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

8 **IN AND FOR THE COUNTY OF FRESNO**

9 AUGUSTUS MONDRIAN and
10 RHONDA JONES, individuals, on behalf
of themselves, and on behalf of all persons
11 similarly situated,

12 Plaintiffs,

13 vs.

14 TRIUS TRUCKING, INC., a California
15 Corporation; and Does 1 through 50,
Inclusive,

16
17 Defendants.

Case No. **16CECG01501**

**THIRD AMENDED CLASS ACTION
COMPLAINT**

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF CAL. LAB.
CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL. LAB.
CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
5. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203;
6. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802;
7. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*]; and,
8. FAILURE TO PAY STRAIGHT AND
OVERTIME COMPENSATION IN
VIOLATION OF 29 U.S.C. §§ 201, *et seq.*

DEMAND FOR A JURY TRIAL

1 Plaintiffs Augustus Mondrian and Rhonda Jones and ("PLAINTIFFS") individuals, on
2 behalf of themselves and all other similarly situated current and former employees, alleges upon
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Plaintiff Mondrian worked for Defendant Trius Trucking, Inc. ("TRIUS" or
8 "DEFENDANT") in California from February of 2016 to April of 2016 as a Truck Driver.
9 Plaintiff Jones worked for DEFENDANT in California from March of 2016 to September of
10 2016 as a Truck Driver. As Truck Drivers, PLAINTIFFS' work required the performance of
11 manual labor consisting of driving TRIUS's trucks and transporting goods for TRIUS. In
12 performing these duties, PLAINTIFFS did not utilize any independent discretion, judgment, or
13 management decisions with respect to matters of significance. To the contrary, the work of
14 PLAINTIFFS as Truck Drivers were to provide on a daily basis the transportation of goods in
15 accordance with the management decisions and business policies established by TRIUS. As a
16 result, PLAINTIFFS are entitled to be paid minimum wages, overtime wages, provided accurate
17 wage statements, and provided meal and rest periods as required by California law.
18 PLAINTIFFS were paid by piece-rate only while they were employed as Truck Drivers for
19 TRIUS. Importantly, PLAINTIFFS were not provided with minimum wages for all of their
20 non-production work time. PLAINTIFFS also did not receive paid rest breaks as required by
21 California law and TRIUS failed to provide PLAINTIFFS with the legally required meal
22 periods. TRIUS failed to pay PLAINTIFFS the correct amount of compensation because TRIUS
23 established an illegal pay practice of paying PLAINTIFFS on a piece rate basis when delivering
24 loads at the locations assigned by TRIUS. TRIUS however failed to pay minimum wages for
25 compensable time worked. To date, TRIUS has not fully paid PLAINTIFFS for all their wages
26 still owed to them or any penalty wages owed to them under California Labor Code § 203. The
27 amount in controversy for PLAINTIFFS individually does not exceed the sum or value of
28 \$75,000.

2. DEFENDANT is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout the State of California. TRIUS is a transportation company that provides dry and temperature controlled hauls and boasts more than one hundred trucks operating in California.

3. PLAINTIFFS bring this class action on behalf of themselves and a California class, defined as all individuals who are or previously were employed by Defendant Trius Trucking, Inc. in California as Truck Driver employees (the “CALIFORNIA CLASS”) at any time during the period beginning on the date four (4) years before the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).

4. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants sued herein as DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS are informed and believe, and based thereon, allege that each of the Defendants designated herein is legally responsible in some manner for the unlawful acts referred to herein. PLAINTIFFS will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants when they have been ascertained and become known.

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

THE CONDUCT

6. The work required to be performed by PLAINTIFFS and the other CALIFORNIA

1 CLASS Members was manual labor consisting of driving DEFENDANT's trucks and
2 transporting goods in accordance with DEFENDANT's policies and practices. As a result of
3 this work, PLAINTIFFS and the other CALIFORNIA CLASS Members were involved in
4 providing day to day routine transportation of goods as specified by DEFENDANT and this
5 work was executed by the performance of manual labor within a defined skill set. PLAINTIFFS
6 and CALIFORNIA CLASS Members were not compensated through a monthly salary.
7 PLAINTIFFS and the other CALIFORNIA CLASS Members employed by DEFENDANT
8 performed these manual tasks but were not paid the minimum wages to which they were entitled
9 because of DEFENDANT's systematic policies and practices of failing to correctly record all
10 time worked, including, but not limited to, time spent during pre and post trip inspections of
11 DEFENDANT's trucks and time spent waiting for DEFENDANT's loads to be ready for
12 transport. DEFENDANT failed to correctly pay minimum wages to PLAINTIFFS and the other
13 CALIFORNIA CLASS Members in accordance with California law, and thereby systematically
14 underpaid minimum compensation to PLAINTIFFS and the other CALIFORNIA CLASS
15 Members for their documented time worked.

16 7. Individuals in these Truck Driver positions are and were employees who are
17 entitled to minimum wage compensation and prompt payment of amounts that the employer
18 owes an employee when the employee quits or is terminated, and other compensation and
19 working conditions that are prescribed by law.

20 8. Industrial Welfare Commission Wage Order 4-2001 provides: "Every employer
21 shall pay to each employee, on the established payday for the period involved, not less than the
22 applicable minimum wage for all hours worked in the payroll period, whether the remuneration
23 is measured by time, piece, commission, or otherwise." "Hours worked" is defined in the Wage
24 Order as "the time during which an employee is subject to the control of an employer, and
25 includes all the time the employee is suffered or permitted to work, whether or not required to
26 do so." Here, PLAINTIFFS and CALIFORNIA CLASS Members are entitled to separate hourly
27 compensation for time spent performing other non-driving tasks directed by DEFENDANT
28 during their work shifts.

1 9. In addition, DEFENDANT failed to provide all the legally required unpaid, off-
2 duty meal periods and all the legally required paid, off-duty rest periods to PLAINTIFFS and the
3 other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor
4 Code. DEFENDANT did not have a policy or practice which provided or recorded all the legally
5 required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to
6 PLAINTIFFS and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's
7 failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally
8 required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is
9 evidenced by DEFENDANT's business records.

10 10. DEFENDANT as a matter of corporate policy, practice and procedure,
11 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFFS and
12 the other CALIFORNIA CLASS Members for required business expenses incurred by
13 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
14 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
15 are required to indemnify employees for all expenses incurred in the course and scope of their
16 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
17 her employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
19 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
20 believed them to be unlawful."

21 11. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use their own personal
23 cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated
25 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
26 course of their employment with DEFENDANT, PLAINTIFFS and other members of the
27 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
28 limited to, costs related to the use of their personal cellular phones all on behalf of and for the

1 benefit of DEFENDANT.

2 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
3 to fail to accurately calculate and pay PLAINTIFFS and the other members of the CALIFORNIA
4 CLASS for their overtime worked. DEFENDANT systematically, unlawfully and unilaterally
5 fails to accurately calculate wages for overtime worked by PLAINTIFFS and other members of
6 the CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
7 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
8 forfeit wages due them for working overtime without compensation at the correct overtime rates.
9 DEFENDANT's uniform policy and practice to not pay the members of the CALIFORNIA
10 CLASS the correct overtime rate for all overtime worked in accordance with applicable law is
11 evidenced by DEFENDANT's business records.

12 13. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
13 other members of the CALIFORNIA CLASS with complete and accurate wage statements
14 which failed to show, among other things, the correct minimum wages for time worked, and
15 allocation of lawfully required, paid, and off-duty rest periods. Cal. Lab. Code § 226 provides
16 that every employer shall furnish each of his or her employees with an accurate itemized wage
17 statement in writing showing, among other things, gross wages earned and all applicable hourly
18 rates in effect during the pay period and the corresponding amount of time worked at each
19 hourly rate. As a result, DEFENDANT provided PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

21 14. In this action, PLAINTIFFS, on behalf of themselves and the CALIFORNIA
22 CLASS, seeks to recover all the compensation that DEFENDANT is required by law to provide,
23 but failed to provide, to PLAINTIFFS and all other CALIFORNIA CLASS Members.
24 PLAINTIFFS also seeks penalties and all other relief available to him and other CALIFORNIA
25 CLASS Members under California law. Finally, PLAINTIFFS seeks declaratory relief finding
26 that the employment practices and policies of the DEFENDANT violated California law and
27 injunctive relief to enjoin the DEFENDANT from continuing to engage in such employment
28 practices.

15. In performing the conduct herein alleged, the DEFENDANT's wrongful conduct and violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFFS and the other members of the CALIFORNIA CLASS of money and career opportunities to which they were lawfully entitled. DEFENDANT engaged in such wrongful conduct by failing to have adequate employment policies and maintaining adequate employment practices consistent with such policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged caused the money belonging to PLAINTIFFS and the other members of the CALIFORNIA CLASS to be kept by DEFENDANT and thereby converted by DEFENDANT for DEFENDANT's own use.

16. DEFENDANT's practices violated and continue to violate the law, regardless of whether the employees' work is paid by commission, by salary, by piece rate, or by part commission, part piece rate, and/or part salary. As a result of this policy and practice, DEFENDANT failed to pay minimum in accordance with applicable law.

17. Accordingly, DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* by engaging in company-wide policies that violated the California Labor Code and regulations promulgated thereunder as herein alleged.

THE CALIFORNIA CLASS

18. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of themselves and a California class, defined as all individuals who are or previously were employed by Defendant Trius Trucking, Inc. in California as Truck Driver employees (the "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years before the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

19. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order

1 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT used an unlawful, unfair and deceptive
3 method to calculate minimum and overtime wages and payment for missed meal periods and
4 off-duty rest breaks owed to PLAINTIFFS and the other members of the CALIFORNIA
5 CLASS.

6 20. All CALIFORNIA CLASS Members, including PLAINTIFFS, performed the
7 same manual labor and were paid by DEFENDANT according to uniform and systematic
8 company procedures, which, as alleged herein above, failed to correctly pay minimum wages.
9 This business practice is uniformly applied to each and every member of the CALIFORNIA
10 CLASS, and therefore, the propriety of these business practices can be adjudicated on a class-
11 wide basis.

12 21. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
13 California law by:

- 14 (a) Committing an act of unfair competition in violation of the California
15 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
16 unlawfully, unfairly and deceptively having in place company policies,
17 practices and procedures that uniformly denied PLAINTIFFS and the
18 members of the CALIFORNIA CLASS the correct minimum wages and
19 otherwise violated applicable law;
- 20 (b) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
21 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
22 place company policies, practices and procedures that fail to pay all wages
23 due the CALIFORNIA CLASS for all overtime worked, and fail to
24 accurately record the applicable rates of all overtime worked by the
25 CALIFORNIA CLASS;
- 26 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
27 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
28 having in place company policies, practices and procedures that uniformly

1 and systematically fail to provide and record all the legally required
2 unpaid, off-duty meal periods and all the legally required paid, off-duty
3 rest periods to PLAINTIFFS and the CALIFORNIA CLASS members;

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

9 (e) Committing an act of unfair competition in violation of the California
10 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
11 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
12 *seq.*, by failing to pay the correct overtime wages to the PLAINTIFF and
13 the members of the CALIFORNIA CLASS as legally required by the
14 FLSA, and retaining the unpaid overtime to the benefit of DEFENDANT.

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

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

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

25 (c) The claims of the representative PLAINTIFFS are typical of the claims of
26 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all other
27 members of the CALIFORNIA CLASS, were subjected to
28 DEFENDANT’s illegal practice of failing to pay minimum and overtime

1 wages for all time worked by PLAINTIFFS and other members of the
2 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
3 result of DEFENDANT's employment practices. PLAINTIFFS and the
4 members of the CALIFORNIA CLASS were and are similarly or
5 identically harmed by the same unlawful, deceptive, unfair and pervasive
6 pattern of misconduct engaged in by the DEFENDANT; and,

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

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

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

1 protect their interests.

2 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
3 act on grounds generally applicable to the CALIFORNIA CLASS, making
4 appropriate class-wide relief with respect to the CALIFORNIA CLASS
5 as a whole in that the DEFENDANT subjects these employees to
6 DEFENDANT's systematic practices with respect to non-payment of
7 wages for all time worked;

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

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

- 22 1) The interests of the members of the CALIFORNIA CLASS in
23 individually controlling the prosecution or defense of separate
24 actions;
- 25 2) The extent and nature of any litigation concerning the controversy
26 already commenced by or against members of the CALIFORNIA
27 CLASS;
- 28 3) The desirability or undesirability of concentrating the litigation of

1 the claims in the particular forum;

2 4) The difficulties likely to be encountered in the management of a
3 Class Action; and,

4 5) The basis of DEFENDANT's conduct towards PLAINTIFFS and
5 the CALIFORNIA CLASS.

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

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

13 (b) A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA
15 CLASS because in the context of employment litigation a substantial
16 number of individual CALIFORNIA CLASS members will avoid
17 asserting their rights individually out of fear of retaliation or adverse
18 impact on their employment;

19 (c) The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the
21 Court;

22 (d) PLAINTIFFS, and the other CALIFORNIA CLASS members, will not be
23 able to obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;

25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations and
27 other improprieties, and in obtaining adequate compensation for the
28 damages and injuries which DEFENDANT's actions have inflicted upon

1 the CALIFORNIA CLASS;

- 2 (f) There is a community of interest in ensuring that the combined assets of
3 DEFENDANT are sufficient to adequately compensate the members of
4 the CALIFORNIA CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally applicable
6 to the CALIFORNIA CLASS, thereby making final class-wide relief
7 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 8 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
9 the business records of DEFENDANT. The CALIFORNIA CLASS
10 consists of all DEFENDANT's current and former Truck Driver
11 employees employed in California during the CALIFORNIA CLASS
12 PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA CLASS.

17 25. DEFENDANT maintains records from which the Court can ascertain and identify
18 by name and job title, each of DEFENDANT's employees who have been systematically,
19 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and
20 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include
21 any additional job titles of similarly situated employees when they have been identified.

22
23 **THE CALIFORNIA LABOR SUBCLASS**

24 26. PLAINTIFFS further brings the Second, Third, Fourth, Fifth and Sixth Causes
25 of Action on behalf of the a California subclass, defined as all members of the CALIFORNIA
26 CLASS who are or previously were employed by DEFENDANT in California as Truck Driver
27 employees (the "CALIFORNIA LABOR SUBCLASS") at any time during the period three (3)
28 years prior to the filing of the complaint and ending on the date as determined by the Court (the

1 “CALIFORNIA LABOR SUBCLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.

2 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
3 LABOR SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS
4 PERIOD should be adjusted accordingly.

5 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
6 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
7 requirements, and the applicable provisions of California law, intentionally, knowingly, and
8 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
9 compensation for the time worked by the PLAINTIFFS and the other members of the
10 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
11 work, required employees to perform this work and permitted or suffered to permit this work.
12 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
13 wages to which these employees are entitled in order to unfairly cheat the competition and
14 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
16 PERIOD should be adjusted accordingly.

17 29. Common questions of law and fact exist as to members of the CALIFORNIA
18 LABOR SUBCLASS, including, but not limited, to the following:

- 19 (a) Whether DEFENDANT unlawfully failed to pay minimum wage
20 compensation to members of the CALIFORNIA LABOR SUBCLASS in
21 violation of the California Labor Code and applicable regulations;
- 22 (b) Whether DEFENDANT’s policy and practice of failing to pay
23 CALIFORNIA LABOR SUBCLASS Members wages, including
24 minimum wages for all time worked, violates applicable provisions of
25 California law;
- 26 (c) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-
28 CLASS for missed meal and rest breaks in violation of the California

Labor Code and California regulations and the applicable California Wage Order;

- (d) Whether DEFENDANT unlawfully failed to keep and furnish CALIFORNIA LABOR SUBCLASS Members with accurate records of time worked; and,
- (e) Whether DEFENDANT's conduct was willful.

30. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS under California law by:

- (a) Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording tall time worked and thereby failing to pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUBCLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1197;\
- (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUBCLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (c) Violating Cal. Lab. Code § 226(a) by failing to provide PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS Members with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate by the employee;
- (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,

- 1 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFFS
2 and the CALIFORNIA CLASS members with necessary expenses
3 incurred in the discharge of their job duties.

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

- 6 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS are
7 so numerous that the joinder of all CALIFORNIA LABOR SUBCLASS
8 members is impracticable and the disposition of their claims as a class will
9 benefit the parties and the Court;
- 10 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
11 that are raised in this Complaint are common to the CALIFORNIA
12 LABOR SUBCLASS and will apply uniformly to every member of the
13 CALIFORNIA LABOR SUBCLASS;
- 14 (c) The claims of the representative PLAINTIFFS are typical of the claims of
15 each member of the CALIFORNIA LABOR SUBCLASS.
16 PLAINTIFFS, like all other members of the CALIFORNIA LABOR
17 SUBCLASS, were denied compensation for all time worked as a result of
18 DEFENDANT's systematic illegal and deceptive pay practices.
19 PLAINTIFFS and all other members of the CALIFORNIA LABOR
20 SUBCLASS sustained economic injuries arising from DEFENDANT's
21 violations of the laws of California. PLAINTIFFS and the members of the
22 CALIFORNIA LABOR SUBCLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by the DEFENDANT as described above; and,
- 25 (d) The representative PLAINTIFFS will fairly and adequately represent and
26 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has
27 retained counsel who are competent and experienced in Class Action
28 litigation. There are no material conflicts between the claims of the

1 representative PLAINTIFFS and the members of the CALIFORNIA
2 LABOR SUBCLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUBCLASS Members.

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

7 (a) Without class certification and determination of declaratory, injunctive,
8 statutory and other legal questions within the class format, prosecution of
9 separate actions by individual members of the CALIFORNIA LABOR
10 SUBCLASS will create the risk of:

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUBCLASS which would
13 establish incompatible standards of conduct for the parties
14 opposing the CALIFORNIA LABOR SUBCLASS; or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA LABOR SUBCLASS which would as a practical
17 matter be dispositive of interests of the other members not party to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests.

20 (b) The parties opposing the CALIFORNIA LABOR SUBCLASS have acted
21 or refused to act on grounds generally applicable to the CALIFORNIA
22 LABOR SUBCLASS, making appropriate class-wide relief with respect
23 to the CALIFORNIA LABOR SUBCLASS as a whole in that the
24 DEFENDANT fails to pay these employees minimum wage compensation
25 as a result of DEFENDANT's company wide illegal and deceptive pay
26 practices;

27 (c) Common questions of law and fact exist as to the members of the
28 CALIFORNIA LABOR SUBCLASS, with respect to the practices and

1 violations of California Law as listed above, and predominate over any
2 question affecting only individual CALIFORNIA LABOR SUBCLASS
3 members, and a Class Action is superior to other available methods for the
4 fair and efficient adjudication of the controversy, including consideration
5 of:

- 6 1) The interests of the members of the CALIFORNIA LABOR
7 SUBCLASS in individually controlling the prosecution or defense
8 of separate actions;
- 9 2) The extent and nature of any litigation concerning the controversy
10 already commenced by or against members of the CALIFORNIA
11 LABOR SUBCLASS;
- 12 3) The desirability or undesirability of concentrating the litigation of
13 the claims in the particular forum;
- 14 4) The difficulties likely to be encountered in the management of a
15 Class Action; and,
- 16 5) The basis of DEFENDANT's conduct towards PLAINTIFFS and
17 the CALIFORNIA LABOR SUBCLASS.

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

- 20 (a) The questions of law and fact common to the CALIFORNIA LABOR
21 SUBCLASS predominate over any question affecting only individual
22 members;
- 23 (b) A Class Action is superior to any other available method for the fair and
24 efficient adjudication of the claims of the members of the CALIFORNIA
25 LABOR SUBCLASS because in the context of employment litigation a
26 substantial number of individual CALIFORNIA LABOR SUBCLASS
27 members will avoid asserting their rights individually out of fear of
28 retaliation or adverse impact on their employment;

- 1 (c) The members of the CALIFORNIA LABOR SUBCLASS are so
2 numerous that it is impractical to bring all members of the CALIFORNIA
3 LABOR SUBCLASS before the Court;
- 4 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUBCLASS
5 members, will not be able to obtain effective and economic legal redress
6 unless the action is maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations and
9 other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted upon
11 the CALIFORNIA LABOR SUBCLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of
14 the CALIFORNIA LABOR SUBCLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally applicable
16 to the CALIFORNIA LABOR SUBCLASS, thereby making final class-
17 wide relief appropriate with respect to the CALIFORNIA LABOR
18 SUBCLASS as a whole;
- 19 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
20 ascertainable from the business records of DEFENDANT. The
21 CALIFORNIA LABOR SUBCLASS consists of those members of the
22 CALIFORNIA CLASS who were subjected to the DEFENDANT's
23 practices as described above during the CALIFORNIA LABOR
24 SUBCLASS PERIOD; and,
- 25 (i) Class treatment provides manageable judicial treatment calculated to bring
26 a efficient and rapid conclusion to all litigation of all wage and hour
27 related claims arising out of the conduct of DEFENDANT as to the
28 members of the CALIFORNIA LABOR SUBCLASS.

1 34. DEFENDANT maintains records from which the Court can ascertain and identify
2 by name and job title, each of DEFENDANT's employees who have been systematically,
3 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and
4 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include
5 any additional job titles of similarly situated employees when they have been identified.

6
7 **JURISDICTION AND VENUE**

8 35. This Court has jurisdiction over this Action pursuant to California Code of
9 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
10 17203. This Action is brought as a Class Action on behalf of similarly situated employees
11 of DEFENDANT pursuant to California Code of Civil Procedure, Section 382.

12 36. Venue is proper in this Court pursuant to California Code of Civil Procedure,
13 Sections 395 and 395.5, because DEFENDANT currently maintains and at all relevant times
14 maintained a place of business in this County and conducts substantial business in this
15 County.

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful, Unfair and Deceptive Business Practices**

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

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

21 37. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 36 of this
23 Complaint.

24 38. DEFENDANT is a "person" as that term is defined under California Business &
25 Professions Code § 17021.

26 39. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
28 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair

1 competition as follows:

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

6 California Business & Professions Code § 17203.

7 40. By the conduct alleged herein, DEFENDANT has engaged and continues to
8 engage in a business practice which violates California and Federal law, including but not
9 limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, the
10 California Labor Code including Sections 204, 226.7, 510, 512, 1194, 1197, 1198, 2802, the
11 FLSA, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
12 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
13 constitute unfair competition, including restitution of wages wrongfully withheld.

14 41. By the conduct alleged herein, DEFENDANT's practices were unlawful and
15 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
16 unscrupulous or substantially injurious to employees, and were without valid justification or
17 utility for which this Court should issue equitable and injunctive relief pursuant to Section
18 17203 of the California Business & Professions Code, including restitution of wages wrongfully
19 withheld.

20 42. By the conduct alleged herein, DEFENDANT's practices were deceptive and
21 fraudulent in that DEFENDANT's policy and practice failed to provide the required amount of
22 compensation for missed meal and rest breaks, failed to reimburse for all necessary business
23 expenses incurred, and failed to adequately compensate PLAINTIFFS and CALIFORNIA
24 CLASS Members for all non-production time, due to a systematic business practice that cannot
25 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
26 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
27 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
28 restitution of wages wrongfully withheld. The work schedule for PLAINTIFFS and other

1 CALIFORNIA CLASS Members was set by DEFENDANT.

2 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
3 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
5 DEFENDANT.

6 44. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
7 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
8 all legally required meal and rest breaks to PLAINTIFFS and the other members of the
9 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

15 46. PLAINTIFFS further demand on behalf of themselves and each member of the
16 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
17 period was not timely provided as required by law.

18 47. By and through the unlawful and unfair business practices described herein,
19 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
20 other members of the CALIFORNIA CLASS, including earned minimum and overtime wages,
21 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
22 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
23 to unfairly compete against competitors who comply with the law.

24 48. All the acts described herein as violations of, among other things, the Industrial
25 Welfare Commission Wage Orders, the California Code of Regulations, and the California
26 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
27 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
28 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

6 50. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
9 engaging in any unlawful and unfair business practices in the future.

10 51. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
11 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
12 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
13 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
14 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
15 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
16 engage in these unlawful and unfair business practices.

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

20 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

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

22 **and Against All Defendants)**

23 52. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
24 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs
25 1 through 51 of this Complaint.

26 53. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
28 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure

1 to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
2 Members.

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

5 55. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

8 56. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
9 including minimum wage compensation and interest thereon, together with the costs of suit.

10 57. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
11 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
12 amount of time they worked, including time spent engaging in non-driving related tasks. As
13 set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
14 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
15 CALIFORNIA LABOR SUB-CLASS.

16 58. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
18 result of implementing a uniform policy and practice that denied accurate compensation to
19 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards
20 to minimum wage pay.

21 59. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculates the correct time worked and consequently underpaid the actual time
23 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
24 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
25 benefits in violation of the California Labor Code, the Industrial Welfare Commission
26 requirements and other applicable laws and regulations.

27 60. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive the correct minimum wage compensation for their time worked for DEFENDANT.

2 61. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
3 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
4 that they were entitled to, constituting a failure to pay all earned wages.

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

11 63. DEFENDANT knew or should have known that PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
13 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
14 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
15 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
16 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the
17 correct minimum wages for their time worked.

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

26 65. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
28 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as

1 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
2 wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
3 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
4 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
5 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
7 was willful, intentional and not in good faith. Further, the PLAINTIFFS and other
8 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

9
10 **THIRDCAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

15 66. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs
17 1 through 65 of this Complaint.

18 67. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
20 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
21 to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other
22 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
23 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
24 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
25 any workweek.

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

28 69. Cal. Lab. Code § 510 further provides that employees in California shall not be

1 employed more than eight (8) hours per workday and/or more than forty (40) hours per
2 workweek unless they receive additional compensation beyond their regular wages in amounts
3 specified by law.

4 70. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
5 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
6 Code § 1198 further states that the employment of an employee for longer hours than those
7 fixed by the Industrial Welfare Commission is unlawful.

8 71. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
9 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
10 amount of overtime they worked. As set forth herein, DEFENDANT's uniform policy and
11 practice was to unlawfully and intentionally deny timely payment of wages due for the overtime
12 worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS,
13 and DEFENDANT in fact fails to pay these employees the correct applicable overtime wages
14 for all overtime worked.

15 72. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
17 result of implementing a uniform policy and practice that denied accurate compensation to
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all
19 overtime worked, including, the work performed in excess of eight (8) hours in a workday
20 and/or forty (40) hours in any workweek.

21 73. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculated the applicable overtime rates and consequently underpaid the actual time
23 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
24 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
25 benefits in violation of the California Labor Code, the Industrial Welfare Commission
26 requirements and other applicable laws and regulations.

27 74. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive full compensation for all overtime worked.

2 75. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
3 from the overtime requirements of the law. None of these exemptions are applicable to
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
5 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
6 subject to a valid collective bargaining agreement that would preclude the causes of action
7 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
8 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
9 of non-negotiable, non-waiveable rights provided by the State of California.

10 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
11 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
12 that they were entitled to, constituting a failure to pay all earned wages.

13 77. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of
14 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
15 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
16 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
17 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
18 failed to accurately record and pay using the applicable overtime rate as evidenced by
19 DEFENDANT's business records and witnessed by employees.

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

26 79. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
28 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
3 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the
4 applicable overtime rate.

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

13 81. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
14 CLASS therefore request recovery of all unpaid wages, including overtime wages, according
15 to proof, interest, statutory costs, as well as the assessment of any statutory penalties against
16 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
17 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
18 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
19 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
20 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
21 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
22 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
23 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
24 statutory costs.

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS**

5 **and Against All Defendants)**

6 82. PLAINTIFFS, and the other members of the CALIFORNIA LABOR
7 SUBCLASS, reallege and incorporate by this reference, as though fully set forth herein,
8 paragraphs 1 through 81 of this Complaint.

9 83. Cal. Labor Code § 226(a) provides that an employer must furnish employees with
10 an “accurate itemized statement in writing showing:

11 (1) gross wages earned,

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

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

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

20 (5) net wages earned,

21 (6) the inclusive dates of the period for which the employee is paid,

22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,

26 (8) the name and address of the legal entity that is the employer, and

27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee.”

1 84. From time to time, DEFENDANT violated Labor Code § 226(a), in that
2 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net wages
3 earned, and all applicable hourly rates in effect during the pay period and the corresponding
4 amount of time worked at each hourly rate by the employee. DEFENDANT failed to provide
5 PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and
6 accurate wage statements which failed to show, among other things, the correct minimum wages
7 for time worked, and allocation of lawfully required, paid, and off-duty rest periods. Cal. Lab.
8 Code § 226 provides that every employer shall furnish each of his or her employees with an
9 accurate itemized wage statement in writing showing, among other things, gross wages earned
10 and all applicable hourly rates in effect during the pay period and the corresponding amount of
11 time worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFFS and the
12 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
13 Code § 226.

14 85. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
15 226(a), causing damages to PLAINTIFFS, and the other members of the CALIFORNIA
16 LABOR SUBCLASS. These damages include, but are not limited to, costs expended
17 calculating the true time worked and the amount of employment taxes which were not properly
18 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
19 PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUBCLASS may recover
20 liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and
21 \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
22 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
23 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUBCLASS herein).

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1 **FIFTH CAUSE OF ACTION**

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

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

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

5 **and Against All Defendants)**

6 86. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1
8 through 85 of this Complaint.

9 87. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of
13 time, task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed
15 under contract, subcontract, partnership, station plan, or other agreement if
16 the labor to be paid for is performed personally by the person demanding
17 payment.

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

21 89. Cal. Lab. Code § 202 provides, in relevant part, that:

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

29 90. There was no definite term in PLAINTIFFS's or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

31 91. Cal. Lab. Code § 203 provides, in relevant part, that:

32 If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid or
2 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

3 92. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
4 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
5 owed as required by law.

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

12 13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 2802]**

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

18 94. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
19 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
20 93 of this Complaint.

21 95. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

25 96. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
26 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
27 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
28 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA

1 LABOR SUB-CLASS members for expenses which included, but were not limited to, costs
2 related to using their personal cellular phones all on behalf of and for the benefit of
3 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
4 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting
5 from using their personal cellular phones for DEFENDANT within the course and scope of
6 their employment for DEFENDANT. These expenses were necessary to complete their
7 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
8 waiver of this expectation. Although these expenses were necessary expenses incurred by
9 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed
10 to indemnify and reimburse the PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
11 members for these expenses as an employer is required to do under the laws and regulations of
12 California.

13 97. PLAINTIFFS therefore demand reimbursement for expenditures or losses
14 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
15 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
16 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

17
18 **SEVENTH CAUSE OF ACTION**

19 **For Violation of the Private Attorneys General Act**

20 **[Cal. Lab. Code §§ 2698, et seq.]**

21 **(By Plaintiff Mondrian and Against All Defendants)**

22 98. Plaintiff Mondrian incorporates by reference the allegations set forth in
23 paragraphs 1-97, supra, as though fully set forth at this point.

24 99. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a

1 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
2 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
3 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
4 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
5 subject to arbitration.

6 100. Plaintiff Mondrian, and such persons that may be added from time to time that
7 satisfy the administrative procedures under the Private Attorneys General Act, brings this
8 Representative Action on behalf of the State of California with respect to himself and all
9 individuals who are or previously were employed by DEFENDANT in a California as Truck
10 Driver employees during the time period of May 10, 2015 until the present (the "AGGRIEVED
11 EMPLOYEES").

12 101. On May 18, 2016, Plaintiff Mondrian gave written notice by certified mail to the
13 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
14 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See*
15 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
16 period for Plaintiff Mondrian to add these allegations to the Complaint has expired. As a result,
17 pursuant to Section 2699.3, Plaintiff Mondrian may now commence a representative civil action
18 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to
19 all AGGRIEVED EMPLOYEES as herein defined.

20 102. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because Defendant (a) failed to properly record and pay Plaintiff
22 Mondrian and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
23 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
24 wage statements, and (c) failed to timely pay wages, all in violation of the applicable Labor
25 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
26 202, 203, 204, 226(a), 226.7, 256, 512, 1194, 1197, 1197.1 and the applicable Industrial Wage
27 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. Plaintiff
28 Mondrian hereby seeks recovery of civil penalties as prescribed by the Labor Code Private

1 Attorney General Act of 2004 as the representative of the State of California for the illegal
2 conduct perpetrated on Plaintiff Mondrian and the other AGGRIEVED EMPLOYEES.

3
4 **EIGHTH CAUSE OF ACTION**

5 **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**
6 **(By PLAINTIFFS and the COLLECTIVE CLASS against DEFENDANT)**
7

8 103. PLAINTIFFS, and the other members of the COLLECTIVE CLASS, reallege
9 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 102
10 of this Complaint.

11 104. DEFENDANT is engaged in communication, business, and transmission
12 between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C.
13 § 203(b).

14 105. PLAINTIFFS further bring the Eighth Cause of Action on behalf of a
15 COLLECTIVE CLASS in accordance with 29 U.S.C. § 216 defined as all persons who are or
16 were previously employed by DEFENDANT in California as Truck Driver employees (the
17 "COLLECTIVE CLASS") at any time during the period three (3) years prior to the filing of the
18 Complaint and ending on the date as determined by the Court (the "COLLECTIVE CLASS
19 PERIOD").

20 106. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to
21 willful violations of the FLSA.

22 107. 29 U.S.C. § 207(a)(1) provides in pertinent part:

23 Except as otherwise provided in this section, no employer shall employ
24 any of his employees who in any workweek is engaged in commerce or
25 in the production of goods for commerce, or is employed in an
26 enterprise engaged in commerce or in the production of goods for
27 commerce, for a workweek longer than forty hours unless such
28 employee receives compensation for his employment in excess of the
hours above specified at a rate not less than one and one-half times the
regular rate at which he is employed.

108. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the

1 PLAINTIFFS and the other members of the COLLECTIVE CLASS are entitled to
2 overtime compensation for all overtime hours actually worked, at a rate not less than
3 one and one-half times their regular rate of pay for all hours worked in excess of forty
4 (40) hours in any workweek. DEFENDANTS' failure to correctly calculate overtime
5 wages as required by federal law was willful and not in good faith.

6 109. During the COLLECTIVE CLASS PERIOD, PLAINTIFFS, and
7 other members of the COLLECTIVE CLASS, worked more than forty (40) hours in
8 a workweek.

9 110. At all relevant times, DEFENDANT required PLAINTIFFS and
10 COLLECTIVE CLASS Members to work off the clock without paying them for all the
11 time they were under DEFENDANT's control. PLAINTIFFS and COLLECTIVE
12 CLASS Members would clock out of DEFENDANT's timekeeping system, in order to
13 perform additional work for DEFENDANT as required to meet DEFENDANT's job
14 requirements. Specifically, DEFENDANT engaged in the uniform and systematic
15 practice of requiring PLAINTIFFS and COLLECTIVE CLASS Members to perform
16 work off the clock including, but not limited to, time spent during pre and post trip
17 inspections of DEFENDANT's trucks and time spent waiting for DEFENDANT's loads
18 to be ready for transport for which DEFENDANT did not provide compensation. As a
19 result, PLAINTIFFS and other COLLECTIVE CLASS Members forfeited overtime
20 wages by working without their time being correctly recorded and without compensation
21 at the applicable overtime rates. DEFENDANT's uniform policy and practice not to pay
22 PLAINTIFFS and other COLLECTIVE CLASS Members for all overtime worked, is
23 evidenced by DEFENDANT's business records. Thus, DEFENDANT failed to pay the
24 PLAINTIFFS, and other members of the COLLECTIVE CLASS, overtime
25 compensation for the hours they have worked in excess of the maximum hours
26 permissible by law as required by § 207 of the FLSA, even though the PLAINTIFFS,
27 and the other members of the COLLECTIVE CLASS, were regularly required to work,
28 and did in fact work, overtime hours.

111. For purposes of the Fair Labor Standards Act, the employment practices of DEFENDANT were and are uniform throughout California in all respects material to the claims asserted in this Complaint.

112. As a result of DEFENDANT's failure to pay the correct overtime compensation for overtime hours worked, as required by the FLSA, PLAINTIFFS and the members of the COLLECTIVE CLASS were damaged in an amount to be proved at trial.

113. Therefore, PLAINTIFFS demand that they and the members of the COLLECTIVE CLASS be paid the correct overtime compensation as required by the FLSA for every hour of overtime worked plus interest and statutory costs as provided by law.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a Class Action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order requiring DEFENDANT to correctly calculate and pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS;
- C) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS according to proof; and,
- D) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein.

2. On behalf of the CALIFORNIA LABOR SUBCLASS:

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, and Sixth Causes of
2 Action asserted by the CALIFORNIA LABOR SUBCLASS as a class action
3 pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFFS and the
6 other members of the CALIFORNIA LABOR SUBCLASS, during the
7 applicable CALIFORNIA LABOR SUBCLASS PERIOD plus interest thereon
8 at the statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
10 period in which a violation occurs and one hundred dollars (\$100) per each
11 member of the CALIFORNIA LABOR SUBCLASS for each violation in a
12 subsequent pay period, not exceeding an aggregate penalty of four thousand
13 dollars (\$4,000) for PLAINTIFFS and each respective member of the
14 CALIFORNIA LABOR SUBCLASS , and an award of costs for violation of
15 Cal. Lab. Code § 226;
- 16 D) The wages of all terminated employees in the CALIFORNIA LABOR
17 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
18 or until an action therefore is commenced, in accordance with Cal. Lab. Code
19 § 203; and,
- 20 E) The amount of the expenses PLAINTIFFS and each member of the
21 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
22 plus interest, and costs of suit.
- 23 3. On behalf of the COLLECTIVE CLASS:
- 24 A) That the Court certify the Eighth Cause of Action asserted by the
25 COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);
- 26 B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and
27 procedures complained of herein violated provisions of the Fair Labor
28 Standards Act; and

1 C) That the PLAINTIFFS and the COLLECTIVE CLASS members recover
2 compensatory damages and an equal amount of liquidated damages as
3 provided under the law and in 29 U.S.C. § 216(b).

4 4. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004.

8 5. On all claims:

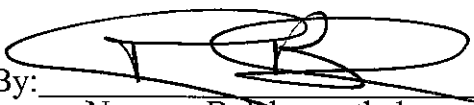
9 A) An award of interest, including prejudgment interest at the legal rate;

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

11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
12 law, including, but not limited to, pursuant to Cal. Labor Code §218.5, and/or
13 §226, §1194, §2802.

14 Dated: ^{May} March ²⁹, 2019

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

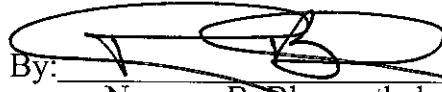
16
17 By: 
18 Norman B. Blumenthal
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

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

3
4
5 Dated: ^{May}~~March~~ 29, 2019

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

7
8 By: 
9 Norman B. Blumenthal
Attorneys for Plaintiffs

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EXHIBIT #1

FACSIMILE
(858) 551-1232

BLUMENTHAL, NORDREHAUG & BHOWMIK

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LA JOLLA, CALIFORNIA 92037**

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WRITERS E-MAIL:
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WRITERS EXT:
5

May 18, 2016
CA1252

VIA CERTIFIED MAIL

Labor and Workforce Development
Agency
Certified Mail # 70142120000378195611
800 Capitol Mall, Suite 5000 MIC-55
Sacramento, CA 95814

Trius Trucking, Inc.
Certified Mail # 70142120000378195628
Tehal Singh Thandi
4692 E. Lincoln Avenue
Fowler, CA 93625

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 512, 1194, 1197, 1197.1, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiff Augustus Mondrian (“Plaintiff”), and other aggrieved employees in a lawsuit against Trius Trucking, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from February of 2016 to April of 2016 as a Truck Driver Employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 512, 1194, 1197, 1197.1, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint filed by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as

if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable the Plaintiff to proceed with the Complaint filed in the Fresno County Superior Court, Case No. 16CECG01501, against Defendant as authorized by California Labor Code section 2695, *et seq.* The pending lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.