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FILED
 Superior Court of California
 County of Los Angeles
10/21/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Bivins Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

PEDRO GERMAN, individually, and on behalf
 of other members of the general public similarly
 situated and on behalf of other aggrieved
 employees pursuant to the California Private
 Attorneys General Act;

Plaintiff,

vs.

FRESH LINK LOGISTICS, LLC, a California
 limited liability company; and DOES 1 through
 100, inclusive,

Defendant.

Case No.: BC719412

Hon. Amy D. Hogue, Department SSC7

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES AND
 ENFORCEMENT UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT, CAL.
 LABOR CODE § 2698, ET SEQ.**

- (1) Violation of Cal. Lab. Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of Cal. Lab. Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of Cal. Lab. Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of Cal. Lab. Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of Cal. Lab. Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of Cal. Lab. Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of Cal. Lab. Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.;
- (11) Violation of Cal. Lab. Code § 2698, et seq. (Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff PEDRO GERMAN (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”) and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avail itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Los Angeles. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Los Angeles. At all relevant times, Defendant maintained it’s headquarters/“nerve center” within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff PEDRO GERMAN is an individual residing in the State of California, County of Los Angeles.

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6. Defendant FRESH LINK LOGISTICS, LLC, at all times herein mentioned, was and is, upon information and belief, a California limited liability company and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

7. At all relevant times, Defendant FRESH LINK LOGISTICS, LLC was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendant FRESH LINK LOGISTICS, LLC and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant FRESH LINK LOGISTICS, LLC and DOES 1 through 100 will hereinafter collectively be referred to as “Defendant.”

11. Plaintiff further alleges that Defendant directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make said Defendant’s employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff bring this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for the Defendant within the State of California at any time during the period from August 28, 2014 to final judgment.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant's employment records.
- b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.
- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily

1 expended for the prosecution of this action for the substantial benefit of
2 each class member.

3 d. Superiority: A class action is superior to other available methods for the
4 fair and efficient adjudication of this litigation because individual joinder
5 of all class members is impractical.

6 e. Public Policy Considerations: Certification of this lawsuit as a class
7 action will advance public policy objectives. Employers of this great
8 state violate employment and labor laws every day. Current employees
9 are often afraid to assert their rights out of fear of direct or indirect
10 retaliation. However, class actions provide the class members who are
11 not named in the complaint anonymity that allows for the vindication of
12 their rights.

13 16. There are common questions of law and fact as to the class members that
14 predominate over questions affecting only individual members. The following common
15 questions of law or fact, among others, exist as to the members of the class:

- 16 a. Whether Defendant's failure to pay wages, without abatement or
17 reduction, in accordance with the California Labor Code, was willful;
- 18 b. Whether Defendant had a corporate policy and practice of failing to pay
19 their hourly-paid or non-exempt employees within the State of California
20 for all hours worked and missed (short, late, interrupted, and/or missed
21 altogether) meal periods and rest breaks in violation of California law;
- 22 c. Whether Defendant required Plaintiff and the other class members to
23 work over eight (8) hours per day, over forty (40) hours per week, and/or
24 over six (6) days per workweek and failed to pay the legally required
25 overtime compensation to Plaintiff and the other class members;
- 26 d. Whether Defendant deprived Plaintiff and the other class members of
27 meal and/or rest periods or required Plaintiff and the other class
28 members to work during meal and/or rest periods without compensation;

- e. Whether Defendant failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- f. Whether Defendant failed to pay a one-hour premium for daily missed, short, or interrupted meal periods and/or rest breaks;
- g. Whether Defendant failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendant failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendant complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- j. Whether Defendant kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- k. Whether Defendant failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- l. Whether Defendant's conduct was willful or reckless;
- m. Whether Defendant engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendant's violation of California law; and
- o. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendant.

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1 18. At all times herein set forth, PAGA provides that any provision of law under the
2 California Labor Code that provides for a civil penalty, including unpaid wages and premium
3 wages, to be assessed and collected by the LWDA for violations of the California Labor Code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself and other current or former employees pursuant to procedures outlined in
6 California Labor Code section 2699.3.

7 19. Code that provides for a civil penalty, including unpaid wages and premium
8 wages, to be assessed and collected by the LWDA for violations of the California Labor Code
9 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
10 on behalf of himself and other current or former employees pursuant to procedures outlined in
11 California Labor Code section 2699.3.

12 20. Plaintiff was employed by Defendant and the alleged violations were committed
13 against him during his time of employment and he is, therefore, an aggrieved employee.
14 Plaintiff and the other employees are “aggrieved employees” as defined by California Labor
15 Code section 2699(c) in that they are current or former employees of Defendant, and one or
16 more of the alleged violations were committed against them.

17 21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
18 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
19 following requirements have been met:

20 a. The aggrieved employee shall give written notice by certified mail
21 (hereinafter “Employee's Notice”) to the LWDA and the employer of the
22 specific provisions of the California Labor Code alleged to have been
23 violated, including the facts and theories to support the alleged
24 violations.

25 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
26 employer and the aggrieved employer by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar days
28 of the postmark date of the Employee’s Notice. Upon receipt of the

LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

22. On May 5, 2021, Plaintiff provided written notice by certified mail to the LWDA and to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendant, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, have been satisfied.

GENERAL ALLEGATIONS

23. At all relevant times set forth herein, Defendant employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Los Angeles.

24. Defendant employed Plaintiff as an hourly-paid, non-exempt employee in the position of "Truck Driver", from approximately July 2014 to approximately October 2015, in the State of California, County of Los Angeles. Plaintiff's base rate of pay upon hire was approximately \$14.00 per hour.

25. Defendant hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked, and missed, short, late, and/or interrupted meal periods and/or rest periods.

26. Defendant had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

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27. Defendant exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

28. Defendant directly hired and paid wages and benefits to Plaintiff and the other class members.

29. Defendant continues to employ hourly-paid or non-exempt employees within the State of California.

30. Plaintiff and the other class members worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) days in a workweek during their employment with Defendant.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendant engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, *inter alia*, failing to pay them for all hours worked and missed short, late, interrupted meal periods and rest breaks in violation of California law.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked. The deficiencies include, *inter alia*, failing to compensate Plaintiff and the other class members for job duties performed off-the-clock, including, but not limited to, receiving assignments, reviewing orders, conducting safety and inspection checks, and remaining on duty, also failing to include non-discretionary commissions, bonuses, incentives, production pay, performance pay, shift premiums, shift differentials to calculate the regular rate of pay used to calculate the overtime rate and premiums. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed to provide Plaintiff and the other class members all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable premium wages. Defendant's failure included, *inter alia*,

1 failing to provide uninterrupted ten (10) minute rest periods and timely, uninterrupted thirty
2 (30) minute meal periods to Plaintiff and the other class members. Plaintiff and the other class
3 members were required to perform work during meal periods and rest periods, and Defendant
4 incentivized Plaintiff and the other class members to forego statutorily required meal periods
5 and rest periods.

6 33. Plaintiff is informed and believe, and based thereon allege, that Defendant failed
7 to relieve Plaintiff and the other class members of all duties, failed to relinquish control over
8 Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class
9 members a reasonable opportunity to take, and impeded or discouraged them from taking thirty
10 (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for
11 shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal
12 breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

13 34. Plaintiff is informed and believes, and based thereon alleges, that Defendant
14 failed to relieve Plaintiff and other class members of all duties, failed to relinquish control over
15 Plaintiff and the other class members' activities, failed to permit Plaintiff and other class
16 members a reasonable opportunity to take, and impeded or discouraged them from taking thirty
17 (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for
18 shifts lasting at least six (6) hours, and/or take second thirty (30) minute uninterrupted meal
19 breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

20 35. Plaintiff is informed and believes, and based thereon alleges, that Defendant
21 knew or should have known that Plaintiff and the other class members were entitled to receive
22 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
23 member's regular rate of pay when a meal period was missed, short, late, and/or interrupted,
24 and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's
25 and the other class member's regular rate of pay when a meal period was missed, short, late,
26 and/or interrupted. During the relevant time period, Plaintiff and the other class members' meal
27 periods were missed, shortened, late and/or interrupted because Defendant required them to
28 perform work duties including, but not limited to, responding to business related inquiries,

1 remaining on duty, traveling, and working to meet order/delivery deadlines.

2 36. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 failed to provide, authorize, and permit Plaintiff and other class members to take full,
4 uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6)
5 hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten
6 (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest
7 breaks in the middle of each work period.

8 37. Plaintiff is informed and believes, and based thereon alleges, that Defendant
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
11 member's regular rate of pay when a rest period was short, late, interrupted and/or missed, and
12 they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
13 the other class members' regular rate of pay when a rest period was short, late, interrupted,
14 and/or missed. During the relevant time period, Plaintiff's and the other class members' rest
15 periods were missed, short, late and/or interrupted because Defendant required them to perform
16 work duties during their purported rest periods, including, but not limited to, working to meet
17 order/delivery deadlines and remaining on duty.

18 38. Plaintiff is informed and believes, and based thereon alleges, that Defendant
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 at least minimum wages for compensation and that they were not receiving at least minimum
21 wages for all hours worked. Defendant's failure to pay minimum wages included, *inter alia*,
22 Defendant's effective payment of zero dollars per hour for all hours Plaintiff and the other
23 class members worked off the clock performing work duties.

24 39. Plaintiff is informed and believes, and based thereon alleges, that Defendant
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 all wages owed to them upon discharge or resignation, including overtime and minimum wages
27 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
28 them at the time of their discharge or resignation.

1 40. Plaintiff is informed and believes, and based thereon alleges, that Defendant
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all wages owed to them during their employment. Plaintiff and the other class members did
4 not receive payment of all wages, including earned, but unpaid, overtime and minimum wages
5 and meal and rest period premiums, within any time permissible under California Labor Code
6 section 204.

7 41. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 complete and accurate wage statements in accordance with California law, but, in fact, they did
10 not receive complete and accurate wage statements from Defendant. The deficiencies
11 included, *inter alia*, the failure to include the accurate total number of hours worked by
12 Plaintiff and the other class members and the accurate net/gross wages earned.

13 42. Plaintiff is informed and believes, and based thereon alleges, that Defendant
14 knew or should have known that Defendant had to keep complete and accurate payroll records
15 for Plaintiff and the other class members in accordance with California law, but, in fact, did
16 not keep complete and accurate payroll records reflecting the accurate hours worked and the
17 accurate wages earned by Plaintiff and other class members

18 43. Plaintiff is informed and believes, and based thereon alleges, that Defendant
19 knew or should have known that Plaintiff and the other class members were entitled to
20 reimbursement for necessary business-related expenses, including but not limited to, the use of
21 personal phones for business-related matters and the costs of complying with the dress code.

22 44. Plaintiff is informed and believes, and based thereon alleges, that Defendant
23 knew or should have known that they had a duty to compensate Plaintiff and the other class
24 members pursuant to California law, and that Defendant had the financial ability to pay such
25 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
26 represented to Plaintiff and the other class members that they were properly denied wages, all
27 in order to increase Defendant's profits.

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1 45. During the relevant time period, Defendant failed to pay overtime wages to
2 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
3 class members were required to work more than eight (8) hours per day, forty (40) hours per
4 week, and/or more than six (6) consecutive days in a workweek without overtime
5 compensation for all overtime hours worked.

6 46. During the relevant time period, Defendant failed to provide all requisite
7 uninterrupted meal and rest periods to Plaintiff and the other class members.

8 47. During the relevant time period, Defendant failed to pay Plaintiff and the other
9 class members at least minimum wages for all hours worked, including work performed off-
10 the-clock.

11 48. During the relevant time period, Defendant failed to pay Plaintiff and the other
12 class members all wages owed to them upon discharge or resignation, including earned and
13 unpaid overtime and minimum wages and meal and rest period premiums.

14 49. During the relevant time period, Defendant failed to pay Plaintiff and the other
15 class members all wages within any time permissible under California law, including, *inter*
16 *alia*, California Labor Code section 204, including earned and unpaid overtime and minimum
17 wages and meal and rest period premiums.

18 50. During the relevant time period, Defendant failed to provide complete or
19 accurate wage statements to Plaintiff and the other class members. The deficiencies included,
20 *inter alia*, the failure to include the accurate total number of hours worked by Plaintiff and the
21 other class members and the accurate net/gross wages earned.

22 51. During the relevant time period, Defendant failed to keep complete or accurate
23 payroll records for Plaintiff and the other class members. The deficiencies included, *inter alia*,
24 the failure to include the accurate total number of hours worked by Plaintiff and the other class
25 members and the accurate net/gross wages earned.

26 52. During the relevant time period, Defendant failed to reimburse Plaintiff and the
27 other class members for all necessary business-related expenses and costs, including, but not
28 limited to, the use of personal phones for business-related matters, use of personal vehicle (s)

1 and/or rental of vehicle(s) for work purposes and/or work-related travel, costs of complying
2 with the dress code, and costs of purchasing and/or maintaining required clothing and
3 footwear.

4 53. During the relevant time period, Defendant failed to properly compensate
5 Plaintiff and the other class members pursuant to California law in order to increase
6 Defendant's profits.

7 54. California Labor Code section 218 states that nothing in Article 1 of the Labor
8 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
9 due to him [or her] under this article."

10 **FIRST CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 510 and 1198)**

12 **(Against FRESH LINK LOGISTICS, LLC**

13 **and DOES 1 through 100)**

14 55. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
15 through 54, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 56. California Labor Code section 1198 and the applicable Industrial Welfare
18 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
19 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
20 rate of pay, depending on the number of hours worked by the person on a daily or weekly
21 basis.

22 57. Specifically, the applicable IWC Wage Order provides that Defendant is and
23 was required to pay Plaintiff and the other class members employed by Defendant, and
24 working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more
25 than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours
26 worked in excess of eight (8) hours in a day, more than forty (40) hours in a week, or the first
27 eight (8) hours worked on the seventh day of work in a workweek.\

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58. The applicable IWC Wage Order further provides that Defendant is and was required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

59. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

60. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of six (6) consecutive days in a workweek, including performing work duties off-the-clock including, but not limited to, receiving assignments, reviewing orders, conducting safety and inspection checks, and remaining on duty.

61. During the relevant time period, Defendant intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members. Plaintiff and the other class members did not receive overtime compensation at one-and-one-half times the regular hourly rate for all hours spent performing job duties in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for the first eight (8) hours worked on the seventh day. Plaintiff and the other class members also did not receive overtime compensation at two times the regular hourly rate for all hours spent performing job duties in excess twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

62. Defendant's failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

63. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

64. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 63, and each and every part thereof with the same force and effect as though fully set forth herein.

65. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendant.

66. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

67. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

68. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (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.

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69. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

70. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

71. During the relevant time period, Plaintiff and other class members' meal periods were missed, shortened, late, and/or were interrupted because Defendant required them to perform and complete work duties, even when it resulted in missed, shortened, late, or interrupted meal periods. Plaintiff and the other class members purported meal periods were missed, shortened, late, and/or interrupted due to work-related inquiries, calls from dispatchers, communication from other co-workers, and/or to meet order/delivery deadlines.

72. As a result, Defendant failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class members a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more than ten (10) hours.

73. During the relevant time period, Plaintiff and the other class members' meal periods were missed, shortened, late, and/or interrupted because Defendant required them to perform work duties including, but not limited to, responding to business related inquiries, remaining on duty, traveling, and working to meet order/delivery deadlines.

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74. As a result, Defendant failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class members a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more than ten (10) hours.

75. During the relevant time period, Defendant intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

76. During the relevant time period, Defendant failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

77. Defendant's conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

78. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendant 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.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

79. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 78, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 80. At all times herein set forth, the applicable IWC Wage Order and California
2 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
3 employment by Defendant.

4 81. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall require an employee to work during any rest period mandated by an applicable
6 order of the California IWC.

7 82. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3 ½) hours.

13 83. During the relevant time period, Defendant required Plaintiff and other class
14 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
15 rest period per each four (4) hour period worked.

16 84. During the relevant time period, Plaintiff's and the other class members' rest
17 periods were missed, short, late and/or interrupted because Defendant required them to perform
18 work duties during their purported rest periods, including, but not limited to, working to meet
19 order/delivery deadlines and remaining on duty.

20 85. As a result, Defendant failed to provide, authorize, or permit Plaintiff and the
21 other class members to take a full, uninterrupted, off-duty rest period for every shift lasting
22 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
23 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
24 permit, and provide such rest breaks in the middle of each work period.

25 86. During the relevant time period, Defendant willfully required Plaintiff and the
26 other class members to work during rest periods and failed to pay Plaintiff and the other class
27 members the full rest period premium for work performed during rest periods.

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87. During the relevant time period, Defendant failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

88. Defendant's conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

89. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendant one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

90. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 89, and each and every part thereof with the same force and effect as though fully set forth herein.

91. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

92. During the relevant time period, Defendant failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendant's failure to pay minimum wages included, *inter alia*, Defendant's effective payment of zero dollars per hour for hours Plaintiff and the other class members worked off-the-clock performing work duties.

93. During the relevant time period, Plaintiff and the other class members were required to perform job duties off-the-clock, including, but not limited to, receiving assignments, reviewing orders, conducting safety and inspection checks and remaining on duty.

94. During the relevant time period, Plaintiff and the other class members were not compensated at the minimum wage for the time they spent performing job duties off the clock.

95. Defendant's failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

96. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

97. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

98. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 97, and each and every part thereof with the same force and effect as though fully set forth herein.

99. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

1 100. During the relevant time period, Plaintiff and the other class members were
2 required to perform job duties off-the-clock, including, but not limited to, receiving
3 assignments, reviewing orders, conducting safety and inspection checks, and remaining on
4 duty.

5 101. During the relevant time period, Plaintiff and the other class members were not
6 compensated at the minimum wage for the time they spent performing job duties off the clock.

7 102. During the relevant time period, Plaintiff and the other class members were not
8 paid overtime wages owed to them for all the time they spent performing job duties off the
9 clock in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8)
10 hours worked on the seventh day of work.

11 103. During the relevant time period, Plaintiff and the other class members were
12 required to perform work duties, including, but not limited to, responding to business-related
13 inquiries, remaining on duty, traveling and working to meet order/delivery deadlines, which
14 resulted in late, short, and/or interrupted meal periods.

15 104. During the relevant time period, Plaintiff and the other class members' rest
16 periods were missed, short, late, and/or interrupted because Defendant required them to
17 perform work duties, including, but not limited to, working to meet order/delivery deadlines
18 and remaining on duty.

19 105. During the relevant time period, Plaintiff and the other class members were not
20 paid the full meal period premium for work performed during meal periods, which were due
21 pursuant to California Labor Code section 226.7.

22 106. During the relevant time period, Plaintiff and other class members were not paid
23 the full rest period premium for work performed during rest periods, which were due pursuant
24 to California Labor Code section 226.7.

25 107. As a result, during the relevant time period, Plaintiff and the other class
26 members did not receive all of their wages, earned and unpaid, within seventy-two (72) hours
27 of leaving Defendant's employ.

28 ///

108. During the relevant time period, Defendant intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendant their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendant's employ. Plaintiff and other class members were not paid at the time of their discharge wages earned and unpaid throughout their employment, including but not limited to, minimum wages for time worked off-the-clock to perform work duties and for meal and rest period premium payments

109. Defendant's failure to pay Plaintiff and the other class members who are no longer employed by Defendant their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendant's employ, is in violation of California Labor Code sections 201 and 202.

110. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then 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 is commenced; but the wages shall not continue for more than thirty (30) days.

111. Plaintiff and the other class members are entitled to recover from Defendant the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

112. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 111, and each and every part thereof with the same force and effect as though fully set forth herein.

113. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was

1 performed.

2 114. At all times herein set forth, California Labor Code section 204 provides that all
3 wages earned by any person in any employment between the 16th and the last day, inclusive,
4 of any calendar month, other than those wages due upon termination of an employee, are due
5 and payable between the 1st and the 10th day of the following month.

6 115. At all times herein set forth, California Labor Code section 204 provides that all
7 wages earned for labor in excess of the normal work period shall be paid no later than the
8 payday for the next regular payroll period.

9 116. During the relevant time period, Defendant intentionally and willfully failed to
10 pay Plaintiff and the other class members all wages due to them, within any time period
11 permissible under California Labor Code section 204.

12 117. Plaintiff and the other class members are entitled to recover all remedies
13 available for violations of California Labor Code section 204.

14 **SEVENTH CAUSE OF ACTION**

15 **(Violation of California Labor Code § 226(a))**

16 **(Against FRESH LINK LOGISTICS, LLC**

17 **and DOES 1 through 100)**

18 118. Plaintiff incorporates by reference the allegations contained in paragraphs 1
19 through 117, and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 119. At all material times set forth herein, California Labor Code section 226(a)
22 provides that every employer shall furnish each of his or her employees an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
24 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
25 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
26 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
27 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
28 his or her social security number, (8) the name and address of the legal entity that is the

1 employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee. The deductions
3 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
4 showing the month, day, and year, and a copy of the statement or a record of the deductions
5 shall be kept on file by the employer for at least three years at the place of employment or at a
6 central location within the State of California.

7 120. Defendant has intentionally and willfully failed to provide Plaintiff and the other
8 class members with complete and accurate wage statements. The deficiencies include, but are
9 not limited to: the failure to include the total number of hours worked by Plaintiff and the other
10 class members. Because Plaintiff's and the other class members' wage statements did not
11 reflect this information, Plaintiff and the other class members were unable to determine the
12 total amount they were owed, and were unable to verify they were paid the proper amount. In
13 order to determine how much Plaintiff and the other class members would have had to engage
14 in discovery and mathematical computations in order to reconstruct the missing information.

15 121. As a result of Defendant's violation of California Labor Code section 226(a),
16 Plaintiff and the other class members have suffered injury and damage to their statutorily-
17 protected rights.

18 122. More specifically, Plaintiff and the other class members have been injured by
19 Defendant's intentional and willful violation of California Labor Code section 226(a) because
20 they were denied both their legal right to receive, and their protected interest in receiving,
21 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

22 123. Plaintiff and the other class members are entitled to recover from Defendant the
23 greater of their actual damages caused by Defendant's failure to comply with California Labor
24 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
25 employee.

26 124. Plaintiff and the other class members are also entitled to injunctive relief to
27 ensure compliance with this section, pursuant to California Labor Code section 226(h).

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EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

125. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 124, and each and every part thereof with the same force and effect as though fully set forth herein.

126. Pursuant to California Labor Code section 1174(d), an employer shall 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

127. Defendant has intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

128. As a result of Defendant's violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

129. More specifically, Plaintiff and the other class members have been injured by Defendant's intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

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NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

130. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 129, and each and every part thereof with the same force and effect as though fully set forth herein.

131. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

132. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendant, including, but not limited to the use of personal phones for business-related matters and the costs of complying with the dress code.

133. Defendant has intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

134. Plaintiff and the other class members are entitled to recover from Defendant their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against FRESH LINK LOGISTICS, LLC

and DOES 1 through 100)

135. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 134, and each and every part thereof with the same force and effect as though fully set forth herein.

1 136. Defendant's conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendant's
3 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public
4 interest within the meaning of Code of Civil Procedure section 1021.5.

5 137. Defendant's activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code section 17200, et seq.

8 138. A violation of California Business & Professions Code section 17200, et seq.
9 may be predicated on the violation of any state or federal law. In this instant case, Defendant's
10 policies and practices of requiring employees, including Plaintiff and the other class members,
11 to work overtime without paying them proper compensation violate California Labor Code
12 sections 510 and 1198. Additionally, Defendant's policies and practices of requiring
13 employees, including Plaintiff and the other class members, to work through their meal and
14 rest periods without paying them proper compensation violate California Labor Code sections
15 226.7 and 512(a). Defendant's policies and practices of failing to pay minimum wages violate
16 California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendant's policies and
17 practices of failing to timely pay wages to Plaintiff and the other class members violate
18 California Labor Code sections 201, 202 and 204. Defendant also violated California Labor
19 Code sections 226(a), 1174(d), 2800 and 2802.

20 139. As a result of the herein described violations of California law, Defendant
21 unlawfully gained an unfair advantage over other businesses.

22 140. Plaintiff and the other class members have been personally injured by
23 Defendant's unlawful business acts and practices as alleged herein, including but not
24 necessarily limited to the loss of money and/or property.

25 141. Pursuant to California Business & Professions Code sections 17200, et seq.,
26 Plaintiff and the other class members are entitled to restitution of the wages withheld and
27 retained by Defendant during a period that commences August 28, 2014; an award of
28 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other

1 applicable laws; and an award of costs.

2 **ELEVENTH CAUSE OF ACTION**

3 **(Violation of California Labor Code § 2698, et seq.)**

4 **(Against FRESH LINK LOGISTICS, LLC**

5 **and DOES 1 through 100)**

6 142. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 141, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 143. PAGA expressly establishes that any provision of the California Labor Code
10 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
11 departments, divisions, commissions, boards, agencies or employees for a violation of the
12 California Labor Code, may be recovered through a civil action brought by an aggrieved
13 employee on behalf of himself or herself, and other current or former employees.

14 144. Whenever the LWDA, or any of its departments, divisions, commissions,
15 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action
16 is authorized to exercise the same discretion, subject to the same limitations and conditions, to
17 assess a civil penalty.

18 145. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved
19 employees” as defined by California Labor Code section 2699(c) in that they are all current or
20 former employees of Defendant, and one or more of the alleged violations was committed
21 against them.

22 **Failure to Pay Overtime**

23 146. Defendant’s failure to pay overtime in violation of the Wage Orders and
24 California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or
25 unfair activity prohibited by California Labor Code sections 510 and 1198.

26 **Failing to Provide Meal Periods**

27 147. Defendant’s failure to provide legally required meal periods in violation of the
28 Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above,

1 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7
2 and 512(a).

3 **Failure to Provide Rest Periods**

4 148. Defendant's failure to provide legally required rest periods in violation of the
5 Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful
6 and/or unfair activity prohibited by California Labor Code section 226.7.

7 **Failure to Pay Minimum Wages**

8 149. Defendant's failure to pay minimum wages in violation of the Wage Orders and
9 California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful
10 and/or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

11 **Failure to Timely Pay Wages Upon Termination**

12 150. Defendant's failure to timely pay wages upon termination in violation of
13 California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or
14 unfair activity prohibited by California Labor Code sections 201 and 202.

15 **Failure to Timely Pay Wages During Employment**

16 151. Defendant's failure to timely pay wages during employment in violation of
17 California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair
18 activity prohibited by California Labor Code section 204.

19 **Failure to Provide Compliant Wage Statements**

20 152. Defendant's failure to provide compliant wage statements in violation of
21 California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair
22 activity prohibited by California Labor Code section 226(a).

23 **Failure to Keep Complete or Accurate Payroll Records**

24 153. Defendant's failure to keep complete or accurate payroll records in violation of
25 California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair
26 activity prohibited by California Labor Code section 1174(d).

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Failure to Reimburse Necessary Business Expenses

154. Defendant's failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

155. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendant business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendant including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

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156. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, pray for relief and judgment against Defendant, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendant provides to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

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6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

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

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendant violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

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18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer

employed by Defendant;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendant's employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendant violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendant violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

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

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As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendant violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

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

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Tenth Cause of Action

53. That the Court decree, adjudge and decree that Defendant violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

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1 55. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendant and determined to have been wrongfully acquired by
3 Defendant as a result of violation of California Business and Professions Code sections 17200,
4 et seq.;

5 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

7 57. For injunctive relief to ensure compliance with this section, pursuant to
8 California Business and Professions Code sections 17200, et seq.; and

9 58. For such other and further relief as the Court may deem just and proper.

10 **As to the Eleventh Cause of Action**

11 59. For civil penalties and wages pursuant to California Labor Code sections
12 2699(a), (f) and (g) plus costs and attorneys' fees for violation of California Labor Code
13 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198,
14 2800, and 2802; and

15 60. For such other and further relief as the Court may deem equitable and appropriate

16 Dated: October 15, 2021

LAWYERS for JUSTICE, PC

17
18 By: _____



Edwin Aiwanian
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On October 21, 2021, I served the foregoing document(s) described as: **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CAL. LABOR CODE § 2698, ET SEQ.**

on interested parties in this action by Electronic Service as follows:

Marjorie C. Soto (mcsoto@mwe.com)
Maria C. Rodriguez (mcrodriguez@mwe.com)
McDERMOTT WILL & EMERY LLP
2049 Century Park East, Suite 3200
Los Angeles, California 90067
T: 310-277-4110
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Attorneys for Defendant Fresh Link Logistics, LLC

[X] BY ELECTRONIC SERVICE

Pursuant to the Court's Order regarding Electronic Service, I caused the documents described above to be E-Served through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere to the individual(s) listed above.

State of California, Labor & Workforce Development Agency Web URL:
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

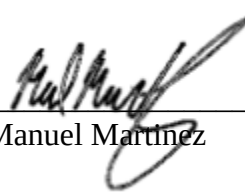
[X] BY ONLINE SUBMISSION

The foregoing documents were transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 21, 2021, at Glendale, California.


Manuel Martinez