

BLANCHARD, KRASNER & FRENCH
David C. Hawkes; SBN: 224241
dhawkes@bkflaw.com
800 Silverado St., 2nd Floor
La Jolla, CA 92037
Telephone: (858) 551-2440
Facsimile: (858) 614-7008

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/24/2022 at 04:19:00 PM

Clerk of the Superior Court
By Vanessa Sezenol, Deputy Clerk

LAW OFFICE OF DAVID A. HUCH
David A. Huch; SBN: 222892
david.a.huch@gmail.com
12223 Highland Ave., Ste. 106-574
Rancho Cucamonga, CA 91739
Telephone: (909) 463-6363
Facsimile: (909) 614-7008

Attorneys for Plaintiff, FRANCISCO LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

FRANCISCO LOPEZ, Individually and On) Case No. 37-2022-00010284-CU-OE CTL
Behalf of All Others Similarly Situated,)

Plaintiffs,

v.

VELOCITY TRANSPORT LLC;
AMAZON.COM, LLC; AMAZON
LOGISTICS, INC.; and Does 1 through 20,
inclusive,

Defendants.

CLASS ACTION

FIRST AMENDED COMPLAINT FOR
COMPENSATORY DAMAGES,
PENALTIES, RESTITUTION &
INJUNCTIVE RELIEF:

- 1. Failure to Pay Overtime in Violation of**
Cal. Labor Code §§ 510 & 1194;
- 2. Failure to Provide Regular Pay/Minimum**
Wages in Violation of Labor Code §§
1182.11, 1182.12, 1194, 1194.2, 1197,
1197.1; Cal. Code Regs. tit. 8, § 11090;
- 3. Failure to Provide Meal Periods, Or**
Compensation in Lieu Thereof, in
Violation of Labor Code §§ 226.7 and
512;
- 4. Failure to Authorize and Permit Rest**
Periods, Or Compensation in Lieu
Thereof (Cal. Labor Code § 226.7);

- 1) 5. Failure to Provide Accurate Itemized
2) Wage Statements (Cal. Labor Code § 226
3) and 226.3);
4) 6. Failure to Pay Compensation When Due
5) at Time of Separation of Employment
6) (Cal. Labor Code §§ 201-203);
7) 7. Unlawful and Unfair Business Practices
8) (Cal. Bus. & Prof. Code § 17200 et seq.);
9) 8. Labor Code Private Attorneys General
10) Act of 2004 (Labor Code § 2698 et seq.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
- JURY TRIAL DEMANDED**
[Unlimited Civil Action]

Plaintiff, FRANCISCO LOPEZ, on his own behalf, all others similarly situated, on behalf of the State of California and all aggrieved, and on behalf of the general public, alleges causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS

1. This is a class action and state enforcement action brought by Plaintiff FRANCISCO LOPEZ ("Plaintiff") individually, on behalf of the State of California and all aggrieved employees, and on behalf of current and former non-exempt employees of Defendants Amazon.com, LLC, Amazon Logistics, Inc. (together, "Amazon"), and Velocity Transport LLC, (together, with Amazon, "Defendants") during the Class Period of March 17, 2018 to the present ("Class Period") and the Labor Code Private Attorneys General Act of 2004 Period of March 17, 2021 to the present ("PAGA Period").

2. At all relevant times, Defendants have failed to pay Plaintiff and other similarly situated employees for the actual number of hours worked, regular and overtime, during the Class Period. These California employees have had their work time, including overtime hours, unlawfully reduced by Defendants. Furthermore, Defendants also unlawfully instructed their current and former non-exempt employees to record inaccurate, reduced hours in order to avoid paying all wages due to such employees, including overtime compensation.

3. At all relevant times, Plaintiff and other similarly situated employees have also been required by Defendants to work during meal periods and rest periods. Defendants' employees have not received their state-mandated meal periods of an uninterrupted thirty minutes within the first five

1 hours of daily work periods lasting more than five hours, and have not received a second meal period
2 within the first ten hours of daily work periods lasting more than ten hours. Defendants' employees
3 have not receive their state-mandated rest period of an uninterrupted ten minutes' rest during every
4 four hour work period, or major fraction thereof.

5 4. At all relevant times, Defendants have failed to include Plaintiff's and similarly
6 situated employees' non-discretionary bonus monies when calculating such employees' overtime
7 rates of pay and sick pay. As a matter of law, bonus compensation received by Plaintiff and other
8 similarly situated employees must be included in the "regular rate of pay." Defendants' failure to do
9 so has resulted in a systemic underpayment of overtime compensation and sick pay to Plaintiff and
10 other similarly situated employees.

11 5. At all relevant times, Defendants unlawfully implemented alternative workweek
12 schedules ("AWS") that failed to comply with the strict requirements contained in California Labor
13 Code Section 511 and California Industrial Welfare Commission Occupational Wage Order No. 9-
14 2001 (Title 8, California Code of Regulations § 11090 and Cal. Labor Code Section 511. As a result,
15 Defendants AWS should be nullified and Defendants are liable to Plaintiff and similarly situated
16 employees for all overtime hours not paid by Defendants due to their improper reliance on unlawfully
17 implemented AWS.

18 6. The policies and practices of Defendants, as alleged herein, are unlawful, unfair and
19 deceptive business practices whereby Defendants have retained wages due to Plaintiff and other
20 similarly situated employees for all hours worked, including overtime compensation; and all missed
21 meal and rest periods. Defendants' unlawful, unfair and deceptive employment and wage practices
22 cheat Plaintiff and other members of the proposed Classes out of their lawful compensation due, as
23 required by California law. Plaintiff therefore seeks an injunction enjoining such conduct by
24 Defendants in the future, restitution for the named Plaintiff and all members of the proposed Classes,
25 and all other appropriate equitable relief.

26 7. Defendants' unlawful deduction of Plaintiff's and other similarly situated employees'
27 recorded work hours, unlawful manipulation of contemporaneously recorded time records, unlawful
28

1 failure to calculate the proper overtime rate, and failure to compensate employees for untimely and
2 missed meal and rest breaks have also resulted in Defendants' intentional issuance of inaccurate
3 wage statements to Plaintiff and other similarly situated employees, and willful failure to pay all
4 wages due and owing to such employees at the time of separation of employment.

5 **IDENTIFICATION OF THE PARTIES**

6 8. Plaintiff FRANCISCO LOPEZ is a competent adult who resides in the City and
7 County of San Diego, State of California. During the time period of November 2019 to November
8 2021, Plaintiff was employed by Defendants in the County of San Diego, State of California as an
9 hourly, non-exempt delivery associate. Plaintiff was paid in whole or in part on an hourly basis and
10 received additional compensation from Defendants in the form of non-discretionary bonuses.

11 9. Defendant VELOCITY TRANSPORT LLC ("Velocity") is a limited liability
12 company organized under the laws of California with principal offices in La Mesa, California in San
13 Diego County. Velocity provides Delivery Associates to Amazon as a Delivery Service Provider
14 ("DSP").

15 10. Defendant AMAZON.COM, LLC is a limited liability company with principal
16 offices in Seattle, Washington, which operates throughout the United States, including in San Diego
17 County.

18 11. Defendant AMAZON LOGISTICS, INC. is a Delaware corporation with principal
19 offices in Seattle, Washington, which operates throughout the United States, including in San Diego
20 County.

21 12. The unlawful acts alleged in this Complaint were committed by Defendants and/or
22 Defendants' officers, agents, employees, or representatives, while actively engaged in the
23 management of Defendants' businesses or affairs and with the authorization of the Defendants.

24 13. Defendants jointly employed Plaintiff and have jointly employed numerous other
25 Delivery Associates in California during the four years preceding the filing of this class action.
26 Plaintiff and other similarly situated employees have been employed by Defendants to deliver
27 packages to Amazon customers.

14. Amazon's unlawful scheme is to attempt to avoid responsibility for paying its Delivery Associates in accordance with applicable wage and hour laws by attempting to contract out that responsibility to third-party Delivery Service Providers ("DSP"), such as Defendant Velocity, who, in turn, routinely violate California's strict wage and hour laws.

15. Defendants failed to comply with California's strict wage and hour laws and failed to pay non-exempt Delivery Associates for all the time they worked – including overtime – as was required to deliver hundreds of Amazon packages each day and meet Amazon's delivery needs throughout California.

16. Defendants employ individuals engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person, as described by 29 U.S.C. §§ 206-207.

17. Defendants' annual gross sales exceed \$500,000.

18. Plaintiff does not know the true names and capacities of Defendants sued herein as DOES 1 through 20, inclusive, and will amend this Complaint to set forth the true names and capacities of said Defendants, along with the appropriate charging allegations when the same have been ascertained.

19. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants was in some manner legally responsible for the actionable and unlawful actions, policies and practices as alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of said Defendants, along with the appropriate charging allegations, when the same have been ascertained.

20. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, all Defendants, and each of them, were acting as the agent and/or employee of each remaining co-defendant, and were acting with permission and consent of each other, and within the course and scope of said agency and/or employment. Plaintiff is further informed and believes that each co-defendant, by and through its officers, directors or managing agents, ratified, authorized and approved, expressly or implicitly, all of the conduct alleged herein.

1 21. When in this Complaint reference is made to any act of the “Defendants,” such shall
2 be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants
3 named in this lawsuit committed or authorized such acts, or failed and omitted to adequately
4 supervise or properly control or direct their employees while engaged in the management, direction,
5 operation or control of the affairs of the Defendants and did so while acting within the scope of their
6 employment or agency.

7 22. When in this Complaint reference is made to any act by a “Defendant” or
8 “Defendants,” such allegations and reference shall also be deemed to mean the acts and failures to
9 act of each of the named Defendants acting individually, jointly and severally.

10 **JURISDICTION AND VENUE**

11 23. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs

12 24. This Court has jurisdiction over all causes of action asserted herein pursuant to
13 California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to other
14 trial courts.

15 25. This Court has jurisdiction over Defendants because each co-defendant is a
16 corporation, limited liability company or other business entity authorized to do business in the State
17 of California and registered with the California Secretary of State to do sufficient business with
18 sufficient minimum contacts in California, and/or otherwise intentionally avail itself of the California
19 market to render the exercise of jurisdiction by the California courts consistent with traditional
20 notions of fair play and substantial justice.

21 26. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
22 Civil Procedure § 395. Defendants’ actionable and unlawful employment practices as to Plaintiff
23 and numerous other employees occurred throughout the County of San Diego, State of California.

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

RELEVANT FACTS

28. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

29. Amazon is one of the largest businesses engaged in the interstate shipment of goods in the United States.

30. Amazon holds itself out as a company able to transport goods across the United States to customers in a short time period.

31. Amazon and Delivery Service Providers are in the business of delivering goods across the United States.

32. Amazon relies on Delivery Service Providers, such as Velocity, for the essential services of transporting goods from Amazon warehouses to Amazon customer's doors as quickly as possible.

33. Delivery Service Providers' delivery services are an integral part of Amazon's business purpose; without the use of Delivery Service Providers like Velocity, Amazon could not get their goods to their customers.

34. Amazon attempts to shield itself from liability by utilizing companies, such as Velocity, to provide the employees to transport their goods.

35. Velocity provides delivery services for Amazon at one or more of Amazon's Delivery Stations through the use of Delivery Associates such as Plaintiffs and members of the proposed Classes.

36. Delivery Associates are engaged to fulfill Amazon's nationwide delivery needs and make deliveries of goods from Amazon delivery stations to Amazon customers.

37. Delivery Associates work in the transportation industry.

38. The goods that Delivery Associates deliver are purchased by customers using Amazon's digital platform (the Amazon.com website).

39. As required by Amazon, Velocity provides Delivery Associates, such as Plaintiffs and other Delivery Associates, with a vehicle.

40. Plaintiff was hired in November 2019 and worked as a Delivery Associate for

1 Velocity until on or about November 2021 in one of Amazon's California Delivery Stations, making
2 deliveries of packages on behalf of Amazon.

3 41. Plaintiffs worked out of Amazon's Delivery Stations in San Diego County.

4 42. The goods Delivery Associates deliver from Amazon delivery stations to Amazon
5 customers are not transformed or modified during the shipping process. Delivery Associates deliver
6 goods to Amazon customers in the same condition as they were shipped to the Amazon delivery
7 station.

8 43. Delivery Associates deliver goods to Amazon customers that were shipped around
9 the United States.

10 44. Delivery Associates drive vehicles in order to deliver Amazon packages, which is
11 vital to the commercial enterprise of the Delivery Service Provider and Amazon.

12 45. Plaintiffs and other Delivery Associates are necessary in order for Amazon goods
13 traveling interstate make it to their final destination.

14 46. At all relevant times, Amazon has been affiliated with and/or operating with Velocity,
15 with respect to Plaintiffs and other similarly situated employees such that Amazon and Velocity, are
16 the "joint employers" of Plaintiffs and other similarly situated employees.

17 47. Delivery Associates are provided with and are required to use an Amazon.com
18 "Rabbit," a handheld device that provides the addresses of Amazon.com customers. The "Rabbit" is
19 also used for navigation assistance, package scanning, and as a phone. The "Rabbit" also allows
20 Amazon to contact and track a Delivery Associate's movement and work progress.

21 48. Amazon has direct access to the "Rabbit" devices, which are given to and used by
22 each Delivery Associate.

23 49. Amazon sets the delivery route that the Delivery Associate will complete.

24 50. Amazon assigns and provides routes to Delivery Service Providers, including
25 Velocity.

26 51. Amazon supervises and controls the work activities, work schedules, conditions and
27 management of Delivery Associates.

1 52. The nature of the work performed by Delivery Associates is similar and standardized
2 at each of the Amazon Delivery Stations where Velocity provides services for Amazon, as the nature
3 of the work is centrally controlled and directed by Defendants.

4 53. Plaintiffs and other Delivery Associates began their shifts at a designated Amazon
5 Delivery Station, where they picked up their assigned van, a handheld scanning device ("rabbit"),
6 and packages.

7 54. For a period of time during Plaintiff's employment, Plaintiffs and other Delivery
8 Associates began their shifts at an off-site location away from the Delivery Station. There, Plaintiffs
9 and other Delivery associates were required to, among other tasks, park their personal vehicles at the
10 offsite lot, collect their handheld "Rabbit" scanning devices and route sheets, and then drive to the
11 Delivery Station before checking in at the dispatch desk.

12 55. Plaintiff regularly worked more than eight (8) hours each workday, sometimes as
13 much as thirteen (13) hours a workday. Plaintiffs observed that other Delivery Associates routinely
14 worked similar hours.

15 56. Plaintiff regularly worked more than forty (40) hours per week. Plaintiff observed
16 that other Delivery Associates routinely worked similar hours.

17 57. Even after Plaintiff and other Delivery Associates finished delivering their assigned
18 packages, Velocity required them to "rescue" other Delivery Associates by going to meet another
19 Delivery Associate in the field to help deliver some of their packages. Plaintiff was directed to
20 "rescue" other Delivery Associates and has observed other Delivery Associates also perform rescues.

21 58. Upon returning to the Amazon Delivery Station, Plaintiff and other Delivery
22 Associates had to unload their vans and wait in line to check in with Velocity and Amazon
23 supervisors concerning the day's route before driving back to the off-site parking lot.

24 59. Plaintiff observed that other Delivery Associates routinely worked similar schedules.

25 60. Defendants were not only aware of and permitted this practice, but the work schedules
26 and conditions imposed by Defendants effectively required this practice.

27 61. Due to the volume of work, Plaintiff and other similarly situated Delivery Associates
28

1 were unable to take rest breaks and routinely worked through their meal periods. Plaintiff observed
2 that other Delivery Associates routinely worked through their breaks and meal period.

3 62. Plaintiff and other Delivery Associates were required to work in excess of five
4 consecutive hours a day without being provided a thirty (30) minute, continuous and uninterrupted,
5 duty free meal period for every five (5) hours of work.

6 63. Defendants also failed to authorize and permit Plaintiff and other Delivery Associates
7 to take timely and duty-free rest periods. Defendants regularly required Plaintiff and other Delivery
8 Associates to work in excess of four (4) consecutive hours a day without allowing Plaintiff and other
9 Delivery Associates to take a ten (10) minute, continuous and uninterrupted rest period every four
10 (4) hours, or major fraction thereof.

11 64. Plaintiff and other Delivery Associates regularly worked more than eight hours per
12 day and/or 40 hours per week.

13 65. Defendants did not compensate Plaintiff and other Delivery Associates for all hours
14 worked.

15 66. Defendants did not accurately record and track all of the hours worked by Plaintiff
16 and other Delivery Associates and therefore failed to compensate Plaintiff and Class members at
17 one-and one-half times the regular rate of pay for hours worked over eight (8) hours in a workday
18 and/or forty (40) hours in a workweek.

19 67. Delivery Associates were not paid for all hours worked and were not paid overtime,
20 as required by law.

21 68. With a few limited exceptions, all remuneration given to an employee must be
22 included in the employee's regular rate calculation. 29 U.S.C. § 207(e); 29 C.F.R. § 778.

23 69. Plaintiff and other similarly situated Delivery Associates are eligible for non-
24 discretionary bonuses working as a Delivery Associate for Defendants.

25 70. Plaintiff worked more than eight (8) hours per day and more than forty (40) hours per
26 workweek during numerous workweeks in which he received non-discretionary bonuses. The
27 number of workweeks in which Plaintiffs worked more than eight (8) hours per day and forty (40)
28

1 hours per week and received non-discretionary bonuses is far higher, although not reflected on
2 Plaintiff's earning statements since Defendants routinely failed to record and pay Plaintiff for all
3 compensable work.

4 71. Failing to include non-discretionary bonuses in the regular rate of pay is a violation
5 of California law with respect to the payment of overtime pay and sick pay.

6 72. Accordingly, Defendants routinely failed to pay Plaintiff one and one-half (1½) times
7 the regular rate for hours worked over eight (8) hours per day and forty (40) hours per workweek.

8 73. Defendants failed to furnish Plaintiff and other Delivery Associates with accurate,
9 itemized wage statements showing all applicable hourly rates, and all gross and net wages earned.

10 CLASS ACTION ALLEGATIONS

11 74. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

12 75. Plaintiff brings this suit as a class action pursuant to California Code of Civil
13 Procedure § 382 on behalf of himself and all individuals who are or previously were employed by
14 Defendants in the State of California as non-exempt delivery associates (and similar positions). The
15 class period applicable to the Classes is defined as the period beginning four years prior to the filing
16 of this Complaint and ending on the date as determined by the Court.

17 76. The putative class and subclass Plaintiff will seek to certify are currently composed
18 of and defined as follows:

- 19 **a. All current and former Delivery Associates (and similar positions**
20 **and job titles) who were paid by Defendant Velocity Transport LLC**
21 **to deliver packages for Amazon in California during the applicable**
22 **limitations period (hereinafter, the "CLASS").**
- 23 **b. All formerly employed Delivery Associates (and similar positions**
24 **and job titles) who were paid by Defendant Velocity Transport LLC**
25 **to deliver packages for Amazon in California during the applicable**
26 **limitations period (hereinafter, the "FORMER EMPLOYEE**
27 **SUBCLASS").**
- 28 **c. All current and former Delivery Associates (and similar positions**
and job titles) who were paid bonus compensation payments by
Defendant Velocity Transport LLC during the same pay period in
which they worked overtime hours during the applicable
limitations period (hereinafter, the "BONUS PAY SUBCLASS").

77. Numerosity: The potential number of members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS as defined is so numerous that joinder of all members would be unfeasible and unpractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS is currently unknown to Plaintiff; however, it is estimated that there are at least 400 members in the CLASS, and at least 200 members in the FORMER EMPLOYEE SUBCLASS and 300 members in the BONUS PAY SUBCLASS. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' employment records, which Defendants are required to maintain under California law.

78. Typicality: The claims of Plaintiff are typical of the claims of all members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS mentioned herein because all members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS sustained injuries and damages arising out of Defendants' common course of conduct in violation of California wage and hour law, and the injuries and damages of all members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS were caused by Defendants' wrongful conduct in violation of California statutory and regulatory law, as alleged herein.

79. Adequacy: Plaintiff is an adequate representative of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS and will fairly protect the interests of the members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS, and has no interests antagonistic to the members of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS, and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

80. Superiority. The nature of this action and the nature of the laws available to Plaintiff make the use of the class action format a particularly effective and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein:

- 1 a. This case involves large corporate Defendants and a large number of
2 individual class members with common issues of law and fact.
- 3 b. If each individual member of the CLASS was required to file an individual
4 lawsuit, the large corporate Defendants would necessarily gain an
5 unconscionable advantage because Defendants would be able to exploit and
6 overwhelm the limited resources of each member of the CLASS with
7 Defendants' vastly superior financial and legal resources.
- 8 c. Requiring each individual member of the CLASS to pursue an individual
9 remedy would also discourage the assertion of lawful claims by the members
10 of the CLASS who would be disinclined to pursue an action against
11 Defendants because of an appreciable and justifiable fear of retaliation and
12 permanent damage to their lives, careers and well being;
- 13 d. Proof of a common business practice or factual pattern, of which the members
14 of the CLASS, FORMER EMPLOYEE SUBCLASS and BONUS PAY
15 SUBCLASS experienced, is representative of the CLASS, FORMER
16 EMPLOYEE SUBCLASS and BONUS PAY SUBCLASS herein and will
17 establish the right of each of the members of CLASS, FORMER EMPLOYEE
18 SUBCLASS and BONUS PAY SUBCLASS to recover on the causes of
19 action alleged herein; and
- 20 e. The prosecution of separate actions by the individual members of the
21 CLASS, even if possible, would create a substantial risk of inconsistent and
22 varying verdicts or adjudications with respect to the individual members of
23 the CLASS against Defendants, which would establish potentially
24 incompatible standards of conduct for Defendants and/or legal
25 determinations with respect to individual members of the CLASS.
- 26
27
28

1 Existence and Predominance of Common Questions of Fact and Law:

2 81. There are common questions of fact and law as to the members of the CLASS, which
3 predominate over questions affecting only individual members of the CLASS including, without
4 limitation:

- 5 a. Whether the work hours of the members of the CLASS were unlawfully reduced by
6 Defendants;
- 7 b. Whether Defendants unlawfully instructed the members of the CLASS to record
8 and submit hours less than those actually worked;
- 9 c. Whether the members of the CLASS were paid wages for all hours worked;
- 10 d. Whether the members of the CLASS were provided with uninterrupted 30-minute
11 meal periods within the first five hours of daily work periods lasting longer than six
12 hours;
- 13 e. Whether Defendants implemented and adopted an alternative work agreement that
14 failed to meet the requirement of Section 3(B), entitled "*Alterative Work*
15 *Schedules*" of the applicable California Industrial Welfare Commission
16 Occupational Wage Order or California Labor Code section 511;
- 17 f. Whether the AWS should be nullified because of Defendants' failure to comply with
18 California's strict voting and notice requirements;
- 19 g. Whether Defendants have failed to keep accurate time records showing when
20 members of the CLASS begin and end each meal periods;
- 21 h. Whether the members of the CLASS were authorized and permitted to take 10-
22 minute rest periods during every four hour period, or major fraction thereof;
- 23 i. Whether Defendants have provided wage compensation to the members of the
24 CLASS for work shifts in which meal periods and/or rest periods were not
25 provided;
- 26 j. Whether Defendants required members of the CLASS to work through their meal
27 periods and rest periods;
- 28

- 1 k. Whether members of the CLASS were lawfully reimbursed for all work related
2 expenses, including use of their personal vehicles and personal cell phones in the
3 course of their work duties for Defendants;
- 4 l. Whether Defendants knowingly and intentionally failed to furnish accurate,
5 itemized wage statements to members of the CLASS;
- 6 m. Whether Defendants paid all wages due and owing to members of the FORMER
7 EMPLOYEE SUBCLASS at the time of separation of employment, in accordance
8 with Labor Code §§ 201-203;
- 9 n. Whether Defendants' conduct constituted unfair or unlawful business practices
10 within the meaning of Business & Professions Code § 17200 *et seq.*;
- 11 o. Whether the members of the CLASS are entitled to compensatory damages, and if
12 so, the means of measuring such damages;
- 13 p. Whether the members of the CLASS are entitled to injunctive relief;
- 14 q. Whether the members of the CLASS are entitled to restitution;
- 15 r. Whether the members of the CLASS are entitled to disgorgement of profits;
- 16 s. Whether the members of the FORMER EMPLOYEE SUBCLASS are entitled to
17 "waiting time penalties;"
- 18 t. Whether Defendants are liable for pre-judgment interest; and
- 19 u. Whether Defendants are liable for attorneys' fees and costs.

20 **FIRST CAUSE OF ACTION**

21 (Failure to Pay Overtime Compensation)

22 (On Behalf of Plaintiff, the CLASS and the BONUS PAY SUBCLASS)

23 82. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

24 83. As set forth herein, Defendants' policy and practice has been to intentionally and
25 uniformly deny payment of wages due for hours worked, including overtime hours worked, to non-
26 exempt employees. This has been done in an illegal attempt to avoid payment of earned wages,
27 overtime compensation and other benefits in violation of the California Labor Code and Industrial
28 Welfare Commission requirements.

1 84. Plaintiff alleges, on the basis of information and belief, that at all relevant times
2 Defendants have continuously engaged in the regular practice of requiring, suffering or permitting
3 members of the CLASS to accrue work hours but Defendants have unlawfully failed to pay wages
4 earned to CLASS members, including Plaintiff, for all hours worked in violation of Labor Code §
5 204 and applicable Industrial Welfare Commission requirements. The actual work hours of the
6 members of the CLASS are evidenced by Defendants' records and witnessed by management, who
7 unlawfully reduced CLASS members' recorded hours, and who instructed Plaintiff and members of
8 the CLASS to exclude work time from their time records.

9 85. Plaintiff alleges, on the basis of information and belief, that at all relevant times
10 Defendants have continuously engaged in the regular practice of requiring, suffering or permitting
11 members of the HOURLY CLASS and Plaintiff to work hours in excess of eight hours per day and/or
12 40 hours per week. Despite CLASS members and Plaintiff regularly working hours in excess of eight
13 hours per day and/or 40 hours per week, Defendants have unlawfully failed to pay overtime
14 compensation to the CLASS, including Plaintiff, for all overtime hours worked in violation of Labor
15 Code § 510 and applicable Industrial Welfare Commission requirements. The actual overtime hours
16 of the members of the CLASS are evidenced by Defendants' records and witnessed by management,
17 who unlawfully reduced CLASS members' and recorded hours, and who instructed Plaintiff and
18 members of the CLASS to exclude work time from their time records.

19 86. Additionally, Defendants are liable to Plaintiff and similarly situated employees for
20 all overtime hours not paid by Defendants due to their improper reliance on unlawfully implemented
21 AWS.

22 87. Section 511 of the California Labor Code which provides for alternate workweek
23 schedules was enacted in 1999 as part of the Eight-Hour-Day Restoration and Workplace Flexibility
24 Act of 1999. 1999 Cal Stats. ch. 134. Section 2(g) of the Act states "the Legislature affirms the
25 importance of the eight-hour workday, declares that it should be protected, and reaffirms the state's
26 unwavering commitment to upholding the eight-hour workday as a fundamental protection for
27 working people." Labor Code § 511 must be read in light of fundamental purpose of the act, to
28

1 protect workers and preserve the 8-hour workday.

2 88. Under Labor Code Section 511, a “regularly scheduled alternative workweek”
3 schedule is allowed when adopted by vote of the employees. Cal. Lab. Code § 511. “No employer
4 shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election
5 procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not
6 more than ten (10) hours per day within a 40-hour workweek without the payment of an overtime
7 rate of compensation.” Cal. Code Regs., tit. 9, § 11090(3)(B)(1). In other words, an employer and its
8 employees may adopt an AWS that, for example, establishes a regular work schedule of 10 hours
9 per day, four days a week, and obligates the employer to pay overtime only if
10 the employee works over 10 hours in a workday. An AWS may only be implemented by compliance
11 with stringent statutory election procedures:

- 12 • Each proposal for an alternative workweek schedule shall be in the form of a written
13 agreement proposed by the employer. The proposed agreement must designate a regularly
14 scheduled alternative workweek in which the specified number of work days and work hours
15 are regularly recurring. Cal Code. Regs. tit. 9 § 11090(3)(c)(1).
- 16 • In order to be valid, the proposed alternative workweek schedule must be adopted in a secret
17 ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the
18 affected employees in the work unit. Cal Code. Regs. tit. 9 § 11090(3)(c)(2).
- 19 • Prior to the secret ballot vote, any employer is required to make a disclosure in writing to
20 the affected employees, including the effects of the proposed arrangement on the employees'
21 wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at
22 least 14 days prior to voting, for the specific purpose of discussing the effects of the
23 alternative workweek schedule. Cal. Code Regs. tit. 9 § 11090(3)(C)(3).
- 24 • Before an AWS is implemented, the employer must hold meeting(s) with the affected
25 employees to discuss the effects of the proposed alternative work schedule on the employees'
26 wages, hours and benefits. The employer shall mail the written disclosure to employees who
27 do not attend the meeting. Cal. Code Regs. tit. 9 § 11090(3)(C)(3).

1 89. If these provisions are not satisfied, the election will be “null and void.” Cal Code.
2 Regs. tit. 9 § 11090(3)(c)(3).

3 90. Only secret ballots may be cast by affected employees in the work unit at any election
4 held pursuant to this section. The results of any election conducted pursuant to this section shall be
5 reported by the employer to the Division of Labor Statistics and Research within 30 days after the
6 results are final, and the report of election results shall be a public document. The report shall include
7 the final tally of the vote, the size of the unit, and the nature of the business of the employer. Cal
8 Code. Regs. tit. 9 § 11090(3)(c)(6).

9 91. At all relevant times, Defendants unlawfully implemented alternative workweek
10 schedules (“AWS”) to which Plaintiff and similarly situated employees were subjected, but which
11 Defendants failed to comply with the strict requirements of Labor Code Section 511 and Section
12 3(B), entitled “*Alterative Work Schedules*” of California Industrial Welfare Commission
13 Occupational Wage Order No. 9-2001 (Title 8 California Code of Regulations § 11090 or other
14 applicable Wage Order(s).

15 92. Defendants’ AWS was unlawful because Defendants failed to comply with the
16 following requirements:

- 17 a. Defendants failed to obtain a vote of all affected employees, including Plaintiff, by
18 a secret ballot;
- 19 b. Defendants failed to present to all affected employees, including Plaintiff, a
20 proposal for an alternative workweek schedule in the form of a written agreement;
- 21 c. Defendants failed to obtain at least a two-thirds (2/3) vote of all affected employees
22 in the work unit in favor of the AWS.
- 23 d. Prior to the secret ballot vote, Defendants failed to make a disclosure in writing to
24 all affected employees, including Plaintiff, including the effects of the proposed
25 arrangement on the employees’ wages, hours, and benefits;
- 26 e. Defendants failed to hold duly notice meeting(s) at least 14 days prior to voting, for
27 the specific purpose of discussing the effects of the alternative workweek schedule;

1 f. Defendants failed to provide the required disclosure in a non-English language, as
2 well as in English, if at least five (5) percent of the affected employees primarily
3 speak that non-English language;

4 g. Defendants failed to mail the written disclosure to employees who did not attend
5 the meeting; and

6 h. Some of the votes were obtained through intimidation or coercion in support of or in
7 opposition to a proposed alternative workweek.

8 93. At all relevant times, relying on an unlawful Alternative Workweek Schedule
9 (“AWS”), Defendants failed to pay Plaintiff and other similarly situated employees overtime
10 compensation.

11 94. Even if the AWS was lawfully implemented, which Plaintiff categorically disputes,
12 the AWS should be nullified because of the frequent changes in the designated AWS schedule.

13 95. Under California law, when an employer *regularly* makes changes in the designated
14 AWS schedule, the AWS agreement between employees and employer is no longer bona fide, and
15 as a result, the employer loses the exemption from the 8-hour day requirements of Labor Code
16 section

17 96. As noted in the DLSE Manual, to make changes in a designated AWS schedule, the
18 employer must provide the employees with a reasonable notice of any changes in the days or hours
19 scheduled. Changes in the schedule are limited to “occasional” occurrences. More frequent changes
20 will result in the loss of the exemption from the 8-hour day requirements of California law. (See the
21 DLSE Enforcement Policies and Interpretations Manual, § 56.23.1)

22 97. As a result of the actions of Defendants in failing and/or refusing to pay earned wages
23 and overtime compensation, members of the CLASS, including Plaintiff, were damaged by not
24 receiving all wages owed and by not receiving overtime compensation which they should have
25 received, but did not receive. Defendants have known or should have known that Plaintiff and
26 members of the CLASS have accrued work hours, including overtime hours, for which Plaintiff and
27 members of the CLASS have not been compensated. Defendants systemically elected, either through
28

1 intentional malfeasance or gross nonfeasance, not to pay Plaintiff and members of the CLASS for
2 their labor as a matter of uniform corporate policy, practice and procedure. To perpetrate this scheme,
3 Defendants have refused to institute a system for recording hours worked that is not subject to
4 manipulation or alteration by Defendants and/or Defendants' managing agents. Members of the
5 CLASS, including Plaintiff, are therefore entitled to compensation in an amount to be proven at trial
6 for unpaid earned wages, unpaid overtime compensation, pre-judgment interest, attorneys' fees and
7 costs pursuant to Labor Code section 218.5 and 1194.

8 98. Additionally, Plaintiff and the other members of the BONUS PAY SUBCLASS bring
9 an overtime claim for Defendants' failure to accurately calculate the applicable rates for all overtime
10 hours worked by Plaintiff and other member of the BONUS PAY SUBCLASS and Defendants'
11 failure to properly compensate the members of the BONUS PAY SUBCLASS for overtime hours
12 worked, including, work performed in excess of eight (8) hours in a workday and forty (40) hours in
13 any workweek.

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

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

19 101. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
20 including overtime compensation and interest thereon, together with attorneys' fees and costs of suit.
21 Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those
22 fixed by the Industrial Welfare Commission is unlawful.

23 102. Defendants maintained a uniform wage practice of paying the Plaintiff and the other
24 members of the BONUS PAY SUBCLASS without regard to the correct applicable overtime rate
25 for the number of overtime hours they worked. As set forth herein, Defendants' uniform policy and
26 practice is to unlawfully and intentionally deny timely payment of wages due for the overtime hours
27 worked by the Plaintiff and the other members of the BONUS PAY SUBCLASS, and Defendants
28

1 have failed to pay these California employees the correct applicable overtime wages for all overtime
2 hours worked.

3 103. In committing these violations of the California Labor Code, Defendants inaccurately
4 calculated the applicable overtime rates and consequently underpaid the actual hours worked.
5 Defendants' acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
6 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
7 applicable laws and regulations.

8 104. As a direct result of Defendants' unlawful wage practices as alleged herein, the
9 Plaintiff and the other members of the BONUS PAY SUBCLASS did not receive full compensation
10 for all overtime hours worked.

11 105. Defendants failed to accurately pay the Plaintiff and the other members of the
12 BONUS PAY SUBCLASS overtime wages for the hours they worked which were in excess of the
13 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though
14 the Plaintiff and the other members of the BONUS PAY SUBCLASS were regularly required to
15 work, and did in fact work, overtime hours as to which Defendants failed to accurately record and
16 pay using the applicable overtime rate as evidenced by Defendants' business records and witnessed
17 by employees.

18 106. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
19 to the Plaintiff and the other members of the BONUS PAY SUBCLASS for the true number of hours
20 they worked, Plaintiff and the other members of the BONUS PAY SUBCLASS have suffered and
21 will continue to suffer an economic injury in amounts which are presently unknown to them and
22 which will be ascertained according to proof at trial.

23 107. Plaintiff and the other members of the BONUS PAY SUBCLASS therefore request
24 recovery of all unpaid wages, including overtime wages, according to proof, interest, attorneys' fees
25 and costs of suit, as well as the assessment of any statutory penalties against Defendants, in a sum as
26 provided by the California Labor Code and/or other applicable statutes.

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

(Failure to Provide Regular Pay/Minimum Wages in Violation of Labor Code §§ 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1; Cal. Code Regs. tit. 8, § 11090)
(On Behalf of Plaintiff and the CLASS)

108. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

109. During the applicable statutory period, California Labor Code §§ 1182.11, 1182.12 and 1197, and the IWC Minimum Wage Order were in full force and effect and required that Defendants' hourly employees receive the minimum wage for all hours worked.

110. Section 2(H) of IWC Wage Order No. 9-2001 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

111. California Labor Code § 1194(a) provides as follows: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum or overtime compensation, including interest thereon, reasonable attorneys’ fees and costs of suit.”

112. California Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

113. California Labor Code section 1197.1 provides, in part: “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, and liquidated damages payable to the employee”

114. As alleged throughout, Plaintiff and CLASS members were not compensated for all hours worked – potentially for several hours per week.

115. Plaintiff and CLASS Members did not enter into legally binding agreements with Defendants to work for a lesser wage.

1 116. Defendants' conduct, as alleged herein, violates the aforementioned regulations
2 because throughout the applicable time period, Defendants' policies, practices and procedures
3 resulted in a failure to compensate Plaintiff and CLASS Members for all hours worked.

4 117. As alleged in more detail above, Defendants' standardized policies, procedures
5 resulted in Plaintiff and CLASS Members being denied regular pay/minimum wages for regular
6 hours worked by, *inter alia*, requiring them work hours off the clock in order to complete their
7 mandated job duties.

8 118. Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages
9 because of the payment of a wage less than minimum wage fixed by an order of the commission, an
10 employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully
11 unpaid and interest thereon.

12 119. As a direct and proximate result of Defendants' unlawful acts and/or omissions, as
13 alleged herein, Plaintiff and CLASS Members have been deprived, and continue to be deprived, of
14 regular pay and mandated minimum wages for regular hours worked in an amount to be determined
15 at trial, are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon,
16 attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

17 120. Wherefore, Plaintiff and the CLASS request relief as hereinafter provided.

18 **THIRD CAUSE OF ACTION**

19 (Failure to Provide 30-Minute Employee Meal Period)
20 (On Behalf of Plaintiff and the CLASS)

21 121. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

22 122. Plaintiff alleges, on the basis of information and belief, that within each of the four
23 years prior to the commencement of this action, Defendants have promulgated and enforced policies
24 under which members of the CLASS, including Plaintiff, regularly worked more than five hours in
25 a daily work period lasting longer than five hours without being provided with an uninterrupted,
26 thirty-minute meal period during which members of the CLASS, including Plaintiff, were relieved
27 of all of their respective work duties, or under which members of the CLASS, including Plaintiff,
28 were not provided with a thirty-minute meal period during the first five hours of their work shifts.

1 Defendants have also otherwise failed to provide CLASS members with state-mandated meal
2 periods, including requiring CLASS members to take unlawful “on duty” meal periods.

3 123. Defendants' policies and practices have required their delivery associates, including
4 Plaintiff, to remain working until delivery goals are met, regardless of whether meal breaks have
5 been provided. This requirement, combined with Defendants' failure to ensure adequate staffing,
6 has resulted in Defendants' failure to provide its delivery associates, including Plaintiff, with state-
7 mandated meal breaks.

8 124. All members of the CLASS, including Plaintiff, are entitled to additional wages
9 pursuant to California Labor Code Section 226.7 for each daily work period lasting more than five
10 hours during which members of the CLASS, including Plaintiffs, were not provided with an
11 uninterrupted, thirty minute meal period, or during which members of the CLASS were not provided
12 with an uninterrupted thirty-minute meal period during the first five hours of their work shifts.
13 Members of the CLASS, including Plaintiff, are also entitled to additional wages pursuant to
14 California Labor Code Section 226.7 for each daily work period lasting more than ten hours during
15 which members of the CLASS, including Plaintiff, were not provided with a second uninterrupted,
16 thirty minute meal period, or during which members of the CLASS were not provided with a second
17 uninterrupted thirty-minute meal period during the first ten hours of their work shifts.

18 125. As a result of Defendants' conduct as alleged herein, members of the CLASS,
19 including Plaintiff, have suffered harm and monetary damages, in an amount to be ascertained at
20 trial.

21 **FOURTH CAUSE OF ACTION**

22 (Failure to Authorize and Permit 10-Minute Employee Rest Periods)
23 (On Behalf of Plaintiff and the CLASS)

24 126. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

25 127. Plaintiff alleges, on the basis of information and belief, that during all relevant times,
26 Defendants have promulgated and enforced policies under which members of the CLASS, including
27 Plaintiff, have regularly worked more than four hours per day without being authorized and permitted
28 to take one or more paid rest periods of at least ten minutes for each four hours of work time, or

1 major fraction thereof, during which the members of the CLASS, including Plaintiff, were relieved
2 of all of their respective work duties.

3 128. Defendants have adopted and maintained uniform corporate rest period policies and
4 procedures that violate California law, including the applicable Industrial Welfare Commission
5 Wage Order. Defendants have failed to authorize and permit members of the CLASS, including
6 Plaintiff, to take ten-minute rest periods every four hours or major fraction thereof.

7 129. Defendants' policies and practices have required their delivery associates, including
8 Plaintiff, to remain working until delivery goals are met, regardless of whether rest periods have
9 been authorized and permitted. This requirement, combined with Defendants' failure to ensure
10 adequate staffing, has resulted in Defendants' failure to authorize and permit its delivery associates,
11 including Plaintiff, with state-mandated rest periods.

12 130. Plaintiff alleges, on the basis of information and belief, that members of the CLASS,
13 including Plaintiff, have suffered harm and monetary damages, in an amount to be ascertained at
14 trial. Plaintiff and the other members of the CLASS and are entitled to additional wages pursuant to
15 California Labor Code Section 226.7 for each four hour work period, or major fraction thereof,
16 during which members of the CLASS were not permitted and authorized to take one or more ten
17 minute rest periods.

18 **FIFTH CAUSE OF ACTION**

19 (Failure to Provide Accurate Itemized Wage Statements in Violation of
20 Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)
(On Behalf of Plaintiff, the CLASS and the BONUS PAY SUBCLASS)

21 131. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

22 132. Labor Code Section 226 requires an employer to keep accurate, itemized pay
23 statements. Under California law, gross wages earned, the precise, actual number of hours and
24 minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the
25 pay period, the name of the employee, the name and address of the legal entity that is the employer,
26 and all applicable hourly rates in effect during the pay period must be accurately itemized on each
27 pay statement.

133. During the applicable statutory period, Defendants routinely failed to provide the members of the CLASS, including Plaintiffs, at the time of each payment of wages, an accurate itemized statement in writing showing the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. Defendants' failure to provide accurate itemized wage statements to the members of the CLASS, including Plaintiff, has been the intentional result of Defendants' failure to pay and record proper rates of pay to Plaintiff and the BONUS PAY SUBCLASS, including overtime and sick pay, Defendants' manipulation of Plaintiff's and CLASS members' time records and Defendants' refusal to institute a system for accurately recording hours worked by Plaintiff and members of the CLASS. Defendants' failure to provide accurate itemized wage statements to members of the CLASS, including Plaintiff, has repeatedly been brought to the attention of Defendants, has been ignored by Defendants, has been knowing and intentional, and was in clear violation of Labor Code § 226(a).

134. The members of the CLASS, including Plaintiff, have suffered injuries as a result of the knowing and intentional failure of Defendants to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that Defendants' failure to provide Plaintiff and CLASS Members with accurate itemized wage statements made it impossible for Plaintiff and the members of the CLASS to be aware that unlawful deductions were being made from their earnings, that they were not being paid all wages earned, and that they were not being properly compensated premium wage payments for missed meal and rest breaks. Additionally, the injury stemming from Defendants' violations is evidenced by this live and active dispute regarding unpaid wages, including overtime pay, between the Parties. As a result of Defendants' violations, Plaintiffs, the CLASS and BONUS PAY SUBCLASS are required to undertake the difficult and costly task of attempting to reconstruct Defendants' incomplete and inaccurate time and pay records to ensure that they are paid for all hours worked and the correct rates of pay as required by California law.

135. Plaintiff is informed and believes, and thereon alleges, that Defendants' knowing and intentional failure to furnish the members of the CLASS with accurate itemized wage statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7). Labor Code §

226(e) entitles Plaintiff and the members of the CLASS to recover the greater of their actual damages caused by Defendants' violations, or \$50 per employee for the initial pay period in which the violation occurred, and \$100 per employee for each violation in subsequent pay periods, not exceeding an aggregate penalty of \$4,000 per employee.

SIXTH CAUSE OF ACTION

(Failure to Pay Compensation When Due at Time of Separation of Employment
in Violation of Labor Code §§ 201-203)

(On Behalf of Plaintiff and the FORMER EMPLOYEE SUBCLASS)

136. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

137. California Labor Code Section 201 requires an employer who discharges an employee to pay compensation due and owing said employee immediately upon discharge. California Labor Code Section 202 requires an employer to promptly pay compensation due and owing an employee within 72 hours of that employee's separation of employment by resignation. California Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is liable to said employee for waiting time penalties.

138. Plaintiff alleges, on the basis of information and belief, that Defendants have willfully failed and have refused to pay all compensation and wages due and owing, including overtime pay, minimum wages and premium wages for missed meal and rest breaks, to members of the FORMER EMPLOYEE SUBCLASS, including Plaintiff, upon their separation of employment.

139. Defendants' failure to timely pay compensation and wages to members of the FORMER EMPLOYEE SUBCLASS at the time of their separation of employment has been willful. As a result, Defendants are liable to members of the FORMER EMPLOYEE SUBCLASS for "waiting time penalties" under California Labor Code Section 203, in an amount to be ascertained at trial.

SEVENTH CAUSE OF ACTION

(Unlawful and Unfair Business Practices: Business & Professions Code §§ 17200 *et seq.*)
(On behalf of Plaintiff, the CLASS and BONUS PAY SUBCLASS)

140. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

1 141. Within each of the four years prior to the commencement of this action, Plaintiff is
2 informed and believes, and thereon alleges, that Defendants have unlawfully failed to pay hourly
3 wages and overtime wages to members of the CLASS and BONUS PAY SUBCLASS, including
4 Plaintiff, in violation of Labor Code §§ 204, 218, 510 and 1194; unlawfully failed to provide meal
5 periods, or compensation in lieu thereof, to members of the CLASS, including Plaintiff, in violation
6 of Labor Code §§ 226.7 and 512; and unlawfully failed to authorize and permit rest periods, or
7 compensation in lieu thereof, to the members of the CLASS, including Plaintiff, in violation of Labor
8 Code § 226.7.

9 142. By committing the alleged acts and/or omissions as described in this Complaint,
10 Defendants have engaged, and continue to engage, in unlawful and/or unfair business practices
11 within the meaning of California Business & Professions Code § 17200 *et seq.*

12 143. Plaintiff alleges, on the basis of information and belief, that by and through
13 Defendants' alleged acts and/or omissions as described in this Complaint, Defendants have obtained
14 valuable property, money, and services from Plaintiff and members of the CLASS and BONUS PAY
15 SUBCLASS and have deprived Plaintiff and members of the CLASS and BONUS PAY SUBCLASS
16 of valuable rights and benefits guaranteed by law and contract, all to Plaintiff's and CLASS
17 members' and BONUS PAY SUBCLASS members' detriment and to the benefit of Defendants.

18 144. A request for injunctive relief, restitution and for the disgorgement of unlawfully
19 earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.*
20 Thus, on behalf of Plaintiff and members of the CLASS and BONUS PAY SUBCLASS, and on
21 behalf of the general public, Plaintiff seeks injunctive relief, restitution (to members of the CLASS
22 and BONUS PAY SUBCLASS) of all unlawfully withheld funds, and the disgorgement of all
23 unlawfully earned profits (to members of the CLASS and BONUS PAY SUBCLASS) obtained by
24 Defendants as a result of Defendants' alleged unlawful and unfair acts and/or omissions described
25 in this Complaint.

26 145. Plaintiff is informed and believes, and thereon alleges, that unless restrained and
27 ordered to pay restitution and disgorge profits derived from these unlawful and unfair employment
28

1 practices, Defendants will continue to engage in the unlawful and unfair acts and/or omissions
2 described in this Complaint.

3 **EIGHTH CAUSE OF ACTION**

4 **(Labor Code Private Attorneys General Act of 2004: Labor Code § 2698 *et seq.*)**

5 (On Behalf of Plaintiff, All Aggrieved Employees and the State of California)

6 146. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
7 Defendants have violated, and continue to violate, several provisions of the California Labor Code,
8 including but not limited to:

- 9 a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);
- 10 b. Section 204 (Failure to Timely Pay All Wages Earned);
- 11 c. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
- 12 d. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements);
- 13 e. Section 226.7 (Failure to Compensate for Missed, Late or On Duty Meal Periods,
14 including Improper Rate of Pay in Calculating Premium Payments);
- 15 f. Section 226.7 (Failure to Compensate for Missed, Late or On Duty Rest Periods);
- 16 g. Section 227.3 (Failure to Pay Vacation Wages at Termination);
- 17 h. Section 246 (Failure to Pay Sick Pay at the Proper Rate of Pay);
- 18 i. Section 510 (Unlawful Overtime Policies and Procedures);
- 19 j. Section 512 (Failure to Provide Timely, Uninterrupted, 30-Minute Meal Periods);
- 20 k. Section 558 (Penalties for Violations in IWC Wage Orders);
- 21 l. Section 1174 (Failure to Maintain Accurate Time Records);
- 22 m. Section 1194 (Failure to Pay Overtime Compensation);
- 23 n. Section 1197 (Failure to Pay Minimum Wages); and
- 24 o. Section 1197.1 (Liquidated Damages for Unpaid Minimum Wages).

25 147. Pursuant to Labor Code § 2699, Plaintiff bring this cause of action on behalf of
26 himself and all other current or former employees of Defendants against whom one or more of the
27 alleged violations was committed and/or is being committed (“aggrieved employees,” as defined by
28 Section 2699(c)).

1 148. Pursuant to Labor Code Section 2699, Plaintiff seeks to recover from Defendants civil
2 penalties for *each* Labor Code violation. The civil penalties are to be calculated at the rate at which
3 the civil penalty is to be assessed and collected by the Labor and Workforce Development Agency
4 or any of its departments, divisions, commissions, boards, agencies, or employees.

5 149. Pursuant to Labor Code Section 2699, for all provisions of the California Labor Code
6 that do not specifically provide for a civil penalty to be assessed and collected by the Labor and
7 Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, Plaintiff seeks to recover from Defendants civil penalties for *each* Labor
9 Code violation at the following rate: one hundred dollar (\$100) for each aggrieved employee per pay
10 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
11 period for each subsequent violation.

12 150. Pursuant to Labor Code Section 2699, Plaintiff seeks an award of reasonable
13 attorney's fees and costs for bringing this cause of action on behalf of himself, the State of California
14 and Defendants' other current and former aggrieved employees against whom one or more of the
15 alleged violations was committed.

16 151. In compliance with Labor Code Section 2699.3, on March 17, 2022, Plaintiff
17 provided Defendants and the California Labor & Workforce Development Agency ("LWDA") with
18 written notice, via online filing and via certified mail, of the specific provisions of the Labor Code
19 alleged to have been violated by Defendants, and the facts and theories to support the allegations.
20 The LWDA assigned this matter Case No. LWDA-CM-874037-22.

21 150. More than 65 days have elapsed since Plaintiff notified the LWDA of the specific
22 provisions of the Labor Code alleged to have been violated by Defendants. To date, the LWDA has
23 not notified Plaintiff nor Defendants that it intends to investigate the alleged violations contained in
24 Plaintiff's March 17, 2022 notice.

25 151. Pursuant to California Labor Code § 2699.3, Plaintiff may commence a civil action
26 against Defendants for civil penalties on behalf of himself, the State of California and Defendants'
27 other current and former aggrieved employees.

1 152. Plaintiff may maintain this cause of action against Defendants for civil penalties
2 under Labor Code Section 2698 *et seq.* regardless of whether Plaintiff's allegations contained herein
3 are certified for class treatment.

4 153. Plaintiff has not alleged any violation of Division 5 (commencing with Section 6300)
5 of the Labor Code.

6 154. In compliance with Labor Code Section 2699.3, Plaintiff's March 17, 2022 notice also
7 provided Defendants and the LWDA, with written notice, via online filing and via certified mail, of
8 the specific provisions of the Labor Code—not specified in Labor Code Section 2699.5—alleged to
9 have been violated by Defendants, including Labor Code Sections 226.3, 246 and 558, as well as the
10 facts and theories to support the allegations.

11 155. To date, Defendants have not cured any of the alleged violations, and Defendants
12 have not abated any of the violations alleged by Plaintiff in his March 17, 2022 notice. At all relevant
13 times, Defendants have not been in compliance with the underlying statutes as specified in Plaintiff's
14 March 17, 2022 notice. At all relevant times, no aggrieved employee has been made whole for the
15 Labor Code violations described in Plaintiff's March 17, 2022 notice.

16 156. To date, Defendants have not given written notice to Plaintiff nor the LWDA that any
17 Labor Code violation alleged by Plaintiff in his March 17, 2022 notice has been cured.

18 157. Pursuant to California Labor Code § 2699.3(c)(2)(A), Plaintiff may commence a civil
19 action against Defendants for civil penalties on behalf of himself, the State of California and
20 Defendants' other current and former aggrieved employees with respect to the specific provisions of
21 the Labor Code—not specified in Labor Code Section 2699.5—alleged to have been violated by
22 Defendants, including Labor Code Sections 226.3, 246 and 558.

23 ///

24 ///

25 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf, and on behalf of all others similarly situated, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS, and BONUS PAY SUBCLASS and FORMER EMPLOYEE SUBCLASS, appointing the named Plaintiff as representatives of all others similarly situated and appointing the law firms representing the named Plaintiff, Blanchard, Krasner and French and the Law Office of David A. Huch, as counsel for members of the CLASS, and BONUS PAY SUBCLASS and FORMER EMPLOYEE SUBCLASS;

2. For compensatory damages according to proof to Plaintiff and the members of the CLASS and BONUS PAY SUBCLASS;

3. For prejudgment interest at the legal rate pursuant to Civil Code §§ 3287, 3288 & 3289, and any other legal rate that may be applicable to Plaintiff's causes of action;

4. For waiting time penalties pursuant to Labor Code sections 201-203 according to proof to Plaintiff and the members of the FORMER EMPLOYEE SUBCLASS;

5. For an Order compelling Defendants to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the CLASS and BONUS PAY SUBCLASS who have suffered as a result of Defendants' unlawful and unfair employment practices alleged herein;

6. For an order compelling Defendants to disgorge and pay over to Plaintiff and the members of the CLASS and BONUS PAY SUBCLASS all profits and savings resulting from Defendants' unlawful and unfair business practices alleged herein;

7. For issuance of a permanent injunction enjoining Defendants, and each of them, from continuing to engage in the unlawful and unfair business practices alleged herein;

8. For attorneys' fees and litigation expenses pursuant to all applicable statutes, including Labor Code sections 218.5, 226, 1194 and 2699, and as otherwise permitted by law;

9. For civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004; and

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

10. For such other and further relief as the court deems just and proper;

DATED: May 24, 2022

BLANCHARD, KRASNER & FRENCH

/s/ David Hawkes

DAVID C. HAWKES

Attorneys for Plaintiff, FRANCISCO LOPEZ,
Individually, on behalf of all others similarly situated,
and on behalf of the State of California and all
aggrieved employees, and on behalf of the general
public.