

STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiffs Julio Garcia, Willie Marquez and Ahdy Mikhael (collectively, “Plaintiffs”), individually and on behalf of all members of the Settlement Class and PAGA Employees (both terms defined below), on one hand, and Defendant Accurate Delivery Systems, Inc. (“Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs, the Settlement Class, and the PAGA Employees are represented by Paul K. Haines of Haines Law Group, APC, Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP (collectively, “Class Counsel”). Defendant is represented by Hekmat (Matt) Kordab of Kordab Law Offices and Stella Park and Yalan Zheng of the Law Offices of Park and Zheng.

On August 18, 2021, Plaintiff Julio Garcia filed a class action Complaint against Defendant in Los Angeles County Superior Court, in the matter entitled *Julio Garcia v. Accurate Delivery Systems, Inc., a California corporation; and Does 1 through 100, inclusive*, Case No. 21STCV30557. On January 27, 2022, pursuant to a request by Plaintiff Julio Garcia, the Los Angeles County Superior Court dismissed his action without prejudice.

On August 31, 2021, Plaintiff Willie Marquez filed a representative PAGA action against Defendant, entitled *Willie Marquez. v. Accurate Delivery Services, Inc.*, in the San Bernardino County Superior Court (Case No. CIVSB 2125174), before Hon. David Cohn of Dept. S-26. In June 2022, pursuant to a request by Plaintiff Willie Marquez, the San Bernardino County Superior Court dismissed his action without prejudice.

On August 31, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael filed a class action against Defendant, entitled *Willie Marquez, et al. v. Accurate Delivery Systems, Inc.*, in the San Bernardino County Superior Court (Case No. CIVSB 2125337), before Hon. David Cohn of Dept. S-26 (hereinafter, the “Action”).

On January 11, 2022, a First Amended Complaint was filed in the Action on behalf of Plaintiffs alleging the following claims: (1) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (2) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (3) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (4) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (5) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (6) failure to issue accurate, itemized wage statements (7) failure to timely pay all wages due upon separation of employment; (8) failure to reimburse necessary business expenses; and (9) violations of the California Labor Code Private Attorney General Act of 2004 (“PAGA”) seeking civil penalties premised on the facts, claims, causes of action and legal theories described above.

On May 28, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael sent a letter to the California Labor & Workforce Development Agency (a copy of which is attached hereto as **Exhibit A**) exhausting their administrative remedies before filing a civil claim under the PAGA against Defendant. The LWDA took no action in response to that letter.

On August 18, 2021, Plaintiffs Julio Garcia sent a letter to the California Labor & Workforce Development Agency (a copy of which is attached hereto as **Exhibit B**) exhausting his administrative remedies before filing a civil claim under the PAGA against Defendant. The LWDA took no action in response to that letter.

Given the uncertainty of litigation and Defendant's denial of Plaintiffs' claims, Plaintiffs and Defendant wish to settle both individually and on behalf of the Settlement Class, PAGA Employees, and the State of California. Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the certification of the "Settlement Class" defined as follows:

All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the Class Period.

For purposes of this Settlement Agreement, the "Class Period" shall mean the time period between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the following definition of "PAGA Employees":

All current and former non-exempt, Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the PAGA Period.

For purposes of this Settlement Agreement, the "PAGA Period" and release under the PAGA shall mean the time period between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023.

3. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys, (collectively the "Released Parties"), as follows:

- A. Settlement Class Members' Release: Settlement Class members and Plaintiffs will release all claims, demands, rights, liabilities and causes of action that were pled or could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; (h) failure to provide paid sick leave or to pay for sick leave; and (i) all claims for unfair business practices that reasonably could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the "Released Class Claims"). The Class Members do not release any claims other than those set forth above, including without limitation claims for vested benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- B. The time period for the release of the Released Class Claims shall be the same time period as the Class Period.
- C. PAGA Release: PAGA Employees, including Plaintiffs (and also including those who opt-out from the Class portion of the Settlement), will release and forever discharge the Released Parties from all claims, demands, rights, liabilities and causes of action for civil penalties under California Labor Code Private Attorneys General Act of 2004 which were pled in the letters to the Labor & Workforce Development Agency ("LWDA") dated May 28, 2021 and August 18, 2021 (**Exhibits A-B**) and the operative First Amended Complaint in the Action, or which could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action that arose during the PAGA Period predicated on the following alleged violations: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-

compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; and (h) failure to provide paid sick leave or to pay for sick leave (collectively, “PAGA Released Claims”).

- D. The time period for the release of the PAGA Released Claims shall be the same time period as the PAGA Period.
- E. In light of the Class Representative Service Awards, Plaintiffs agree to release, in addition to the Released Class Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- F. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement by Plaintiffs does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’ compensation claims, pending or otherwise and/or benefits to be received by Plaintiffs in workers’ compensation pursuant to the jurisdiction of workers’ compensation; and (ii) rights or claims arising out of this Settlement.
 - G. The releases identified herein will only be effective upon the date that Defendant fully funds the Gross Settlement Amount and any required employer-side taxes.
4. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a “Gross Settlement Amount” of Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) (unless such Gross Settlement Amount is increased pursuant to Paragraph 4.H. below) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Class Action Administration Solutions as the “Settlement Administrator” to administer this Settlement. All administrative costs due and owing to the Settlement Administrator shall be paid from the Gross Settlement Amount.
- B. With the exception of the Settlement Administrator’s fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees.

Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator in twenty-four (24) equal monthly installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023, and will be deposited with the Settlement Administrator in an escrow account set up by it. The second through twenty-fourth Settlement Installment payments shall be due no later than the 6th day of each month thereafter. The employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the Escalator Clause, if applicable, shall be deposited with the Settlement Administrator along with the twenty-fourth and final Settlement Installment.

- C. The Settlement Administrator shall hold all portions of the Gross Settlement Amount in an interest-bearing account for benefit of the Settlement Class until the time for disbursement. In the event that the Gross Settlement amount is not paid as required under Paragraph 4.B. of this Agreement, after Defendant's counsel receives written notice of the default, and given ten (10) days to cure, then at Plaintiffs' option, the Settlement, Final Approval Order, and Judgment may be enforced by remedies available and Defendant agrees to the payment of reasonable attorneys' fees and costs necessary in enforcing the Agreement. The Parties agree that unless otherwise ordered by the Court, there shall be no disbursements of the Gross Settlement Amount unless and until the Court has issued final approval of the Settlement, and the Gross Settlement Amount and employer-side taxes have been fully funded. If for any reason the Court denies approval with prejudice of the Settlement, any portion of the Gross Settlement Amount deposited by Defendant with the Administrator as of that date of denial shall be returned to Defendant in full.
- D. This Settlement shall become effective on the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed (hereinafter, "Effective Date").
- E. The Parties agree that this Settlement is conditioned upon Plaintiffs' counsel's review of a Defendant declaration to be provided by Defendant which attests to and confirms that Defendant's financial condition is consistent with the representations made by Defendant at the mediation. To the extent the declaration is not consistent with the representations made at mediation, Plaintiffs have the sole right to withdraw from this Settlement. Following the execution of this Settlement, the Parties agree to meet and confer regarding Defendant providing a declaration under oath confirming the various data points and information discussed during mediation. Defendant agrees to cooperate and provide any declarations and/or necessary information regarding the payment plan in support of preliminary approval and/or final approval should the Court request additional information regarding the payment plan.
- F. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00);
 - (3) Up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for each of the three Plaintiffs' Class Representative Service Awards (for a total of up to \$30,000.00), in recognition of their contributions to the Action, and their service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees [estimated to be Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), unless the Gross Settlement Amount is increased pursuant to Paragraph 4.H. below], plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty Thousand Dollars and Zero Cents (\$30,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and/or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to the PAGA Employees as the "PAGA Amount," as described below.
- G. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount. These taxes will not be deducted from the Gross Settlement Amount.
- H. **Unexpected Workweeks/Escalator Clause.** Defendant represents that there are an estimated 14,814 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks worked by Settlement Class members during the Class Period is more than 10% greater than this figure (*i.e.*, if there are 16,296 or more workweeks) worked by the Settlement Class members), Defendant agrees to increase the Gross Settlement Amount on a *pro rata* basis above the 10% (*i.e.*, if there was 11% increase in the number workweeks during

the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).

5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiffs’ Class Representative Service Awards, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a Delivery Driver during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a Delivery Driver during the Class Period, and the denominator of which is the total workweeks worked as Delivery Drivers by all Settlement Class members (who do not opt out) who worked during the Class Period.
- C. PAGA Amount: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099.
- D. Within ten (10) calendar days following Defendant’s deposit of the final Settlement Installment of Gross Settlement Amount and all employer-side taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards to participating Settlement Class members.

- E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: twenty percent (20%) as wages; and eighty percent (80%) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- F. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. Any uncashed funds from the PAGA Amount shall be handled in the same manner.

6. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of one-third of the Gross Settlement Amount, which is currently estimated to be Three Hundred Thousand Dollars and Zero Cent (\$300,000.00), unless the Gross Settlement Amount is increased pursuant to Paragraph 4.H. above, in which case the attorneys’ fees shall increase accordingly. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. The attorneys’ fees awarded by the Court shall be allocated between Class Counsel as follows: 50% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 50% to Haines Law Group, APC and Lidman Law, APC, collectively. The award of litigation costs and expenses shall be allocated based upon the expense incurred by each firm as documents in their declarations. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award and cost award allowed by the Court.

7. **Class Representative Service Awards.** Defendant will not object to a request for a Class Representative Service Awards of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to each of the Plaintiffs (for a total of \$30,000.00) for their time and risk in prosecuting this case, their service to the Settlement Class, and their execution of a general release. This award will be in addition to Plaintiffs’ Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

8. **Settlement Administrator.** Defendant will not object the appointment of Phoenix Class Action Administration Solutions as Settlement Administrator. Defendant will not object to Plaintiffs' seeking permission to pay up to Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be paid by Defendant separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC, Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel;
- C. Appointing Julio Garcia, Ahdy Mikhael and Willie Marquez as Class Representatives for the Settlement Class;
- D. Approving Phoenix Class Action Administration Solutions as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as **Exhibit C**), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

10. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) calendar days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the number of weeks worked during the Class Period, number pay periods worked during the PAGA Period (or information allowing the Settlement Administrator to calculate same) for each Settlement Class member while employed during the Class Period

and PAGA Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”). The Response Deadline shall be extended by fourteen (14) days in the event of a re-mailing of a Notice Packet.
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. Plaintiffs agree that they shall not request to be excluded from the Settlement.
 - iii. The Parties agree there is no statutory or other right for any Settlement Class member to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel) postmarked by the Response Deadline. Class Counsel shall file any objections with the Court. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing in person or virtually irrespective of whether they submitted any written objections.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well the Settlement Class member's number of pay periods worked as a non-exempt employee during the Class Period and PAGA Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have their Response Deadline extended by

fourteen (14) calendar days to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once before the Response Deadline, the Settlement Administrator shall continue to make reasonable efforts to obtain an updated mailing address. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

13. **Non-disclosure and Non-publication.** Prior to the filing of the Motion for Preliminary Approval, Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. Thereafter, however, the Parties will agree to make no comments to the media or otherwise publicize the terms of the settlement; provided, however, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of

the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

14. **Legal Developments.** The Parties agree that Plaintiffs will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Class Claims.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Enforcement Action:** The Parties agree that this Settlement is enforceable pursuant to the provisions of Code of Civil Procedure §664.6. Further, in the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover their, his and/or its reasonable attorneys' fees and costs, including any expert witness fees, incurred arising from such dispute.

17. **Staying of Action and Five-Year Rule:** The Parties agree that upon full execution of this Settlement, the Action shall be stayed for all purposes except with respect to seeking approval of the Settlement and/or enforcing the terms thereof. The Parties further stipulate that the time within which to bring the Action to trial under C.C.P. Section 583.310 shall be extended for a period of not less than one (1) year starting from the date of the signing of this Settlement by all Parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect.

18. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Stella Park and Yalan Zheng, Park & Zheng, 6 Venture, Suite 265, Irvine, California 92618; spark@parkandzheng.com and yzheng@parkandzheng.com

Hekmat (Matt) Kordab, Kordab Law Offices, 300 S. Harbor Blvd., Suite 820, Anaheim, California 92805; matt@kordablalaw.com

if to Plaintiffs: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150, El Segundo, California 90245; slidman@lidmanlaw.com; enguyen@lidmanlaw.com and mmoore@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik
of Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2255 Calle
Clara, La Jolla, California 92037; norm@bamlawca.com;
kyle@bamlawca.com and aj@bamlawca.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

20. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original, and such signatures may be delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 4-17-2023

DEFENDANT ACCURATE DELIVERY
SYSTEMS, INC.

By: 

Its: PRESIDENT

DATED:

PLAINTIFF JULIO GARCIA

By: _____

Plaintiff and Settlement Class Representative

DATED: Apr 11, 2023

PLAINTIFF WILLIE MARQUEZ

By: Willie Marquez
Willie Marquez (Apr 11, 2023 13:42 PDT)

Plaintiff and Settlement Class Representative

Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2255 Calle Clara, La Jolla, California 92037; norm@bamlawca.com; kyle@bamlawca.com and aj@bamlawca.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

20. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original, and such signatures may be delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 4-17-2023

DEFENDANT ACCURATE DELIVERY
SYSTEMS, INC.

By: 

Its: PRESIDENT

DATED:

PLAINTIFF JULIO GARCIA

By: _____

Plaintiff and Settlement Class Representative

DATED: Apr 11, 2023

PLAINTIFF WILLIE MARQUEZ

By: Willie Marquez
Willie Marquez (Apr 11, 2023 13:42 PDT)

Plaintiff and Settlement Class Representative

Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2255 Calle Clara, La Jolla, California 92037; norm@bamlawca.com; kyle@bamlawca.com and aj@bamlawca.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

20. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original, and such signatures may be delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED:

DEFENDANT ACCURATE DELIVERY
SYSTEMS, INC.

By: _____

Its: _____

DATED: Apr 11, 2023

PLAINTIFF JULIO GARCIA

By:  _____
Julio Garcia (Apr 11, 2023 11:39 PDT)

Plaintiff and Settlement Class Representative

DATED:

PLAINTIFF WILLIE MARQUEZ

By: _____

Plaintiff and Settlement Class Representative

DATED: Apr 11, 2023

PLAINTIFF AHDY MIKHAEL

By: 
Ahdy Mikhael (Apr 11, 2023 19:24 PDT)

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: April 20, 2023

KORDAB LAW OFFICES.

By: 
Hekmat (Matt) Kordab
Attorneys for Defendant Accurate Delivery
Services, Inc.

DATED:

PARK & ZHENG

By: _____
Stella Park
Attorneys for Defendant Accurate Delivery
Services, Inc.

DATED: April 11, 2023

HAINES LAW GROUP, APC

By:  _____
Paul K. Haines
Attorneys for Plaintiff Julio Garcia

DATED: April 11, 2023

LIDMAN LAW, APC

By:  _____
Scott M. Lidman
Attorneys for Plaintiff Julio Garcia

DATED:

BLUMENTHAL NORDREHAUG BHOWMIK DE
DE BLOUW LLP

By: _____
Kyle Nordrehaug
Attorneys for Plaintiffs Willie Marquez and
Ahdy Mikhael

DATED: *April 17, 2023*

PARK & ZHENG

By: 

Stella Park
Attorneys for Defendant Accurate Delivery
Services, Inc.

DATED:

HAINES LAW GROUP, APC

By: _____

Paul K. Haines
Attorneys for Plaintiff Julio Garcia

DATED:

LIDMAN LAW, APC

By: _____

Scott M. Lidman
Attorneys for Plaintiff Julio Garcia

DATED: April 12, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
DE BLOUW LLP

By: 

Kyle Nordrehaug
Attorneys for Plaintiffs Willie Marquez and
Ahdy Mikhael

EXHIBIT A

EXHIBIT A

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

Bvb WRITERS E-MAIL:

Nick@bamlawca.com

**WRITER
S EXT:
1004**

May 28, 2021
CA2271

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Accurate Delivery Systems, Inc.
Online Filing Certified Mail #70200640000213198216
Mamoud Maraach
173 W. Resource Drive
Bloomington, CA 92316

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Accurate Delivery Systems, Inc. in California as Delivery Drivers and other similar job titles. “Aggrieved Employees” also refers to all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees during the time period of May 28, 2020 until a date as determined by the Court. Our offices represent Plaintiff Willie Marquez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Accurate Delivery Systems, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee in the position of a Delivery Driver from April of 2018 to September 2020 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiffs

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9
10 WILLIE MARQUEZ and AHDY MIKHAEL,
on behalf of themselves and on behalf of all
11 persons similarly situated,

12
13 Plaintiffs,

14 vs.

15 ACCURATE DELIVERY SYSTEMS, INC.,
a California Corporation; and DOES 1
16 through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Willie Marquez and Ahdy Mikhael (“PLAINTIFFS”) individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge,
4 the following:

5
6 **THE PARTIES**

7 1. Defendant Accurate Delivery Systems, Inc. (“DEFENDANT”) is a California
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT is the premier Hotshot delivery service of all goods, perishable and
11 in demand.

12 3. Plaintiff Marquez was employed by DEFENDANT from April of 2018 to
13 September of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

16 4. Plaintiff Mikhael was employed by DEFENDANT from November of 2019 to
17 March of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
18 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
19 of minimum and overtime wages due for all time worked.

20 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
21 class, defined as all individuals who are or previously were employed by DEFENDANT as
22 Delivery Drivers and other similar job titles. PLAINTIFFS also bring this class action on behalf
23 of all individuals who are or previously were employed by DEFENDANT in California and
24 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
25 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
26 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
27 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
28 (\$5,000,000.00).

1 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
2 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
3 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
4 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
5 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
6 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
7 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
9 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
10 economically injured by DEFENDANT's past and current unlawful conduct, and all other
11 appropriate legal and equitable relief.

12 7. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
15 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
16 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
17 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
18 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
19 inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged.

21 8. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
26 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
28 Defendants' agents, servants and/or employees.

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work from time to time while they were clocked out for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFFS and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed duties while on their meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. Further, PLAINTIFFS and other members of the CALIFORNIA CLASS from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time only paid a piece rate for deliveries made during specific pay periods. In these pay periods DEFENDANT failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all their non-driving work tasks that included but were not limited to, completing mandatory paperwork, loading and unloading the truck with goods, waiting for goods to be ready for transport, cleaning the trucks and other non-driving related work tasks. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from time to time working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

10. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other
2 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
3 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
4 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
5 Members with a second off-duty meal period from time to time in which these employees were
6 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and
7 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
8 compensation and in accordance with DEFENDANT's corporate policy and practice. Industrial
9 Welfare Commission Wage Order 4-2001 provides: "Every employer shall pay to each
10 employee, on the established payday for the period involved, not less than the applicable
11 minimum wage for all hours worked in the payroll period, whether the remuneration is
12 measured by time, piece, commission, or otherwise." "Hours worked" is defined in the Wage
13 Order as "the time during which an employee is subject to the control of an employer, and
14 includes all the time the employee is suffered or permitted to work, whether or not required to
15 do so." Here, PLAINTIFFS and CALIFORNIA CLASS Members are entitled to separate
16 hourly compensation for time spent performing other non-driving tasks directed by
17 DEFENDANT during their work shifts.

18 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
20 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
21 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
22 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
26 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
28 proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because of

1 DEFENDANT's commission/piece rate pay plan described herein, DEFENDANT failed to
2 compensate PLAINTIFFS and CALIFORNIA CLASS Members for their rest periods as
3 required by the applicable Wage Order and Labor Code, and more specifically Cal. Lab. Code
4 Section 226.2. DEFENDANT did not have a policy or practice which paid for off-duty rest
5 periods to PLAINTIFFS and the other CALIFORNIA CLASS Members. As a result,
6 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with
7 all the legally required paid rest periods is evidenced by DEFENDANT's business records.

8 12. State law provides that employees must be paid overtime at one-and-one-half
9 times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members
10 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
11 employee's performance.

12 13. The second component of PLAINTIFFS's and other CALIFORNIA CLASS
13 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
14 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
15 performance for DEFENDANT. The non-discretionary incentive program provided all
16 employees paid on an hourly basis with incentive compensation when the employees met the
17 various performance goals set by DEFENDANT. However, when calculating the regular rate
18 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
19 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
20 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
21 the incentive program to potential and new employees as part of the compensation package. As
22 a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
23 CLASS Members must be included in the "regular rate of pay." The failure to do so has
24 resulted in an underpayment of overtime compensation to PLAINTIFFS and other
25 CALIFORNIA CLASS Members by DEFENDANT.

26 14. DEFENDANT also failed to provide PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
28 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that

1 every employer shall furnish each of his or her employees with an accurate itemized wage
2 statement in writing showing, among other things, gross wages earned and all applicable hourly
3 rates in effect during the pay period and the corresponding amount of time worked at each
4 hourly rate. Specifically, DEFENDANT violated Cal. Lab. Code Section 226(a)(2) by failing
5 to list the total hours worked. Aside, from the violations listed above, DEFENDANT failed to
6 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
7 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
9 which violated Cal. Lab. Code § 226.

10 15. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
11 employment are due and payable twice during each calendar month, on days designated in
12 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
13 requires employers to pay employees all wages owed within eleven (11) days of the close of the
14 payroll period. DEFENDANT from time to time failed to pay PLAINTIFFS and other
15 CALIFORNIA CLASS Members all wages owed to them within eleven (11) days of the close
16 of the payroll period.

17 16. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
18 to collect or receive from an employee any part of wages theretofore paid by said employer to
19 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFFS and other
20 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
21 payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
22 all aspects of the deductions from compensation payable to PLAINTIFFS and CALIFORNIA
23 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
24 each applicable pay period and upon termination. PLAINTIFFS and members of the
25 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
26 according to proof, related penalties, interest, attorney fees and costs.

27 17. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
28 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.

1 Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary
2 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
3 pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

4 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
5 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
6 incurred by PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of
7 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
8 2802, employers are required to indemnify employees for all expenses incurred in the course
9 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
11 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
12 directions of the employer, even though unlawful, unless the employee, at the time of obeying
13 the directions, believed them to be unlawful."

14 19. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
17 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
18 cost associated with the use of their personal cellular phones and personal vehicles for
19 DEFENDANT's benefit. Specifically, PLAINTIFFS and other CALIFORNIA CLASS
20 Members were required by DEFENDANT to use their personal cellular phones to respond to
21 managers while off the clock (which also results in minimum wage and overtime violations).
22 As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
23 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
24 included, but were not limited to, costs related to the use of their personal cellular phones all
25 on behalf of and for the benefit of DEFENDANT.

26 20. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
28 a matter of company policy, practice and procedure, intentionally and knowingly failed to

1 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed
2 meal and rest periods. This policy and practice of DEFENDANT is intended to purposefully
3 avoid the payment for all time worked as required by California law which allows
4 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
5 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

8 21. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA
9 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
10 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
11 engaging in a company-wide policy and procedure which fails to accurately calculate and record
12 all missed meal and rest periods and failed to pay all minimum and overtime wages due to
13 PLAINTIFFS and other CALIFORNIA CLASS Members. The proper recording of these
14 employees’ missed meal and rest breaks is the DEFENDANT’s burden. As a result of
15 DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT fails
16 to properly calculate and/or pay all required compensation for work performed by the members
17 of the CALIFORNIA CLASS and violated the California Labor Code and regulations
18 promulgated thereunder as herein alleged.

19 22. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
20 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage
21 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due
22 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-
23 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
24 PLAINTIFFS’s missed meal and rest breaks. The nature of the work performed by the
25 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS’ duties
26 for the legally required off-duty meal periods. As a result, DEFENDANT’s failure to provide
27 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT’s business
28 records. DEFENDANT also required PLAINTIFFS to work off the clock without paying

1 PLAINTIFFS for all the time PLAINTIFFS were working for DEFENDANT, specifically by
2 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
3 expected PLAINTIFFS to complete on a daily and/or weekly basis. The amount in controversy
4 for PLAINTIFFS individually do not exceed the sum or value of \$75,000. To date,
5 DEFENDANT has not fully paid PLAINTIFFS for all PLAINTIFFS' wages still owed to
6 PLAINTIFFS or any penalties owed to PLAINTIFFS under California Labor Code § 203.

7 8 **JURISDICTION AND VENUE**

9 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
11 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
12 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

13 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, reside
15 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
16 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against members of the
18 CALIFORNIA CLASS.

19 20 **THE CALIFORNIA CLASS**

21 25. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
24 all individuals who are or previously were employed by DEFENDANT as Delivery Drivers and
25 other similar job titles. PLAINTIFFS also bring this class action on behalf of all individuals
26 who are or previously were employed by DEFENDANT in California and classified as non-
27 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
28 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court

1 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
2 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
7 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
8 requirements, and the applicable provisions of California law, intentionally, knowingly, and
9 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
10 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
11 DEFENDANT enjoys the benefit of this work, requires employees to perform this work and
12 permits or suffers to permit this work.

13 28. DEFENDANT has the legal burden to establish that each and every
14 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
15 required by California laws. The DEFENDANT, however, as a matter of policy and procedure
16 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
17 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
18 as required by law. This common business practice is applicable to each and every
19 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
20 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
21 causation, damages, and reliance are not elements of this claim.

22 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
25 law by:

- 26 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
27 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
28 deceptively having in place company policies, practices and procedures

1 that failed to record and pay PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS for all time worked minimum wages owed and
3 overtime wages owed for work performed by these employees;

4 (b) Committing an act of unfair competition in violation of the UCL, by
5 failing to provide the PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS with the legally required meal and rest periods;
7 and,

8 (c) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
10 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
11 the CALIFORNIA CLASS members with necessary expenses incurred in
12 the discharge of their job duties.

13 31. This Class Action meets the statutory prerequisites for the maintenance of a Class
14 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition of
17 their claims as a class will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA
20 CLASS will apply to every member of the CALIFORNIA CLASS;

21 (c) The claims of the representative PLAINTIFFS are typical of the claims of
22 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
23 other members of the CALIFORNIA CLASS, is classified as a non-
24 exempt employee paid on an hourly basis who has been subjected to the
25 DEFENDANT's deceptive practice and policy which failed to provide the
26 legally required meal and rest periods to the CALIFORNIA CLASS and
27 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
28 CLASS. PLAINTIFFS sustained economic injury as a result of

1 DEFENDANT's employment practices. PLAINTIFFS and the members
2 of the CALIFORNIA CLASS were and are similarly or identically harmed
3 by the same unlawful, deceptive and unfair misconduct engaged in by
4 DEFENDANT; and,

- 5 (d) The representative PLAINTIFFS will fairly and adequately represent and
6 protect the interest of the CALIFORNIA CLASS, and has retained
7 counsel who are competent and experienced in Class Action litigation.
8 There are no material conflicts between the claims of the representative
9 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
10 make class certification inappropriate. Counsel for the CALIFORNIA
11 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
12 Members.

13 32. In addition to meeting the statutory prerequisites to a Class Action, this action is
14 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 15 (a) Without class certification and determination of declaratory, injunctive,
16 statutory and other legal questions within the class format, prosecution of
17 separate actions by individual members of the CALIFORNIA CLASS will
18 create the risk of:

- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA CLASS which would establish
21 incompatible standards of conduct for the parties opposing the
22 CALIFORNIA CLASS; and/or,
23 2) Adjudication with respect to individual members of the
24 CALIFORNIA CLASS which would as a practical matter be
25 dispositive of interests of the other members not party to the
26 adjudication or substantially impair or impede their ability to
27 protect their interests.

- 28 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to

1 act on grounds generally applicable to the CALIFORNIA CLASS, making
2 appropriate class-wide relief with respect to the CALIFORNIA CLASS
3 as a whole in that DEFENDANT failed to pay all wages due to members
4 of the CALIFORNIA CLASS as required by law;

5 1) With respect to the First Cause of Action, the final relief on behalf
6 of the CALIFORNIA CLASS sought does not relate exclusively to
7 restitution because through this claim PLAINTIFFS seeks
8 declaratory relief holding that the DEFENDANT's policy and
9 practices constitute unfair competition, along with declaratory
10 relief, injunctive relief, and incidental equitable relief as may be
11 necessary to prevent and remedy the conduct declared to constitute
12 unfair competition;

13 (c) Common questions of law and fact exist as to the members of the
14 CALIFORNIA CLASS, with respect to the practices and violations of
15 California law as listed above, and predominate over any question
16 affecting only individual CALIFORNIA CLASS Members, and a Class
17 Action is superior to other available methods for the fair and efficient
18 adjudication of the controversy, including consideration of:

19 1) The interests of the members of the CALIFORNIA CLASS in
20 individually controlling the prosecution or defense of separate
21 actions in that the substantial expense of individual actions will be
22 avoided to recover the relatively small amount of economic losses
23 sustained by the individual CALIFORNIA CLASS Members when
24 compared to the substantial expense and burden of individual
25 prosecution of this litigation;

26 2) Class certification will obviate the need for unduly duplicative
27 litigation that would create the risk of:

28 A. Inconsistent or varying adjudications with respect to

individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

33. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial

1 number of individual CALIFORNIA CLASS Members will avoid
2 asserting their rights individually out of fear of retaliation or adverse
3 impact on their employment;

4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the
6 Court;

7 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
8 able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of unfair competition, statutory violations and
12 other improprieties, and in obtaining adequate compensation for the
13 damages and injuries which DEFENDANT's actions have inflicted upon
14 the CALIFORNIA CLASS;

15 (f) There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of
17 the CALIFORNIA CLASS for the injuries sustained;

18 (g) DEFENDANT has acted or refused to act on grounds generally applicable
19 to the CALIFORNIA CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA CLASS as a whole;

21 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
22 the business records of DEFENDANT; and,

23 (i) Class treatment provides manageable judicial treatment calculated to bring
24 a efficient and rapid conclusion to all litigation of all wage and hour
25 related claims arising out of the conduct of DEFENDANT as to the
26 members of the CALIFORNIA CLASS.

27 34. DEFENDANT maintains records from which the Court can ascertain and identify
28 by job title each of DEFENDANT's employees who have been intentionally subjected to

1 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS
2 will seek leave to amend the Complaint to include any additional job titles of similarly situated
3 employees when they have been identified.

4
5 **THE CALIFORNIA LABOR SUB-CLASS**

6 35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
7 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
8 CALIFORNIA CLASS who are or previously were employed by DEFENDANT as Delivery
9 Drivers and other similar job titles. PLAINTIFFS also bring this class action on behalf of all
10 individuals who are or previously were employed by DEFENDANT in California and classified
11 as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the
12 period three (3) years prior to the filing of the complaint and ending on the date as determined
13 by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of
14 Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
15 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

16 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
18 requirements, and the applicable provisions of California law, intentionally, knowingly, and
19 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
20 for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR
21 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
22 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
23 to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
24 Members wages to which these employees are entitled in order to unfairly cheat the competition
25 and unlawfully profit. To the extent equitable tolling operates to toll claims by the
26 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
27 SUB-CLASS PERIOD should be adjusted accordingly.

28 37. DEFENDANT maintains records from which the Court can ascertain and identify

1 by name and job title, each of DEFENDANT's employees who have been intentionally
2 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
3 PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of
4 similarly situated employees when they have been identified.

5 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
6 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

7 39. Common questions of law and fact exist as to members of the CALIFORNIA
8 LABOR SUB-CLASS, including, but not limited, to the following:

- 9 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
10 compensation due to members of the CALIFORNIA LABOR SUB-
11 CLASS for missed meal and rest breaks in violation of the California
12 Labor Code and California regulations and the applicable California Wage
13 Order;
14 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with accurate
16 itemized wage statements;
17 (c) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct;
19 (d) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS; and,
21 (e) Whether DEFENDANT's conduct was willful.

22 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
23 under California law by:

- 24 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
25 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
26 CLASS all wages due for overtime worked, for which DEFENDANT is
27 liable pursuant to Cal. Lab. Code § 1194;
28 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to

1 accurately pay PLAINTIFFS and the members of the CALIFORNIA
2 LABOR SUB-CLASS the correct minimum wage pay for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

4 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
5 the members of the CALIFORNIA LABOR SUB-CLASS with an
6 accurate itemized statement in writing showing the corresponding correct
7 amount of wages earned by the employee; and,

8 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
9 PLAINTIFFS and the other members of the CALIFORNIA LABOR
10 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
11 minute meal breaks and the legally required off-duty rest breaks;

12 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
13 and the CALIFORNIA LABOR SUB-CLASS members with necessary
14 expenses incurred in the discharge of their job duties.

15 41. This Class Action meets the statutory prerequisites for the maintenance of a Class
16 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
18 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
19 Members is impracticable and the disposition of their claims as a class
20 will benefit the parties and the Court;

21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
22 that are raised in this Complaint are common to the CALIFORNIA
23 LABOR SUB-CLASS and will apply to every member of the
24 CALIFORNIA LABOR SUB-CLASS;

25 (c) The claims of the representative PLAINTIFFS are typical of the claims of
26 each member of the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
28 SUB-CLASS, is a non-exempt employee paid on an hourly basis who has

1 been subjected to the DEFENDANT's practice and policy which fails to
2 pay the correct amount of wages due to the CALIFORNIA LABOR SUB-
3 CLASS. PLAINTIFFS sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFFS and the members
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive and unfair misconduct
7 engaged in by DEFENDANT; and,

- 8 (d) The representative PLAINTIFFS will fairly and adequately represent and
9 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
10 retained counsel who are competent and experienced in Class Action
11 litigation. There are no material conflicts between the claims of the
12 representative PLAINTIFFS and the members of the CALIFORNIA
13 LABOR SUB-CLASS that would make class certification inappropriate.
14 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
15 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

16 42. In addition to meeting the statutory prerequisites to a Class Action, this action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA LABOR
21 SUB-CLASS will create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which
24 would establish incompatible standards of conduct for the parties
25 opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a practical
28 matter be dispositive of interests of the other members not party to

1 the adjudication or substantially impair or impede their ability to
2 protect their interests.

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
4 or refused to act on grounds generally applicable to the CALIFORNIA
5 LABOR SUB-CLASS, making appropriate class-wide relief with respect
6 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
7 DEFENDANT fails to pay all wages due. Including the correct wages for
8 all time worked by the members of the CALIFORNIA LABOR SUB-
9 CLASS as required by law;

10 (c) Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any
13 question affecting only individual CALIFORNIA LABOR SUB-CLASS
14 Members, and a Class Action is superior to other available methods for
15 the fair and efficient adjudication of the controversy, including
16 consideration of:

17 1) The interests of the members of the CALIFORNIA LABOR SUB-
18 CLASS in individually controlling the prosecution or defense of
19 separate actions in that the substantial expense of individual
20 actions will be avoided to recover the relatively small amount of
21 economic losses sustained by the individual CALIFORNIA
22 LABOR SUB-CLASS Members when compared to the substantial
23 expense and burden of individual prosecution of this litigation;

24 2) Class certification will obviate the need for unduly duplicative
25 litigation that would create the risk of:

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA LABOR SUB-
28 CLASS, which would establish incompatible standards of

conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of

1 retaliation or adverse impact on their employment;

2 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
3 numerous that it is impractical to bring all members of the CALIFORNIA
4 LABOR SUB-CLASS before the Court;

5 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
6 Members, will not be able to obtain effective and economic legal redress
7 unless the action is maintained as a Class Action;

8 (e) There is a community of interest in obtaining appropriate legal and
9 equitable relief for the acts of unfair competition, statutory violations and
10 other improprieties, and in obtaining adequate compensation for the
11 damages and injuries which DEFENDANT's actions have inflicted upon
12 the CALIFORNIA LABOR SUB-CLASS;

13 (f) There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of
15 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

16 (g) DEFENDANT has acted or refused to act on grounds generally applicable
17 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
18 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
19 CLASS as a whole;

20 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
21 ascertainable from the business records of DEFENDANT. The
22 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
23 CLASS Members who worked for DEFENDANT in California at any
24 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

25 (i) Class treatment provides manageable judicial treatment calculated to bring
26 a efficient and rapid conclusion to all litigation of all wage and hour
27 related claims arising out of the conduct of DEFENDANT as to the
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 44. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

18 Cal. Bus. & Prof. Code § 17203.

19 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1,
23 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder,
24 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
25 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
26 unfair competition, including restitution of wages wrongfully withheld.

27 48. By the conduct alleged herein, DEFENDANT’s practices are unlawful and unfair
28 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous

1 or substantially injurious to employees, and are without valid justification or utility for which
2 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
3 California Business & Professions Code, including restitution of wages wrongfully withheld.

4 49. By the conduct alleged herein, DEFENDANT's practices are deceptive and
5 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
6 meal and rest periods, and the required amount of compensation for missed meal and rest
7 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
8 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
9 incentive compensation into their regular rate for purposes of computing the proper overtime
10 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
11 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
12 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
13 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

14 50. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
15 and deceptive in that DEFENDANT's employment practices cause PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS to be underpaid during their employment with
17 DEFENDANT.

18 51. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
19 and deceptive in that DEFENDANT's policies, practices and procedures fail to provide all
20 legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA
21 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

22 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
23 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
24 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
25 for each workday in which a second off-duty meal period was not timely provided for each ten
26 (10) hours of work.

27 53. PLAINTIFFS further demand on behalf of themselves and each member of the
28 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off

1 duty paid rest period was not timely provided as required by law.

2 54. By and through the unlawful and unfair business practices described herein,
3 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
4 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
5 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
6 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
7 to unfairly compete against competitors who comply with the law.

8 55. All the acts described herein as violations of, among other things, the Industrial
9 Welfare Commission Wage Orders, the California Code of Regulations, and the California
10 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
11 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
12 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

13 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
14 to, and do, seek such relief as may be necessary to restore to them the money and property
15 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
17 unfair business practices, including earned but unpaid wages for all time worked.

18 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
19 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
20 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
21 engaging in any unlawful and unfair business practices in the future.

22 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
24 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
25 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
26 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
27 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
28 engage in these unlawful and unfair business practices.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

6
7
8
9
20
21
22
23
24
25
26
27
28

9
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

27
28

1 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

3 66. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculates the correct time worked and consequently underpays the actual time
5 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 67. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not
11 receive the correct reporting time pay and minimum wage compensation for their time worked
12 for DEFENDANT.

13 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
14 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked
15 that they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
16 accurately pay the PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS the
17 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFFS
18 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,
19 permitted or suffered to work, and do in fact work, off the clock time as to which
20 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
21 records and witnessed by employees.

22 69. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
23 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
24 CLASS for the true time they work, PLAINTIFFS and the other members of the CALIFORNIA
25 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
26 which are presently unknown to them and which will be ascertained according to proof at trial.

27 70. DEFENDANT knew or should have known that PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time

1 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
2 to not pay employees for their labor as a matter of company policy, practice and procedure, and
3 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
4 of the CALIFORNIA LABOR SUB-CLASS the correct reporting time pay and minimum wages
5 for their time worked.

6 71. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
8 all time worked and provide them with the requisite compensation, DEFENDANT acted and
9 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
10 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
11 their legal rights, or the consequences to them, and with the despicable intent of depriving them
12 of their property and legal rights, and otherwise causing them injury in order to increase
13 company profits at the expense of these employees.

14 72. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
15 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
16 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
17 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's
18 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
19 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
20 statutory costs.

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code §§ 510, *et seq.*]**

25 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **Defendants)**

27 73. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
28 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior

1 paragraphs of this Complaint.

2 74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
4 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
5 to pay these employees for all overtime worked, including, work performed in excess of eight
6 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
7 workweek.

8 75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
9 public policy, an employer must timely pay its employees for all hours worked.

10 76. Cal. Lab. Code § 510 further provides that employees in California shall not be
11 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
12 unless they receive additional compensation beyond their regular wages in amounts specified
13 by law.

14 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
15 including reporting time pay and minimum wage and overtime compensation and interest
16 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the
17 employment of an employee for longer hours than those fixed by the Industrial Welfare
18 Commission is unlawful.

19 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
20 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by
21 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including
22 overtime work.

23 79. DEFENDANT's pattern of unlawful wage and hour practices manifested, without
24 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
25 implementing a policy and practice that failed to accurately record overtime work by
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
27 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for overtime work, including, the overtime work performed in excess of eight (8) hours

1 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

2 80. In committing these violations of the California Labor Code, DEFENDANT
3 inaccurately records overtime worked and consequently underpays the overtime worked by
4 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
5 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
6 of the California Labor Code, the Industrial Welfare Commission requirements and other
7 applicable laws and regulations.

8 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
11 including overtime work.

12 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
13 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
14 receiving full compensation for overtime worked.

15 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
16 from the overtime requirements of the law. None of these exemptions are applicable to the
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
19 subject to a valid collective bargaining agreement that would preclude the causes of action
20 contained herein this Complaint. Rather, PLAINTIFFS brings this Action on behalf of
21 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
22 of non-negotiable, non-waiveable rights provided by the State of California.

23 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
24 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime
25 worked that they are entitled to, constituting a failure to pay all earned wages.

26 86. DEFENDANT fails to accurately pay the PLAINTIFFS and the other members
27 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
28 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,

1 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
2 SUB-CLASS are required to work, and did in fact work, overtime as to which DEFENDANT
3 fails to accurately record and pay as evidenced by DEFENDANT's business records and
4 witnessed by employees.

5 87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
6 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
7 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of the
8 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
9 injury in amounts which are presently unknown to them and which will be ascertained
10 according to proof at trial.

11 88. DEFENDANT knew or should have known that PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
13 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
14 to not pay employees for their labor as a matter of company policy, practice and procedure, and
15 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
16 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

17 89. In performing the acts and practices herein alleged in violation of California labor
18 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
19 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
20 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
21 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
22 disregard for their legal rights, or the consequences to them, and with the despicable intent of
23 depriving them of their property and legal rights, and otherwise causing them injury in order
24 to increase company profits at the expense of these employees.

25 90. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory
27 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
28 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

6 **For Failure to Provide Required Meal Periods**

7 **[Cal. Lab. Code §§ 226.7 & 512]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

9 91. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
11 paragraphs of this Complaint.

12 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
13 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
14 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
15 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
16 does not prevent these employees from being relieved of all of their duties for the legally
17 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and
18 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
19 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
20 provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally
21 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
22 business records. Further, DEFENDANT fails to provide PLAINTIFFS and CALIFORNIA
23 CLASS Members with a second off-duty meal period in some workdays in which these
24 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
25 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit
26 meal breaks without additional compensation and in accordance with DEFENDANT's strict
27 corporate policy and practice.

28 93. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that a meal period was not provided.

5 94. As a proximate result of the aforementioned violations, PLAINTIFFS and
6 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
7 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
8 suit.

9
10 **FIFTH CAUSE OF ACTION**

11 **For Failure to Provide Required Rest Periods**

12 **[Cal. Lab. Code §§ 226.7 & 512]**

13 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 95. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 96. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for
21 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least
22 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
23 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
24 or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are also not
25 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
27 their proper rest periods by DEFENDANT and DEFENDANT's managers.

28 97. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a rest period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that rest period was not provided.

5 98. As a proximate result of the aforementioned violations, PLAINTIFFS and
6 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
7 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
8 suit.

9
10 **SIXTH CAUSE OF ACTION**

11 **For Failure to Provide Accurate Itemized Statements**

12 **[Cal. Lab. Code § 226]**

13 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 99. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an "accurate itemized" statement in writing showing:

20 (1) gross wages earned,

21 (2) total hours worked by the employee, except for any employee whose compensation
22 is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission,

25 (3) the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,

27 (4) all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

1 (5) net wages earned,
2 (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee and his or her social security number, except that by
4 January 1, 2008, only the last four digits of his or her social security number or an
5 employee identification number other than a social security number may be shown on
6 the itemized statement,
7 (8) the name and address of the legal entity that is the employer, and
8 (9) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee.

10 101. DEFENDANT also fails to provide PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
12 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
13 provides that every employer shall furnish each of his or her employees with an accurate
14 itemized wage statement in writing showing, among other things, gross wages earned and all
15 applicable hourly rates in effect during the pay period and the corresponding amount of time
16 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to
17 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
18 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
19 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
20 statements which violated Cal. Lab. Code § 226.

21 102. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct wages for all missed meal and rest breaks and the amount of
25 employment taxes which were not properly paid to state and federal tax authorities. These
26 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
28 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars

1 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in
2 an amount according to proof at the time of trial (but in no event more than four thousand
3 dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA
4 LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

7 **For Failure to Reimburse Employees for Required Expenses**

8 **[Cal. Lab. Code § 2802]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 103. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
12 reallege and incorporate by this reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

18 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFFS and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
23 limited to, costs related to using their personal cellular phones all on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
25 SUB-CLASS Members are required by DEFENDANT to use their personal cell phones to
26 respond to work related issues. DEFENDANT's policy, practice and procedure is to not
27 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
28

1 expenses resulting from using their personal cellular phones for DEFENDANT within the
2 course and scope of their employment for DEFENDANT. These expenses are necessary to
3 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct
4 to assert any waiver of this expectation. Although these expenses are necessary expenses
5 incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
6 DEFENDANT fails to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
7 LABOR SUB-CLASS members for these expenses as an employer is required to do under
8 the laws and regulations of California.

9 106. PLAINTIFFS therefore demand reimbursement for expenditures or losses
10 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
11 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
12 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **EIGHTH CAUSE OF ACTION**

14 **For Failure to Pay Wages When Due**

15 **[Cal. Lab. Code §§ 201, 202, 203]**

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

18 107. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 108. Cal. Lab. Code § 200 provides, in relevant part, that:

22 As used in this article:

- 23 (a) "Wages" includes all amounts for labor performed by employees of
24 every description, whether the amount is fixed or ascertained by the
25 standard of time, task, piece, Commission basis, or other method of calculation.
26 (b) "Labor" includes labor, work, or service whether rendered or
27 performed under contract, subcontract, partnership, station plan, or other
28 agreement if the labor to be paid for is performed personally by the person
demanding payment.

109. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately.”

2 110. Cal. Lab. Code § 202 provides, in relevant part, that:

3 If an employee not having a written contract for a definite period quits his
4 or her employment, his or her wages shall become due and payable not
5 later than 72 hours thereafter, unless the employee has given 72 hours
6 previous notice of his or her intention to quit, in which case the employee
7 is entitled to his or her wages at the time of quitting. Notwithstanding any
8 other provision of law, an employee who quits without providing a 72-
9 hour notice shall be entitled to receive payment by mail if he or she so
10 requests and designates a mailing address. The date of the mailing shall
11 constitute the date of payment for purposes of the requirement to provide
12 payment within 72 hours of the notice of quitting.

13 111. There was no definite term in PLAINTIFFS’s or any CALIFORNIA LABOR
14 SUB-CLASS Members’ employment contract.

15 112. Cal. Lab. Code § 203 provides, in relevant part, that:

16 If an employer willfully fails to pay, without abatement or reduction, in
17 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
18 employee who is discharged or who quits, the wages of the employee shall
19 continue as a penalty from the due date thereof at the same rate until paid
20 or until an action therefor is commenced; but the wages shall not continue
21 for more than 30 days.

22 113. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
23 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
24 owed as required by law.

25 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
26 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
27 terminated and who have not been fully paid their wages due to them, PLAINTIFFS
28 demands thirty days of pay as penalty for not paying all wages due at time of termination for
all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
PERIOD and demands an accounting and payment of all wages due, plus interest and
statutory costs as allowed by law.

29 **PRAYER FOR RELIEF**

30 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
31 severally, as follows:

- 1 1. On behalf of the CALIFORNIA CLASS:
- 2 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
- 3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 5 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 6 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
- 7 withheld from compensation due to PLAINTIFFS and the other members of the
- 8 CALIFORNIA CLASS; and,
- 9 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
- 10 for restitution of the sums incidental to DEFENDANT's violations due to
- 11 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 12 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 13 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
- 14 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
- 15 action pursuant to Cal. Code of Civ. Proc. § 382;
- 16 B) Compensatory damages, according to proof at trial, including compensatory
- 17 damages for minimum and overtime compensation due PLAINTIFFS and the
- 18 other members of the CALIFORNIA LABOR SUB-CLASS, during the
- 19 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
- 20 at the statutory rate;
- 21 C) Meal and rest period compensation pursuant to California Labor Code Section
- 22 226.7 and the applicable IWC Wage Order;
- 23 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 24 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 25 in which a violation occurs and one hundred dollars (\$100) per each member of
- 26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 28 an award of costs for violation of Cal. Lab. Code § 226;

1 F) The amount of the expenses PLAINTIFFS and each member of the
2 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
3 plus interest, and costs of suit; and,

4 G) The wages of all terminated employees in the CALIFORNIA LABOR
5 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
6 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

7 3. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
11 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
12 §2802.

13
14 Dated: May 19, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
15

16
17 By: _____
18 Norman B. Blumenthal
19 Attorneys for PLAINTIFFS
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: May 19, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFFS

EXHIBIT B

EXHIBIT B

August 18, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Accurate Delivery Systems, Inc.
c/o Mahmoud Maraach, Registered Agent for Service of Process:
173 W Resource Drive
Bloomington, CA 92316

Re: *Julio Garcia v. Accurate Delivery Systems, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Julio Garcia in claims arising from his employment with Accurate Delivery Systems, Inc., a California corporation (“Defendant”). Mr. Garcia is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Garcia intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former employees who worked as delivery drivers (and other similar job positions/titles) in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Garcia was employed by Defendant as a delivery driver from on or about 2018 through approximately September 23, 2020, at which time Mr. Garcia’s employment with Defendant was separated. During his employment, Mr. Garcia worked out of Defendant’s facility in Bloomington, California. Mr. Garcia’s primary job responsibilities, included without limitation, loading and unloading his transportation vehicle and making deliveries to Defendant’s customers throughout California, including to San Diego, Santa Barbara, and Bakersfield.

During his employment with Defendant, Mr. Garcia generally would be scheduled to work from approximately 8:00 a.m. until approximately 4:00 p.m., five days per week. Mr. Garcia and other Aggrieved Employees were not required to keep track of their work

time, and Defendant did not otherwise track the time worked by Mr. Garcia or other Aggrieved Employees.

During his employment, Mr. Garcia and other Aggrieved Employees were compensated through a commission structure that paid them a certain percentage for each delivery. Mr. Garcia and other Aggrieved Employees were not otherwise compensated by Defendant, and were not paid based on their time worked, including not being paid an hourly rate. Indeed, Defendant did not track the time worked by Mr. Garcia or other Aggrieved Employees and did not require Mr. Garcia and other Aggrieved Employees to keep track of their time worked.

Defendant required Mr. Garcia and other Aggrieved Employees to complete a number of tasks unrelated to their deliveries. Such tasks included, without limitation, waiting around for customers, fueling his delivery van, washing his delivery van, completing paperwork, conducting a pre- and post-shift inspection on their van at the beginning and end of their shift, and loading and unloading the delivery vehicle. Due to the fact that Defendant compensated Mr. Garcia and other Aggrieved Employees solely by commissions per delivery, all of these tasks unrelated to their deliveries were non-productive and Defendant did not compensate them for the time completing these tasks. As a result, Defendant failed to pay Mr. Garcia and other Aggrieved Employees all required minimum and overtime wages.

Throughout his employment, Mr. Garcia and other Aggrieved Employees were not provided all required meal periods due to Defendant's meal period policies and practices which fail to provide uninterrupted, duty-free 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, Mr. Garcia and other Aggrieved Employees were often unable to take a legally compliant meal period because of the heavy work demands imposed by Defendant which prevented them from taking legally compliant meal periods. Further, Defendant did not track any meal periods for Mr. Garcia and other Aggrieved Employees and did not require any tracking of meal periods purportedly taken.

Although Mr. Garcia and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Garcia and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Garcia and other Aggrieved Employees.

In addition, throughout Mr. Garcia's employment with Defendant, Mr. Garcia and other Aggrieved Employees were not authorized and permitted to take legally required rest periods due to Defendant's unlawful rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, or major fraction thereof. Specifically, as a result of the work demands

imposed by Defendant, Mr. Garcia and other Aggrieved Employees were often not authorized and permitted to take their rest periods. Additionally, while working on a commission-only basis, Mr. Garcia and other Aggrieved Employees worked shifts in excess of 3.5 hours, but were never authorized and permitted to take a paid rest period for every 4-hour period worked, or major fraction thereof, because Defendant's commission compensation plan failed to separately compensate Mr. Garcia and other Aggrieved Employees for required rest periods. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017). As a result, Mr. Garcia and other Aggrieved Employees were not authorized and permitted to take compensated rest periods as required by Industrial Welfare Commission Wage Order 9 § 12(A). Further, upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not authorized and permitted to their delivery drivers.

Throughout Mr. Garcia's employment with Defendant, Mr. Garcia and other Aggrieved Employees were required to use their personal cellular phone to discharge their duties. Specifically, Defendant would regularly contact Mr. Garcia and other Aggrieved Employees through their personal cellular phone for a variety of required work activities, including, but not limited to, checking the status of their assigned tasks. Defendant knew or should have known that Mr. Garcia and other Aggrieved Employees were necessarily incurring expenses due to the use of their personal cellular phone in the direct discharge of their duties. Yet, despite the necessity of Mr. Garcia and other Aggrieved Employees using their cellular phone for work activities and Defendant knowing or should have knowing about same, Mr. Garcia and other Aggrieved Employees were never reimbursed for a reasonable portion of their cellular phone expenses by Defendant, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant failed to pay all wages owed to Mr. Garcia and other Aggrieved Employees upon their separation of employment from Defendant.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant failed to provide Mr. Garcia and other Aggrieved Employees with accurate, itemized wage statements. In addition, Defendant failed to include the total hours worked during the pay period on Mr. Garcia's and other Aggrieved Employees' wage statements, in further violation of Labor Code section 226.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

Overtime Violations

Defendant was required to pay Mr. Garcia and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. See Labor Code §§ 1194(a) and 1198; the Wage Order 9, § 3.

According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Defendant had a policy/practice of not keeping track of and compensating Mr. Garcia and other Aggrieved Employees for all of their time worked, including without limitation, compensable “non-productive” time. Further, Mr. Garcia and other Aggrieved Employees routinely worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. As a result of these policies/practices, Mr. Garcia and other Aggrieved Employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Minimum Wage Violations

Defendant was required to pay Mr. Garcia and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 9, § 4. Mr. Garcia and other Aggrieved Employees were not paid for all hours worked due to Defendant’s timekeeping and compensation practices. As alleged above, Defendant caused Mr. Garcia and other Aggrieved Employees to work hours in a workweek but did not properly compensate Mr. Garcia and other Aggrieved Employees at least minimum wages for all such hours, due to Defendant’s unlawful timekeeping practices and/or commission-based compensation plans. This practice by Defendant resulted in Defendant not paying Mr. Garcia and other Aggrieved Employees for all wages owed for the work they performed, including failing to pay all required minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Garcia and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 11. Throughout Mr. Garcia’s employment with Defendant, Mr. Garcia and other Aggrieved Employees were not provided all required meal periods due to Defendant’s meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to the job duties imposed on Mr. Garcia and other Aggrieved Employees, they were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. As a result, Mr. Garcia and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery

period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Garcia and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Garcia and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Garcia and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 9, § 12. Due to work demands, Mr. Garcia and other Aggrieved Employees were not authorized and permitted to take rest periods regardless of whether they were actually paid. Defendant's commission-based compensation plan failed to separately compensate Mr. Garcia and other Aggrieved Employees for required rest periods. As a result, Garcia and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Garcia and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, and total meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Garcia and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Garcia and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Garcia and other Aggrieved Employees was willful and, consequently, entitles Mr. Garcia and other Aggrieved Employees to wages from the due date thereof at

the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Failure to Reimburse Business Expenses

Defendant failed to reimburse Mr. Garcia and other Aggrieved Employees for necessary work expenses, including, but not limited to, expenses related to use of their personal cellular phone to discharge their duties. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 9 § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Mr. Garcia and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

As an "aggrieved employee," Mr. Garcia will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Garcia's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

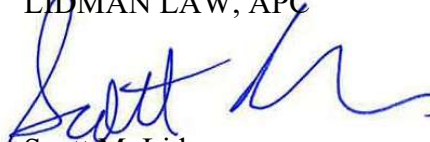
- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Garcia and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Garcia and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Garcia and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Garcia and other Aggrieved Employees;
- e) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Garcia and other Aggrieved Employees;
- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Garcia and other Aggrieved Employees with accurate and compliant itemized wage statements;

- g) Defendant violated Labor Code § 204 by failing to pay Mr. Garcia and other Aggrieved Employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Garcia and other Aggrieved Employees; and
- i) Defendant violated Labor Code §§ 2802 by failing to reimburse Mr. Garcia and other Aggrieved Employees for all necessary expenditures incurred.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT C

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and AHDY MIKHAEL, on
behalf of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2125337

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the time period between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023. Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. In exchange for the settlement payment, you will release claims against the Defendant as detailed below. Your estimated Settlement Award is explained in the accompanying Notice of Settlement Award. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, you must notify the Settlement Administrator as explained below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. However, if you are an PAGA Employee who requests exclusion, you will still receive a small amount as your share of the PAGA civil penalties described below. Instructions are set forth below.
Object	Write to the Court about why you do not agree with the Settlement, and/or appear at the Final Approval Hearing to make an oral objection. Directions are provided below.

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) entitled *Willie*

Marquez and Ahdy Mikhael, on behalf of themselves and on behalf of all persons similarly situated,

v. Accurate Delivery Systems, Inc., San Bernardino Superior Court Case No. CIVSB2125337 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Accurate Delivery System, Inc.’s (“Defendant”) records show that you were employed by Defendant as a Delivery Driver in California at some time between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Willie Marquez, Ahdy Mikhael, and Julio Garcia (“Plaintiffs”) brought this Lawsuit against Defendant, seeking to assert claims on behalf of a class of current and former Delivery Drivers who worked for Defendant in California at any time on or after August 18, 2017. Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Defendant failed to provide Settlement Class members all minimum and/or overtime wages, failed to provide all legally required meal periods, failed to authorize and permit all legally required rest periods, and failed to reimburse necessary business expenses. As a result of the foregoing alleged violations, Plaintiffs also allege that Defendant failed to provide accurate, itemized wages statements, failed to pay all wages upon termination, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”).

Defendant denies that it has done anything wrong. Defendant further denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. No Court has made any determination as to the factual allegations in the Lawsuit. Rather, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, and it expressly denies all liability.

The Court has not ruled that Defendant violated any laws or whether Plaintiffs or any other person is entitled to damages or other relief. However, to avoid additional expense, inconvenience, and interference with their business operations, Defendant has concluded that it is in their best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the Parties.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant’s policies strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiffs / Settlement Class Members:	Attorneys for Defendant Accurate Delivery Systems, Inc.
--	---

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP Norman B. Blumenthal Kyle R. Nordrehaug 2255 Calle Clara La Jolla, CA 92037 Telephone: (858) 551-1223 Facsimile: (858) 551-1232 Email: kyle@bamlawca.com Website: www.bamlawca.com LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	KORDAB LAW OFFICES Hekmat (Matt) Kordab, Esq. Yadira De La Rosa, Esq. 300 S. Harbor Blvd. Suite 820 Anaheim, California 92805 Telephone: (714) 881-0581 Facsimile: (714) 881-0582 PARK & ZHENG Stella Park, Esq. Yalan Zheng, Esq. 6 Venture, Suite 265 Irvine, CA 92618 Telephone: (949) 679-3372 Facsimile: 949-258-9808
---	--

What are the terms of the Settlement?

On **[INSERT DATE OF PRELIMINARY APPROVAL]**, the Court preliminarily certified a class, for settlement purposes only, of all current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the time period between August 18, 2017 **and the earlier of the date of preliminary approval or June 7, 2023**. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below.

Defendant has agreed to pay \$900,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, and the Class Representatives’ Service Awards.

The following deductions from the Gross Settlement Amount will be requested by the Parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside an amount not to exceed \$5,750.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as

attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$300,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$30,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Awards to Class Representatives. Class Counsel will ask the Court to award the Class Representatives a service award in the amount not to exceed \$10,000.00 each or a total of \$30,000.00, to compensate them for their services and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$30,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act ("PAGA"). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

Calculation of Individual Settlement Class Members' Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$<< >>, to be shared among an up to << >> estimated Settlement Class members. The NSA will be divided as follows:

- (i) The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a Delivery Driver during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a Delivery Driver during the Class Period, and the denominator of which is the total workweeks worked as Delivery Drivers by all Settlement Class members (who do not opt out) who worked during the Class Period.

PAGA Amount. In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Amount regardless of whether you exclude yourself from the Settlement if you are a PAGA Employee.

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will be transferred to the California State Controller's Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member. Funds can be claimed by such individuals by submitting a claim at www.claimit.ca.gov.

Payment by Defendant of Gross Settlement Amount. The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator in twenty-four (24) equal installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents

(\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023, and will be deposited with the Settlement Administrator in an escrow account set up by it. The second through twenty-fourth Settlement Installment payments shall be due every thirty (30) days thereafter.

Within ten (10) calendar days following Defendant's deposit of the final Settlement Installment of Gross Settlement Amount and all employer-side taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards to participating Settlement Class members. Settlement Awards are expected to be disbursed in [insert estimated month and year].

Allocation and Taxes. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: twenty percent (20%) as wages; and eighty percent (80%) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the "Released Parties"), from all claims, demands, rights, liabilities and causes of action that were pled or could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; (h) failure to provide paid sick leave or to pay for sick leave; and (i) all claims for unfair business practices that reasonably could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the "Released Class Claims"). The Class Members do not release any claims other than those set forth above, including without limitation claims for vested benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

The time period of the Released Claims shall be the same time period as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees, including Plaintiffs (and also including those who opt-out from the Class portion of the Settlement), will release and forever discharge the Released Parties from all claims, demands, rights, liabilities and causes of action for civil penalties under California Labor Code Private Attorneys General Act of 2004 which were pled in the letters to the Labor & Workforce Development Agency ("LWDA") dated May 28, 2021 and August 18, 2021 (**Exhibits A-B**) and the operative First Amended Complaint in the Action, or which could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action that arose during the PAGA Period predicated on the following alleged violations: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest

periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due ; (g) failure to issue accurate, itemized wage statements; and (h) failure to provide paid sick leave or to pay for sick leave (collectively, “PAGA Released Claims”).

The time period of the PAGA Released Claim is August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023 (“PAGA Period”).

The Parties acknowledge that under the release, the right of the LWDA to investigate the PAGA Released claim is not released, but the PAGA Released Claim does include any claims for penalties by a PAGA Employee as a result of any such LWDA investigation, and PAGA Employees are barred from their right to act as a private attorney general as to the PAGA Released Claims.

You cannot submit a Request for Exclusion from the PAGA Release.

The releases are null and void if Defendant fail to fully fund the Settlement. The releases identified herein shall become effective on the date on which Defendant fully funds the Settlement (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment shall have, released, waived and relinquished the Released Claims.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

If your address is incorrect or has changed, you must notify the Settlement Administrator. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The Settlement Administrator is: _____ (800) _____.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of pay periods you worked during the Class Period, and whether you have worked between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023. The information contained in Defendant’s records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. Send disputes directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or

card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, your signature, and a statement indicating that you would like to be excluded from the Class Action Settlement. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MARQUEZ V. ACCURATE DELIVERY LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023.

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Written objections must be postmarked on or before <<RESPONSE DEADLINE>>. Send written objections directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case (*Willie Marquez and Ahdy Mikhael v. Accurate Delivery Systems, Inc.* San Bernardino County Superior Court, Case No. CIVSB2125337).

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. The Court also will be asked to rule on Class Counsel’s request for attorneys’ fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator’s website (<http://.com>). The Court’s final judgment will also be posted on the Settlement Administrator’s website.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You may get more details by examining the Court's file on the Court Access website for the California Superior Court for the County of San Bernardino (<https://cap.sb-court.org/login>) and entering the Case No. CIVSB2125337. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANT OR ITS ATTORNEYS FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF SETTLEMENT AWARD

Willie Marquez and Ahdy Mikhael , on behalf of themselves and on behalf of all persons similarly situated,

v. Accurate Delivery Systems, Inc.

SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVSB2125337

Please complete, sign, date and return this form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to the records of Accurate Delivery System, Inc. ("Defendant"):

- (a) You were employed by Defendant and worked a total of [] workweeks between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023.
- (b) You were employed by Defendant and worked a total of [] pay periods between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023.
- (c)

Based on the above, your Individual Settlement Award is estimated to be \$ [].

(IV) If you disagree with item (a) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Defendant's records, Defendant's records will control unless you are able to provide documentation that establishes that Defendant's records are mistaken. If there is a dispute about whether Defendant's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>**