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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THOMAS LEWIS and AURELIO
SANCHEZ, individually, as aggrieved
employees, and on behalf of other
members of the general public similarly
situated,

Plaintiffs,

vs.

EXPRESS MESSENGER SYSTEMS,
INC., a Delaware corporation doing
business as ONTRAC; and DOES 1
through 100, inclusive,

Defendants.

Case No.: BC501521

**CLASS ACTION & ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698 ET SEQ.**

FIRST AMENDED COMPLAINT FOR:

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7 & 512(a) (Unpaid Meal Period Premiums);
- (4) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (5) Violation of Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code §§ 2800 and 2802 (Unpaid Business Expenses);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of Labor Code §§ 2698, *et seq.* ("PAGA"); and
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.*

Jury Trial Demanded

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1 Plaintiffs, individually and on behalf of all other members of the public similarly
2 situated, allege as follows:

3 INTRODUCTION

4 1. This is a class action brought pursuant to California Code of Civil Procedure
5 section 382 on behalf of a group of delivery drivers who were and are misclassified by
6 Defendants as independent contractors.

7 2. Defendants operate a regional package delivery service for companies and
8 individuals throughout various western states including California. Similar to other package
9 delivery companies such as FedEx and UPS, Defendants operate a delivery system consisting
10 of hubs and local facilities that collect, sort and route packages for delivery. The burden of
11 the package delivery service, i.e. the actual delivery of the packages, is performed by drivers
12 who Defendants intentionally, but improperly and illegally, classify as independent
13 contractors rather than employees.

14 3. As a result of Defendants' intentional misclassification of the drivers as
15 independent contractors as opposed to employees, Defendants have denied numerous wage
16 and hour protections provided by the California Labor Code and the applicable Industrial
17 Welfare Commission Wage Orders including, but not limited to, overtime wages, minimum
18 wages, meal and rest breaks, and reimbursement of business-related expenses.

19 4. Despite Defendants' efforts to evade California wage and hour laws by setting
20 up an alleged subcontractor scheme, the reality is that Plaintiffs and class members are in fact
21 employees according to the law. Defendants are in the business of parcel delivery, and
22 Plaintiffs and class members are Defendants' parcel delivery personnel. Plaintiffs and class
23 members' work, i.e. delivering parcels, is therefore not a distinct occupation or an incidental
24 or tangential part of Defendants' operations, but rather is central to Defendants' business.
25 Defendants provide the vast majority of the tools, instrumentalities and locations where
26 Plaintiffs and class members do their jobs including without limitation the packages to be
27 delivered, the delivery routes, equipment used to scan packages, the required logos, signs, and
28 clothing, etc. Plaintiffs and class members must appear at Defendant's various warehouses to

1 pick up packages Defendants pre-sort for them and are tracked via GPS by Defendants the
2 entire time they are working. The job duties that Plaintiffs and class members perform for
3 Defendants are not those typically done by a specialist and require no special skill. The vast
4 majority of the drivers only work for Defendants on a full-time, long-term basis. Defendants
5 pay Plaintiffs and class members, albeit through a separate company, a daily fixed rate, in
6 addition to other amounts per delivery and pick-up with those amounts set by Defendants.
7 The daily fixed rate paid to Plaintiffs and class members forms the majority of their pay.

8 5. In order to create the facade that its drives are independent contractors,
9 Defendants use various straw men to create an imaginary layer between their delivery
10 operations and its drivers, including individuals known as Regional Service Providers (many
11 of whom are themselves drivers) who help recruit and manage drivers pursuant to Defendants'
12 instructions.

13 6. Defendants' conduct constitutes an intentional, willful pattern and/or practice
14 of misclassification. As a result of this conduct, Defendants have deprived Plaintiffs and other
15 Drivers of overtime pay and minimum wages, meal and rest breaks, and failed to reimburse
16 Drivers for necessary business-related expenses. Plaintiffs, on behalf of themselves and all
17 other similarly situated persons, seeks all available remedies as set forth below as a result of
18 Defendants' unlawful conduct.

19 JURISDICTION AND VENUE

20 7. This class action is brought pursuant to California Code of Civil Procedure
21 section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal
22 jurisdiction limits of the Superior Court and will be established according to proof at trial.
23 Based upon information, investigation, and analysis as of the filing date of this complaint,
24 Plaintiffs allege that the amount in controversy for each class representative, including claims
25 for monetary damages, restitution, penalties, injunctive relief, and a pro rata share of
26 attorneys' fees, is less than seventy-five thousand dollars (\$75,000) and that the aggregate
27 amount in controversy for the proposed class action, including monetary damages, restitution,
28 penalties, injunctive relief, and attorneys' fees, is less than five million dollars (\$5,000,000),

1 exclusive of interest and costs. Plaintiffs reserve the right to seek a larger amount based upon
2 new and different information resulting from investigation and discovery.

3 8. This Court has jurisdiction over this action pursuant to the California
4 Constitution, Article VI, section 10. The statutes under which this action is brought do not
5 specify any other basis for jurisdiction.

6 9. This Court has jurisdiction over all Defendants because, upon information and
7 belief, Defendants are either citizens of California, have sufficient minimum contacts in
8 California, or otherwise intentionally avail themselves of the California market so as to render
9 the exercise of jurisdiction over them by the California courts consistent with traditional
10 notions of fair play and substantial justice.

11 10. Venue is proper in this Court because Defendants are not California residents
12 and have not filed a statement designating a principal office in California, and venue is
13 therefore proper in any county in the State including this county. *Easton v. Sup.Ct.*, 12 Cal.
14 App. 3d 243, 246-47.

15 **THE PARTIES**

16 11. Plaintiff THOMAS LEWIS is a resident of Fresno, California, in Fresno
17 County.

18 12. Plaintiff AURELIO SANCHEZ is a resident of Maywood, California, in Los
19 Angeles County.

20 13. Defendant EXPRESS MESSENGER SYSTEMS, INC., was and is, upon
21 information and belief, a Delaware corporation doing business as “OnTrac” and, at all times
22 hereinafter mentioned, an employer whose employees are engaged throughout this county, the
23 State of California, or the various states of the United States of America.

24 14. Plaintiffs are unaware of the true names or capacities of the Defendants sued
25 herein under the fictitious names DOES 1 through 100 but will seek leave of this Court to
26 amend the complaint and serve such fictitiously named Defendants once their names and
27 capacities become known.

28 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the

1 acts and omissions alleged herein were performed by, or are attributable to, EXPRESS
2 MESSENGER SYSTEMS, INC, and/or DOES 1 through 100 (collectively “Defendants”),
3 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
4 with, each of the other co-Defendants and was acting within the course and scope of such
5 agency, employment, joint venture, or concerted activity with legal authority to act on the
6 others’ behalf. The acts of any and all Defendants represent and were in accordance with
7 Defendants’ official policy.

8 16. At all relevant times, Defendants, and each of them, ratified each and every act
9 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
10 and abetted the acts and omissions of each and all the other Defendants in proximately causing
11 the damages herein alleged.

12 17. Plaintiffs are informed and believe, and thereon allege, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 **CLASS ACTION ALLEGATIONS**

16 18. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
17 all other persons similarly situated, and thus, seek class certification under California Code of
18 Civil Procedure section 382.

19 19. All claims alleged herein arise under California law for which Plaintiffs seek
20 relief authorized by California law.

21 20. Plaintiffs’ proposed class consists of and is defined as follows:

22 All individuals who worked for Defendants in California as a
23 driver and classified as an independent contractor, excluding
24 Regional Service Providers and multiple-route divers, at any
time during the period from four years prior to the filing of this
Complaint until the date of certification (“Class”).

25 21. Plaintiffs’ first proposed subclass consists of and is defined as follows:

26 All individuals who worked for Defendants in California as a
27 driver and classified as an independent contractor, excluding
28 Regional Service Providers and multiple-route divers, at any
time within one year prior to the filing of this Complaint until
the date of certification (“One Year Class”).

1 22. Plaintiffs reserve the right to redefine the class and subclass above and to add
2 subclasses as appropriate based on further investigation, discovery, and specific theories of
3 liability.

4 23. Members of the Class and One Year Class will hereinafter be referred to as
5 “class members.”

6 24. There are common questions of law and fact as to the class members that
7 predominate over questions affecting only individual members, including, but not limited to:

- 8 (a) Whether Defendants’ improperly classified Plaintiffs and class members
9 as “independent contractors” rather than employees;
- 10 (b) Whether Defendants required Plaintiffs and class members to work over
11 eight (8) hours per day, over twelve (12) hours per day, and/or over
12 forty (40) hours per week and failed to pay legally required overtime
13 compensation to Plaintiffs and class members;
- 14 (c) Whether Defendants deprived Plaintiffs and class members of minimum
15 wages;
- 16 (d) Whether Defendants deprived Plaintiffs and class members of meal
17 periods or required Plaintiffs and class members to work during meal
18 periods without compensation;
- 19 (e) Whether Defendants deprived Plaintiffs and class members of rest
20 periods or required Plaintiffs and class members to work during rest
21 periods without compensation;
- 22 (f) Whether Defendants complied with wage reporting as required by
23 California Labor Code section 226(a);
- 24 (g) Whether Defendants failed to reimburse Plaintiffs and class members
25 for necessary and required business-related expenditures and/or losses
26 incurred by them in the scope of their employment;
- 27 (h) Whether Defendants failed to pay the statutorily designated wage scale
28 as required by Labor Code section 223;

- (i) Whether Defendants failed to maintain information relating to their employees including their name, address and payroll records;
- (j) Whether Defendants failed to timely pay wages due to Plaintiffs and class members during their employment;
- (k) Whether Defendants compelled or coerced Plaintiffs and class members to patronize Defendants business by purchasing uniforms;
- (l) Whether Defendants failed to timely pay wages due to Plaintiffs and class members upon their discharge;
- (m) Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful or reckless;
- (n) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

25. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

- (a) Numerosity: The members of the class are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be over forty and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all Class Members' as demonstrated herein.
- (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-

1 defined community of interest and typicality of claims, as demonstrated
2 herein. Plaintiffs acknowledge that they have an obligation to make
3 known to the Court any relationship, conflicts or differences with any
4 class member. Plaintiffs' attorneys, the proposed class counsel, are
5 versed in the rules governing class action discovery, certification, and
6 settlement. Plaintiffs have incurred, and throughout the duration of this
7 action, will continue to incur costs and attorneys' fees that have been,
8 are and will be necessarily expended for the prosecution of this action
9 for the substantial benefit of each class member.

10 (d) Superiority: The nature of this action makes the use of class action
11 adjudication superior to other methods. A Class action will achieve
12 economies of time, effort, and expense as compared with separate
13 lawsuits, and will avoid inconsistent outcomes because the same issues
14 can be adjudicated in the same manner and at the same time for the
15 entire class.

16 (e) Public Policy Considerations: Employers in the State of California
17 violate employment and labor laws every day. Current employees are
18 often afraid to assert their rights out of fear of direct or indirect
19 retaliation. Former employees are fearful of bringing actions because
20 they believe their former employers might damage their future
21 endeavors through negative references and/or other means. Class
22 actions provide the class members who are not named in the complaint
23 with a type of anonymity that allows for the vindication of their rights at
24 the same time as their privacy is protected.

25 **GENERAL ALLEGATIONS**

26 26. Defendants operate a parcel delivery service under the brand name "OnTrac."
27 Defendants' main business is to transport packages to and from various locations in the
28 western United States including California, Nevada, Arizona, Oregon, Washington, Utah, and

1 Colorado.

2 27. Defendants operate their parcel delivery service using drivers who need no
3 special skills and who are recruited via websites, job flyers, job fairs, and other
4 advertisements. For example one such advertisement which uses the “OnTrac” company logo
5 and features an “OnTrac” driver wearing an “OnTrac” uniform encourages drivers to “Join
6 Our Team! Visit Our Job Fairs.”

7 28. As part of Defendants’ independent contractor scheme, Defendants have set up
8 various straw men to create an illusion of separation between their delivery operations and
9 their drivers. For example, Defendants use individuals known as Regional Service Providers
10 to help recruit and supervise drivers according to Defendants’ instructions. The Regional
11 Service Providers work out of Defendants’ facilities, are themselves predominantly drivers or
12 former drivers for OnTrac, and are effectively Defendants’ managers. Defendants pay drivers
13 through a subcontractor straw-man called Subcontracting Concepts, Inc. using several
14 methods which include a daily base rate ranging from approximately \$30 to \$110, a per
15 delivery stop amount of approximately 35 cents to \$1.25, and an additional payment related to
16 the weight of the packages. Defendant also requires each driver to enter into a “marketing
17 agreement” in which the driver is required to wear an “OnTrac” uniform and display
18 “OnTrac” logos on their vehicles for a token daily payment.

19 29. In reality, however, Defendants’ exercise pervasive and systematic control over
20 scheduling, deliveries and routes effectively determining the Drivers’ shifts, working hours,
21 and working conditions. For example, Defendants process and approve driver applications,
22 perform background checks on drivers and cause drivers to be terminated. Defendants assign
23 drivers specific routes and with specific deliveries they must complete within pre-set time
24 windows throughout the day and are not permitted to alter, effectively controlling drivers’
25 working hours. Defendants require drivers to obtain a relief driver (who must be approved in
26 advance by Defendants) should drivers not wish, or be unable to, complete their routes for any
27 given day and Defendants forbid drivers from seeking separate employment with other parcel
28 delivery companies. Defendants further require drivers to obtain and maintain a commercial

1 van, to wear uniforms with “OnTrac” logos, to outfit their vans with “OnTrac” logos and
2 colors, to scan each package with Defendants’ scanner and to complete pre-formatted forms
3 provided by Defendants. Defendants’ true purpose in ensuring all drivers wear matching
4 uniforms and display matching “OnTrac” logos on their vehicles is to project to the public,
5 consumers, and commercial customers that OnTrac is one united company and is in full
6 control of its regional package delivery service. Defendants also maintain total control over
7 the delivery fees, and collection of those fees, charged to customers.

8 30. Defendants’ drivers, including Plaintiffs and class members, were and are, for
9 all practical purposes, forced regularly to work forty (40) to fifty (50) hours per week as
10 Defendants assign drivers specific routes which they are responsible for serving which include
11 a number of daily deliveries. Because the drivers are often required to work over ten (10)
12 hours to complete all of their daily deliveries, they have no choice but to work often in excess
13 of eight hours per day.

14 31. Defendants’ misclassification of Plaintiffs and other drivers as independent
15 contractors is intentional, unjustified, and unlawful. Under the “economic realities test,”
16 Plaintiffs and other class members are Defendants’ employees. As a result of
17 misclassification, Defendants have violated numerous wage and hour provisions, including,
18 but not limited to, failing to pay at least minimum wages for all hours worked, failing to pay
19 overtime wages for all overtime hours worked, failing to provide meal or rest breaks,
20 compelling or coercing Plaintiffs and class members to patronize their business, failing to
21 provide reimbursement for necessary business-related expenses, and not paying all wages due
22 during employment and upon termination.

23 32. Pursuant to California Labor Code section 3357, Plaintiffs and other class
24 members are entitled to a presumption that they are in fact employees of Defendants.
25 Moreover, the existence of any document purporting to create an independent contractor
26 relationship is not determinative.

27 33. Defendants employed Plaintiff Thomas Lewis as a driver from February 2010
28 to September 2011 in the Fresno, California area but knowingly and willfully misclassified

1 him as an independent contractor and on that basis committed the violations against him as set
2 forth herein.

3 34. Defendants have employed Plaintiff Aurelio Sanchez from November 2012 to
4 the present in the Los Angeles, California area, but knowingly and willfully misclassified him
5 as an independent contractor and on that basis committed the violations against him as set
6 forth herein.

7 35. Defendants continue to employ drivers in various locations throughout
8 California and continue to misclassify these employees as independent contractors.

9 36. Plaintiffs are informed and believe, and thereon allege, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
11 and advisors knowledgeable about California labor and wage law, employment and personnel
12 practices, and about the requirements of California law.

13 37. Plaintiffs are informed and believe, and thereon allege, that class members were
14 not paid for all hours worked, because all hours worked were not recorded.

15 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to receive certain wages
17 for overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and class members were entitled to receive at least
21 minimum wages for compensation and that, in violation of the California Labor Code, they
22 were not receiving at least minimum wages for work done off-the-clock.

23 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and class members were entitled to receive all meal periods
25 or payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of
26 pay when they did not receive a timely uninterrupted meal period, and that they did not
27 receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class
28 members' regular rate of pay when they did not receive a timely uninterrupted meal period.

1 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to receive all rest periods
3 or payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of
4 pay when a rest period was missed, and that they did not receive all rest periods or payment of
5 one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay when a rest
6 period was missed.

7 42. Plaintiffs are informed and believe, and thereon allege that Defendants knew or
8 should have known that they were not permitted to compel or coerce Plaintiffs and class
9 members to patronize their business in the purchase of any thing of value but did in fact
10 require Plaintiffs and class members to purchase various things, including uniforms.

11 43. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and class members were entitled to receive full
13 reimbursement for all business-related expenses and costs they incurred, including but not
14 limited to, purchase of their own gas, maintenance, and repairs, uniforms, and other necessary
15 business expenses, during the course and scope of their employment and that they did not
16 receive full reimbursement of applicable business-related expenses and costs incurred.

17 44. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and class members were entitled to receive complete and
19 accurate wage statements in accordance with California law. In violation of the California
20 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
21 statements.

22 45. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and class members were entitled to timely payment of
24 wages during their employment. In violation of the California Labor Code, Plaintiffs and
25 class members did not receive payment of all wages, including, but not limited to, overtime
26 wages and minimum wages, within permissible time periods.

27 46. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that they were required to pay Plaintiffs and class members the statutorily

1 designated wage scale but did not do so.

2 47. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that they were required to maintain certain information and documents
4 relating to their employees, including Plaintiffs and class members, including, but not limited
5 to, their names, addresses and payroll records but did not do so.

6 48. Plaintiff Lewis is informed and believes, and thereon alleges, that Defendants
7 knew or should have known that Plaintiff Lewis and class members were entitled to receive all
8 wages upon termination, including, without limitation, minimum wages and overtime wages.

9 49. At all times herein set forth, PAGA was applicable to Plaintiff Sanchez's
10 employment by defendants.

11 50. At all times herein set forth, PAGA provides that any provision of law under
12 the California Labor Code that provides for a civil penalty to be assessed and collected by the
13 LWDA for violations of the California Labor Code may, as an alternative, be recovered
14 through a civil action brought by an aggrieved employee on behalf of himself and other
15 current or former employees pursuant to procedures outlined in California Labor Code section
16 2699.3.

17 51. Pursuant to PAGA, a civil action under PAGA may be brought by an
18 "aggrieved employee," who is any person that was employed by the alleged violator and
19 against whom one or more of the alleged violations was committed.

20 52. Plaintiff Sanchez was employed by Defendants and the alleged violations were
21 committed against him during his time of employment and he is, therefore, an aggrieved
22 employee. Plaintiff Sanchez and other employees are "aggrieved employees" as defined by
23 California Labor Code section 2699(c) in that they are all current or former employees of
24 Defendants, and one or more of the alleged violations were committed against them.

25 53. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved
26 employees, including Plaintiff Sanchez, may pursue a civil action arising under PAGA after
27 the following requirements have been met:

28 (a) The aggrieved employee shall give written notice by certified mail

(hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within thirty-three (33) 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.

54. On April 25, 2013, Plaintiff Sanchez provided written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to California Labor Code section 2699.3. Defendants have failed to cure any of the alleged violations.

55. As of the filing date of this first amended complaint, over 34 day have passed since Plaintiff Sanchez sent the notice to the LWDA described above and the LWDA has not stated that it intends to investigate Plaintiff Sanchez’ claims. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) are satisfied and Plaintiff Sanchez has authorization to recover civil penalties and unpaid wages against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 226.8, 510, 512(a), 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 unless the LWDA provides timely notice of its intent to investigate Plaintiffs’ Labor Code claims.

1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against All Defendants)**

4 56. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 57. California Labor Code section 1198 makes it illegal to employ an employee
7 under conditions of labor that are prohibited by the applicable wage order. California Labor
8 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
9 shall be the . . . standard conditions of labor for employees. The employment of any employee
10 . . . under conditions of labor prohibited by the order is unlawful.”

11 58. California Labor Code section 1198 and the applicable Industrial Welfare
12 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
13 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
14 rate of pay, depending on the number of hours worked by the person on a daily or weekly
15 basis.

16 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
17 were required to pay Plaintiffs and class members employed by Defendants, and working
18 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
19 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
20 (40) hours in a workweek.

21 60. The applicable IWC Wage Order further provides that Defendants are and were
22 required to pay Plaintiffs and class members employed by Defendants, and working more than
23 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
24 of pay.

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

1 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
2 of work.

3 62. During the relevant time period, Plaintiffs and class members worked in excess
4 of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty
5 (40) hours in a week. Because Defendants misclassified Plaintiffs and class members as
6 independent contractors, however, Defendants did not pay any hourly rate to them and did not
7 record their working hours. During the relevant time period, therefore, Defendants willfully
8 failed to pay all overtime wages owed to Plaintiffs and class members

9 63. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
10 overtime compensation, as required by California law, violates the provisions of California
11 Labor Code sections 510 and 1198, and is therefore unlawful.

12 64. Pursuant to California Labor Code section 1194, Plaintiffs and class members
13 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and
14 attorneys' fees.

15 **SECOND CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 1194, 1197, 1197.1—Unpaid Minimum Wages** 17 **(Against All Defendants)**

18 65. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
19 and every allegation set forth above.

20 66. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1
21 provide that the minimum wage for employees fixed by the Industrial Welfare Commission is
22 the minimum wage to be paid to employees, and the payment of a wage less than the
23 minimum so fixed is unlawful. As described above, Plaintiffs and class members were
24 misclassified as independent contractors and thus not paid any hourly wage. Plaintiffs and
25 class members were not paid even minimum wage for all of the hours they worked as a result
26 of being paid on a piece rate basis instead. Plaintiffs and class members were not paid the
27 minimum wage for off the clock work, and the wages paid to them were not sufficient to
28 compensate Plaintiffs and class members for all hours they worked at a minimum wage rate

1 on a cumulative basis. Accordingly, Defendants regularly failed to pay at least minimum
2 wages to Plaintiffs and class members for all of the hours they worked in violation of
3 California Labor Code sections 1194, 1197 and 1197.1.

4 67. Defendants' failure to pay Plaintiffs and class members the minimum wage as
5 required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those
6 sections, Plaintiffs and class members are entitled to recover the unpaid balance of their
7 minimum wage compensation, as well as interest, costs, and attorneys' fees.

8 68. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members
9 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
10 and interest thereon.

11 **THIRD CAUSE OF ACTION**

12 **Violations of California Labor Code §§ 226.7 and 512(a)—Unpaid Meal Period**

13 **Premiums**

14 **(Against All Defendants)**

15 69. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
16 and every allegation set forth above.

17 70. At all relevant times herein set forth, the applicable California Industrial
18 Welfare Commission (IWC) Wage Order(s) and California Labor Code sections 226.7 and
19 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants
20 and each of them.

21 71. At all relevant times herein set forth, California Labor Code section 226.7
22 provides that no employer shall require an employee to work during any meal period
23 mandated by an applicable order of the California Industrial Welfare Commission (IWC).

24 72. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is
28 not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee.

2 73. During the relevant time period, Plaintiffs and other class members scheduled
3 to work for a period of time no longer than six (6) hours, and who did not waive their legally
4 mandated meal periods by mutual consent, were required to work for periods longer than five
5 (5) hours without a meal period of not less than thirty (30) minutes.

6 74. During the relevant time period, Defendants willfully required Plaintiffs and
7 class members to work during meal periods and failed to compensate Plaintiffs and class
8 members for work performed during meal periods. For example, Defendants improperly
9 classified Plaintiffs and class members as independent contractors and on that basis never
10 informed them they could take meal breaks and further took no efforts to relieve them of all of
11 their duties such that Plaintiffs and class members could take compliant meal breaks. Rather,
12 Defendants scheduled deliveries and required Plaintiffs and class members to work throughout
13 their entire shift which led to Plaintiffs and class members not being able to take compliant
14 meal breaks. Defendants also had no policy and/or practice to pay a premium when meal
15 periods were missed and thus failed to pay Plaintiffs and class members the full meal period
16 premium due pursuant to California Labor Code section 226.7.

17 75. Defendants' conduct violates applicable Industrial Welfare Commission (IWC)
18 Wage Order(s), and California Labor Code sections 226.7 and 512(a).

19 76. Pursuant to the applicable Industrial Welfare Commission (IWC) Wage
20 Order(s) and California Labor Code section 226.7(b), Plaintiffs and other class members are
21 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
22 hourly rate of compensation for each work day that the meal period was not provided.

23 **FOURTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 226.7—Unpaid Rest Period Premiums** 25 **(Against All Defendants)**

26 77. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 78. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code section 226.7 were applicable to Plaintiffs' and class members'
2 employment by Defendants.

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

6 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
7 employer shall authorize and permit all employees to take rest periods, which insofar as
8 practicable shall be in the middle of each work period" and that the "rest period time shall be
9 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
10 hours or major fraction thereof" unless the total daily work time is less than three and one-half
11 (3½) hours.

12 81. During the relevant time period, Defendants required Plaintiffs and class
13 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
14 rest period per each four (4) hour period worked. As with meal periods, Defendants
15 improperly classified Plaintiffs and class members as independent contractors and on that
16 basis never informed them they could take rest breaks and further took no efforts to relieve
17 them of all of their duties such that Plaintiffs and class members could take compliant rest
18 breaks. Rather, Defendants scheduled deliveries and required Plaintiffs and class members to
19 work throughout their entire shift which led to Plaintiffs and class members not being able to
20 take compliant rest breaks. Defendants also had no policy and/or practice to pay a premium
21 when rest periods were missed and thus failed to pay Plaintiffs and class members the full rest
22 period premium due pursuant to California Labor Code section 226.7.

23 82. During the relevant time period, Defendants failed to pay Plaintiffs and class
24 members the full rest period premium due pursuant to California Labor Code section 226.7.

25 83. Defendants' conduct violates the applicable IWC Wage Orders and California
26 Labor Code section 226.7.

27 84. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(b), Plaintiffs and class members are entitled to recover from Defendants one (1)

1 additional hour of pay at the employee's regular hourly rate of compensation for each work
2 day that the rest period was not provided.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon**
5 **Termination**
6 **(Against All Defendants)**

7 85. Plaintiff Lewis incorporates by reference and re-alleges as if fully stated herein
8 each and every allegation set forth above.

9 86. This cause of action is wholly derivative of and dependent upon the unpaid
10 wage claims set forth for unpaid overtime wages, unpaid minimum wages, and unpaid meal
11 and rest period premium wages, which remained unpaid upon termination of Plaintiff and
12 class members' employment.

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

20 88. During the relevant time period, Defendants willfully failed to pay class
21 members who are no longer employed by Defendants the earned and unpaid wages set forth
22 above, including but not limited to, overtime wages, minimum wages, and meal and rest
23 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
24 their leaving Defendants' employ.

25 89. Defendants' failure to pay Plaintiff Lewis and those class members who are no
26 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
27 within seventy-two (72) hours of their leaving Defendants' employ, is in violation of
28 California Labor Code sections 201 and 202.

90. 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, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

91. Plaintiff Lewis and class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 2800 and 2802

(Against All Defendants)

92. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

93. At all times herein set forth California Labor Code sections 2800 and 2802 provide that an employer must reimburse employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties..

94. Plaintiffs and class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, without limitation, travel expenses, gas expenses, vehicle maintenance and repair expenses, vehicle insurance and vehicle lease payments, uniform expenses, parking and related fees, cell phone fees, and GPS service fees. Specifically, Defendants had, and continue to have, a policy and practice of requiring employees, including Plaintiffs and class members, to pay for said costs from their own funds. Defendants had, and continue to have, a policy of not reimbursing employees, including Plaintiffs and class members, for said business-related expenses and costs.

95. Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and class members for necessary business-related expenses and costs.

96. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest, pursuant to California Labor Code sections 2800 and 2802.

1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 226(a)—Non-Compliant Wage Statements**
3 **(Against All Defendants)**

4 97. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 98. At all material times set forth herein, California Labor Code section 226(a)
7 provides that every employer shall furnish each of his or her employees an accurate itemized
8 wage statement in writing, including, but not limited to, the name and address of the legal
9 entity that is the employer, total hours worked, and all applicable hourly rates.

10 99. Defendants have intentionally and willfully failed to provide employees with
11 complete and accurate wage statements as a result of misclassifying them as independent
12 contractors. The deficiencies include, among other things, the failure to provide any wage
13 statement, the failure to state all hours worked, the failure to state an hourly rate, the failure to
14 state the beginning and ending dates of their pay periods, the failure to state the employee's
15 identification number of last four digits of their social security number.

16 100. As a result of Defendants' violation of California Labor Code section 226(a),
17 Plaintiffs and class members have suffered injury and damage to their statutorily protected
18 rights.

19 101. Specifically, Plaintiffs and class members have been injured by Defendants'
20 intentional violation of California Labor Code section 226(a) because they were denied both
21 their legal right to receive, and their protected interest in receiving, accurate, itemized wage
22 statements under California Labor Code section 226(a). In addition, because Defendants
23 failed to provide the accurate number of total hours worked on wage statements, Plaintiffs
24 have been prevented by Defendants from determining if all hours worked were paid and the
25 extent of the underpayment. Plaintiffs have had to file this lawsuit, conduct discovery,
26 reconstruct time records, and perform computations in order to analyze whether in fact
27 Plaintiffs were paid correctly and the extent of the underpayment, thereby causing Plaintiffs to
28 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and

1 incur these costs had Defendants provided the accurate number of total hours worked. This
2 has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
3 Defendants.

4 102. Plaintiffs and class members are entitled to recover from Defendants the greater
5 of their actual damages caused by Defendants' failure to comply with California Labor Code
6 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
7 employee.

8 **EIGHTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 2698, *et seq.***

10 **(Against All Defendants)**

11 103. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 104. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff Sanchez to
14 recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor
15 Code section 2699.5.

16 105. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
17 plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
18 under this part at any time within 60 days of the time periods specified in this part."

19 106. Defendants' conduct, as alleged herein, violates numerous sections of the
20 California Labor Code, including, but not limited to, the following:

- 21 (a) Violation of Labor Code section 226.8 for Defendants' willful
22 misclassification of Plaintiff Sanchez and class members as
23 "independent contractors" rather than employees and for charging them
24 fees and deducting wages;
- 25 (b) Violation of Labor Code sections 510 and 1198 for Defendants' failure
26 to compensate Plaintiff Sanchez and other aggrieved employees with all
27 required overtime pay as herein alleged;
- 28 (c) Violation of Labor Code sections 1194, 1197, and 1197.1 for

1 Defendants' failure to compensate Plaintiff Sanchez and other aggrieved
2 employees for all hours worked with at least minimum wages as herein
3 alleged;

4 (d) Violation of Labor Code sections 226.7 and 512 for failure to provide
5 meal periods to Plaintiff Sanchez and other aggrieved employees and
6 failure to pay premium wages for missed meal periods as herein alleged;

7 (e) Violation of Labor Code section 226.7 for failure to provide rest periods
8 to Plaintiff Sanchez and other aggrieved employees and failure to pay
9 premium wages for missed rest periods as herein alleged;

10 (f) Violation of Labor Code section 223 for failure to pay the statutorily
11 designated wage scale to Plaintiff Sanchez and other aggrieved
12 employees, as set forth more fully below;

13 (g) Violation of Labor Code section 1174 for failure to keep and maintain
14 information and records relating to Plaintiff Sanchez and aggrieved
15 employees, including, but not limited to their name, addresss, and
16 payroll records;

17 (h) Violation of Labor Code section 226(a) for failure to provide compliant
18 wage statements to Plaintiff Sanchez and other aggrieved employees, as
19 herein alleged; and

20 (i) Violation of Labor Code sections 2800 and 2802 for failure to reimburse
21 Plaintiff Sanchez and other aggrieved employees for all necessary
22 expenditures incurred by the employees in direct consequence of the
23 discharge of their job duties as herein alleged.

24 107. California Labor Code section 1198 makes it illegal to employ an employee
25 under conditions of labor that are prohibited by the applicable wage order. California Labor
26 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
27 shall be the ... standard conditions of labor for employees. The employment of any employee
28 ... under conditions of labor prohibited by the order is unlawful."

1 108. California Labor Code section 226.8 makes it illegal to willfully misclassify an
2 employee as an independent contractor, providing: “[i]t is unlawful for any person or
3 employer to engage in any of the following activities: (1) Willful misclassification of an
4 individual as an independent contractor. (2) Charging an individual who has been willfully
5 misclassified as an independent contractor a fee, or making any deductions from
6 compensation, for any purpose, including for goods, materials, space rental, services,
7 government licenses, repairs, equipment maintenance, or fines arising from the individual's
8 employment where any of the acts described in this paragraph would have violated the law if
9 the individual had not been misclassified.”

10 109. California Labor Code section 226.8(b) further provides that “[i]f the Labor and
11 Workforce Development Agency or a court issues a determination that a person or employer
12 has engaged in any of the enumerated violations of subdivision (a), the person or employer
13 shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more
14 than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or
15 fines permitted by law.”

16 110. Moreover, California Labor Code section 226.8(c) provides “[i]f the Labor and
17 Workforce Development Agency or a court issues a determination that a person or employer
18 has engaged in any of the enumerated violations of subdivision (a) and the person or employer
19 has engaged in or is engaging in a pattern or practice of these violations, the person or
20 employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
21 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any
22 other penalties or fines permitted by law.”

23 111. California Labor Code section 226.8(e) also provides “[i]f the Labor and
24 Workforce Development Agency or a court issues a determination that a person or employer
25 has violated subdivision (a), the agency or court, in addition to any other remedy that has been
26 ordered, shall order the person or employer to display prominently on its Internet Web site, in
27 an area which is accessible to all employees and the general public, or, if the person or
28 employer does not have an Internet Web site, to display prominently in an area that is

1 accessible to all employees and the general public at each location where a violation of
2 subdivision (a) occurred, a notice that sets forth all of the following: (1) That the Labor and
3 Workforce Development Agency or a court, as applicable, has found that the person or
4 employer has committed a serious violation of the law by engaging in the willful
5 misclassification of employees. (2) That the person or employer has changed its business
6 practices in order to avoid committing further violations of this section. (3) That any
7 employee who believes that he or she is being misclassified as an independent contractor may
8 contact the Labor and Workforce Development Agency. The notice shall include the mailing
9 address, e-mail address, and telephone number of the agency. (4) That the notice is being
10 posted pursuant to a state order.

11 112. California Labor Code section 226.8(f) further provides “[i]n addition to
12 including the information specified in subdivision (e), a person or employer also shall satisfy
13 the following requirements in preparing the notice: (1) An officer shall sign the notice. (2) It
14 shall post the notice for one year commencing with the date of the final decision and order.”

15 113. Defendants knew that Plaintiffs and class members were employees under the
16 law yet still classified them as independent contractors. Defendants’ conduct as described
17 herein amounts to a pattern a willful pattern and practice, throughout all of the time period
18 applicable in this complaint, of unlawful misclassification in violation of California Labor
19 Code section 226.8.

20 114. California Labor Code section 204 requires that all wages earned by any person
21 in any employment between the 1st and the 15th days, inclusive, of any calendar month, other
22 than those wages due upon termination of an employee, are due and payable between the 16th
23 and the 26th day of the month during which the labor was performed, and that all wages
24 earned by any person in any employment between the 16th and the last day, inclusive, of any
25 calendar month, other than those wages due upon termination of an employee, are due and
26 payable between the 1st and the 10th day of the following month. California Labor Code
27 section 204 also requires that all wages earned for labor in excess of the normal work period
28 shall be paid no later than the payday for the next regular payroll period. During the relevant

1 time period, Defendants failed to pay Plaintiffs Sanchez and other aggrieved employees all
2 wages due to them within any time period specified by California Labor Code section 204
3 including, but not limited to, unpaid overtime wages, unpaid minimum wages, and unpaid
4 meal and rest period premium wages.

5 115. Labor Code section 223 provides that “[w]here any statute or contract requires
6 an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
7 wage while purporting to pay the wage designated by statute or by contract.” The California
8 Labor Code at sections 510, 1198, 1197 and 1197.1, as set forth above, provide statutory
9 minimum wage scales for all works in California including Plaintiffs and class members. In
10 violation of Labor Code section 223, Defendants failed to pay the wage scale designated by
11 those statutes.

12 116. Labor Code section 1174 provides that “[e]very person employing labor in this
13 state shall ... [k]eep a record showing the names and addresses of all employees employed
14 and the ages of all minors” and “[keep, at a central location in the state or at the plants or
15 establishments at which employees are employed, payroll records showing the hours worked
16 daily by and the wages paid to, and the number of piece-rate units earned by and any
17 applicable piece rate paid to, employees employed at the respective plants or
18 establishments...” In violation of Labor Code section 1174, Defendants did not keep any
19 information relating to Plaintiffs and class members including their names, addresses, or
20 payroll records.

21 117. At all relevant times herein set forth, California Labor Code section 450
22 provides that an employer may not “compel or coerce any employee, or applicant for
23 employment, to patronize his or her employer, or any other person, in the purchase of any
24 thing of value.” However, as set forth above, Defendants did compel and/or coerce Plaintiffs
25 and class members to purchase various items including, but not limited to, uniforms from
26 Defendants, in violation of California Labor Code section 450.

27 118. California Labor Code section 204 requires that all wages earned by any person
28 in any employment between the 1st and the 15th days, inclusive, of any calendar month, other

1 than those wages due upon termination of an employee, are due and payable between the 16th
2 and the 26th day of the month during which the labor was performed, and that all wages
3 earned by any person in any employment between the 16th and the last day, inclusive, of any
4 calendar month, other than those wages due upon termination of an employee, are due and
5 payable between the 1st and the 10th day of the following month. California Labor Code
6 section 204 also requires that all wages earned for labor in excess of the normal work period
7 shall be paid no later than the payday for the next regular payroll period. During the relevant
8 time period, Defendants failed to pay Plaintiffs and class members all wages due to them,
9 including, but not limited to, overtime wages and minimum wages, within any time period
10 specified by California Labor Code section 204.

11 119. California Labor Code section 210 provides: “In addition to, and entirely
12 independent and apart from, any other penalty provided in this article, every person who fails
13 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2,
14 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
15 violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each
16 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
17 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

18 120. Labor Code section 558 (a) provides “[a]ny employer or other person acting on
19 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the Industrial Welfare
21 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
22 dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
24 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount sufficient to recover
26 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
27 employee.” Labor code section 558(c) provides “[t]he civil penalties provided for in this
28 section are in addition to any other civil or criminal penalty provided by law.”

121. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiffs and aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

122. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5 and 558, Plaintiff Sanchez, acting in the public interest as a private attorney general, seeks assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 226.8, 510, 512(a), 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802.

NINTH CAUSE OF ACTION

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

(Against All Defendants)

123. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

124. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

125. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

126. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Willfully misclassifying Plaintiffs and class members as "independent contractors" rather than employees and charging them fees and/or making deductions to their wages on that basis;
- (b) Requiring non-exempt employees, including Plaintiffs and class

1 members, to work overtime without paying them proper compensation
2 in violation of California Labor Code sections 510 and 1198 and the
3 applicable Industrial Welfare Commission Order;

4 (c) Failing to pay at least minimum wage to Plaintiffs and class members in
5 violation of California Labor Code sections 1194, 1197 and 1197.1 and
6 the applicable Industrial Welfare Commission Order;

7 (d) Failing to provide meal and rest periods or to pay premium wages for
8 missed meal and rest periods to Plaintiffs and class members in
9 violation of California Labor Code sections 226.7 and 512 and the
10 applicable Industrial Welfare Commission Order;

11 (e) Failing to reimburse Plaintiffs and class members for all necessary
12 expenditures in violation of California Labor Code sections 2800 and
13 2802 and the applicable Industrial Welfare Commission Order;

14 (f) Compelling and/or coercing Plaintiffs and class members to patronize
15 Defendants' business in violation of California Labor Code section 450
16 and the applicable Industrial Welfare Commission Order;

17 (g) Failing to provide Plaintiffs and class members with accurate wage
18 statements in violation of California Labor Code section 226(a) and the
19 applicable Industrial Welfare Commission Order;

20 (h) Failing to pay the statutorily designated wage scale in violation of
21 California Labor Code section 223;

22 (i) Failing to maintain information relating to their employees including
23 their name, address and payroll records in violation of California Labor
24 Code section 1174 and the applicable Industrial Welfare Commission
25 Order; and

26 (j) Failing to timely pay all earned wages to Plaintiffs and class members in
27 violation of California Labor Code section 204 and the applicable
28 Industrial Welfare Commission Order.

127. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs requests a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000).

Class Certification

2. That this case be certified as a class action;
3. That Plaintiffs be appointed as the representatives of the Class and One Year Subclass;
4. That counsel for Plaintiffs be appointed as Class Counsel.

As to the First Cause of Action

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

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 for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

1 9. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Second Cause of Action**

4 10. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 1194, 1197 and 1197.1 by willfully failing to pay minimum wages to
6 Plaintiffs and class members;

7 11. For general unpaid wages and such general and special damages as may be
8 appropriate;

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

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

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

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

16 **As to the Third Cause of Action**

17 16. That the Court declare, adjudge, and decree that Defendants violated California
18 Labor Code sections 226.7 and 512(a) and applicable Industrial Welfare Commission (IWC)
19 Wage Order(s) by willfully failing to provide all meal periods to Plaintiffs and class members;

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

23 18. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 19. For premiums pursuant to California Labor Code section 226.7(b);

26 20. For pre-judgment interest on any unpaid meal period premiums from the date
27 such amounts were due; and

28 21. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fourth Cause of Action

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

23. That the Court make an award to the Plaintiffs and 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;

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

25. For premiums pursuant to California Labor Code section 226.7(b);

26. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due; and

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

As to the Fifth Cause of Action

28. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay all overtime and minimum wage compensation owed at the time of termination of the employment of Plaintiff Lewis and other class members no longer employed by Defendants.

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

30. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff Lewis and all other class members who have left Defendants' employ;

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

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

1 **As to the Sixth Cause of Action**

2 33. That the Court declare, adjudge, and decree that Defendants violated California
3 Labor Code sections 2800 and 2802 by failing to reimburse necessary business expenses as to
4 Plaintiffs and class members;

5 34. For unpaid business-related expenses and such general and special damages as
6 may be appropriate;

7 35. For pre-judgment interest on any unpaid business-related expenses from the
8 date such amounts were due;

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

11 37. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Seventh Cause of Action**

14 38. That the Court declare, adjudge and decree that Defendants violated the
15 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
16 Orders as to Plaintiffs and class members, and willfully failed to provide accurate itemized
17 wage statements thereto;

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

20 40. For statutory penalties pursuant to California Labor Code section 226(e); and

21 41. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Eighth Cause of Action**

24 42. That the Court declare, adjudge and decree that Defendants violated the
25 following California Labor Code sections as to Plaintiff Sanchez and the One Year Subclass:
26 226.8 (by willfully misclassifying Plaintiffs and class members as “independent contractors”
27 rather than employees and charging them fees and/or making deductions to their wages), 510
28 and 1198 (by failing to provide Plaintiffs and class members all overtime compensation),

1 1194, 1197, and 1197.1 (by failing to pay at least minimum wages for all hours worked),
2 226.7 and 512 (by failing to provide all meal and rest periods and failing to pay for all missed
3 meal and rest periods), 223 (by failing to pay the statutorily designated wage scale to Plaintiffs
4 and class members, 1174 (by failing to maintain employee information and payroll records),
5 2800 and 2802 (by failing to reimburse necessary business expenses as to Plaintiffs and class
6 members); and 226(a) (by failing to provide accurate wage statements).

7 43. For civil penalties and unpaid wages pursuant to California Labor Code
8 sections 2699(a) and/or 2699(f) and (g) and 558, plus costs and attorneys' fees, for violations
9 of California Labor Code sections 226(a), 201 202 203, 204, 223, 226.7, 226.8, 510, 512,
10 1194, 1197, 1197.1, and 1198, 2800, 2802; and

11 44. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 45. That the Court declare, adjudge and decree that Defendants violated California
15 Business and Professions Code sections 17200, *et seq.* by misclassifying Plaintiffs and class
16 members as independent contractors, failing to pay overtime compensation due, failing to pay
17 at least minimum wages for all hours worked, failing to provide meal and rest periods or
18 premium wages in lieu thereof, failing to maintain employee information and payroll records,
19 failing to pay the statutorily designated wage scale, failing to provide accurate wage
20 statements, failing timely to pay all earned wages during employment and upon termination,
21 intentionally and knowingly misclassifying Plaintiffs and class members as independent
22 contractors, compelling or coercing employees to patronize Defendants' business, collecting,
23 and failing to reimburse necessary business-related expenses;

24 46. For restitution of unpaid wages to Plaintiffs and all class members and
25 prejudgment interest from the day such amounts were due and payable;

26 47. For the appointment of a receiver to receive, manage and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections 17200

1 *et seq.*;

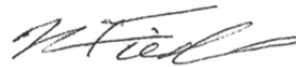
2 48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure section 1021.5; and

4 49. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 Dated: January 29, 2014

Respectfully submitted,

7 Capstone Law APC

8 

9 By: _____

10 Robert K. Frield
11 Katherine Kerr
12 Jonathan Lee

13 Attorneys for Plaintiffs Thomas Lewis and
14 Aurelio Sanchez
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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1840 Century Park East, Suite 450, Los Angeles, California 90067.

FIRST AMENDED COMPLAINT

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Bassil A. Hamideh
The Hamideh Firm, P.C.
1801 Century Park East, Suite 2400
Los Angeles, California 90067

Stanley D Saltzman
 Marcus J. Bradley
 Christina A. Humphrey
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 29229 Canwood Street, Suite 208
 Agoura Hills, CA 91301
Attorneys for Plaintiff Eliseo Leal

- (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () **PERSONAL:** I caused such envelope to be delivered by hand to the individuals at the address listed above.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered via overnight courier service (FedEx) to the individuals at the address listed above.
- () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on January 30, 2014, at Los Angeles, California.


Sandy S. Acevedo