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on behalf of himself and other aggrieved employees.

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County of Santa Barbara
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

ALEJANDRO ESCOBAR MORENO, on
behalf of himself and other aggrieved
employees,

PLAINTIFF,

vs.

DELIVERY DRIVERS, INC.; RESTAURANT
CONNECTION OF SANTA BARBARA, INC.;
and DOES 1 to 100, Inclusive,

DEFENDANTS.

Case No.: 21CV03633

**PLAINTIFF ALEJANDRO ESCOBAR
MORENO'S FIRST AMENDED
COMPLAINT FOR DAMAGES,
RESTITUTION AND FOR:**

- 1. DECLARATORY RELIEF**
- 2. WILLFUL MISCLASSIFICATION
IN VIOLATION OF LABOR CODE
SECTION 226.8**
- 3. FAILURE TO PAY WAGES FOR
ALL TIME WORKED AT
MINIMUM WAGE RATE IN
VIOLATION OF LABOR CODE
SECTIONS 1194 AND 1197**
- 4. FAILURE TO PAY OVERTIME
WAGES FOR DAILY OVERTIME
HOURS WORKED, ALL HOURS
WORKED, IN VIOLATION OF
LABOR CODE SECTIONS 510,
1194, AND 1198**
- 5. FAILURE TO AUTHORIZE OR
PERMIT MEAL PERIODS IN
VIOLATION OF LABOR CODE
SECTIONS 512 AND 226.7**

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6. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**
7. **FAILURE TO ADEQUATELY INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES/EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802**
8. **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204**
9. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
10. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
11. **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***
12. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”), LABOR CODE SECTION 2698, *et seq.***

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, ALEJANDRO ESCOBAR MORENO (“Plaintiff”), who alleges and complains against DEFENDANTS DELIVERY DRIVERS, INC.; RESTAURANT CONNECTION OF SANTA BARBARA, INC.; and DOES 1 to 100, inclusive, (hereinafter collectively referred to as “Defendants”) as follows:

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1 **I. INTRODUCTION**

2 1. This is a, individual wage and hour and representative action lawsuit seeking
3 declaratory relief; penalties for willful misclassification; unpaid wages and interest thereon for
4 failure to pay wages for all hours worked at minimum wage; overtime wages for overtime hours
5 worked; failure to authorize or permit legally-required meal and rest periods; failure to adequately
6 indemnify employees for employment-related losses/expenditures; statutory penalties for failure to
7 timely pay earned wages; failure to provide accurate wage statements; failure to timely pay all
8 wages due and owing upon separation of employment; injunctive relief and other equitable relief;
9 reasonable attorney’s fees pursuant to California Labor Code sections 226(e), and 1194; costs; and
10 interest brought on behalf of Plaintiff and penalties pursuant to California Labor Code sections
11 2698, et seq.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over Plaintiff’s and the aggrieved employees’ claims for
14 declaratory relief; penalties for willful misclassification; unpaid minimum wages; unpaid meal
15 period premium wages; unpaid rest period premium wages; failure to indemnify for employment-
16 related expenditures; statutory penalties for failure to timely pay earned wages; failure to provide
17 accurate wage statements; and claims for injunctive relief and restitution under California Business
18 & Professions Code section 17200 *et seq.* for the following reasons: Defendants operate throughout
19 California; Defendants employed putative class members in County of Santa Barbara; more than
20 two-thirds of the putative class members are California citizens; the principal violations of
21 California law occurred in California; the conduct of Defendants forms a significant basis for
22 Plaintiff’s and the Class Members’ claims; and Plaintiff and the aggrieved employees seek
23 significant relief from Defendants.

24 **III. PARTIES**

25 3. Plaintiff brings this action on behalf of himself and other aggrieved employees as a
26 representative of the Labor and Workforce Development Agency. The named Plaintiff and the
27 group of persons on whose behalf this action is filed are current, former and/or future employees of
28 Defendants who work as delivery drivers. At all times mentioned herein, the currently named

1 Plaintiff is and was a resident of California and was employed in a position by Defendants as a
2 delivery driver, within the four years prior to the filing of the complaint.

3 4. Defendants employed Plaintiff as delivery driver from approximately May 2020 until
4 in or around February 2021.

5 5. Plaintiff is informed and believes and on that basis alleges that Defendants employed
6 Plaintiff and other delivery drivers throughout the State of California and therefore its conduct
7 forms a significant basis of the claims asserted in this matter.

8 6. Plaintiff is informed and believes and thereon alleges that defendant Does 1 through
9 20 are corporations or are other business entities or organizations of a nature unknown to Plaintiff.

10 7. Plaintiff is informed and believes and thereon alleges that Defendant DELIVERY
11 DRIVERS, INC. is authorized to do business within the State of California and is doing business in
12 the State of California and/or that Defendants Does 21 through 40 are, and at all times relevant
13 hereto were, individuals acting on behalf of DELIVERY DRIVERS, INC. in the establishment of,
14 or ratification, of, the aforementioned illegal wage and hour practices or policies. DELIVERY
15 DRIVERS, INC. operates throughout California including Santa Barbara County and employed
16 putative class members in through its business located in Santa Barbara County, among other
17 locations.

18 8. Plaintiff is informed and believes and thereon alleges that Defendant
19 RESTAURANT CONNECTION OF SANTA BARBARA, INC. is authorized to do business within
20 the State of California and is doing business in the State of California and/or that Defendants Does
21 41 through 60 are, and at all times relevant hereto were, individuals acting on behalf of
22 RESTAURANT CONNECTION OF SANTA BARBARA, INC. in the establishment of, or
23 ratification, of, the aforementioned illegal wage and hour practices or policies. RESTAURANT
24 CONNECTION OF SANTA BARBARA, INC. operates throughout California including Santa
25 Barbara County and employed putative class members in through its business located in Santa
26 Barbara County, among other locations.

27 9. Plaintiff is informed and believes and thereon alleges that Defendants Does 61
28 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued

1 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
2 supervisor, independent contractor and/or employee of each Defendant and participated in the
3 establishment of, or ratification, of, the aforementioned illegal wage and hour practices or policies.

4 10. Plaintiff is unaware of the true names of Defendants Does 1 through 100. Plaintiff
5 sues said defendants by said fictitious names, and will amend this complaint when the true names
6 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
7 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
8 named defendants is in some manner responsible for the events and allegations set forth in this
9 complaint.

10 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
11 defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
12 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
13 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
14 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
15 of the other defendants so as to be liable for their conduct with respect to the matters alleged in this
16 complaint. Plaintiff is further informed and believes and thereon alleges that each defendant acted
17 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
18 each defendant knew or should have known about, authorized, ratified, adopted, approved,
19 controlled, aided and abetted the conduct of all other defendants. As used in this complaint,
20 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the
21 particular cause of action in which the word appears and includes Defendants DELIVERY
22 DRIVERS, INC.; RESTAURANT CONNECTION OF SANTA BARBARA, INC.; and DOES 1 to
23 100; and DOES 1 to 100, inclusive.

24 12. At all times mentioned herein, each Defendant was the co-conspirator, agent,
25 servant, employee, and/or joint venturer of each of the other defendants and was acting within the
26 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
27 permission and consent of each of the other Defendants.

28 ///

1 13. Plaintiff makes the allegations in this complaint without any admission that, as to
2 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
3 reserves all of Plaintiff rights to plead in the alternative.

4 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

5 14. Pursuant to the applicable Industrial Welfare Commission Wage Order (“Wage
6 Order”), codified at California Code of Regulations title 8, section 11040, Defendants were
7 employers of Plaintiff within the meaning of the applicable Wage Order and applicable California
8 Labor Code sections. Therefore, each of these Defendants is jointly and severally liable for the
9 wrongs complained of herein in violation of the Wage Order and the California Labor Code.

10 15. **Defendants willfully misclassify Plaintiff as an independent contractor:**
11 Plaintiff is Defendants’ employee, not independent contractors. Defendants retain and exercise
12 significant control over the details of Plaintiff’s work. Plaintiff is integral to the operation of
13 Defendants’ core business; he was hired to pick up food orders, transport, and deliver food orders in
14 California based on restaurants, times, locations, subject to terms, and for amounts determined by
15 Defendants.

16 16. Defendants unilaterally set the prices charged to its customers for services rendered
17 by Plaintiff, as well as the compensation paid to Plaintiff.

18 17. Defendants control Plaintiff’s schedules. Defendants required Plaintiff to obtain
19 permission prior to taking time off of work. Defendants require Plaintiff to wear Defendants’
20 uniform while picking up food from restaurants and making deliveries. Additionally, Defendants
21 require Plaintiff to keep their vehicles in good working condition and to maintain vehicles at his
22 own expense.

23 18. Despite Defendants’ pervasive control over all aspects of its transportation services
24 and delivery drivers, Defendants misclassify Plaintiff as an independent contractor. However,
25 Plaintiff is Defendants’ employee.

26 19. **Failure to pay wages for all hours worked at the legal minimum wage or**
27 **contractual rate:** Despite their misclassification as independent contractors, Defendants employ
28 many of their employees, including Plaintiff, as delivery drivers. In California, an employer is

1 required to pay hourly employees for all “hours worked,” which includes all time that an employee
2 is under control of the employer and all time the employee is suffered and permitted to work. This
3 includes the time an employee spends, either directly or indirectly, performing services which inure
4 to the benefit of the employer.

5 20. Plaintiff worked more hours per shift than Defendants credited him with having
6 worked. Specifically, Defendants paid Plaintiff per delivery instead for all hours worked.
7 Moreover, Plaintiff was not paid for non-driving work Defendants required them to perform. For
8 example, Defendants required Plaintiff to wait to be sent to a restaurant with a delivery order and
9 then wait for food orders at the restaurant all prior to beginning the actual delivery process.
10 Plaintiff is not separately paid for this work; rather, Defendants considered these duties “part of the
11 job” which are somehow compensated by either a flat daily rate or piece rate for “all hours worked”
12 regardless of how much time they actually spend performing these tasks. Further, if there was an
13 error with an order, Plaintiff was required to return to the restaurant and then to the customer
14 without compensation. The foregoing resulted in time during each workday which Plaintiff was
15 under control of Defendants but as not compensated. *Cardenas v. McLane Food Service, Inc.* (C.D.
16 Cal. 2011) 796 F.Supp.2d 1246 (granting truck drivers’ motion for summary judgment of claims
17 where employer paid with piece rate wages for “all hours worked”).

18 21. California Labor Code sections 1194 and 1197 require an employer to compensate
19 employees for his or her “hours worked” at least at a minimum wage rate of pay as established by
20 the Industrial Welfare Commission (“IWC”) and the Wage Orders.

21 22. Despite the fact that California law requires employers to pay employees for all
22 hours worked at least at a minimum wage rate, Defendants suffered, permitted, and required
23 Plaintiff to be subject to Defendants’ control throughout each workday without paying wages for
24 that time. This resulted in employees working time for which he was not compensated any wages,
25 in violation of California Labor Code sections 1194, 1197, and the Wage Order.

26 23. **Failure to pay wages for all hours worked in excess of eight hours per day at the**
27 **employees’ overtime rate of pay:** Defendants’ delivery drivers often worked more than eight hours
28 per workday.

1 24. California Labor Code sections 510 and 1194 require an employer to compensate
2 employees a higher rate of pay for hours worked in excess of eight hours in a workday:

3 Any work in excess of eight hours in one workday and any work in excess of 40
4 hours in any one workweek and the first eight hours worked on the seventh day of
5 work in any one workweek shall be compensated at the rate of no less than one and
6 one-half times the regular rate of pay for an employee. Any work in excess of 12
7 hours in one day shall be compensated at the rate of no less than twice the regular
8 rate of pay for an employee. In addition, any work in excess of eight hours on any
9 seventh day of a workweek shall be compensated at the rate of no less than twice the
10 regular rate of pay of an employee.

11 (Cal. Lab. Code §510.)

12 25. Further, California Labor Code section 1198 provides,

13 The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of
15 labor for employees. The employment of any employee for longer hours than those
16 fixed by the order or under conditions of labor prohibited by the order is unlawful.

17 26. Despite that California law requires employers to pay employees a higher rate of pay
18 for all hours worked more than eight hours in a workday, Defendants failed to pay Plaintiff
19 overtime wages due them for his daily overtime hours worked.

20 27. Specifically, Defendants paid Plaintiff per trip instead for all hours worked.
21 Plaintiff was not paid for non-driving work Defendants required them to perform. For example,
22 Defendants required Plaintiff to wait to be sent to a restaurant with a delivery order and then wait
23 for food orders at the restaurant all prior to beginning the actual delivery process. Plaintiff is not
24 separately paid for this work; rather, Defendants considered these duties “part of the job” which are
25 somehow compensated by a piece rate per delivery for “all hours worked” regardless of how much
26 time they actually spend performing these tasks. *Cardenas v. McLane Food Service, Inc.* (C.D. Cal.
27 2011) 796 F.Supp.2d 1246 (granting truck drivers’ motion for summary judgment of claims where
28 employer paid with piece rate wages for “all hours worked”).

 28. The foregoing resulted in time during each workday which Plaintiff was under
control of Defendants, but was not compensated at his overtime rate of pay when he worked more
than eight hours in a day or 40 hours in a week, in violation of Labor Code sections 510, 1194, and
1198, and the Wage Order.

1 29. **Failure to pay employees' wages to compensate them for workdays Defendants**
2 **failed to provide all required meal periods:** Defendants often employed delivery drivers,
3 including the named Plaintiff, for shifts longer than 10 hours in length.

4 30. California law requires an employer to provide an employee an uninterrupted meal
5 period of no less than 30-minutes in which the employee is relieved of all duties and the employer
6 relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal.
7 Lab. Code §§ 226.7, 512; Wage Order §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53
8 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours
9 per day without providing the employee with a second such meal period of not less than 30 minutes
10 prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during
11 a meal period, the meal period shall be considered an "on duty" meal period and counted as time
12 worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents
13 an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing
14 to on duty meal periods.

15 31. If an employer fails to provide an employee a meal period in accordance with the
16 law, the employer must pay the employee one hour of pay at the employee's regular rate of pay for
17 each work day that a legally required meal period was not provided or was not duty-free. *Id.*

18 32. Plaintiff worked on workdays in shifts long enough to entitle him to both first and
19 second meal periods under California law. Defendants employed a policy and procedure that did
20 not provide for a first meal period or a second 30-minute meal period when the employees worked
21 shifts of more than 10 hours.

22 33. Defendants failed to pay premium wages to Plaintiff to compensate him for each
23 workday the employees did not receive all legally required duty-free meal periods. Defendants
24 employed policies and procedures which ensured delivery drivers did not receive any premium
25 wages to compensate them for the workdays in which they did not receive all legally required meal
26 periods.

27 34. This practice resulted in Plaintiff not receiving premium wages to compensate him
28 for workdays which Defendants did not provide him with second duty free meal periods, in

1 violation of California law.

2 35. **Failure to pay employees' wages to compensate them for workdays Defendants**
3 **failed to provide required rest periods:** Defendants often employed delivery drivers, including the
4 named Plaintiff, for shifts at least 3.5 hours in length.

5 36. California law requires an employer to provide an employee a rest period of ten (10)
6 net minutes for every four hours worked, "which insofar as practicable shall be in the middle of
7 each work period." Cal. Lab. Code §226.7; Wage Order §12. Thus, employees are entitled to 10
8 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts between
9 six and ten hours in length, 30 minutes for shifts between 10 and 14 hours in length, and so on. See
10 *Brinker, supra*.

11 37. If the employer fails to provide a required rest period, the employer must pay the
12 employee one hour of pay at the employee's regular rate of compensation for each work day the
13 employer did not provide all legally required rest periods. *Id.*

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15 38. Defendants' policies and procedures ensured Plaintiff would not receive all legally
16 required rest periods. Specifically, because Defendants paid their delivery drivers based on each
17 delivery rather than "hours worked" and Defendants failed to account for rest periods or provide an
18 ability to be paid for them. Moreover, under a piece-rate compensation system, Defendants were
19 required to separately pay Plaintiff for their rest periods.

20 39. Defendants also employed policies and procedures which ensured Plaintiff did not
21 receive any premium wages to compensate him for workdays that he did not receive all legally
22 required rest periods. Moreover, Defendants failed to provide a means by which Plaintiff could
23 verify whether he was paid for his missed rest periods.

24 40. These practices resulted in Plaintiff not receiving premium wages to compensate
25 them for workdays which Defendants did not provide them with all rest periods required by
26 California law.

27 41. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
28 **Employment:** California law requires that every employer must indemnify its employees for all

1 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the
2 obedience of the directions of the employer. Moreover, an employer is prohibited from passing the
3 ordinary business expenses and losses of the employer onto the employee. (Lab. Code §2802.)

4 42. Plaintiff was required to pay necessary employment-related expenses in the
5 discharge of his duties including, but not limited to, the following:

- 6 • Fuel;
- 7 • Car Maintenance;
- 8 • Uniform;
- 9 • Uniform Cleaning and Maintenance;
- 10 • Cell Phone Usage; and
- 11 • Bags.

12 43. For Plaintiff, these costs are significant.

13 44. Defendants employed policies and procedures which ensured Plaintiff would not
14 receive indemnification for the aforementioned necessary expenditures. This practice resulted in
15 Plaintiff not receiving such indemnification in compliance with California law.

16 45. **Failure to Timely Pay Earned Wages:** In California, wages must be paid at least
17 twice during each calendar month on days designated in advance by the employer as regular
18 paydays, subject to some exceptions. Labor Code section 204(a). Wages earned between the 1st and
19 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that
20 month and wages earned between the 16th and the last day, inclusive, of any calendar month must
21 be paid between the 1st and 10th day of the following month. Id. Other payroll periods such as
22 those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days
23 following the close of the payroll period in which wages were earned. Labor Code section 204(d).

24 46. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
25 timely pay Plaintiff's earned wages (including minimum wages, overtime wages, meal period
26 premium wages, and/or rest period premium wages), in violation of Labor Code section 204.

27 47. Defendants' aforementioned policies, practices, and/or procedures resulted in their
28 failure to pay Plaintiff his earned wages within the applicable time frames outlined in Labor Code

1 section 204.

2 48. **Pay Stub Violations:** California Labor Code section 226(a) provides that, *inter alia*,
3 upon paying an employee his or her wages, the employer must “furnish each of his or her
4 employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours
5 worked by the employee, except for any employee whose compensation is solely based on a salary
6 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
7 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned
8 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
9 provided, that all deductions made on written orders of the employee may be aggregated and shown
10 as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee
11 is paid, (7) the name of the employee and his or her social security number, (8) the name and
12 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
13 the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

14 49. In direct violation of Labor Code 226(a)(2)-(9), the wage and hour statements
15 Defendants provided to Plaintiff failed to state the total hours worked by the employee, the number
16 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
17 all deductions, net wages earned, the employees’ last four digits of his or her social security number
18 or an employee identification number other than a social security number may be shown on the
19 itemized statement, the name and address of the legal entity that is the employer, and all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at each
21 hourly rate by the employee.

22 50. Additionally, Defendants failed to provide accurate wage and hour statements to
23 Plaintiff by failing to include uncompensated time, overtime wages for overtime hours worked,
24 premium wages for missed meal periods, premium wages for missed rest periods, and
25 indemnification for employment-related expenses to which Plaintiff was entitled.

26 51. **Failure to Pay California Employees All Wages Due at Time of**
27 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
28 employee’s employment ends. The wages are due immediately upon termination (California Labor

Code section 201) or within 72 hours of resignation (California Labor Code section 202).

52. Because Defendants failed to pay Plaintiff all his earned wages (including minimum wages, overtime wages, and unpaid meal period and rest period premium wages), Defendants failed to pay those Plaintiff timely after his termination and/or resignation.

FIRST CAUSE OF ACTION

DECLARATORY RELIEF

(As Against All Defendants by Plaintiff)

53. Plaintiff hereby incorporates by reference paragraphs 1-52 above, as if fully set herein by reference.

54. An actual controversy has arisen between Plaintiff, on the one hand, and Defendants on the other, relating the following matters:

(a) Whether Defendants misclassified Plaintiff as an “independent contractor” when, in fact, he was Defendants’ employee.

55. Plaintiff further seeks declaratory relief against all Defendants herein and in their favor, which declares Defendants’ practices to be unlawful, and which provides for recovery of all sums determined by the Court to be owed by Defendants, and each of them, to Plaintiff.

SECOND CAUSE OF ACTION

WILLFUL MISCLASSIFICATION IN VIOLATION OF LABOR CODE 226.8

(As Against All Defendants by Plaintiff)

56. Plaintiff hereby incorporates by reference paragraphs 1-55 above, as if fully set herein by reference.

57. At times relevant to this Complaint, Plaintiff was a delivery driver employee of Defendants who Defendants willfully misclassified as an “independent contractor.”

58. Labor Code section 226.8(a)(1) provides that it is unlawful for any person or employer to willfully misclassify individuals as independent contractors.

59. Here, Defendants willfully misclassify Plaintiff as an “independent contractor,” despite the following:

///

1 (a) Defendants retain and exercise significant control over the details of
2 Plaintiff's work. Plaintiff is integral to the operation of Defendants' core business; he was hired to
3 pick up food orders, transport, and deliver food orders in California based on restaurants, times,
4 locations, subject to terms, and for amounts determined by Defendants.

5 (b) Defendants unilaterally set the prices charged to its customers for services
6 rendered by Plaintiff, as well as the compensation paid to the delivery drivers, including Plaintiff.

7 (c) Defendants control Plaintiff's schedules. Defendants required Plaintiff to
8 obtain permission prior to taking time off of work. Defendants require Plaintiff to wear
9 Defendants' uniform while picking up food from restaurants and making deliveries. Additionally,
10 Defendants require Plaintiff to keep his vehicles in good working condition and to maintain vehicles
11 at his own expense.

12 (d) Despite Defendants' pervasive control over all aspects of its transportation
13 services and delivery drivers, Defendants misclassify Plaintiff as an independent contractor.
14 However, Plaintiff is Defendants' employee.

15 60. As a result of Defendants' unlawful conduct, pursuant to Labor Code section
16 226.8(c), they are subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not
17 more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
18 penalties or fines permitted by law.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**
21 **WAGE RATE, IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**

22 **(As Against All Defendants by Plaintiff)**

23 61. Plaintiff hereby incorporates by reference paragraphs 1-60 above, as if fully set
24 herein by reference.

25 62. At times relevant to this Complaint, Plaintiff was a delivery driver employee of
26 Defendants covered by California Labor Code sections 1194 and 1197.

27 63. Pursuant to Labor Code sections 1194, 1197, and Wage Orders, Plaintiff is entitled
28 to receive wages for all hours worked and those wages must be paid at least at the minimum wage

1 rate in effect during the time the employees earned the wages.

2 64. Plaintiff worked more hours per shift than Defendants credited them with having
3 worked. Specifically, Defendants paid Plaintiff per delivery instead for all hours worked.
4 Moreover, Plaintiff was not paid for non-driving work Defendants required him to perform. For
5 example, Defendants required Plaintiff to wait to be sent to a restaurant with a delivery order and
6 then wait for food orders at the restaurant all prior to beginning the actual delivery process.
7 Plaintiff is not separately paid for this work; rather, Defendants considered these duties “part of the
8 job” which are somehow compensated by either a flat daily rate or piece rate for “all hours worked”
9 regardless of how much time they actually spend performing these tasks. Further, if there was an
10 error with an order, Plaintiff was required to return to the restaurant and then to the customer
11 without compensation.

12 65. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
13 amount subject to proof, to the extent that he was not paid wages at a minimum wage rate for all
14 hours worked.

15 66. Pursuant to California Labor Code Sections 1194 and 1194.2, Plaintiff is entitled to
16 recover unpaid minimum wages, interest thereon, liquidated damages in the amount of their unpaid
17 minimum wages, and attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES, IN VIOLATION OF CALIFORNIA LABOR**

20 **CODE SECTIONS 510, 1194, AND 1198**

21 **(As Against all Defendants by Plaintiff)**

22 67. Plaintiff hereby incorporates by reference paragraphs 1-68 above, as if fully set
23 herein by reference.

24 68. At times relevant to this Complaint, Plaintiff was an hourly non-exempt employee
25 of Defendants, covered by California Labor Code sections 510 and 1194 and the Wage Order.

26 69. Pursuant to California Labor Code sections 510 and 1194 and the Wage Order,
27 hourly non-exempt employees are entitled to receive a higher rate of pay for all hours worked in
28 excess of eight hours in a workday and/or 40 hours in a workweek.

1 70. California Labor Code section 510, subdivision (a), states in relevant part:
2 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
3 one workday and any work in excess of 40 hours in any one workweek and the first
4 eight hours worked on the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the regular rate of pay
6 for an employee. Any work in excess of 12 hours in one day shall be compensated at
7 the rate of no less than twice the regular rate of pay for an employee. In addition, any
8 work in excess of eight hours on any seventh day of a workweek shall be
9 compensated at the rate of no less than twice the regular rate of pay of an employee.
10 Nothing in this section requires an employer to combine more than one rate of
11 overtime compensation in order to calculate the amount to be paid to an employee for
12 any hour of overtime work.

13 71. Further, California Labor Code section 1198 provides,
14 The maximum hours of work and the standard conditions of labor fixed by the
15 commission shall be the maximum hours of work and the standard conditions of labor
16 for employees. The employment of any employee for longer hours than those fixed
17 by the order or under conditions of labor prohibited by the order is unlawful.

18 72. Despite that California law requires employers to pay employees a higher rate of pay
19 for all hours worked more than eight hours in a workday, Defendants failed to pay Plaintiff
20 overtime wages due him for his daily overtime hours worked.

21 73. Specifically, Defendants paid Plaintiff per trip instead for all hours worked.
22 Moreover, Plaintiff was not paid for non-driving work Defendants required him to perform. For
23 example, Defendants required Plaintiff to wait to be sent to a restaurant with a delivery order and
24 then wait for food orders at the restaurant all prior to beginning the actual delivery process.
25 Plaintiff is not separately paid for this work; rather, Defendants considered these duties "part of the
26 job" which are somehow compensated by a piece rate per delivery for "all hours worked" regardless
27 of how much time they actually spend performing these tasks.

28 74. The foregoing resulted in time during each workday which Plaintiff was under the
control of Defendants but was not compensated at his overtime rate of pay when he worked more
than eight hours in a day or 40 hours in a week, in violation of Labor Code sections 510, 1194, and
1198, and the Wage Order.

As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
amount subject to proof, to the extent that they were not paid premium wages at an overtime rate of
pay for all hours worked which constitute overtime.

76. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover the full amount of his unpaid overtime wages, prejudgment interest and attorneys' fees and costs.

FIFTH CAUSE OF ACTION

**FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR
CODE SECTIONS 512 AND 226.7**

(As Against All Defendants by Plaintiff)

77. Plaintiff hereby incorporates by reference paragraphs 1-76 above, as if fully set
herein by reference.

78. At times relevant to this Complaint, Plaintiff was a delivery driver of Defendants, covered by California Labor Code sections 512 and 226.7 and the Wage Order.

79. California law requires an employer to provide an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities no later than the employee's sixth hour of work. Cal. Lab. Code §§ 226.7, 512; Wage Order §11; *Brinker Rest. Corp. v. Super Ct.*(Hohnbaum) (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes by no later than the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods.

80. Plaintiff worked in shifts long enough to entitle him to both first and second meal periods under California law. Defendants failed to provide Plaintiff a full 30-minute meal period for each five-hour period of work as required by law.

81. Defendants also failed to provide premium wages to Plaintiff to compensate him for workdays he did not receive his legally required meal periods. Defendants employed policies and procedures which ensured its delivery drivers would not receive all legally required meal periods. Defendants employed policies and procedures which ensured Plaintiff did not receive premium

1 wages to compensate him for workdays that he did not receive required meal periods. This practice
2 resulted in Plaintiff not receiving premium wages to compensate him for workdays which
3 Defendants did not provide him with all required meal periods, in violation of California law.

4 82. Because Defendants failed to provide proper meal periods, they are liable to Plaintiff
5 for one hour of additional pay at the regular rate of compensation for each workday the meal period
6 was not provided, pursuant to California Labor Code section 226.7 and the Wage Order.

7 83. Plaintiff seeks damages and all other relief allowable, including a meal period
8 premium wage for each workday Defendants failed to provide all required 30-minute uninterrupted
9 meal periods, plus pre-judgment interest.

10 84. Thus, Plaintiff is entitled to one hour of pay for each workday Defendants did not
11 provide them all required meal periods, including second meal periods, plus pre-judgment interest.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CALIFORNIA**
14 **LABOR CODE SECTION 226.7 AND THE WAGE ORDER**

15 **(As Against All Defendants by Plaintiff)**

16 85. Plaintiff hereby incorporates by reference paragraphs 1-84 above, as if fully set
17 herein by reference.

18 86. At all times relevant to this Complaint, Plaintiff was an employee delivery drivers of
19 Defendants, covered by California Labor Code section 226.7 and the Wage Order.

20 87. California law requires an employer to authorize or permit an employee to take a rest
21 period of ten (10) net minutes for every four hours worked. Cal. Lab. Code §226.7; Wage Order
22 §12. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” *Id.* If
23 the employer fails to provide any required rest period, the employer must pay the employee one
24 hour of pay at the employee’s regular rate of compensation for each work day the employer did not
25 provide at least one legally required rest period. *Id.*

26 88. Defendants failed to provide Plaintiff all required rest periods and failed to pay
27 premium wages to Plaintiff to compensate him for each workday he did not receive all legally
28 required rest periods. Defendants employed policies and procedures which ensured Plaintiff would

1 not receive all legally required rest periods. Specifically, because Defendants paid their delivery
2 drivers by delivery rather than hours worked, Defendants failed to account for rest periods or
3 provide an ability to be paid for them. Moreover, under a piece-rate compensation system,
4 Defendants were required to separately pay Plaintiff for his rest periods.

5 89. Defendants also employed policies and procedures which ensured Plaintiff did not
6 receive any premium wages to compensate him for workdays that he did not receive all legally
7 required rest periods. Moreover, Defendants failed to provide a means by which Plaintiff could
8 verify whether he was paid for his missed rest periods.

9 90. This practice resulted in Defendants failing to pay Plaintiff premium wages to
10 compensate them for workdays in which Defendants did not provide the employees with all
11 required rest periods, in violation of California law.

12 91. Plaintiff seeks damages and all other relief allowable including rest period premium
13 wages for each workday the employee was not provided with all required rest periods of ten net
14 minutes, plus prejudgment interest.

15 92. Pursuant to California Labor Code section 226.7 and the Wage Order, Plaintiff is
16 entitled to one hour of pay for each workday Defendants failed to provide all required rest periods,
17 plus prejudgment interest.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO INDEMNIFY EMPLOYEES FOR LOSSES AND EXPENDITURES IN**

20 **VIOLATION OF LABOR CODE SECTION 2802**

21 **(As Against All Defendants by Plaintiff)**

22 93. Plaintiff hereby incorporates by reference paragraphs 1-92 above, as if fully set
23 herein by reference.

24 94. Plaintiff has been employed by Defendants in the State of California. California law
25 requires that Defendants indemnify its employees for all necessary expenditures or losses incurred
26 by the employee in discharge of his or her duties or at the obedience of the directions of the
27 employer. Moreover, an employer is prohibited from passing the ordinary business expenses and
28 losses of the employer onto the employee. (Lab. Code §2802.)

1 95. Defendants have violated Labor Code section 2802 by unlawfully passing the
2 ordinary business expenses and losses of the employer onto the employee from Defendants to
3 Plaintiff including, but not limited to, the following: Fuel; Car Maintenance; Uniform Cleaning and
4 Maintenance; Cell Phone Usage; and Parking Fees.

5 96. Moreover, Defendants employed policies and procedures which ensured Plaintiff
6 would not receive indemnification for their employment-related expenses. This practice resulted in
7 Plaintiff not receiving such indemnification in compliance with California law.

8 97. Because Defendants failed to properly indemnify Plaintiff for the necessary
9 expenditures incurred in the discharge of their duty including, but not limited to, the following:
10 Fuel; Car Maintenance; Uniform Cleaning and Maintenance; Cell Phone Usage; and Parking Fees;
11 they are liable to Plaintiff for monies to compensate him for the use of his vehicles, cell phones, and
12 gas pursuant to Labor Code section 2802.

13 98. As a direct and proximate result of Defendants' violation of Labor Code section
14 2802, Plaintiff has suffered irreparable harm and monetary damages entitling them to both
15 injunctive relief and restitution. Plaintiff seeks damages and all other relief allowable including
16 indemnification for all employment-related expenses and ordinary business expenses incurred by
17 Defendants and passed onto Plaintiff pursuant to Labor Code section 2802.

18 99. Pursuant to Labor Code Section 2802, Plaintiff is entitled to recover the full
19 indemnification, reasonable attorney fees and costs of suit.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**
22 **VIOLATION OF LABOR CODE SECTION 204**

23 **(Against All Defendants by Plaintiff)**

24 100. Plaintiff hereby incorporates by reference paragraphs 1-99 above, as if fully set forth
25 below.

26 101. Plaintiff has been employed by Defendants in the State of California. In California,
27 wages must be paid at least twice during each calendar month on days designated in advance by the
28 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned

1 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
2 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
3 calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll
4 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
5 calendar days following the close of the payroll period in which wages were earned. Labor Code
6 section 204(d).

7 102. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
8 timely pay Plaintiff earned wages (including minimum wages, overtime wages, overtime wages at
9 the proper overtime rate of pay, meal period premium wages, meal period premium wages at the
10 regular rate of pay, rest period premium wages, and/or rest period premium wages at the regular rate
11 of pay), in violation of Labor Code section 204.

12 103. Defendants' aforementioned policies, practices, and/or procedures resulted in their
13 failure to pay Plaintiff his earned wages within the applicable time frames outlined in Labor Code
14 section 204.

15 104. Defendants' failure to timely pay Plaintiff his earned wages in accordance with
16 Labor Code section 204 was willful. Defendants had the ability to timely pay all wages earned by
17 hourly workers in accordance with Labor Code section 204, but intentionally adopted policies or
18 practices incompatible with the requirements of Labor Code section 204. When Defendants failed to
19 timely pay Plaintiff all earned wages, they knew what they were doing and intended to do what they
20 did.

21 105. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
22 amount subject to proof, to the extent that they were not timely paid their earned wages pursuant to
23 Labor Code section 204.

24 106. Pursuant to Labor Code section 210, Plaintiff is entitled to recover civil penalties as
25 follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to pay each
26 employee; and (2) for each subsequent violation, or any willful or intentional violation, two hundred
27 dollars (\$200) for each failure to pay each employee, plus twenty-five (25%) percent of the amount
28 unlawfully withheld.

NINTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTION 226
(As Against All Defendants by Plaintiff)

107. Plaintiff hereby incorporates by reference paragraphs 1-108 above, as if fully set herein by reference.

108. At all relevant times, Plaintiff was a non-exempt delivery driver of Defendants, covered by California Labor Code section 226.

109. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff was entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

110. In direct violation of Labor Code 226(a)(2)-(9), the wage and hour statements Defendants provided to Plaintiff failed to state the total hours worked by the employee, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the employees' last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

111. As a derivative of Defendants' illegal wage practices, including but not limited to Defendants' failure to minimum wage, failure to pay overtime wages, failure to pay meal period premium wages, failure to pay rest period premium wages, and failure to reimburse for the necessary expenditures incurred in the discharge of their duty including, but not limited to, the following: Fuel; Car Maintenance; Uniform Cleaning and Maintenance; Cell Phone Usage; and Parking Fees resulted in Defendants providing Plaintiff with inaccurate itemized wage statements in violation of California Labor Code section 226, including but not limited to the employees' gross and net pay and all applicable hourly rates and earnings at each rate.

112. Defendants' failure to provide Plaintiff with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff with accurate wage statements but intentionally provided wage statements they knew were not accurate. Defendants knowingly and intentionally put in place practices which deprived employees of wages and resulted in Defendants' knowing and intentional providing of inaccurate wage statements. These practices included Defendants' failure to include all rates of pay and all wages due.

113. As a result of Defendants' unlawful conduct, Plaintiff has suffered injury. The absence of accurate information on their wage statements has prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and mathematical computations to determine the amount of wages owed, and will cause difficulty and expense in attempting to reconstruct time and pay records. Defendants' conduct led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies. As a result, Plaintiff is required to participate in this lawsuit and create more difficulty and expense for Plaintiff from having to reconstruct time and pay records than if Defendants had complied with their legal obligations.

114. Pursuant to California Labor Code section 226(e), Plaintiff is entitled to recover fifty dollars per employee for the initial pay period in which a Section 226 violation occurred and one hundred dollars per employee per violation for each subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

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115. Pursuant to California Labor Code Section 226(h), Plaintiff is entitled to bring an action for injunctive relief to ensure Defendants' compliance with California Labor Code section 226(a).

116. Pursuant to California Labor Code sections 226(e) and 226(h), Plaintiff is entitled to recover the full amount of penalties due under Section 226(e), reasonable attorney fees, and costs of suit.

TENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT, IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

(As Against all Defendants by Plaintiff)

117. Plaintiff hereby incorporates by reference paragraphs 1-116 above, as if fully set
herein by reference.

118. At all times relevant to this Complaint, Plaintiff was an employee of Defendants, covered by California Labor Code sections 201-202.

119. Pursuant to California Labor Code sections 201 and 202, Plaintiff was entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

120. Defendants failed to pay Plaintiff all wages earned and unpaid prior to separation of employment, in accordance with either California Labor Code section 201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations period applicable to this cause of action Defendants maintained a policy or practice of not Plaintiff all earned wages timely upon separation of employment.

121. Defendants' failure to pay Plaintiff all wages earned prior to separation of employment timely in accordance with California Labor Code sections 201 and 202 was willful.

1 Defendants had the ability to pay all wages earned by hourly workers prior to separation of
2 employment in accordance with California Labor Code sections 201 and 202, but intentionally
3 adopted policies or practices incompatible with the requirements of California Labor Code sections
4 201 and 202. Defendants' practices include failing to pay at least minimum wage for all time
5 worked, overtime wages for overtime hours worked, and failing to pay premium wages for
6 workdays Defendants did not timely provide employees all meal periods and rest periods in
7 compliance with California law. When Defendants failed to pay its delivery drivers all earned
8 wages timely upon separation of employment, they knew what they were doing and intended to do
9 what it did.

10 122. Pursuant to either California Labor Code section 201 or 202, Plaintiff is entitled to
11 all wages earned prior to separation of employment that Defendants did not pay them.

12 123. Pursuant to California Labor Code section 203, Plaintiff is entitled to continuation of
13 their wages, from the day their earned and unpaid wages were due upon separation until paid, up to
14 a maximum of 30 days.

15 124. As a result of Defendants' conduct, Plaintiff has suffered damages in an amount,
16 subject to proof, to the extent they were not paid for all wages earned prior to separation.

17 125. As a result of Defendants' conduct, Plaintiff has suffered damages in an amount,
18 subject to proof, to the extent they were not paid all continuation wages owed under California
19 Labor Code section 203.

20 126. Plaintiff is entitled to recover the full amount of their unpaid wages, continuation
21 wages under Section 203, and interest thereon.

22 **ELEVENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Against All Defendants by Plaintiff)**

25 127. Plaintiff hereby incorporates by reference paragraphs 1-126 above, as if fully set
26 herein by reference.

27 128. The unlawful conduct of Defendants alleged herein constitutes unfair competition
28 within the meaning of California Business and Professions Code Section 17200. This unfair conduct

1 includes Defendants' use of policies and procedures which resulted in: failure to pay minimum
2 wage; failure to pay overtime wages; failure to authorize or permit, or provide, all required meal
3 periods or pay meal period premium wages; failure to authorize or permit, or provide, all required
4 rest periods or pay rest period premium wages; failure to indemnify for employment-related
5 expenses; and failure to provide accurate wage and hour statements. Due to their unfair and
6 unlawful business practices in violation of the California Labor Code, Defendants have gained a
7 competitive advantage over other comparable companies doing business in the State of California
8 that comply with their obligations to pay minimum wage; to pay overtime wages; to authorize or
9 permit, or provide, all required meal periods or pay meal period premium wages; to authorize or
10 permit, or provide, all required rest periods or pay rest period premium wages; to reimburse
11 business expenses; failure to provide accurate wage and hour statements; and failure to timely pay
12 all wages upon separation of employment.

13 129. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered
14 injury in fact and lost money or property, as described in more detail above.

15 130. Pursuant to California Business and Professions Code Section 17203, Plaintiff is
16 entitled to restitution of all wages and other monies rightfully belonging to him that Defendants
17 failed to pay him and wrongfully retained by means of his unlawful and unfair business practices.
18 Plaintiff also seeks an injunction against Defendants enjoining Defendants, and any and all persons
19 acting in concert with them, from engaging in each of the unlawful practices, policies and patterns
20 set forth herein.

21 **TWELFTH CAUSE OF ACTION**

22 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

23 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

24 **(Against all Defendants by the California Class)**

25 134. Plaintiff hereby incorporates by reference paragraphs 1-133 above, as if fully set
26 herein by reference.

27 135. During the one-year period preceding the sending of the initial notice to the LWDA
28 to the present, Defendants violated Labor Code sections 201, 202, 203, 266, 226.7, 226.8, 510, 512,

1194, 1197, 1198, and 2802, as alleged in more detail above.

136. Specifically, Defendants have committed the following violations of the California Labor Code:

137. **Willful misclassification in violation of California Labor Code section 226.8:** Plaintiff maintains that he and other aggrieved hourly non-exempt delivery drivers were willfully misclassified as independent contractors. Employers retain and exercise significant control over the details of Plaintiff's and aggrieved delivery drivers' work. Plaintiff and aggrieved delivery drivers are integral to the operation of Defendants' core business; they are hired to pick up food orders, transport, and deliver food orders in California based on restaurants, times, locations, subject to terms, and for amounts determined by Defendants.

138. Further, Defendants unilaterally set the prices charged to its customers for services rendered by Plaintiff and other aggrieved California-based delivery drivers as well as the compensation paid to the delivery drivers. Plaintiff and other aggrieved delivery drivers were required to obtain permission to take days off and were subject to discipline including termination if they failed to obtain permission. Defendants further controlled the uniform, which included Defendant's name and logo, worn by Plaintiff and other aggrieved delivery drivers while picking up food from restaurants and making deliveries.

139. Additionally, Defendants require Plaintiff and other aggrieved drivers to keep their vehicles in good working condition and to maintain vehicles at their own expense.

140. Despite Defendants' pervasive control over all aspects of its delivery services and drivers, Defendants misclassify Plaintiff and other aggrieved delivery drivers as independent contractors. However, Plaintiff maintains, he and other aggrieved delivery drivers are employees of Defendants.

141. **Failure to pay the minimum wage rate of pay for all hours worked:** In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer. Plaintiff maintains that because he and

1 other aggrieved California-based delivery drivers are employees, they are entitled to at the least
2 minimum wage for all hours worked.

3 142. Here, Defendants paid Plaintiff and other aggrieved California-based delivery drivers
4 per delivery instead for all hours worked. Moreover, Plaintiff and other aggrieved California-based
5 delivery drivers were not paid for non-delivery work Defendants required them to perform. For
6 example, Defendants required Plaintiff and other aggrieved delivery drivers to wait to be sent to a
7 restaurant with a delivery order and then wait for food orders at the restaurant all prior to beginning
8 the actual delivery process. Plaintiff and other aggrieved delivery drivers in California are not
9 separately paid for this work; rather, Defendants considered these duties “part of the job” which are
10 somehow compensated by a piece rate per delivery for “all hours worked” regardless of how much
11 time they actually spend performing these tasks.

12 143. Further, if there was an error with an order, Plaintiff and other aggrieved delivery
13 drivers were required to return to the restaurant and then to the customer without compensation. The
14 foregoing resulted in time during each workday which Plaintiff and other aggrieved California-
15 based delivery drivers were under control of Defendants but were not compensated. As a result,
16 Plaintiff is informed and believes that Defendants failed to pay him and other aggrieved California-
17 based delivery drivers for all hours worked at the minimum wage rate of pay.

18 144. **Failure to pay overtime wages for overtime hours worked:** Plaintiff maintains
19 that Defendants failed to pay him and other aggrieved delivery drivers for overtime hours worked at
20 their overtime rate of pay.

21 145. In this case, Plaintiff maintains that Defendants paid him and other aggrieved drivers
22 per delivery instead for all hours worked. Plaintiff and other aggrieved delivery drivers were not
23 paid for non-delivery work Defendants required them to perform. For example, Defendants
24 required Plaintiff and other aggrieved delivery drivers to wait to be sent to a restaurant with a
25 delivery order and then wait for food orders at the restaurant all prior to beginning the actual
26 delivery process. Plaintiff and those other aggrieved delivery drivers are not separately paid for this
27 work; rather, Defendants considered these duties “part of the job” which are somehow compensated
28 by a piece rate per delivery for “all hours worked” regardless of how much time they actually spend

1 performing these tasks. The foregoing resulted in time during each workday which Plaintiff and
2 other aggrieved delivery drivers were under control of Defendants, but were not compensated at
3 their overtime rate of pay when they worked more than eight hours in a day or 40 hours in a week.

4 **146. Failure to authorize or permit meal periods and/or failure to pay meal period**
5 **premiums:** Plaintiff maintains that during his employment, Defendants failed to maintain
6 compliant meal period polices. Plaintiff maintains that Defendants often employed him and other
7 aggrieved drivers to work shifts more than ten hours in length.

8 **147.** Here, Defendants failed to authorize or permit first meal periods prior to their sixth
9 hour of work when Plaintiff and other aggrieved delivery drivers worked shifts more than five hours
10 in length and second meal periods when they worked shifts in excess of 10 hours. Moreover,
11 Defendants failed to provide a “premium” wage (one hour of pay at the employee’s regular rate of
12 pay) for missed first and/or second meal periods for qualifying shifts.

13 **148. Failure to authorize or permit rest periods and/or failure to pay rest period**
14 **premiums:** Plaintiff maintains that Defendant did not authorize or permit their delivery drivers to
15 take 10-minute paid rest periods for every four hours of work or major fraction thereof. As a result,
16 Plaintiff and other similarly situated delivery drivers of Defendants were often unable to take
17 compliant rest periods. At no time did Defendants provide a “premium” wage (one hour of pay at
18 the employee’s regular rate of pay) for missed rest periods.

19 **149. Failure to indemnify employees for employment-related expenditures:** Plaintiff
20 maintains that Defendants failed to reimburse him and other aggrieved delivery drivers for all
21 necessary expenditures or losses incurred by them in discharge of their duties or at the obedience of
22 the directions of the Defendants in violation of Labor Code §2802. Plaintiff maintains that he and
23 other aggrieved delivery drivers were required to pay necessary employment-related expenses in the
24 discharge of their duties including, but not limited to, the following: car maintenance, purchasing
25 the uniform, maintaining and cleaning the uniform, gas, parking fees, and cell phone usage. For
26 Plaintiff and other aggrieved delivery drivers, these costs are significant. Defendants employed
27 policies and procedures which ensured Plaintiff and those other aggrieved delivery drivers would
28 not receive indemnification for the aforementioned necessary expenditures. This practice resulted in

1 Plaintiff and all other aggrieved drivers not receiving such indemnification in compliance with
2 California law.

3 150. **Failure to provide accurate wage statements:** In addition to the aforementioned
4 derivative wage statement violations, Defendants provided Plaintiff and other aggrieved delivery
5 drivers with paystubs that did not reflect (1) the total hours worked by the employee; (2) the number
6 of piece-rate units earned (and any applicable piece rate if the employee is paid on a piece-rate
7 basis); (3) all deductions; (4) net wages earned; (5) the employees' last four digits of his or her
8 social security number, or an employee identification number other than a social security number on
9 the itemized statement; (6) the name and address of the legal entity that is the employer; and (7) all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate by the employee.

12 151. **Failure to timely pay final wages:** As a result of Defendants' aforementioned
13 violations of the California Labor Code, Plaintiff was not paid his final wages pay in a timely
14 manner. The wages for all hours worked, including overtime hours worked, premium wages for
15 missed meal and rest periods, and indemnification for employment-related expenditures (all
16 described above) were not paid at the time of separation. Plaintiff is informed and believes other
17 delivery drivers who separated from the Defendants, whether voluntarily or involuntarily, were not
18 paid all wages due in a timely manner, including wages for all hours worked, including overtime
19 hours worked, and premium wages for missed meal and rest periods.

20 152. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee,
21 on behalf of himself or herself and other current or former employees, to bring a civil action to
22 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
23 section 2699.3.

24 153. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
25 section 2699.3. Plaintiff filed notice on September 10, 2021 with the Labor and Workforce
26 Development Agency ("LWDA") giving the LWDA written notice of the specific provisions of the
27 Labor Code alleged to have been violated, including the facts and theories to support the alleged
28 violations. Plaintiff sent the notices to Defendants by certified mail.

1 154. Pursuant to Labor Code section 2699.3, LWDA must give written notice by certified
2 mail to the parties that it intends to investigate the alleged violations of the Labor Code within sixty-
3 five (65) days of the date of the aggrieved employee or representative's written notice and/or the
4 employer may attempt to cure for certain violations. LWDA failed to provide the parties notice
5 within sixty-five (65) days of the date of Plaintiff's PAGA Claim Notice that it intended to
6 investigate Plaintiff's claims and/or Defendants failed to cure any of the alleged violations which
7 could have been cured.

8 155. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks civil penalties for
9 Defendants' violations of Labor Code 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1194, 1197, 1198,
10 and 2802 for the one (1) year preceding the filing of the PAGA Claim Notice with LWDA, in the
11 following amounts:

12 (a) For violations of Labor Code section 226.8, not less than five thousand
13 dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, unless
14 there is a determination that there is a pattern or practice to such violations, in which case the
15 penalties are not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
16 dollars (\$25,000) per violation [penalty amounts established by Labor Code sections 226.8(b) and
17 (c)];

18 (b) For violations of Labor Code sections 201, 202, 203, 226.7, and 1198, one
19 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
20 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation
21 [penalty amounts established by Labor Code section 2699(f)(2)];

22 (c) For violations of Labor Code section 226(a), seven hundred fifty dollars
23 (\$750) for each employee [penalty amounts established by Labor Code section 226(f)];

24 (d) For violations of Labor Code section 510, 512, and 1194, fifty dollars (\$50)
25 for each employee for each pay period for the initial violation, and for each subsequent violation,
26 one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
27 established by Labor Code section 558]; and

28 ///

1 (e) For violations of Labor Codes sections 1194 and 1197, one hundred dollars
2 (\$100) for each employee per pay period for the initial violation and two hundred dollars (\$200) for
3 each employee per pay period for each subsequent violation [penalty amounts established by Labor
4 Code section 1197.7].

5 156. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
6 reasonable attorney's fees and costs in connection with his claims for civil penalties.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON BEHALF OF THOSE**
9 **SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

10 **ON THE FIRST CAUSE OF ACTION:**

11 1. That the Court issues an Order declaring that Defendants misclassified Plaintiff as an
12 “independent contractor,” when, in fact, they were Defendants’ employees.

13 **ON THE SECOND CAUSE OF ACTION:**

14 1. Defendants be found to have violated the misclassification provisions of the
15 California Labor Code as to Plaintiff; and

16 2. For any and all legally applicable penalties.

17 **ON THE THIRD CAUSE OF ACTION:**

18 1. That Defendants be found to have violated the minimum wage provisions of the
19 California Labor Code and the IWC Wage Order as to Plaintiff;

20 2. For damages, according to proof, including but not necessarily limited to unpaid
21 wages;

22 3. For any and all legally applicable penalties;

23 4. For liquidated damages pursuant to California Labor Code section 1194.2;

24 5. For pre-judgment interest, including but not limited to that recoverable under
25 California Labor Code section 1194, and post-judgment interest;

26 6. For attorneys’ fees and costs of suit, including but not limited to that recoverable
27 under California Labor Code section 1194;

28 ///

7. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 218.6, and post-judgment interest; and

8. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the overtime provisions of the California Labor Code and the Wage Order as to Plaintiff;

2. For damages, according to proof, including unpaid premium wages;

3. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 1194, and post-judgment interest; and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the California Labor Code and the Wage Order as to Plaintiff;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the California Labor Code and the Wage Order as to Plaintiff;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 218.6, and post-judgment interest; and

1 5. For such and other further relief, in law and/or equity, as the Court deems just or
2 appropriate.

3 **ON THE SEVENTH CAUSE OF ACTION:**

4 1. That the Defendants be found to have violated the indemnification provisions of the
5 Labor Code and the IWC Wages Orders as to the Plaintiff;

6 2. For damages, according to proof, including unpaid use of class members' vehicles,
7 gasoline, maintenance, insurance, and other expenses;

8 3. For any and all legally applicable penalties;

9 4. For pre-judgment interest, including but not limited to that recoverable under
10 California Labor Code section 2802, and post-judgment interest;

11 5. For attorneys' fees and costs of suit, including but not limited to that recoverable
12 under Labor Code section 2802; and

13 6. For such and other further relief, in law and/or equity, as the Court deems just or
14 appropriate.

15 **ON THE EIGHTH CAUSE OF ACTION:**

16 1. That Defendants be found to have violated Labor Code 204 as to Plaintiff;

17 2. For damages, according to proof;

18 3. For any and all legally applicable penalties, including but not limited to those
19 recoverable pursuant to Labor Code section 210(a);

20 4. For pre-judgment interest, including but not limited to that recoverable under Labor
21 Code section 218.6, and post-judgment interest; and

22 5. For such other further relief, in law and/or equity, as the Court deems just or
23 appropriate.

24 **ON THE NINTH CAUSE OF ACTION:**

25 1. That Defendants be found to have violated the provisions of the California Labor
26 Code regarding accurate itemized paystubs as to Plaintiff;

27 2. For damages and/or penalties, according to proof, including damages and/or
28 statutory penalties under California Labor Code section 226(e) and any other legally applicable

1 damages or penalties;

2 3. For pre-judgment interest and post-judgment interest;

3 4. For attorneys' fees and costs of suit, including but not limited to that recoverable
4 under California Labor Code section 226(e); and

5 5. For such and other further relief, in law and/or equity, as the Court deems just or
6 appropriate.

7 **ON THE TENTH CAUSE OF ACTION:**

8 1. That Defendants be found to have violated the provisions of the California Labor
9 Code regarding payment of all unpaid wages due upon resignation or termination as to Plaintiff;

10 2. For damages and/or penalties, according to proof, including damages and/or
11 statutory penalties under California Labor Code section 203 and any other legally applicable
12 damages or penalties;

13 3. For pre-judgment interest, including under California Labor Code section 218.6, and
14 post-judgment interest; and

15 4. For such and other further relief, in law and/or equity, as the Court deems just or
16 appropriate.

17 **ON THE ELEVENTH CAUSE OF ACTION:**

18 1. That Defendants be found to have violated California Business and Professions Code
19 section 17200, et seq., for the conduct alleged herein;

20 2. A declaratory judgment that the practices complained herein are unlawful;

21 3. An injunction against Defendants enjoining them, and any and all persons acting in
22 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
23 herein;

24 4. For restitution to the full extent permitted by law; and,

25 5. For such and other further relief, in law and/or equity, as the Court deems just or
26 appropriate.

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1 **ON THE TWELFTH CAUSE OF ACTION:**

2 1. That the Defendants be found to have violated the provisions of the Labor Code and
3 the IWC Wages Orders as to the Plaintiff and current or former aggrieved employees;

4 2. For any and all legally applicable penalties, including but not limited to that
5 recoverable under California Labor Code section 2699(f), 201, 202, 226.7, 226.8, 510, 512, 1194,
6 1197, and 2802;

7 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
8 under California Labor Code section 2699(g); and

9 4. For such and other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11
12
13 Dated: March 4, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

14
15
16 By: 
17 Joseph Lavi, Esq.
18 Vincent C. Granberry, Esq.
19 Melissa A. Huether, Esq.
20 Attorneys for PLAINTIFF
ALEJANDRO ESCOBAR MORENO, on
behalf of himself and other aggrieved
employees

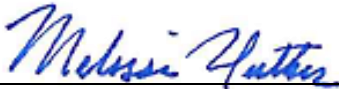
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DEMAND FOR JURY TRIAL

PLAINTIFF ALEJANDRO ESCOBAR MORENO demands a trial by jury for himself and the California Class on all claims so triable.

Dated: March 4, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Melissa A. Huether, Esq.
Attorneys for PLAINTIFF
ALEJANDRO ESCOBAR MORENO, on
behalf of himself and other aggrieved
employees

2 **PROOF OF SERVICE**3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**4 I am an employee in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200,
Beverly Hills, California 90211.

6 On March 4, 2022, I served the foregoing documents, described as:

7 **“PLAINTIFF ALEJANDRO ESCOBAR MORENO’S FIRST AMENDED COMPLAINT**
8 **FOR DAMAGES, RESTITUTION”**9 on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed
as follows:10 *Counsel for Defendants:*11 Damon M. Ott, Bar No. 215392
12 dott@littler.com
13 Philip B. Baldwin, Bar No. 307920
14 pbaldwin@litter.com
15 LITTLER MENDELSON P.C.
16 333 Bush Street, 34th Floor
San Francisco, California 94104
Telephone: 415.433.1940
Fax No.: 415.399.849017 P. Dustin Bodaghi, Bar No. 271501
18 dbodaghi@littler.com
19 LITTLER MENDELSON P.C.
18565 Jamboree Road, Suite 800
Irvine, California 92612
Telephone: 949.705.3000
Fax No.: 949.724.120122 ☒ **(BY MAIL)** As follows:23 I placed such envelope, with postage thereon prepaid, in the United States mail at Los
24 Angeles, California.25 I am “readily familiar” with the firm’s practice of collecting and processing correspondence
26 for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that
27 same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary
28 course of business. I am aware that, on motion of the party served, service is presumed
invalid if the postal cancellation or postage meter date is more than one day after the date of
deposit for mailing in this affidavit.



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

Executed March 4, 2022, at Beverly Hills, California


J. Cesar Flores