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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MAI HERNANDEZ, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SUBCONTRACTING CONCEPTS (CT),
LLC, a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: **21CV379323**

**CLASS AND REPRESENTATIVE PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY WAGES;**
- (2) VIOLATION OF LABOR CODE § 226.7;**
- (3) VIOLATION OF LABOR CODE §§ 201-203;**
- (4) VIOLATION OF LABOR CODE § 226;**
- (5) VIOLATION OF LABOR CODE § 2802;**
- (6) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*; AND**
- (7) VIOLATION OF PAGA, LABOR CODE § 2698, *ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Mai Hernandez (“Plaintiff”) hereby submits this Class and Representative
2 PAGA Action Complaint (“Complaint”) against Defendant Subcontracting Concepts (CT), LLC
3 (“Defendant”) and Does 1 through 50 (collectively, “Defendants”), as an individual and on
4 behalf of all other similarly situated current and former individuals who worked for and/or
5 performed services for Defendants, for penalties and/or damages under the California Labor
6 Code, the IWC Wage Orders, and California Business & Professions Code, resulting from the
7 misclassification of Plaintiff and other similarly situated individuals as independent contractors, as
8 follows:

9 **INTRODUCTION**

10 1. This Complaint is within the Court’s jurisdiction under California Labor Code
11 §§ 201-204, 221-223, 226(a), 226.7, 226.8, 246, 400-410, 450, 510, 1174, 1194, 1194.2, 1197,
12 2802, and 2698, *et seq.*, the applicable Wage Orders of the California Industrial Welfare
13 Commission (“IWC”), and the California Unfair Competition Law (the “UCL”), Business and
14 Professions Code § 17200, *et seq.*

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and the UCL against Plaintiff and other individuals who
17 worked for and/or provided services for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of Plaintiff and other similarly situated individuals by misclassifying them
21 as independent contractors, failing to pay all regular, minimum, and overtime wages, failing to
22 provide paid rest breaks, failing to provide paid sick leave, failing to provide accurate itemized
23 wage statements, failing to pay wages in a timely manner, failing to reimburse business-related
24 expenses, and unlawfully deducting various fees from their wages.

25 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 have engaged in, among other things a system of willful violations of the California Labor Code,
27 the UCL, and the applicable IWC Wage Orders by creating and maintaining policies, practices
28 and customs that knowingly deny Plaintiff and other similarly situated individuals the above

1 stated rights and benefits.

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

5 **JURISDICTION AND VENUE**

6 6. The Court has jurisdiction over the violations of the California Labor Code
7 §§ 201-204, 221-223, 226(a), 226.7, 226.8, 246, 400-410, 450, 510, 1174, 1194, 1194.2, 1197,
8 2802, and 2698, *et seq.*, and the UCL.

9 7. Venue is proper in Santa Clara County, because Defendant does business in this
10 County and Plaintiff worked for Defendant in this County.

11 **PARTIES**

12 8. Plaintiff worked for Defendant as a delivery driver from in or about May 2017,
13 until on or about March 18, 2021. Throughout her employment with Defendant, Plaintiff was
14 misclassified as an independent contractor.

15 9. Plaintiff was and is the victim of the policies, practices, and customs of
16 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
17 by California Labor Code §§ 201-204, 221-223, 226(a), 226.7, 226.8, 246, 400-410, 450, 510,
18 1174, 1194, 1194.2, 1197, 2802, and 2698, *et seq.*, and the UCL.

19 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
20 Delaware corporation, doing business in the State of California. Defendant is in the business of
21 providing delivery services throughout the United States, including in the State of California and
22 County of Santa Clara.

23 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
25 individuals, and partnerships, licensed to do business and actually doing business in the State of
26 California.

27 12. As such, and based upon all the facts and circumstances incident to Defendants'
28 business, Defendants are subject to California Labor Code §§ 201-204, 221-223, 226(a), 226.7,

226.8, 246, 400-410, 450, 510, 1174, 1194, 1194.2, 1197, 2802, and 2698, *et seq.*, and the UCL.

13. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

15. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

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

17. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and

1 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
2 damages as herein alleged.

3 CLASS ACTION ALLEGATIONS

4 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
5 California Code of Civil Procedure § 382. Plaintiff proposes the following Class and Sub-Class:

6 a. All individuals who were classified by Defendants as independent
7 contractors and/or signed Owner/Operator Agreements and provided delivery services for
8 Defendants in the State of California at any time from April 9, 2017 to the present (the “Class”).

9 19. Plaintiff reserves the right to propose additional classes and/or sub-classes, and or/
10 amend the above class definitions upon further discovery and investigation.

11 20. **Numerosity and Ascertainability:** The members of the Class are so numerous
12 that joinder of all members would be impractical, if not impossible. The identity of the members
13 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
14 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) misclassified
15 its workers who provided delivery services as independent contractors, in violation of Labor
16 Code § 226.8; (b) failed to pay all regular, minimum, and overtime wages owed, in violation of
17 Labor Code §§ 201-204, 510, 1174, 1194, and 1197; (c) failed to provide paid rest periods in
18 violation of Labor Code § 226.7; (d) failed to pay sick leave, in violation of Labor Code §§ 201-
19 203 and 246; (e) failed to reimburse business-related expenses and unlawful wage deductions, in
20 violation of Labor Code § 2802; (f) failed to provide accurate itemized wage statements, in
21 violation of Labor Code § 226(a); and (g) engaged in unfair business practices in violation of the
22 California Labor Code, the applicable IWC Wage Orders, and the UCL.

23 21. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
24 necessary steps to represent fairly and adequately the interests of the Class defined above.
25 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the Class and
26 the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
27 actions in the past and currently have a number of wage-and-hour class actions pending in
28 California state and federal courts.

1 22. Defendants uniformly administered a corporate policy, practice of: (a)
2 misclassifying its workers who provided delivery services as independent contractors, in
3 violation of Labor Code § 226.8; (b) failing to pay all regular, minimum, and overtime wages
4 owed, in violation of Labor Code §§ 201-204, 510, 1174, 1194, and 1197; (c) failing to provide
5 paid rest periods, in violation of Labor Code § 226.7; (d) failing to pay sick leave, in violation of
6 Labor Code §§ 201-203 and 246; (e) failing to reimburse business-related expenses and unlawful
7 wage deductions, in violation of Labor Code § 2802; (f) failing to provide accurate itemized
8 wage statements, in violation of Labor Code § 226(a); and (g) engaging in unfair business
9 practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the
10 UCL.

11 23. Plaintiff is informed and believes, and based thereon alleges, that this corporate
12 conduct is accomplished with the advance knowledge and designed intent to willfully and
13 intentionally fail to accurately record and identify the number of piece-rate units earned,
14 applicable piece rates, total wages earned, and the legal name and address of the entity that is the
15 employer.

16 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
17 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
18 Code §§ 201-204, 221-223, 226(a), 226.7, 226.8, 246, 400-410, 450, 510, 1174, 1194, 1194.2,
19 1197, and 2802, the UCL, and the applicable IWC Wage Orders.

20 25. **Common Question of Law and Fact:** There are predominant common questions
21 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
22 concerning Defendants' policy and practice of: (a) misclassifying its workers who provided
23 delivery services as independent contractors, in violation of Labor Code § 226.8; (b) failing to
24 pay all regular, minimum, and overtime wages owed, in violation of Labor Code §§ 201-204,
25 510, 1174, 1194, and 1197; (c) failing to provide paid rest periods, in violation of Labor Code §
26 226.7; (d) failing to pay sick leave, in violation of Labor Code §§ 201-203 and 246; (e) failing to
27 reimburse business-related expenses and unlawful wage deductions, in violation of Labor Code §
28 2802; (f) failing to provide accurate itemized wage statements, in violation of Labor Code §

226(a); and (g) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

26. **Typicality:** The claims of Plaintiff are typical of the claims of all Class Members in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as the Class Members. As with all other Class Members, Plaintiff was misclassified as an independent contractor pursuant to an Owner/Operator Agreement. Specifically, Defendants exercised control over Plaintiff and Class Members' work, including without limitation by providing instructions and rules to Plaintiff and Class Members on how to perform work, requiring Plaintiff and Class Members to rent the company's tools including a scanner and/or similar electronic device in connection with their work duties, requiring Plaintiff and Class Members to install and use the company's mobile applications to track their work and deliveries, and requiring Plaintiff and Class Members to maintain insurance for cargo. Moreover, as a result of the misclassification, Plaintiff was not provided with paid sick leave. Additionally, like other Class Members, Plaintiff was not paid for all wages owed, including minimum, regular, and overtime wages. In this regard, Plaintiff was paid a flat rate as well as by piece rate. However, whenever Plaintiff worked more than 8 hours in a day or more than 40 hours in a week, Defendants did not pay overtime compensation for such overtime hours. Because Defendants paid Plaintiff by piece rate, whenever rest breaks were taken, they were not paid for as required by the California Labor Code. Furthermore, Plaintiff also was issued inaccurate wage statements that did not identify the breakdown of her pay, including the number of piece-rate units, the applicable piece rate, and the legal name and address of the entity that is the employer. Lastly, as with other Class Members, Plaintiff was required to use her own personal vehicle and cell phone in order to perform deliveries on behalf of Defendants. Defendants also routinely deducted various fees from Plaintiff's wages, including postage fees, cargo fees, insurance fees, and program fees. Plaintiff was never reimbursed for any such costs expended and/or fees deducted in connection with the discharge of her duties. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code §§ 201-204, 226(a), 226.7, 226.8, 246, 510, 1174, 1194, 1194.2, 1197, and 2802, the applicable IWC Wage Orders, and the UCL.

1 27. The California Labor Code and upon which Plaintiff bases these claims are
2 broadly remedial in nature. These laws and labor standards serve an important public interest in
3 establishing minimum working conditions and standards in California. These laws and labor
4 standards protect the average working employee from exploitation by employers who may seek
5 to take advantage of superior economic and bargaining power in setting onerous terms and
6 conditions of employment.

7 28. The nature of this action and the format of laws available to Plaintiff and
8 members of the Class identified herein make the class action format a particularly efficient and
9 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
10 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
11 advantage since it would be able to exploit and overwhelm the limited resources of each
12 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
13 Member to pursue an individual remedy would also discourage the assertion of lawful claims
14 by employees who would be disinclined to file an action against their former and/or current
15 employer for real and justifiable fear of retaliation and permanent damage to their careers at
16 subsequent employment.

17 29. The prosecution of separate actions by the individual Class Members, even if
18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
19 to individual Class Members against the Defendants and which would establish potentially
20 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
21 individual Class Members which would, as a practical matter, be dispositive of the interest of the
22 other Class Members not parties to the adjudications or which would substantially impair or
23 impede the ability of the Class Members to protect their interests. Further, the claims of the
24 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
25 considering all of the concomitant costs and expenses.

26 30. Such a pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation described herein is unlawful and creates an entitlement to
28 recovery by Plaintiff and the Class identified herein, in a civil action, for all applicable penalties

1 and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of
2 California Labor Code §§ 201-204, 218.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1198, 1199,
3 and 2802, and Code of Civil Procedure § 1021.5.

4 31. Proof of a common business practice or factual pattern, which the named Plaintiff
5 experienced and is representative of, will establish the right of each of the Class Members to
6 recovery on the causes of action alleged herein.

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

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES**

13 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

14 33. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 34. This cause of action is brought pursuant to Labor Code §§ 201-204, 510, 1174,
17 1194, 1197, and the IWC Wage Orders, which require an employer to pay employees all earned
18 minimum, regular, and overtime wages.

19 35. At all relevant times herein, Defendants failed to pay all earned regular,
20 minimum, and overtime wages to Plaintiff and Class Members. Specifically, Defendants had a
21 corporate policy and practice of misclassifying Plaintiff and Class Members as independent
22 contractors and paying them a flat rate fee for their compensation. As a result, Plaintiff and
23 Class Members were not paid all wages owed to them, including all minimum, regular, and
24 overtime wages.

25 36. Labor Code § 510 requires an employer to pay employees overtime at a rate of
26 one and one-half the employee's regular rate of pay for any work in excess of eight hours in a
27 workday or 40 hour in a workweek.

28 37. At all relevant times herein, Defendants suffered and permitted Plaintiff and Class

1 Members to work in excess of eight hours in a workday and/or over 40 hours in a workweek
2 without proper overtime pay. During workweeks where Plaintiff and Class Members worked
3 overtime, Plaintiff and Class Members were not compensated with proper overtime pay due to
4 the misclassification as independent contractors. Furthermore, Defendants routinely deducted
5 various fees from Plaintiff's wages, including postage fees, cargo fees, insurance fees, and
6 program fees, resulting in Plaintiff and Class Members not being fully paid their wages,
7 including minimum wages.

8 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 willfully failed to pay employees all regular, minimum, overtime wages pursuant to the
10 California Labor Code and the applicable IWC Wage Order, and that Plaintiff and Class
11 Members are owed wages for the violations set forth above.

12 39. Plaintiff is informed and believes and based thereon alleges that Defendants'
13 willful failure to pay all wages due and owing to Plaintiff and Class Members upon separation of
14 employment results in a continued payment of wages up to thirty (30) days from the time the
15 wages were due. Therefore, Plaintiff and Class Members who have separated from employment
16 are entitled to compensation pursuant to Labor Code § 203.

17 40. Such a pattern, practice and uniform administration of corporate policy regarding
18 illegal employee compensation as described herein is unlawful and creates an entitlement to
19 recovery by Plaintiff and the Class in a civil action, for all damages and penalties, including
20 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
21 Code §§ 201-204, 218.5, 510, 1174, 1194, 1194.2, and 1197, and the IWC Wage Orders.

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE §§ 226.2 & 226.7**

24 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

25 41. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
26 though fully set forth herein.

27 42. This cause of action is brought pursuant to Labor Code §§ 226.2 and 226.7, which
28 requires an employer to provide a duty-free, 10-minute paid rest period for every 4 hours

1 worked, or major fraction thereof.

2 43. Plaintiff and other Class Members regularly worked shifts of three and one-half
3 hours (3.5) hours or more per day, and accordingly had a right to take a 10-minute paid rest
4 period each day. Furthermore, Plaintiff and other Class Members who worked shifts of seven
5 and one-half (7.5) hours or more per day had a right to take a second 10-minute paid rest period.

6 44. At all relevant times, Defendants failed in their affirmative obligation to provide
7 Plaintiff and other Class Members with the opportunity to take paid rest periods in accordance
8 with the mandates of the California Labor Code and the applicable IWC Wage Order. As a
9 result of the Class Members' compensation scheme, Class Members were not provided with paid
10 rest periods. As such, Defendants are liable under Labor Code § 226.7.

11 45. Such a pattern, practice and uniform administration of corporate policy as
12 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
13 identified herein, in a civil action, for the balance of the unpaid wages and premium
14 compensation pursuant to Labor Code §§ 226.2 and 226.7 and the applicable IWC Wage Order,
15 including interest thereon, penalties and costs of suit.

16 46. Plaintiff is informed and believes and based thereon alleges that Defendants'
17 willful failure to pay all wages and rest period premiums due and owing to Plaintiff and Class
18 Members upon separation of employment results in a continued payment of wages up to thirty
19 (30) days from the time the wages were due. Therefore, Plaintiff and Class Members who have
20 separated from employment are entitled to compensation pursuant to Labor Code § 203.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §§ 201-203**

23 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

24 47. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set forth herein.

26 48. Labor Code § 246 provides that an employer must provide paid sick days for
27 employees who works in California for the same employer for 30 or more days within a year
28 from the commencement of employment. Section 246 further provides that "[a]n employee shall

1 accrue paid sick days at the rate of not less than one hours per every 30 hours worked.”

2 49. As a pattern and practice, Defendants failed to provide paid sick leave to Plaintiff
3 and Class Members. Specifically, because Defendants misclassified Plaintiff and Class
4 Members and independent contractors, Plaintiff and Class Members were not provided with any
5 paid sick leave. Accordingly, Defendants owe waiting time penalties pursuant to Labor Code §
6 203.

7 50. Plaintiff is informed and believes, and based thereon alleges, that such failure to
8 provide paid sick leave was willful, such that Plaintiff and Class Members whose employment
9 has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-203.

10 51. Such a pattern, practice and uniform administration of corporate policy as
11 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
12 Members identified herein, in a civil action, for the unpaid balance of the full amount of damages
13 and penalties pursuant to Labor Code §§ 201-203, 218.5, and 1194, and the applicable IWC
14 Wage Order, including interest thereon, penalties, and costs of suit.

15 **FOURTH CAUSE OF ACTION**

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

17 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

18 52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
19 though fully set forth herein.

20 53. Labor Code § 226(a) requires employers to provide itemized wage statements to
21 its employees that identify accurate information, including without limitation, the number of
22 piece-rate units earned and any applicable piece rate if the employees are paid on a piece-rate
23 basis, and the name and address of the legal entity that is the employer. Defendants, as a matter
24 of policy and practice, failed in their affirmative obligation to provide accurate itemized wage
25 statements to Plaintiff and Class Members.

26 54. Plaintiff and the Class were paid on a piece-rate basis. As such, the wage
27 statements should have reflected the number of piece-rate units earned and any applicable piece
28 rate, pursuant to Labor Code § 226(a)(3). The wage statements provided to Plaintiff and the

1 Class failed to identify said information regarding the breakdown of how their pay was
2 calculated.

3 55. Moreover, Plaintiff and Class Members were also issued wage statements that
4 violated Labor Code § 226(a)(8). In this regard, the wage statements failed to identify the legal
5 name and address of the employer as there is only a reference to “SCI” on the wage statements.
6 No name and/or address is provided on the wage statements.

7 56. Finally, as a result of Defendants’ rest period violations and nonpayment of wages
8 identified above, the wage statements issued to Plaintiff and Class Members failed to identify the
9 rest period premium compensation payments earned, and failed to identify the hours worked at
10 each rate, gross and net wages earned, and total hours worked, in violation of Labor Code §
11 226(a).

12 57. The issuance of inaccurate wage statements caused “injury” under Labor Code §
13 226(e) to Plaintiff and Class Members as they cannot accurately verify and/or calculate their
14 wages for each particular pay period. Plaintiff and Class Members will have no way of verifying
15 the amount of piece rate or whether they were correctly paid wages for each particular pay
16 period, especially since there is no legal name and/or address of the employer provided on the
17 wage statements.

18 58. Such a pattern, practice and uniform administration of corporate policy as
19 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
20 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
21 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
22 California Labor Code § 226.

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 2802**

25 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

26 59. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 60. This cause of action is brought pursuant to Labor Code § 2802, which provides

1 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
2 their employers.

3 61. At all relevant times herein, Defendants regularly failed to reimburse and
4 indemnify Plaintiff and Class Members for business expenses necessary for the discharge of their
5 duties. Specifically, Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff
6 and Class Members for all business-related expenses, including without limitation, the costs
7 incurred with use of personal cellular phones and personal vehicles to perform deliveries and
8 other business-related purposes.

9 62. At all relevant times herein, Defendants uniformly required Plaintiff and Class
10 Members to download and use the Defendants' mobile applications, including without limitation
11 the "OnTrac" application, on their personal cellular phones in connection with the deliveries
12 made on behalf of Defendants. However, Defendants failed to pay Plaintiff and Class Members
13 said work-related expenses including the costs associated with personal cell phone use for work-
14 related purposes.

15 63. Additionally, Defendants had a policy and practice of routinely deducting various
16 fees from Plaintiff and Class Members' wages, including without limitation, postage fees,
17 insurance fees, cargo fees, and program fees. Plaintiff and Class Members were not reimbursed
18 for said fees and costs unlawfully deducted from their wages.

19 64. Defendants had a uniform corporate pattern and practice and procedure regarding
20 the above practices in violation of Labor Code § 2802.

21 65. Such a pattern, practice and uniform administration of corporate policy regarding
22 illegal employee compensation as described herein is unlawful and creates an entitlement to
23 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
24 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
25 to the mandate of California Labor Code § 2802.

26 **SIXTH CAUSE OF ACTION**

27 **VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

28 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

1 66. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
2 though fully set forth herein.

3 67. Defendants, and each of them, have engaged and continue to engage in unfair and
4 unlawful business practices in California by practicing, employing and utilizing the employment
5 practices outlined above, include, to wit, by: (a) misclassifying Plaintiff and Class Members as
6 independent contractors; (b) failing to pay all regular, minimum, and overtime wages owed; (c)
7 failing to provide paid rest periods; and (d) failing to reimburse business-related expenses and
8 unlawful wage deductions.

9 68. Defendants' utilization of such unfair and unlawful business practices constitutes
10 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

11 69. Plaintiff seeks, on behalf of himself and other members of the Class similarly
12 situated, full restitution of monies, as necessary and according to proof, to restore any and all
13 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
14 complained of herein.

15 70. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
17 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
18 forth herein above thereby depriving Plaintiff and other members of the class the minimum
19 working condition standards and conditions due to them under the California laws as specifically
20 described therein.

21 **SEVENTH CAUSE OF ACTION**

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

23 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

24 71. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set forth herein.

26 72. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees from February 3, 2020,
28 through the present, for Defendant's violations of Labor Code §§ 201-204, 221, 222, 223, 226(a),

226.7, 226.8, 246, 400-410, 450, 510, 1174, 1194, 1197, and 2802, arising from Defendants’ following misconduct alleged above: (a) misclassifying its workers who provided delivery services as independent contractors, in violation of Labor Code § 226.8; (b) failing to pay all regular, minimum, and overtime wages owed, in violation of Labor Code §§ 201-204, 510, 1174, 1194, and 1197; (c) failing to provide paid rest periods, in violation of Labor Code § 226.7; (d) failing to pay sick leave, in violation of Labor Code §§ 201-203 and 246; (e) failing to reimburse business-related expenses and unlawful wage deductions, in violation of Labor Code § 2802; and (f) failing to provide accurate itemized wage statements, in violation of Labor Code § 226(a);

73. Plaintiff also seeks penalties under the PAGA for Defendants’ failure to pay wages in a timely manner, in violation of Labor Code § 204, which require that all earned wages must be paid by the time limits as set forth in Section 204. In this regard, Defendants had a consistent policy and practice of paying wages to their employees beyond the time limits as allowed under Section 204. As a pattern and practice, while Plaintiff and Aggrieved Employees had a weekly pay period, they were not paid their wages until approximately 11 days after the close of each pay period.

74. In addition, Plaintiff also seeks penalties under the PAGA for Defendants’ violations of Labor Code §§ 221-223, 400-410, and 450, resulting from Defendant’s unlawful deduction of various fees from Plaintiff and Aggrieved Employees’ wages, including without limitation, postage fees, cargo fees, program fees, and insurance fees.

75. Based on the above-stated Labor Code violations, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on behalf of the State of California for violations committed against all similarly situated Aggrieved Employees of Defendants.

76. On or about February 3, 2021, Plaintiff sent her written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of the California Labor Code provided above, pursuant to Labor Code § 2698, *et seq.* As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in Plaintiff’s written notice. In

1 addition to the LWDA, Plaintiff also sent her written notice to Defendants via certified mail
2 according to Labor Code § 2699.3.

3 77. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
4 applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 221, 222, 223,
5 226(a), 226.7, 226.8, 246, 400-410, 450, 510, 1174, 1194, 1197, and 2802, for the time period
6 described above, on behalf of herself and other Aggrieved Employees.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
9 this suit is brought against Defendants, jointly and severally, as follows:

- 10 1. For an order certifying the Class;
- 11 2. For an order appointing Plaintiff as the representative of the Class as described
12 herein;
- 13 3. For an order appointing counsel for Plaintiff as Class Counsel;
- 14 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
15 California Labor Code §§ 201-204, 218.5, 510, 1174, and 1194, and for costs and attorneys'
16 fees;
- 17 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
18 California Labor Code §§ 201-203, 226.2, and 226.7, and for costs and attorneys' fees;
- 19 6. Upon the Third Cause of Action, for damages and/or penalties, pursuant to
20 California Labor Code §§ 201-203, and for costs and attorneys' fees;
- 21 7. Upon the Fourth Cause of Action, for penalties pursuant to statute as set forth in
22 California Labor Code § 226, and for costs and attorneys' fees;
- 23 8. Upon the Fifth Cause of Action, for damages and/or penalties, pursuant to
24 California Labor Code § 2802, and for costs and attorneys' fees;
- 25 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
26 affected members of the general public of all funds unlawfully acquired by Defendants by means
27 of any acts or practices declared by this Court to be in violation of the California Business and
28 Professions Code § 17200, *et seq.*, and for costs and attorneys' fees;

1 10. Upon the Seventh Cause of Action, for the full amount of civil penalties
2 according to the PAGA, California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and
3 attorneys' fees;

4 11. On all causes of action for attorneys' fees and costs as provided by California
5 Labor Code §§ 218.5, 226, 510, 1194, 1197, 2699, 2802, and Code of Civil Procedure § 1021.5;
6 and

7 12. For such other and further relief the Court may deem just and proper.

8
9 DATED: April 9, 2021

DIVERSITY LAW GROUP, P.C.

10
11 By: _____

Larry W. Lee

Mai Tulyathan

12 Attorneys for Plaintiff, the Class, and Aggrieved
13 Employees
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