to California’s laws
21 and regulations protecting the employees’ entitlement to be paid and presumption to be paid all wages
22 earned for labor performed, including an hourly wage for each and every hour worked.

23 23. IWC No. 9 §5 provides, in pertinent part, that “[e]ach workday an employee is required
24 to report for work and does report, but is not put to work or is furnished less than half said employee’s
25 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work,
26 but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate
27 of pay...”

1 24. Throughout the Class Period, Defendant would schedule Plaintiffs and Class
2 Members/Subclass Members for shifts, and routinely call them on the day of their shift and inform
3 them they were being taken off the schedule for that day due to lack of deliveries. Defendant also
4 would send Plaintiffs and Class Members/Subclass Members home early if they ran out of deliveries
5 mid-day, prior to the halfway point in Plaintiffs' and Class Members/Subclass Members' shifts.
6 Plaintiffs and Class Members/Subclass Members were never paid reporting time by Defendant for
7 shifts that were cancelled prior to the shift or during the shift, as is required by IWC No. 9.

8 25. Plaintiffs and Class Members/Subclass Members were never paid "reporting time pay"
9 pursuant to IWC No. 9 for any of the workdays that Defendant failed to provide them at least half of
10 their scheduled shift.

11 26. *Labor Code* §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not been
12 paid the legal wage may recover the unpaid balance and together with attorney's fees and costs of suit,
13 as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

14 27. *Labor Code* § 1198 states: "The maximum hours of work and the standard conditions
15 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
16 labor for employees. The employment of any employee for longer hours than those fixed by the order
17 or under conditions of labor prohibited by the order is unlawful."

18 28. *Labor Code* § 510 states in pertinent part, "Any work in excess of eight hours in one
19 workday or in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less
20 than one and one-half times the regular rate of pay for any employee." In addition, "any work in excess
21 of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of pay for
22 an employee." As a matter of course during all or a substantial portion of the Class Period, Plaintiffs
23 and each member of the Class were regularly, uniformly and systematically required by Defendant to
24 work in excess of eight hours per day, and/or required to work in excess of 40 hours per week without
25 being paid the requisite overtime wages required by *Labor Code* §§ 510, 1194 and Wage Order No.
26 9.

27 29. Due to Plaintiffs and Class Members/Subclass Members working off the clock during
lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded eight

1 hours a day or over 40 hours in a week. Defendant also routinely altered Plaintiffs and the Class
2 Members/Subclass Members timesheets to avoid paying any overtime owed.

3 30. *Labor Code* § 512 provides in relevant part: “An employer shall not employ an
4 employee for a work period of more than five hours per day without providing the employee with a
5 meal period of not less than 30 minutes An employer shall not employ an employee for a work
6 period of more than 10 hours per day without providing the employee with a second meal period of
7 not less than 30 minutes”

8 31. IWC Order No. 9-2001, which applies to Defendant’s industry, likewise requires
9 employers to provide meal periods to employees. Section 11(C) of IWC Order No 9-2001 provides in
10 relevant part: “Unless the employee is relieved of all duty during a 30 minute meal period, the meal
11 period shall be considered an “on duty” meal period and counted as time worked.”

12 32. Throughout the Class Period, Defendant failed to provide meal periods and rest periods
13 to Plaintiffs. The nature of Plaintiffs’ and Class Members/Subclass Members work, being deliveries,
14 was rigorous and nonstop. Plaintiffs and Class Members/Subclass Members were frequently prevented
15 from timely taking meal breaks and rest breaks because, due to their constant work demands and
16 staffing shortages, they were not timely relieved of all duties to take such breaks. Defendant required
17 for Plaintiffs and Class Members/Subclass Members to end every meal break back at the office,
18 requiring Plaintiffs and Class Members/Subclass Members to take their meal breaks while driving
19 back from their most recent delivery. Thus, as a matter of course during all or a substantial portion of
20 the Class Period, Plaintiffs and each member of the Class were regularly, uniformly and systematically
21 prohibited by Defendant from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods
22 for every five hours worked as required by *Labor Code* § 512 and Wage Order no. 9, nor were Plaintiffs
23 or members of the Class paid a one hour premium wage at their regular rate of pay for each missed,
24 short, late or interrupted meal period.

25 33. Section 12(A) of IWC Order No. 9-2001 provides in relevant part: “Every employer
26 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
27 the middle of each work period. The authorized rest period time shall be based on the total hours
worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

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

3 34. The nature of Plaintiffs’ and Class Members/Subclass Members work, being deliveries,
4 was rigorous and nonstop. Plaintiffs and Class Members/Subclass Members were frequently prevented
5 from timely taking rest breaks because, due to their constant work demands and staffing shortages,
6 they were not timely relieved of all duties to take such breaks. Plaintiffs and Class Members/Subclass
7 Members were berated by Defendant for taking too long on deliveries if any time was unaccounted
8 for, leaving no time for rest breaks. Thus, as a matter of course, during all or a substantial portion of
9 the Class Period, Plaintiffs and each member of the Class were regularly, uniformly, and
10 systematically prohibited by Defendant from taking, timely, compliant, uninterrupted paid 10-minute
11 rest periods for every four hours worked (or major fraction thereof) as required by Labor Code §§
12 226.7, 512 and Wage Order 9, nor were Plaintiffs or members of the Class paid a one-hour premium
13 wage at their regular rate of pay for each missed, short, late or interrupted rest period.

14 35. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
15 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
16 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
17 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
18 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

19 36. Defendant knew or reasonably should have known that Plaintiffs and Class
20 Members/Subclass Members were not timely relieved of all duties and were impeded or prevented
21 from taking timely all meal periods and rest breaks.

22 37. Plaintiffs and Class Members/Subclass Members were never paid “premium pay
23 penalties” pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide
24 them timely, uninterrupted meal and rest breaks.

25 38. *Labor Code* § 226(a) requires employers to provide employees itemized wage
26 statements that accurately report, among other things, the total hours worked and total wages earned
27 in each pay period.

1 39. Pursuant to Section 11(C) of IWC Order No. 9-2001, Defendant should have correctly
2 counted all purported “meal periods” for which Defendant failed to relieve Plaintiffs and Class
3 Members/Subclass Members of all duty as “on duty” meal periods, and Defendant should have
4 counted those purported “meal periods” as time worked. Defendant should have reported that
5 additional time worked on the itemized wage statements that Defendant provided to Plaintiffs and
6 Class Members/Subclass Members, but Defendant failed to do so, in violation of *Labor Code* § 226(a).

7 40. From the outset and throughout the Class Period, Defendant has failed to comply with
8 *Labor Code* § 226(a). As a matter of common policy and practice, Defendant did not include Plaintiffs
9 and Class Members’ proper and correct number of hours worked at each correct hourly rate of pay.
10 The wage statements that were distributed by Defendant to Plaintiffs and the Class Members did not
11 contain all wages earned. Defendant’s policies and practices and the omissions on the wage statements
12 were intention and knowing, causing Plaintiffs and members of the Class to suffer “injury” by, among
13 other things, impeding them from knowing the amount of wages to which they are and were entitled.

14 41. Defendant’s failure to accurately record and maintain records of all hours worked and
15 wages earned further constitutes a violation of *Labor Code* §1174(d), which requires employers to
16 maintain accurate payroll records of hours worked and wages earned for a period of three years.

17 42. *Labor Code* § 201(a) provides in relevant part: “If an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

19 43. *Labor Code* § 202(a) provides in relevant part: “If an employee not having a written
20 contract for a definite period quits his or her employment, his or her wages shall become due and
21 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
22 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
23 quitting.”

24 44. As a further result of Defendant’s manipulation of Plaintiffs’ and Class
25 Members/Subclass Members’ time records, Defendant violated *Labor Code* §§ 201 and 202 by failing
26 to timely pay all wages due upon Plaintiffs’ and such Class Members who separated from Defendant’s
27 employment during the Class Period, at their time of discharge or quitting.

1 45. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
2 without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any wages of an employee who
3 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
4 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not
5 continue for more than 30 days.”

6 46. Despite Defendant’s violations of *Labor Code* §§ 201 and 202 by failing to timely pay
7 all wages due upon such Plaintiffs’ and Class Members who separated from Defendant’s employment
8 during the Class Period, discharge or quitting, Defendant has failed to pay such individuals “waiting
9 time” penalties pursuant to *Labor Code* § 203(a).

10 47. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they
11 incur in direct consequence of the discharge of their duties or obedience to their employers’
12 instructions.

13 48. During the Class Period, Defendant required Plaintiffs and Class Members to use their
14 personal cell phones to perform their job duties each workday throughout their employment.
15 Defendant required them to contact supervisors, to communicate with other employees on shift, to text
16 supervisors, and to call customers for prescription deliveries. Only certain drivers assigned to certain
17 routes were issued a company cell phone, while other drivers servicing other routes were forced to use
18 their own personal cell phones. Plaintiffs and Class Members/Subclass Members were regularly
19 required to call clients with deliveries and to answer phone calls from supervisors to come in for
20 unscheduled shifts.

21 49. Despite Defendant’s requirement that Plaintiffs and Class Members/Subclass Members
22 incur expenses using their personal cell phones to perform their job duties, Defendant never
23 reimbursed them for doing so. Defendant’s failure to reimburse Plaintiffs and Class Members
24 constitutes a violation of *Labor Code* §2802(a).

25 50. Defendant has willfully refused to pay Plaintiffs and members of the Class/Subclasses
26 the required compensation for all hours worked and failed to keep time records as required by law.

27 51. Defendant’s company-wide policies and practices violate California law as pled herein.
Plaintiffs seek declaratory relief, reporting time pay, regular and overtime compensation, premium

1 pay for rest and meal break violations, reimbursement of business expenses, liquidated damages and
2 other damages and penalties as permitted by California Law, interest and attorneys' fees and costs.

3 **CLASS ACTION ALLEGATIONS**

4 52. Plaintiffs bring causes of action for violation of California's wage-and-hour laws as a
5 class action on behalf of all members of the Class and Subclasses which are defined and composed as
6 follows:

7 **THE CLASS:**

8 All individuals (a) who are currently or formerly employed by Defendant and
9 performed work in California as courier and/or delivery drivers and similar job
10 positions, job titles, job codes, job classifications, job duties or job descriptions, and
11 (b) who were subject to Defendant's illegal policies and practices as alleged herein
12 during the Class Period.

13 53. In the alternative, and for the convenience of the Court and the parties, Plaintiffs may
14 seek to certify the following Subclasses at the time the motion for class certification is filed:

15 **REPORTING TIME SUBCLASS:**

16 All members of the Class who Defendant failed to pay all reporting time pay as defined
17 by IWC No. 9, for all scheduled shifts that were cancelled prior to members of the Class
18 working at least half of the scheduled shift during the Class Period as fixed by
19 California statutes.

20 **UNTIMELY PAYMENT OF WAGES SUBCLASS:**

21 All members of the Class who Defendant failed to timely pay all wages earned when
22 due, as defined by Labor Code § 204 for all hours worked during the Class Period.

23 **OVERTIME SUBCLASS:**

24 All members of the Class who (a) worked in excess of 8 hours per day and/or 40 hours
25 per week; and (2) who Defendant failed to pay wages at the requisite overtime rates of
26 pay for overtime hours worked during the Class Period.

27 **MEAL PERIOD SUBCLASS:**

1 All members of the Class that Defendant did not provide 30-minute, uninterrupted and
2 duty-free meal periods for shifts over 5 and 10 hours of work, and who were not paid
3 an additional hour of pay in lieu thereof during the Class Period.

4 **REST PERIOD SUBCLASS:**

5 All members of the Class that Defendant did not authorize or permit uninterrupted and
6 duty-free 10-minute paid rest periods for every four hours worked, or major fraction
7 thereof, and who were not paid an additional hour of pay in lieu thereof during the
8 Class Period.

9 **WAGE STATEMENT SUBCLASS:**

10 All members of the Class that Defendant did not provide accurate, itemized wage
11 statements showing all hours actually worked, all wages earned, and the applicable
12 rates of pay for each hour worked during the Class Period.

13 **WAITING TIME SUBCLASS:**

14 All members of the Class who (a) from three years prior to the filing of this complaint
15 separated from Defendant's employment, and (2) who Defendant knowingly and
16 willfully failed to pay all wages due within 72 hours of the time such employees
17 voluntarily or involuntarily ended their employment with Defendant during the Class
18 Period.

19 **REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:**

20 All members of the Class that Defendant did not reimburse expenses necessarily
21 incurred in the discharge of performing their work-related duties during the Class
22 Period.

23 **UCL SUBCLASS:**

24 All members of the Class who, during the Class Period, are owed restitution of unpaid
25 wages resulting from Defendant's systematic violations of California's Labor Code and
26 Wage Order No. 9.

27 54. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
necessary to amend the definition of the Subclasses. In any event, Plaintiffs will formally define and

1 designate a class definition at such time when Plaintiffs seek to certify the Class or Subclasses defined
2 herein.

3 **COMMON CLASS ACTION ALLEGATIONS FOR THE PROPOSED CLASS AND**
4 **SUBCLASSES**

5 55. **Numerosity**: The potential quantity of members of the Class and Subclasses as defined
6 are so numerous that joinder of all members would be unfeasible and impractical. Plaintiffs are
7 informed and believe that the total number of current and formerly employed members of the Class
8 exceeds 100. The quantity and identity of such membership is readily ascertainable via inspection of
9 Defendant's records.

10 56. **Superiority**: The nature of this action and the nature of the laws available to Plaintiffs
11 make the use of the class action format particularly efficient and the appropriate procedure to afford
12 relief to Plaintiffs and the members of the Class and Subclasses for the wrongs alleged herein, for the
13 following reasons:

- 14 a) The State of California, for which there is a named representative, has a public policy
15 which encourages the use of the class action device.
- 16 b) By establishing a technique whereby, the claims of many individuals can be resolved
17 at the same time, the class suit both eliminates the possibility of repetitious litigation
18 and provides small claimants with a method of obtaining redress for claims which
19 would otherwise be too small to warrant individual litigation.
- 20 c) This case involves large corporate Defendant and a large number of individual class
21 members with many relatively small claims and common issues of law and fact.
- 22 d) If each individual member of the Class was required to file an individual lawsuit, the
23 large corporate Defendant would necessarily gain an unconscionable advantage
24 because Defendant would be able to exploit and overwhelm the limited resources of
25 each individual member of the Class with Defendant's vastly superior financial and
26 legal resources.
- 27 e) Requiring each individual member of the Class to pursue an individual remedy would
also discourage the assertion of lawful claims by the members of the Class who would

1 be disinclined to pursue action against Defendant because of an appreciable and
2 justifiable fear of retaliation and permanent damage to their lives, careers and well-
3 being.

4 f) Proof of a common policy and practice or factual pattern, of which the members of the
5 Class experienced, is representative of the Class herein and will establish the right of
6 each of the members of the Class to recover on the causes of action alleged herein.

7 g) Absent class treatment, the prosecution of separate actions by the individual members
8 of the Class, even if possible, would likely create:

9 i. a substantial risk of each individual plaintiff presenting in separate, duplicative
10 proceedings the same or essentially similar arguments and evidence, including
11 expert testimony;

12 ii. a multiplicity of trials conducted at enormous expense to both the judicial
13 system and the litigants;

14 iii. inconsistent or varying verdicts or adjudications with respect to the individual
15 members of the Class against Defendant;

16 iv. potentially incompatible standards of conduct for Defendant; and

17 v. potentially incompatible legal determinations with respect to individual
18 members of the Class which would, as a practical matter, be dispositive of the
19 interests of the other members of the Class who are not parties to the
20 adjudications or which would substantially impair or impede the ability of the
21 members of the Class to protect their interests.

22 h) The claims of the individual members of the Class are not sufficiently large to warrant
23 vigorous individual prosecution, considering all of the concomitant costs and expenses
24 attendant thereto.

25 i) Courts seeking to preserve efficiency and other benefits of class actions routinely
26 fashion methods to manage any individual questions.

27 j) Judicial precedent urges trial courts, which have an obligation to consider the use of
innovative procedural tools to certify a manageable class, to be procedurally innovative

1 in managing class actions.

2 57. **Well-defined Community of Interest:** Plaintiffs also meet the established standards
3 for class certification as follows:

- 4 a) **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the
5 Class and Subclasses they seek to represent because all members of the Class sustained
6 injuries and damages arising out of Defendant's common course of conduct in violation
7 of California law, and the injuries and damages of all members of the Class were caused
8 by Defendant's wrongful conduct in violation of California law, as alleged herein.
- 9 b) **Adequacy:** Plaintiffs are adequate representatives of the Class and/or Subclasses they
10 seek to represent, will fairly protect the interests of the members of the Class, have no
11 interests antagonistic to the members of the Class, and will vigorously pursue this suit
12 via attorneys who are competent, skilled and experienced in litigating matters of this
13 type.
- 14 c) **Predominant Common Questions of Law or Fact:** There are common questions of
15 law and/or fact as to the members of the Class which predominate over questions
16 affecting only individual members of the Class, including, without limitation:
- 17 i. Whether Defendant unlawfully failed to pay Plaintiffs and the members of the
18 Class all reporting time owed in violation of IWC No. 9;
 - 19 ii. Whether Defendant failed and continues to fail to have a policy to provide
20 members of the Class timely, duty-free, uninterrupted meal periods of at least
21 30-minutes for shifts over 5 and 10 hours of work;
 - 22 iii. Whether Defendant failed and continues to fail to have a policy to provide
23 members of the Class timely, duty-free, uninterrupted rest periods of at least
24 10-minutes for every four hours worked or major fraction thereof;
 - 25 iv. Whether Defendant unlawfully failed to pay Plaintiffs and the members of the
26 Class overtime compensation in violation of Labor Code §§ 218, 510, 1194,
27 and Wage Order 9;

- v. Whether Defendant unlawfully failed to maintain accurate records in violation of Labor Code § 1174(d);
- vi. Whether Defendant unlawfully failed to pay all wages to Plaintiffs and members of the Class when due in violation of Labor Code § 204;
- vii. Whether Defendant unlawfully failed to furnish accurate itemized statements to members of the Class in violation of Labor Code §§ 226, 226.3;
- viii. Whether Defendant failed to reimburse Plaintiffs and members of the Class for all expenses incurred in discharge of their duties in violation of Labor Code § 2802;
- ix. Whether Defendant's policies and practices of failing to pay their employees all wages due within the time required by California law after their employment ended with Defendant violate Labor Code §§ 201-203;
- x. Whether Defendant's conduct constitutes unfair competition, an unfair business practice and/or a deceptive business practice within the meaning of Business & Professions Code §§ 17200, *et seq.*;
- xi. Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- xii. Whether the members of the Class are entitled to injunctive relief;
- xiii. Whether the members of the Class are entitled to restitution; and
- xiv. Whether Defendant is liable for attorneys' fees and costs to the extent permitted by California law.

d) **Manageability of Class and Common Proof:** The nature of this action and the nature of laws available to Plaintiffs make use of the class action format and procedure a particularly efficient and appropriate procedure to afford relief to Plaintiffs and members of the Class for the wrongs alleged herein. Specifically, liability will turn on Defendant's own uniform, systematic practices of failing to pay their employees for all wages they earned in violation of California law during the Class Period. Therefore, the wage violations are predominant questions of fact that are easily capable of being

determined through manageable devices of common proof, such as statistical random sampling, survey evidence based on scientific principles, representative testimony, documentary evidence and common practices/procedures of Defendant in treating each of the members of the Class as a homogeneous group. Once the predominant issues of wage compliance are determined, then each of the derivative subclass claims and damages suffered by each member of the Class will be capable of being shown by several means of common proof, and limited by individual showings of entitlement to recovery that can be professionally administered and tailored to the facts and circumstances of the case.

58. Class certification of the First through the Tenth causes of action is appropriate under *Cal. Code Civ. Proc.* § 382 because questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses of this litigation. Defendant's policies and practices unlawfully treated members of the Class and Subclasses in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

59. Class certification of the First through Tenth causes of action is also appropriate pursuant to *Cal. Code Civ. Proc.* § 382 because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

60. Plaintiffs intend to send notice to all members of the Class and Subclasses to the extent required by law and each will be given an opportunity to opt out of the proceedings.

FIRST CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY

In Violation of Wage Order 9, Section 5

(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the Alternative, Reporting Time Subclass Against Defendant and Does 1 – 50, inclusive)

1 61. Plaintiffs reallege and incorporate by this reference each of the preceding and foregoing
2 paragraphs as if fully set forth herein.

3 62. Wage Order 9, § 5 provides that “[e]ach workday an employee is required to report for
4 work and does report but is not put to work or is furnished less than half said employee’s usual or
5 scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in
6 no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of
7 pay, which shall not be less than the minimum wage.”

8 63. During a substantial portion of the Class Period, Plaintiffs and members of the Class
9 showed up for work as scheduled by Defendant, prepared and expecting to work an entire schedule,
10 but were sent home by Defendant without being furnished at least half of their scheduled work.
11 Defendant also would call on the same day as a scheduled shift and inform Plaintiffs and Class
12 Members not to come into work that day. On such occasions these employees were not paid reporting
13 time pay for at least two hours, nor more than four hours of reporting time pay at their regular hourly
14 rate of pay.

15 64. Defendant’s failure to pay reporting time pay to the employees who showed up for
16 work and were sent home or who were called on the day of their shift and had their shift cancelled
17 without out being furnished at least half of their scheduled work, was a violation of Wage Order 9.

18 65. As a direct and proximate result of Defendant’s unlawful conduct, the members of the
19 Class have suffered, and continue to suffer, economic damages in an amount to be proven at trial.

20 66. Accordingly, Class Members are entitled to recover and seek to recover their reporting
21 pay wages equal to a minimum of at least two hours of pay at their regular hourly rate, plus interest
22 thereon in an amount according to proof at trial, and attorneys’ fees and costs pursuant to Cal. Lab.
23 Code § 218.5 or § 1194.

24 67. Further, pursuant to IWC No. 9, § 20 and Labor Code § 1099, Class Members seek to
25 recover penalties equal to \$50 for each initial failure to properly pay each employee reporting time
26 wages, and an amount equal to \$100 dollars for each subsequent failure to properly pay reporting time
27 wages, in an amount according to proof at trial.

1 agreed to. The written agreement shall state that the employee may in writing, revoke the agreement
2 at any time.

3 74. *Labor Code* §1198 states: “The maximum hours of work and the standard conditions
4 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
5 labor for employees. The employment of any employee for longer hours than those fixed by the order
6 or under conditions of labor prohibited by the order is unlawful.”

7 75. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
8 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
9 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
10 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
11 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

12 76. Throughout the Class Period, Plaintiffs and members of the Class were required to end
13 their lunch breaks at the office, which would force them to drive back to the office during their lunch
14 breaks. This made it impossible for Plaintiffs and members of the Class to have a duty-free
15 uninterrupted meal break. Defendant has never paid Plaintiffs and members of the Class for the time
16 they worked during their breaks nor the premium pay to which they are/were entitled for the missed
17 and non-compliant rest and meal breaks.

18 77. Plaintiffs and members of the Class did not waive their meal periods by mutual consent
19 with Defendant or otherwise.

20 78. The nature of Plaintiffs and Class Members’ work, being deliveries, was rigorous and
21 nonstop. Plaintiffs and Class Members were frequently prevented from timely taking meal breaks
22 because, due to their constant work demands and staffing shortages, they were not timely
23 relieved of all duties to take such breaks. If Plaintiff and Class Members attempted to take a lunch
24 break that was uninterrupted, they would be berated by Defendant and told that meal breaks must be
25 taken while driving to the office.

26 79. Plaintiffs and the Class Members did not consent to missing their meal and rest breaks,
27 nor did they waive their right to timely, uninterrupted meal and rest breaks.

1 80. Defendant discouraged, impeded and through threats and intimidation prevented and
2 dissuaded Plaintiffs and members of the Class from taking compliant 30-minute meal periods, nor did
3 Defendant pay Plaintiffs or Members of the Class with an additional hour of pay for these meal period
4 violations, nor did Defendant pay Plaintiffs and Class Members a premium pay penalty for missed,
5 short, late or interrupted meal breaks pursuant to *Labor Code* § 226.7(c).

6 81. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 512(a), 1198, and
7 IWC Order No. 9-2001, Plaintiffs seek recovery of "premium pay" pursuant to the DLSE's Policy
8 Manual Guidelines and *Labor Code* § 226.7.

9 82. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the
10 Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REST PERIODS**

13 **In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 9-2001**

14 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**
15 **Alternative, Rest Break Subclass Against Defendant and Does 1 – 50, inclusive)**

16 83. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
17 fully set forth herein.

18 84. Section 12(A) of IWC Order No. 9-2001 provides in relevant part: "Every employer
19 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
20 the middle of each work period. The authorized rest period time shall be based on the total hours
21 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
22 . . . Authorized rest period time shall be counted as hours worked for which there shall be no deduction
23 from wages."

24 85. *Labor Code* §1198 states: "The maximum hours of work and the standard conditions
25 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
26 labor for employees. The employment of any employee for longer hours than those fixed by the order
27 or under conditions of labor prohibited by the order is unlawful."

1 86. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
2 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
3 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
4 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
5 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

6 87. Throughout the Class Period, Defendant failed to provide rest periods to Plaintiffs and
7 the Class Members. The nature of Plaintiffs and Class Members’ work, being deliveries, was rigorous
8 and nonstop. Plaintiffs and Class Members were frequently prevented from timely taking rest breaks
9 because, due to their constant work demands and staffing shortages, they were not timely relieved of
10 all duties to take such breaks. Defendant carefully tracked how long Plaintiff and Class Members
11 would take on their assigned delivery routes, and would reprimand Plaintiffs and Class Members if
12 they took too long. Defendant did not allow time for complaint rest breaks in their driver and courier’s
13 schedules and would not allow rest breaks to be taken during or in between routes.

14 88. Defendant knew or reasonably should have known that Plaintiffs and the Class
15 Members were not timely relieved of all duties and were impeded or prevented from timely taking
16 timely all rest breaks after every fourth hour of work (or major fraction thereof).

17 89. Plaintiffs and the Class Members were never paid premium pay penalties pursuant to
18 *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide them timely,
19 uninterrupted rest breaks.

20 90. As a result of Defendant’s violations of *Labor Code* §§ 226.7(c), 1198, and IWC Order
21 No. 9-2001, Plaintiffs on their own behalf and on behalf of the Class Members they seek to represent,
22 seek “premium pay penalties” pursuant to *Labor Code* § 226.7.

23 91. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the
24 Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

27 **In Violation of Labor Code §§ 510, 1194**

(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the

Alternative, Overtime Subclass Against Defendant and Does 1 – 50, inclusive)

92. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

93. Plaintiffs seek to represent the proposed Class or in the alternative the proposed Overtime Subclass as a basis to enforce equal or greater protections for wages owed that are offered by California law. Because the practices alleged herein are uniform, systematic and continuous and affect each proposed member of the Class in a legally identical way, Plaintiffs, at the appropriate time will move to certify the Class or Overtime Subclass to the extent permitted by *Cal. Code Civ. Proc.* § 382.

94. Plaintiffs and the Class, were at all times subject to California’s laws and regulations protecting the employees’ entitlement to be paid and presumption to be paid overtime wages for requisite hours worked beyond a normal work day or a normal work week, as specified, without limitation, by *Labor Code* §§ 510, 1194 and Wage Order No. 9.

95. California law requires employers, such as Defendant to pay overtime compensation to all nonexempt employees for all hours worked over 40 hours per week, or over 8 hours per day. *Labor Code* § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

96. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.” In addition, *Labor Code* § 510(a) provides that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

97. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer than the hours set by the IWC.

98. Pursuant to *Labor Code* § 1194, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

99. As set forth above, Plaintiffs and the members of the Class were entitled to be paid overtime compensation for all overtime hours worked. Plaintiffs, and members of the Class, were regularly and consistently required to work overtime during the Class Period but were not paid for all overtime hours worked and were not paid at the correct overtime rate of pay.

100. Throughout the Class Period, Plaintiffs and members of the Class worked in excess of 8 hours in a workday and/or 40 hours in a workweek. Plaintiffs and members of the Class also worked in excess of 12 hours in a workday. Whenever Plaintiffs and Class Members exceeded eight hours per day or forty hours per week, Defendant's managers would alter the Plaintiffs and Class Members timecards to get rid of any overtime.

101. Plaintiffs and the Class Members would also routinely work off the clock during their meal breaks when driving back to the office, as was required by Defendant. Due to this time worked off the clock, Plaintiffs and Class Members would routinely exceed eight hour shifts and forty hour workweeks and would not be paid the required overtime pay.

102. During the Class Period, Defendant did not pay Plaintiffs and members of the Class overtime pay for all overtime hours worked, included hours worked while off the clock and Defendant did not pay Plaintiffs and members of the Class at the correct overtime rate of pay.

103. As a direct and proximate result of Defendant's unlawful conduct as set forth herein, Plaintiffs and members of the Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant in an amount to be established according to proof at trial, prejudgment interest, and costs and attorneys' fees, pursuant to *Labor Code* § 1194.2 and applicable California law.

FIFTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

In Violation of Labor Code § 1174(d)

(Brought by Plaintiffs on Behalf of Themselves and

Members of the Class Against Defendant and Does 1 – 50, inclusive)

104. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

1 105. *California Labor Code* § 1174(d), which was in force and effect at all relevant times,
2 herein, provides in pertinent part, that “Every person employing labor in this state shall keep... at a
3 central location in the state or at the plants or establishments at which employees are employed, payroll
4 records showing the hours worked daily by and the wages paid to, and the number of piece-rate units
5 earned by and any applicable piece rate paid to, employees employed at the respective plants or
6 establishments. These records shall be kept in accordance with rules established for this purpose by
7 the commission, but in any case shall be kept on file for not less than three years. An employer shall
8 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-
9 rate basis, piece-rate units earned.”

10 106. During the Class Period, Defendant knowingly and intentionally failed to accurately
11 record, track, maintain and keep accurate records of each and every hour worked and wages earned
12 for Plaintiffs and the Class Members.

13 107. Upon information and belief and thereon, Plaintiffs have alleged herein that in an effort
14 to fabricate the appearance of compliance with the provisions of the Labor Code, (simultaneously
15 motivated by Defendant’s effort to unlawfully avoid payment of premium pay penalties owed for
16 missed or non-compliant rest and meal breaks, and overtime pay) Defendant’s routinely prohibited
17 Plaintiffs and members of the Class from receiving proper, timely, and compliant meal and rest breaks and
18 altered timesheets to get rid of any owed overtime pay.

19 108. Thus at all times relevant, Defendant failed to maintain accurate records of all hours
20 Plaintiffs and Class Members worked, including hours they were working during rest and meal break
21 period, and for the days they worked in excess of eight hours, or workweeks in excess of forty hours.
22 As a result of Defendant’s failure to maintain proper accurate records, premium penalties to which
23 Plaintiffs and Class Members were entitled for rest and meal break violations was not properly
24 recorded either.

25 109. Accordingly, Plaintiffs as a direct and proximate result of Defendant’s unlawful
26 conduct as set forth herein, Plaintiffs and members of the Class have sustained damages, for
27 Defendant’s violation of *Labor Code* § 1174(d), including loss of earnings for all hours worked, and
loss of receipt of premium pay penalties, in amounts to be established at time.

1 110. Plaintiffs and Class members are therefore entitled to and do seek to recover penalties,
2 pursuant to § 1174.5, which provides that an employer who fails to properly maintain records pursuant
3 to 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES EARNED WHEN DUE**

6 **In Violation of Labor Code § 204**

7 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

8 **Alternative, the Untimely Payment of Wages Subclass**

9 **Against Defendant and Does 1 – 50, inclusive)**

10 111. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
11 set forth herein.

12 112. The California Labor Code requires employers to pay all wages due within the time
13 specified by law. *California Labor Code* § 204 was in full force and effect at all relevant times herein.

14 113. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay
15 are required. Labor performed between the 1st and 15th of the month must be paid between the 16th
16 and 26th of the same month and labor performed on the 16th and the end of the month must be paid
17 on pay days between the 1st and 10th of the following month. *Labor Code* § 210 provides that “ ...
18 (a) In addition to, and entirely independent and apart from, any other penalty provided in this article,
19 every person who fails to pay the wages of each employee as provided in §§ 201.3, 204, 204b, 204.1,
20 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

21 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
22 employee.

23 (2) For each subsequent violation, or any willful or intentional violation, two hundred
24 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
25 unlawfully withheld.

26 114. Plaintiffs and the Class Members were entitled to be paid twice monthly for labor
27 performed. Although Plaintiffs and the class members are and/or were paid twice monthly, Defendant

1 failed and intentionally refused to pay Plaintiffs and the Class Members all wages they were entitled
2 to, twice monthly, including overtime pay during each and every pay period of their employment.

3 115. As alleged herein, Plaintiffs and the Class Members were not paid for all of their wages,
4 for each and every hour worked, including inter alia time worked during rest and meal breaks, time
5 worked off the clock and overtime hours, as alleged herein, during every single pay period during the
6 term(s) of their employment.

7 116. Accordingly, as a result of the unlawful acts of Defendant, Plaintiffs and the Class
8 Members have been deprived of wages in amounts to be determined according to proof at trial, and
9 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs
10 of suit, pursuant to *Labor Code* § s 210, 218 and 1194.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

13 **In Violation of Labor Code § 226(a)**

14 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

15 **Alternative, the Wage Statement Subclass**

16 **Against Defendant and Does 1 – 50, inclusive)**

17 117. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
18 set forth herein.

19 118. *Labor Code* § 226(a) requires employers to provide employees itemized wage
20 statements that accurately report, among other things, the total hours worked and total wages earned
21 in each pay period. Section 226(a) states in pertinent part, that “[e]very employer shall, semimonthly
22 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
23 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
24 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
25 (2) total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of the period
26 for which the employee is paid ..., and (9) all applicable hourly rates in effect during the pay period
27 and the corresponding number of hours worked at each hourly rate by the employee ...”

1 119. *Labor Code* § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
2 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
3 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
5 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
6 costs and reasonable attorney’s fees.”

7 120. *Labor Code* § 226(e)(1) provides: “An employee suffering injury as a result of a
8 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
9 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
11 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
12 costs and reasonable attorney’s fees.”

13 121. *Labor Code* § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
14 reasonable person would be able to readily ascertain the information without reference to other
15 documents or information.”

16 122. *Labor Code* § 226(e)(3) states that the phrase “knowing and intentional failure” “does
17 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

18 123. *Labor Code* § 226(h) provides: “An employee may also bring an action for injunctive
19 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable
20 attorney’s fees.”

21 124. As alleged supra, during the Class Period, Defendant failed to maintain accurate
22 records, including records of time worked through rest and meal break periods, resulting in failure pay
23 them overtime wages they were owed when they worked shifts in excess of eight hours or in excess
24 of forty hours per week.

25 125. In addition, because of Defendant’s intentional and knowing failure to maintain proper
26 and accurate records, overtime hours and wages earned were also never recorded, and never appeared
27 on the Plaintiffs’ and Class Members’ wage statements.

1 126. During the Class Period Defendant knowingly and willingly failed to comply with
2 *Labor Code* § 226. As a common policy and practice Defendant did not include all hours worked,
3 including hours worked during on-duty rest and meal breaks, overtime hours worked and wage
4 statements failed to include premium pay penalties for Plaintiffs and Class Members' regularly missed
5 or otherwise, non-compliant, rest and meal breaks. The wage statements issued to the Plaintiffs and
6 Class Members were not accurate, did not reflect or include all wages earned during each and every
7 pay period of the Class Period. Defendant's knowing, and intentional omissions caused the Plaintiffs
8 and Class Members to suffer "injury" by, among other things, impeding them from knowing the
9 amount of wages to which they are/were lawfully entitled.

10 127. As a result of Defendant's violations of *Labor Code* § 226(a), Plaintiffs seek an award
11 of penalties pursuant to *Labor Code* § 226(e)(1), and injunctive relief, attorneys' fees, and costs
12 pursuant to *Labor Code* § 226(h).

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE WORK EXPENSES**

15 **In Violation of Labor Code § 2802**

16 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

17 **Alternative, the Reimbursement of Business Expense Subclass**

18 **Against Defendant and Does 1 – 50, inclusive)**

19 128. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
20 set forth herein.

21 129. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they
22 incur in direct consequence of the discharge of their duties or obedience to their employers'
23 instructions.

24 130. As alleged, during the Class Period, Defendant required Plaintiffs and Class Members
25 to use their personal cell phones to perform their job duties each workday throughout their
26 employment. Defendant required them to contact supervisors, to communicate with other employees
27 on shift, to text supervisors, and to call customers for prescription deliveries. Only certain drivers
assigned to certain routes were issued a company cell phone, while other drivers servicing other routes

1 were forced to use their own personal cell phones. Plaintiffs and Class Members were routinely
2 required to call clients with deliveries and to answer phone calls from supervisors to come in for
3 unscheduled shifts.

4 131. Despite Defendant's requirement that Plaintiffs and Class Members incur expenses
5 using their personal cell phones to perform their job duties, Defendant never reimbursed them for
6 doing so. Defendant's failure to reimburse Plaintiffs and the Class Members violated *Labor Code* §
7 2802(a).

8 132. As a result of Defendant's failure to indemnify and reimburse Plaintiffs and Class
9 Members for the expenses they necessarily incurred in the performance and discharge of their work-
10 related duties, Plaintiffs and the Class Members have sustained economic damages in amount to be
11 proven at trial.

12 133. As a result of Defendant's violation of *Labor Code* § 2802, Plaintiffs seek
13 reimbursement for all business-related expenses they have incurred working for Defendant, in amounts
14 to be determined at trial, with interest thereon as well as attorney's fees and costs of suit pursuant to
15 *Labor Code* § 2802(c).

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20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**

22 **In Violation of Labor Code §§ 201-203**

23 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**
24 **Alternative, Waiting Time Subclass Against Defendant and Does 1 – 50, inclusive)**

25 134. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
26 set forth herein.

27 135. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges an
employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

1 136. *Labor Code* § 202(a) provides in relevant part: “If an employee not having a written
2 contract for a definite period quits his or her employment, his or her wages shall become due and
3 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
5 quitting.”

6 137. As a further result of Defendant’s manipulation of Plaintiffs and Class Members time
7 records, and Defendant’s requirement and practice of having Plaintiffs and Class Members end their
8 lunch breaks at the office, which forced them to drive to the office on such lunch breaks, Defendant
9 violated Labor Codes § 201 and 202 by failing to timely pay all wages due for each and every hour
10 worked, including overtime wages, upon Plaintiffs’ and such Class Members who separated from
11 Defendant’s employment during the Class Period, at the time of discharge or quitting.

12 138. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with § § 201 . . . 202 . . . any wages of an employee
14 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
15 date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
16 not continue for more than 30 days.”

17 139. Despite Defendant’s willful violations of *Labor Code* §§ 201 and 202 by failing to
18 timely pay all wages due upon Plaintiffs’ and such Class Members who separated from Defendant’s
19 employment during the Class Period upon their discharge or quitting, Defendant failed to pay Plaintiffs
20 and such Class Members “waiting time” penalties pursuant to *Labor Code* § 203(a).

21 140. As alleged *supra*, Defendant failed to lawfully compensate Plaintiffs and the Class
22 Members as required by law. Therefore, Defendant has willfully failed to make timely payment of the
23 full wages due to Plaintiffs and such Class Member employees who have resigned or been discharged
24 during the Class Period.

25 141. *Labor Code* § 218.5(a) states in relevant part: “In any action brought for the
26 nonpayment of wages . . . the court shall award reasonable attorney’s fees and costs to the prevailing
27 party if any party to the action requests attorney’s fees and costs upon the initiation of the action.”

142. As a result of Defendant’s violations of Labor Code §§ 201 and 202, Plaintiffs seek an award of “waiting time penalties” pursuant to Labor Code § 203, and attorney’s fees and costs pursuant to *Labor Code* § 218.5.

TENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

In Violation of Bus. & Prof. Code § 17200 et seq.

(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the

Alternative, the UCL Subclass Against Defendant and Does 1 – 50, inclusive)

143. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

144. California Business and Professions Code § 17200, et seq. prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

145. California Business and Professions Code § 17202 provides: “Notwithstanding § 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in case of unfair competition.”

146. California Business and Professions Code § 17203 provides in relevant part that the court may “restore to any person in interest any money or property, real or person, which may have been acquired by means of such unfair competition.”

147. California Business and Professions Code § 17203 also provides that any person who meets the standing requirements of § 17204 and complies with *California Code of Civil Procedure* § 382 may pursue representative claims for relief on behalf of others.

148. California Business and Professions Code § 17204 allows any “person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

149. Pursuant to § 17204, Plaintiffs and all similarly situated employees are entitled to enforce all applicable provisions of the Labor Code.

150. Beginning at an exact date unknown, but at least since the date four years prior to the filing of this Complaint, Defendant has committed acts of unfair competition as defined by the Unfair

1 Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts described
2 in the Complaint, including, but not limited to violations of Labor Codes §§ 201-203, 204, 226 (a),
3 226.7, 510, 512, 1194, 1198, 2802 and the provisions of IWC No. 9-2001.

4 151. The violations of these laws and regulations, as well as of fundamental California
5 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
6 Business and Professions Code § 17200 et seq.

7 152. The acts and practices described above constitute unfair, unlawful and fraudulent
8 business practices, and unfair competition, within the meaning of Business and Professions Code §
9 17200, et seq. Among other things, Defendant's acts and practices have forced Plaintiffs and Class
10 Members to labor without receiving appropriate wages and/or to incur personal cell phone expenses
11 in the discharge of their duties.

12 153. The acts and practices described above have allowed Defendant to gain an unfair
13 competitive advantage over law-abiding employers and competitors.

14 154. As a result of the acts and practices described herein, Plaintiffs and Class Members
15 have been denied compensation in an amount to be proven at trial.

16 ///

17 ///

18 155. Plaintiffs and Class Members are therefore, entitled to restitution pursuant to Business
19 and Professions Code § 17203 and 17208 for all wages and other compensation unlawfully withheld
20 from them during the Class Period.

21 156. As a result of the aforementioned acts and practices, Defendant has received and
22 continues to receive ill-gotten gains belonging to Plaintiffs and Class Members.

23 157. Injunctive relief is necessary and appropriate to prevent Defendant from repeating and
24 continuing their unlawful, unfair and fraudulent business acts and practices described herein.

25 158. Pursuant to § 17203 and/or any other applicable law, Plaintiffs seek an order preventing
26 Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from
27 profiting and benefiting from their illegal and wrongful acts.

159. Plaintiffs' success in this action will enforce important rights affecting the public interest.

160. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

ELEVENTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004

Labor Code §2698 et seq.

(Against Defendant and Does 1-50, Inclusive)

161. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

162. The PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

163. Plaintiffs, by their employment with Defendants and Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the PAGA.

164. Plaintiffs, by virtue of **Exhibit A** and **Exhibit B** have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws including, without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiffs, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

1 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation
2 of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3,
3 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206,
4 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5,
5 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1,
6 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
7 subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision
8 (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551,
9 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
10 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c)
11 and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision
12 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294,
13 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391,
14 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections
15 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,
16 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of
17 subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section
18 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,
19 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,
20 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,
21 6310, 6311, and 6399.7.”

14 165. Plaintiffs are informed and believes that Defendant has violated and continues to
15 violate the provisions of the Labor Code and applicable Wage Order No. 9-2001.

16 166. Pursuant to Labor Code section 2699, any provision of the Labor Code that already
17 provides a civil penalty to be assessed and collected by the Labor and Workforce Development
18 Agency, or any of its departments, divisions, commissions, boards, agencies or employees for
19 violation of the code or does not provide a civil penalty may be recovered through a civil action
20 brought by an aggrieved employee on behalf of himself or herself, and other current or former
21 employees pursuant to the procedures set forth in Labor Code, section 2699.3.

22 167. Plaintiffs, on their own behalf, and on behalf of the other similarly situated Aggrieved
23 Employees is an “aggrieved employees” because they were employed by the violators (the named
24 Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory time
25 period and during such time period, was subjected to one or more violations, including Labor Code
26 sections 201-203, 204, 226(a), 226.7, 510, 512, 1174, 1194(a), 2802 and IWC No. 9, and are therefore
27 properly suited to represent the interests of a PAGA person.

168. Plaintiffs are informed and believes that Defendant have violated and continue to
violate provisions of the Labor Code and applicable Wage Order No. 9. Despite mailing of **Exhibit A**

1 and **Exhibit B** at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not
2 notified Plaintiffs that it intends to investigate the alleged Labor Code violations identified in
3 **Exhibit A** and **Exhibit B**, such that, by operation of law Plaintiffs are entitled to commence this
4 cause of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

5 **Failure to Pay Reporting Time**

6 169. Wage Order 9, § 5 provides that “[e]ach workday an employee is required to report for
7 work and does report but is not put to work or is furnished less than half said employee’s usual or
8 scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in
9 no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of
10 pay, which shall not be less than the minimum wage.”

11 170. Plaintiffs and the Aggrieved Employees were at all times subject to California’s laws
12 and regulations protecting employees’ entitlement to be paid and presumption to be reporting time pay
13 for any cancelled shifts that did not provide half or more of said employee’s usual opr scheduled day’s
14 work. .

15 171. At all relevant times herein, Defendant was required to compensate Plaintiffs and the
16 Aggrieved Employees reporting time pursuant to IWC No. 9.

17 172. By uniformly and systemically failing to pay all required reporting time pay, Defendant
18 was able to skim wages from the Plaintiffs and the Aggrieved Employees by not paying them all
19 reporting time legally owed to them.

20 173. Through their unlawful and illegal policies and practices, Defendant failed to pay
21 Plaintiffs and the Aggrieved Employees all wages owed to them at the proper corresponding legal
22 rates during the relevant time period.

23 **Failure to Provide Meal Periods and Rest Periods**

24 174. In accordance with the mandates of Labor Code §226.7 and 512, Defendant were
25 required to authorize and relinquish control to permit their non-exempt employees to take a ten-minute,
26 uninterrupted, duty-free rest break for every four (4) hours worked or a major fraction thereof and
27 were further required to provide their non-exempt employees with a full, uninterrupted 30-minute meal
period for every five (5) hours of labor performed.

1 175. As alleged, as a pattern and practice, Defendant failed to provide Plaintiffs and the
2 Aggrieved Employees with legally mandated rest break period and uninterrupted meal break periods
3 and failed to pay proper premium pay compensation for such failures in violation of Labor Code §§
4 226.7, 512 and IWC No. 9.

5 **Failure to Pay Overtime Wages**

6 176. At all times relevant herein, Defendant were required to compensate their non-exempt
7 employees overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40)
8 hours in a workweek, pursuant to the mandates of Labor Code §§ 510, 1194, and 1198.

9 177. As a pattern and practice, Defendant routinely failed to pay Plaintiffs and the Aggrieved
10 Employees for hours worked off the clock, including the 10-15 minutes of labor performed each
11 workday prior to clocking in and for labor performed during rest and meal break periods. Such off-
12 the-clock work performed caused Plaintiffs and the Aggrieved Employees to work overtime hours for
13 which they were not paid by Defendant.

14 178. Defendant also routinely altered timecards to erase any overtime hours worked and
15 owed to Plaintiffs and the Aggrieved Employees.

16 179. Thus, during the relevant statutory period, Defendant failed to compensate Plaintiffs
17 and the Aggrieved Employees for all hours worked, resulting in a failure to pay all overtime wages
18 they were due in amounts to be proven at trial.

19 **Failure to Provide Maintain Accurate Records**

20 180. At all times relevant herein, Defendant were required to keep accurate records showing
21 the names and addresses of all employees employed and showing the hours worked daily and wages
22 earned and paid, pursuant to the mandates of Labor Code §1174.

23 181. As a result of and in addition to Defendant's various Labor Code violations, including
24 Defendant's failure to records all hours worked, including overtime hours worked and time worked
25 during rest and meal break periods, Defendant failed in their affirmative obligation to maintain
26 accurate records regarding Plaintiffs and the Aggrieved Employees including accurate records of all
27 hours actually worked and wages paid at their applicable respective corresponding rates of pay in
violation of Labor Code §1174.

1 **Failure to All Wages When Due**

2 182. Pursuant to Labor Code §204, all wages earned by Plaintiffs and the Aggrieved
3 Employees were and/or are “due and payable twice during each calendar month, on days designated
4 in advance by the employer as regular paydays.” For [l]abor performed between the 1st and 15th days,
5 inclusive of any calendar month” payment is due no later than the 26th day of the month. “... for labor
6 performed between the 16th and the last day, inclusive, of any calendar month, payment is due no later
7 than the 10th day of the following month...” By failing to pay Plaintiffs and the Aggrieved Employees
8 properly for all hours worked at the proper corresponding rates of pay, including overtime hour and
9 overtime rates of pay, Defendant deprived them of timely payment of all wages earned, when due and
10 owing at these regularly scheduled intervals throughout the relevant time period in violation of Labor
11 Code §204.

12 **Failure to Timely Pay All Wages Earned Twice Monthly**

13 183. At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of §
14 200 defines “wages” as “all amounts for labor performed by employees of every description, whether
15 the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other
16 method of calculation.” Subdivision (b) of Section 200 defines “labor” as all work or service whether
17 rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the
18 labor to be paid for is performed personally by the person demanding payment.

19 184. At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of §
20 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of
21 Defendant’s failure to pay Plaintiffs and the Aggrieved Employees all wages they earned, Defendant
22 likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice
23 monthly.

24 185. At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210
25 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one
26 hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two
27 hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent
of the amount unlawfully withheld.

1 186. Due to the aforementioned failure by Defendant to pay all wages owed to Plaintiffs and
2 the Aggrieved Employees, a result of Defendant's willful and intentional violations of Labor Code §
3 204, Defendant is liable to the Plaintiffs and Aggrieved Employees for the penalties described above.

4 **Failure to Provide Complete and Accurate Wage Statements**

5 187. Pursuant to Labor Code §§ 226 "every employer shall, semimonthly or at the time of
6 each payment of wages, furnish each of his or her employees, either as a detachable part of the check,
7 draft, or voucher paying the employees' wages or separately when wages are paid by personal check
8 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
9 worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the
10 employee is paid..., and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee..."

12 188. As a result of the alleged and various Labor Code violations, Defendant failed to keep
13 maintain accurate records of all hours actually worked/wages earned and thus, consequently failed in
14 their affirmative obligation to provide Plaintiffs and the Aggrieved Employees with accurately
15 itemized wage statements regarding the true total number of hours each of them actually worked
16 during each and every pay period, their gross wages earned, all deductions, and net wages earned,
17 along with their applicable corresponding hourly rates, including premium pay for missed rest and/or
18 meal breaks and including overtime rates for each respective hourly rate of overtime worked. The
19 inaccurate wage statements were not caused by inadvertent and occasional clerical mistakes, but rather
20 were the result of a pre-determined, deliberate and uniform deliberate operational policies and
21 practices of Defendant.

22 **Failure to Reimburse Expenses**

23 189. California Labor Code § 2802 provides that an employer shall indemnify his or her
24 employees for all necessary expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties.

26 190. As alleged supra, Defendant required or requires as a condition of employment that
27 Plaintiffs and the Aggrieved Employees utilize their personal cell phones in the daily and routine
discharge of their duties to communicate with Defendant's managers, supervisors, and colleagues.

1 Defendant does not and has not reimbursed Plaintiff and the Aggrieved Employees for expenses they
2 incurred in the routine and daily use of their personal cell phone for work related duties and
3 communications.

4 191. As a direct result of Defendant's failure to reimburse Plaintiffs and the Aggrieved
5 Employees for their personal cell phone expenses they necessarily incurred in the discharge of their
6 work-related duties, Defendant has violated Labor Code Section 2802.

7 **Damages**

8 192. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
9 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

10 193. Pursuant to California Labor Code § 2699, Plaintiffs requests and is entitled to recover
11 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved employee
12 per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
13 per pay period for each subsequent violation; and

14 194. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
15 statute.

16 195. As alleged supra, notice of these violations was provided pursuant to Labor Code
17 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days have
18 passed since notice was provided and Plaintiffs have not received any notification from the LWDA
19 that it intends to investigate the alleged violations. Therefore, the representative Plaintiffs are entitled
20 to prosecute their PAGA claims under Labor Code §2699, et seq.

21 196. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
22 Employees, whether a part of this action or not. Further this claim needs no certification to proceed
23 with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

24 197. Accordingly, Plaintiffs respectfully requests that the Court award judgment and relief
25 in their favor including an award of civil penalties under California Labor Code §2699 in the amount
26 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
27 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
violation during the relevant period, according to proof.

198. Plaintiffs as the personal representatives of the Aggrieved Employees, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agencies. Said funds recovered will be distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL MEMBERS OF THE CLASS AND/OR SUBCLASSESS THEY SEEK TO REPRESENT, PRAYS FOR RELIEF AS FOLLOWS:

ON THE FIRST THROUGH TENTH CAUSES OF ACTION

1. For an order certifying the First through Tenth causes of action and maintaining said causes of action as a class action pursuant to Cal. Code Civ. Proc. § 382 on behalf of the members of the Class and/or Subclasses who were either employed or who performed work here in the State of California within the Class Period and that notice of the pendency of this action be provided to members of the Class;
2. Designation of Plaintiffs as the Class Representatives for the Class and/or Subclasses and Plaintiffs' attorneys as Class Counsel for the Class and/or Subclasses;
3. A declaratory judgment that the practices complained of herein are unlawful under California law;
4. Appropriate equitable relief to remedy Defendant's violations of California law including, but not necessarily limited to, an order enjoining Defendant from continuing their unlawful practices;
5. For an award of unpaid wages for all labor performed and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 200, 218, 1194 and 1194.2;
6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
7. All appropriate California statutory penalties;

8. An award of unpaid reporting time pay pursuant to IWC No. 9;
9. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class was not provided a first or second meal period;
10. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
11. Labor Code § 203 penalties;
12. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
13. Reimbursement of the necessary expenses incurred by the Class in the discharge of their duties;
14. For an order that Defendant makes restitution to Plaintiffs and the Class due to its unlawful business practices, including unlawfully-collected compensation pursuant to Business & Professions Code §§ 17203 and 17204;
15. Pre-judgment and post-judgment interest, as provided by law;
16. Such other equitable relief as the Court may deem just and proper;
17. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws; and

ON THE ELEVENTH CAUSE OF ACTION

1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1198, 2802 and applicable Wage Order No. 9;
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and
3. For such other and further relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands trial of all issues by jury.

1
2
3 DATED November 2, 2021

SW EMPLOYMENT LAW, APC

4
5 By: _____



Jacob N. Whitehead, Esq.

Meghan N. Higday, Esq.

6 Attorneys for Plaintiffs, Putative Class, and all others
7 similarly situated
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EXHIBIT A



December 18, 2020

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Certified Mail

Greg M. Morse, Manager, CEO, and
Registered Agent for
Peninsula Messenger LLC
8 Harris Court, C-3
Monterey, California 93940

Via First Class Mail

Greg M. Morse, Manager, CEO, and
Registered Agent for
Peninsula Messenger LLC
8 Harris Court, C-3
Monterey, California 93940

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that the representative Ivan Hernandez ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (the "Aggrieved Employees") against Peninsula Messenger LLC, a California limited liability company (hereinafter "Defendant") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full time employees, including but not limited to Delivery Drivers or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify Defendant of Plaintiff's intent to file a PAGA action complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant's failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation or termination of employment.

Based upon these violations, as further detailed below, Defendant violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 9-2001 (IWC No. 9).

Ivan Hernandez was formerly employed by Defendant from approximately March of 2018 until approximately February 5, 2020 as a full time, hourly compensated, non-exempt delivery driver who delivers products for clients, including but not limited to documents, medical equipment, medication, and warehouse items.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were routinely prohibited from receiving proper, timely, and compliant meal and rest breaks. Defendant required Plaintiff and the Aggrieved Employees to always end their lunch breaks at the office, requiring them to drive back to the office during their lunch break. This made it impossible for Plaintiff and the Aggrieved Employees to have a duty-free uninterrupted meal break. Defendant never provided rest breaks for Plaintiff and the Aggrieved Employees, and when Plaintiff and the Aggrieved Employees attempted to take a rest break, they were berated by their managers for taking too long on deliveries. Defendant has never paid Plaintiff and the Aggrieved Employees for the time they worked during their breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time have Plaintiff or the Aggrieved Employees validly waived their rest and meal break periods.

During the relevant statutory period, Defendant routinely cancelled Plaintiff and the Aggrieved Employees' scheduled shifts, often on the day of the shift, with no advance notice. Plaintiff and the Aggrieved Employees never received any reporting time pay for these regularly scheduled, then-cancelled shifts. Defendant also required Plaintiff and the Aggrieved Employees to be on call whenever they were not scheduled to work. Plaintiff and the Aggrieved Employees routinely were called in to work when they were not prior scheduled. These spontaneous demands by Defendant for Plaintiff and the Aggrieved Employees to come into work on non-scheduled workdays, occurred on average one to two times a week.

Defendant also intentionally failed to properly pay such employees all of the overtime wages that they were due. Due to Plaintiff and the Aggrieved Employees working off the clock during lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded 8 hours a day or over 40 hours in a week. Defendant also routinely altered Plaintiff and the Aggrieved Employees' timecards to reduce overtime. Defendant would regularly inform supervisors to reduce overtime, causing supervisors to alter Plaintiff and the Aggrieved Employees timecards to eliminate any reported overtime.

Further, Defendant routinely failed to pay Plaintiff and the Aggrieved Employees on their regularly-scheduled pay dates. Often Plaintiff and the Aggrieved Employees would have to wait several days after their expected pay dates to receive their pay. Defendant does not offer direct deposit pay, so Plaintiff and the Aggrieved Employees were unable to get paid until Defendant got around to writing them their checks. As a result, Plaintiff and the Aggrieved Employees routinely did not receive their checks until anywhere from two to four days after their scheduled pay days.

Further, during the relevant statutory period, Plaintiff and certain of the Aggrieved Employees were required to utilize their personal cell phones for work related duties and work-related communications. Utilization of their personal cell phones was an essential part of the job on certain routes. Plaintiff and certain the Aggrieved Employees used their personal cell phones to contact supervisors, to communicate with other employees on shift, to text supervisors, and to call customers for prescription deliveries. Only certain drivers assigned to certain routes were issued a company cell phone, while other drivers servicing other routes were forced to use their own personal cell phones. Plaintiff was regularly required to call clients with deliveries and to answer phone calls from supervisors to come in for unscheduled shifts. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. If Defendant fails to cure these alleged violations, Plaintiff will

bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to Plaintiff and those Aggrieved Employees who ceased their employment relationship with Defendant during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 9, Section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were never able to take Labor Code compliant, timely and duty-free rest breaks. Plaintiff and Aggrieved Employees were never provided an uninterrupted meal break due to Defendant requiring them to drive back to the office during their lunch break. Defendant actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendant have not paid premium pay penalties for the missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 9 which set forth California employers' affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 9, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

Failure to Pay Wages For Each Hour Worked

IWC Wage Order No. 9 §5 provides, in pertinent part, that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay ...”

During the relevant statutory period, Plaintiff and the Aggrieved Employees were scheduled by Defendant to work and had their shift cancelled, the day of the scheduled shift, without being provided any work as scheduled. When this occurred, neither Plaintiff nor the Aggrieved Employees are/were paid with their lawfully entitled reporting time pay. On other occasions, Plaintiff and the Aggrieved Employees are/were scheduled to work and permitted to clock in but were sent home after only a couple hours of work due to a lack of deliveries and were not provided with at least half of their regularly scheduled hours, after reporting to work their full shift. At no time have the Plaintiff or similarly situated Aggrieved Employees paid reporting time wages when they were furnished less than half of their scheduled shift.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states “All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Under Labor Code §1194 (a) “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at

the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

As indicated above, the Plaintiff and the Aggrieved Employees often worked off the clock, which meant they were working more than an eight-hour shift most of the time but were not paid overtime wages. Defendant also altered Plaintiff and the Aggrieved Employees' timecards to avoid paying for any overtime worked. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest or meal breaks due to Defendant's policies. Defendant also altered timecards and did not pay for overtime worked. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant's unlawful business and compensation practices under the Labor Code and IWC No. 9, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their meal breaks, due to Defendant's unlawful instructions forcing them to work while off the clock and had overtime unrecorded by Defendant. Hours worked off the clock are/were not recorded, were not recorded at the proper pay rate, and no premium pay is reflected on Plaintiff and the Aggrieved Employees' pay stubs during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendant terminated, Defendant failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, "*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*"

As described above, the Plaintiff and certain of the Aggrieved Employees daily utilize or utilized their personal cell phones in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendant. Defendant violated Labor Code § 2802 and the Plaintiff and certain of the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorneys' fees, penalties and interest thereon as permitted by §2802.

Conclusion

In sum, as has been factually alleged, Defendant violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174(d), 1194 (a) and 2802, and IWC No. 9. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seek to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in blue ink, appearing to read 'J. Whitehead', is written over the printed name.

Jacob N. Whitehead

JNW/mnh

EXHIBIT B



March 17, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Certified Mail

Thomas C. Brodersen,
Registered Agent for
Peninsula Messenger Service of Central
California, Inc.
2222 West Main St.
Visalia, California 93291

Via First Class Mail

Aaron Bush, CEO
Peninsula Messenger Service of Central
California, Inc.
6639 W Pershing Ave.
Visalia, California 93279

Re: First Amended Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that the representative Ivan Hernandez, Jesus Mendoza, and Nicolas Ortiz ("Plaintiffs") has retained Whitehead Employment Law to represent them and other similarly-situated current and former employees (the "Aggrieved Employees") against Peninsula Messenger Service of Central California, Inc., a California corporation (hereinafter "Defendant") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

Defendant currently or formerly employed Plaintiffs and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full time employees, including but not limited to Delivery Drivers or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify Defendant of Plaintiffs' intent to file a PAGA action complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant's failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation or termination of employment.

Based upon these violations, as further detailed below, Defendant violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 9-2001 (IWC No. 9).

Ivan Hernandez was formerly employed by Defendant from approximately March of 2018 until approximately February 5, 2020 as a full time, hourly compensated, non-exempt delivery driver

who delivers products for clients, including but not limited to documents, medical equipment, medication, and warehouse items.

Jesus Mendoza was formerly employed by Defendant from approximately March 28, 2019 until approximately January 16, 2020 as a full time, hourly compensated, non-exempt delivery driver who delivers products for clients, including but not limited to documents, medical equipment, medication, and warehouse items.

Nicolas Ortiz was formerly employed by Defendant from approximately September 16, 2019 until approximately January 5, 2021 as a full time, hourly compensated, non-exempt delivery driver who delivers products for clients, including but not limited to documents, medical equipment, medication, and warehouse items.

During the relevant statutory period, Plaintiffs and the Aggrieved Employees were routinely prohibited from receiving proper, timely, and compliant meal and rest breaks. Defendant required Plaintiffs and the Aggrieved Employees to always end their lunch breaks at the office, requiring them to drive back to the office during their lunch break. This made it impossible for Plaintiffs and the Aggrieved Employees to have a duty-free uninterrupted meal break. Defendant never provided rest breaks for Plaintiffs and the Aggrieved Employees, and when Plaintiffs and the Aggrieved Employees attempted to take a rest break, they were berated by their managers for taking too long on deliveries. Defendant has never paid Plaintiffs and the Aggrieved Employees for the time they worked during their breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time have Plaintiffs or the Aggrieved Employees validly waived their rest and meal break periods.

During the relevant statutory period, Defendant routinely cancelled Plaintiffs and the Aggrieved Employees' scheduled shifts, often on the day of the shift, with no advance notice. Plaintiffs and the Aggrieved Employees never received any reporting time pay for these regularly scheduled, then-cancelled shifts. Defendant also required Plaintiffs and the Aggrieved Employees to be on call whenever they were not scheduled to work. Plaintiffs and the Aggrieved Employees routinely were called in to work when they were not prior scheduled. These spontaneous demands by Defendant for Plaintiffs and the Aggrieved Employees to come into work on non-scheduled workdays, occurred on average one to two times a week.

Defendant also intentionally failed to properly pay such employees all of the overtime wages that they were due. Due to Plaintiffs and the Aggrieved Employees working off the clock during lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded 8 hours a day or over 40 hours in a week. Defendant also routinely altered Plaintiffs and the Aggrieved Employees' timecards to reduce overtime. Defendant would regularly inform supervisors to reduce overtime, causing supervisors to alter Plaintiffs and the Aggrieved Employees timecards to eliminate any reported overtime.

Further, Defendant routinely failed to pay Plaintiffs and the Aggrieved Employees on their regularly scheduled pay dates. Often Plaintiffs and the Aggrieved Employees would have to wait several days after their expected pay dates to receive their pay. Defendant does not offer direct deposit pay, so Plaintiffs and the Aggrieved Employees were unable to get paid until Defendant got around to writing them their checks. As a result, Plaintiffs and the Aggrieved Employees routinely did not receive their checks until anywhere from two to four days after their scheduled pay days.

Further, during the relevant statutory period, Plaintiffs and certain of the Aggrieved Employees were required to utilize their personal cell phones for work related duties and work-related communications. Utilization of their personal cell phones was an essential part of the job on

certain routes. Plaintiffs and certain the Aggrieved Employees used their personal cell phones to contact supervisors, to communicate with other employees on shift, to text supervisors, and to call customers for prescription deliveries. Only certain drivers assigned to certain routes were issued a company cell phone, while other drivers servicing other routes were forced to use their own personal cell phones. Plaintiffs were regularly required to call clients with deliveries and to answer phone calls from supervisors to come in for unscheduled shifts. At no time has Defendant ever reimbursed Plaintiffs or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones.

Plaintiffs are informed and believe, and thereon alleges that the above-described violations are ongoing, systematic and uniform. If Defendant fails to cure these alleged violations, Plaintiffs will bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to Plaintiffs and those Aggrieved Employees who ceased their employment relationship with Defendant during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without

¹ Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 9, Section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, the Plaintiffs and the Aggrieved Employees, were never able to take Labor Code compliant, timely and duty-free rest breaks. Plaintiffs and Aggrieved Employees were never provided an uninterrupted meal break due to Defendant requiring them to drive back to the office during their lunch break. Defendant actively failed to relinquish control to permit Plaintiffs and the Aggrieved Employees opportunities for lawful breaks. Defendant have not paid premium pay penalties for the missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 9 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 9, Plaintiffs and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

Failure to Pay Wages For Each Hour Worked

IWC Wage Order No. 9 §5 provides, in pertinent part, that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay ...”

During the relevant statutory period, Plaintiffs and the Aggrieved Employees were scheduled by Defendant to work and had their shift cancelled, the day of the scheduled shift, without being provided any work as scheduled. When this occurred, neither Plaintiffs nor the Aggrieved Employees are/were paid with their lawfully entitled reporting time pay. On other occasions, Plaintiffs and the Aggrieved Employees are/were scheduled to work and permitted to clock in but were sent home after only a couple hours of work due to a lack of deliveries and were not provided with at least half of their regularly scheduled hours, after reporting to work their full shift. At no time have the Plaintiffs or similarly situated Aggrieved Employees paid reporting time wages when they were furnished less than half of their scheduled shift.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states “All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Under Labor Code §1194 (a) “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiffs and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney's fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."*

As indicated above, the Plaintiffs and the Aggrieved Employees often worked off the clock, which meant they were working more than an eight-hour shift most of the time but were not paid overtime wages. Defendant also altered Plaintiffs and the Aggrieved Employees' timecards to avoid paying for any overtime worked. Plaintiffs and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiffs and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

As indicated above, Plaintiffs and the Aggrieved Employees were often required to work during their rest or meal breaks due to Defendant's policies. Defendant also altered timecards and did not pay for overtime worked. The time Plaintiffs and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant's unlawful business and compensation practices under the Labor Code and IWC No. 9, Plaintiffs and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly*

rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

As indicated above, Plaintiffs and the Aggrieved Employees often work/worked during their meal breaks, due to Defendant’s unlawful instructions forcing them to work while off the clock and had overtime unrecorded by Defendant. Hours worked off the clock are/were not recorded, were not recorded at the proper pay rate, and no premium pay is reflected on Plaintiffs and the Aggrieved Employees’ pay stubs during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiffs and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiffs and the Aggrieved Employees’ respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiffs and certain of the Aggrieved Employees’ employment relationships with Defendant terminated, Defendant failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay the Plaintiffs and the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, the Plaintiffs and certain of the Aggrieved Employees daily utilize or utilized their personal cell phones in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendant. Defendant violated Labor Code § 2802 and the Plaintiffs and certain of the Aggrieved Employees seek reimbursement of these

work-related expenses incurred, as well as their attorneys' fees, penalties and interest thereon as permitted by §2802.

Conclusion

In sum, as has been factually alleged, Defendant violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174(d), 1194 (a) and 2802, and IWC No. 9. Plaintiffs on their own behalf and on behalf of all similarly situated Aggrieved Employees, seek to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code 2699.

Plaintiffs requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiffs requests the agency inform them if it does not intend to investigate these violations so that they may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/mnh