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FRESNO COUNTY SUPERIOR COURT

By: C. Cogburn, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

13 AUGUSTUS MONDRIAN, an individual,
14 on behalf of himself, and on behalf of all
15 persons similarly situated,

16 Plaintiff,

17 vs.

18 TRIUS TRUCKING, INC., a California
19 Corporation; and Does 1 through 50,
20 Inclusive,

21 Defendants.

Case No. **16CECG01501**

**FIRST 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 PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;

4. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203;

5. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802; and,

6. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiff Augustus Mondrian ("PLAINTIFF") an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges upon information and belief,
3 except for his own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

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

26 2. DEFENDANT is a corporation that at all relevant times mentioned herein
27 conducted and continues to conduct substantial and regular business throughout the State of
28 California. TRIUS is a transportation company that provides dry and temperature controlled

1 hauls and boasts more than one hundred trucks operating in California.

2 3. Plaintiff Augustus Mondrian brings this class action on behalf of himself and a
3 California class, defined as all individuals who are or previously were employed by Defendant
4 Trius Trucking, Inc. in California as Truck Driver employees (the "CALIFORNIA CLASS")
5 at any time during the period beginning on the date four (4) years before the filing of this
6 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
7 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
8 Members is under five million dollars (\$5,000,000.00).

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

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

25
26 **THE CONDUCT**

27 6. The work required to be performed by PLAINTIFF and the other CALIFORNIA
28 CLASS Members was manual labor consisting of driving DEFENDANT's trucks and

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

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

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

28 9. In addition, DEFENDANT failed to provide all the legally required unpaid, off-

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

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

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

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

10 13. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA CLASS,
11 seeks to recover all the compensation that DEFENDANT is required by law to provide, but
12 failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS Members. PLAINTIFF
13 also seeks penalties and all other relief available to him and other CALIFORNIA CLASS
14 Members under California law. Finally, PLAINTIFF seeks declaratory relief finding that the
15 employment practices and policies of the DEFENDANT violated California law and injunctive
16 relief to enjoin the DEFENDANT from continuing to engage in such employment practices.

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

26 15. DEFENDANT's practices violated and continue to violate the law, regardless of
27 whether the employees' work is paid by commission, by salary, by piece rate, or by part
28 commission, part piece rate, and/or part salary. As a result of this policy and practice,

1 DEFENDANT failed to pay minimum in accordance with applicable law.

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

6
7 **THE CALIFORNIA CLASS**

8 17. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
9 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
10 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of himself and a California class,
11 defined as all individuals who are or previously were employed by Defendant Trius Trucking,
12 Inc. in California as Truck Driver employees (the "CALIFORNIA CLASS") at any time during
13 the period beginning on the date four (4) years before the filing of this Complaint and ending
14 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount
15 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
16 dollars (\$5,000,000.00).

17 18. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 wilfully, engaged in a practice whereby DEFENDANT used an unlawful, unfair and deceptive
21 method to calculate minimum and payment for missed meal periods and off-duty rest breaks
22 owed to PLAINTIFF and the other members of the CALIFORNIA CLASS.

23 19. All CALIFORNIA CLASS Members, including PLAINTIFF, performed the same
24 manual labor and were paid by DEFENDANT according to uniform and systematic company
25 procedures, which, as alleged herein above, failed to correctly pay minimum wages. This
26 business practice is uniformly applied to each and every member of the CALIFORNIA CLASS,
27 and therefore, the propriety of these business practices can be adjudicated on a class-wide basis.

28 20. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under

1 California law by:

- 2 (a) Committing an act of unfair competition in violation of the California
3 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
4 unlawfully, unfairly and deceptively having in place company policies,
5 practices and procedures that uniformly denied PLAINTIFF and the
6 members of the CALIFORNIA CLASS the correct minimum wages and
7 otherwise violated applicable law;
- 8 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
9 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
10 having in place company policies, practices and procedures that uniformly
11 and systematically fail to provide and record all the legally required
12 unpaid, off-duty meal periods and all the legally required paid, off-duty
13 rest periods to PLAINTIFF and the CALIFORNIA CLASS members; and,
- 14 (c) Committing an act of unfair competition in violation of the California
15 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
16 violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
17 and the CALIFORNIA CLASS members with necessary expenses
18 incurred in the discharge of their job duties.

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

- 21 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
22 that the joinder of all CALIFORNIA CLASS Members is impracticable
23 and the disposition of their claims as a class will benefit the parties and the
24 Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS and will apply uniformly to every member of the CALIFORNIA
28 CLASS;

1 (c) The claims of the representative PLAINTIFF are typical of the claims of
2 each member of the CALIFORNIA CLASS. PLAINTIFF, like all other
3 members of the CALIFORNIA CLASS, was subjected to
4 DEFENDANT's illegal practice of failing to pay minimum wages for all
5 time worked by PLAINTIFF and other members of the CALIFORNIA
6 CLASS. PLAINTIFF sustained economic injury as a result of
7 DEFENDANT's employment practices. PLAINTIFF and the members
8 of the CALIFORNIA CLASS were and are similarly or identically harmed
9 by the same unlawful, deceptive, unfair and pervasive pattern of
10 misconduct engaged in by the DEFENDANT; and,

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

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

21 (a) Without class certification and determination of declaratory, injunctive,
22 statutory and other legal questions within the class format, prosecution of
23 separate actions by individual members of the CALIFORNIA CLASS will
24 create the risk of:

25 1) Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA CLASS which would establish
27 incompatible standards of conduct for the parties opposing the
28 CALIFORNIA CLASS; and/or,

1 2) Adjudication with respect to individual members of the
2 CALIFORNIA CLASS which would as a practical matter be
3 dispositive of interests of the other members not party to the
4 adjudication or substantially impair or impede their ability to
5 protect their interests.

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

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

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

26 1) The interests of the members of the CALIFORNIA CLASS in
27 individually controlling the prosecution or defense of separate
28 actions;

- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA CLASS;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- 4) The difficulties likely to be encountered in the management of a Class Action; and,
- 5) The basis of DEFENDANT's conduct towards PLAINTIFF and the CALIFORNIA CLASS.

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

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

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

26
27 **THE CALIFORNIA LABOR SUBCLASS**

28 25. PLAINTIFF further brings the Second, Third, Fourth and Fifth Causes of Action

1 on behalf of the a California subclass, defined as all members of the CALIFORNIA CLASS
2 who are or previously were employed by DEFENDANT in California as Truck Driver
3 employees (the "CALIFORNIA LABOR SUBCLASS") at any time during the period three (3)
4 years prior to the filing of the complaint and ending on the date as determined by the Court (the
5 "CALIFORNIA LABOR SUBCLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
6 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
7 Members is under five million dollars (\$5,000,000.00).

8 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 LABOR SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS
10 PERIOD should be adjusted accordingly.

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

23 28. Common questions of law and fact exist as to members of the CALIFORNIA
24 LABOR SUBCLASS, including, but not limited, to the following:

- 25 (a) Whether DEFENDANT unlawfully failed to pay minimum wage
26 compensation to members of the CALIFORNIA LABOR SUBCLASS in
27 violation of the California Labor Code and applicable regulations;
28 (b) Whether DEFENDANT's policy and practice of failing to pay

1 CALIFORNIA LABOR SUBCLASS Members wages, including
2 minimum wages for all time worked, violates applicable provisions of
3 California law;

4 (c) Whether DEFENDANT unlawfully failed to correctly calculate and pay
5 compensation due to members of the CALIFORNIA LABOR SUB-
6 CLASS for missed meal and rest breaks in violation of the California
7 Labor Code and California regulations and the applicable California Wage
8 Order;

9 (d) Whether DEFENDANT unlawfully failed to keep and furnish
10 CALIFORNIA LABOR SUBCLASS Members with accurate records of
11 time worked; and,

12 (e) Whether DEFENDANT's conduct was willful.

13 29. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS
14 under California law by:

15 (a) Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording tall
16 time worked and thereby failing to pay PLAINTIFF and the members of
17 the CALIFORNIA LABOR SUBCLASS the correct minimum wage pay
18 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1197;

19 (b) Violating Cal. Lab. Code § 226(a) by failing to provide PLAINTIFF and
20 the CALIFORNIA LABOR SUBCLASS Members with an accurate
21 itemized statement in writing showing the gross wages earned, the net
22 wages earned, all applicable hourly rates in effect during the pay period
23 and the corresponding amount of time worked at each hourly rate by the
24 employee;

25 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
26 when an employee is discharged or quits from employment, the employer
27 must pay the employee all wages due without abatement, by failing to
28 tender full payment and/or restitution of wages owed or in the manner

1 required by California law to the members of the CALIFORNIA LABOR
2 SUB-CLASS who have terminated their employment; and,

- 3 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse the PLAINTIFF
4 and the CALIFORNIA CLASS members with necessary expenses
5 incurred in the discharge of their job duties.

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

- 8 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS are
9 so numerous that the joinder of all CALIFORNIA LABOR SUBCLASS
10 members is impracticable and the disposition of their claims as a class will
11 benefit the parties and the Court;

- 12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Complaint are common to the CALIFORNIA
14 LABOR SUBCLASS and will apply uniformly to every member of the
15 CALIFORNIA LABOR SUBCLASS;

- 16 (c) The claims of the representative PLAINTIFF are typical of the claims of
17 each member of the CALIFORNIA LABOR SUBCLASS. PLAINTIFF,
18 like all other members of the CALIFORNIA LABOR SUBCLASS, was
19 denied compensation for all time worked as a result of DEFENDANT's
20 systematic illegal and deceptive pay practices. PLAINTIFF and all other
21 members of the CALIFORNIA LABOR SUBCLASS sustained economic
22 injuries arising from DEFENDANT's violations of the laws of California.
23 PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS
24 were and are similarly or identically harmed by the same unlawful,
25 deceptive, unfair and pervasive pattern of misconduct engaged in by the
26 DEFENDANT as described above; and,

- 27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has

1 retained counsel who are competent and experienced in Class Action
2 litigation. There are no material conflicts between the claims of the
3 representative PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUBCLASS that would make class certification inappropriate.
5 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
6 assert the claims of all CALIFORNIA LABOR SUBCLASS Members.

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

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

13 1) Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUBCLASS which would
15 establish incompatible standards of conduct for the parties
16 opposing the CALIFORNIA LABOR SUBCLASS; or,

17 2) Adjudication with respect to individual members of the
18 CALIFORNIA LABOR SUBCLASS which would as a practical
19 matter be dispositive of interests of the other members not party to
20 the adjudication or substantially impair or impede their ability to
21 protect their interests.

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

1 (c) Common questions of law and fact exist as to the members of the
2 CALIFORNIA LABOR SUBCLASS, with respect to the practices and
3 violations of California Law as listed above, and predominate over any
4 question affecting only individual CALIFORNIA LABOR SUBCLASS
5 members, and a Class Action is superior to other available methods for the
6 fair and efficient adjudication of the controversy, including consideration
7 of:

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

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

- 22 (a) The questions of law and fact common to the CALIFORNIA LABOR
23 SUBCLASS predominate over any question affecting only individual
24 members;
- 25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 LABOR SUBCLASS because in the context of employment litigation a
28 substantial number of individual CALIFORNIA LABOR SUBCLASS

1 members will avoid asserting their rights individually out of fear of
2 retaliation or adverse impact on their employment;

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

6 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS
7 members, will not be able to obtain effective and economic legal redress
8 unless the action is maintained as a Class Action;

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

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

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

21 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUBCLASS consists of those members of the
24 CALIFORNIA CLASS who were subjected to the DEFENDANT's
25 practices as described above during the CALIFORNIA LABOR
26 SUBCLASS PERIOD; and,

27 (i) Class treatment provides manageable judicial treatment calculated to bring
28 a efficient and rapid conclusion to all litigation of all wage and hour

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA LABOR SUBCLASS.

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

8
9 **JURISDICTION AND VENUE**

10 34. This Court has jurisdiction over this Action pursuant to California Code of
11 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
12 17203. This Action is brought as a Class Action on behalf of similarly situated employees
13 of DEFENDANT pursuant to California Code of Civil Procedure, Section 382.

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

18
19 **FIRST CAUSE OF ACTION**

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

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

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

23 36. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 35 of this
25 Complaint.

26 37. DEFENDANT is a "person" as that term is defined under California Business &
27 Professions Code § 17021.

28 38. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
2 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
3 competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair
5 competition may be enjoined in any court of competent jurisdiction. The court
6 may make such orders or judgments, including the appointment of a receiver, as
7 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.

8 California Business & Professions Code § 17203.

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

16 40. By the conduct alleged herein, DEFENDANT's practices were unlawful and
17 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 41. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's policy and practice failed to provide the required amount of
24 compensation for missed meal and rest breaks, failed to reimburse for all necessary business
25 expenses incurred, and failed to adequately compensate PLAINTIFF and CALIFORNIA
26 CLASS Members for all non-production time, due to a systematic business practice that cannot
27 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld. The work schedule for PLAINTIFF and other
3 CALIFORNIA CLASS Members was set by DEFENDANT.

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

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

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

17 45. PLAINTIFF further demands on behalf of himself and each member of the
18 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
19 period was not timely provided as required by law.

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

26 47. All the acts described herein as violations of, among other things, the Industrial
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California
28 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,

1 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
2 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

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

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

24 **and Against All Defendants)**

25 51. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
26 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs
27 1 through 50 of this Complaint.

28 52. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
2 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
3 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
4 Members.

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

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

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

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

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

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

1 59. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

28 64. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

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

11 12 **THIRD CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS**

16 **and Against All Defendants)**

17 65. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
18 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
19 64 of this Complaint.

20 66. Cal. Labor Code § 226(a) provides that an employer must furnish employees with
21 an "accurate itemized statement in writing showing:

22 (1) gross wages earned,

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

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

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

12 67. From time to time, DEFENDANT violated Labor Code § 226(a), in that
13 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net wages
14 earned, and all applicable hourly rates in effect during the pay period and the corresponding
15 amount of time worked at each hourly rate by the employee. DEFENDANT failed to provide
16 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
17 wage statements which failed to show, among other things, the correct minimum wages for time
18 worked, and allocation of lawfully required, paid, and off-duty rest periods. Cal. Lab. Code §
19 226 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and the other
23 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
24 § 226.

25 68. DEFENDANT knowingly and intentionally failed to comply with Labor Code
26 § 226(a), causing damages to PLAINTIFF, and the other members of the CALIFORNIA
27 LABOR SUBCLASS. These damages include, but are not limited to, costs expended
28 calculating the true time worked and the amount of employment taxes which were not properly

1 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
2 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS may recover
3 liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and
4 \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
5 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
6 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUBCLASS herein).

7
8 **FOURTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

12 **and Against All Defendants)**

13 69. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
14 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 68
15 of this Complaint.

16 70. Cal. Lab. Code § 200 provides, in relevant part, that:

17 As used in this article:

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

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

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

24 72. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his or
26 her employment, his or her wages shall become due and payable not later
than 72 hours thereafter, unless the employee has given 72 hours previous
27 notice of his or her intention to quit, in which case the employee is entitled
to his or her wages at the time of quitting. Notwithstanding any other
28 provision of law, an employee who quits without providing a 72-hour notice

1 shall be entitled to receive payment by mail if he or she so requests and
2 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.

3
4 73. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
CLASS Members' employment contract.

5 74. Cal. Lab. Code § 203 provides, in relevant part, that:

6 If an employer willfully fails to pay, without abatement or reduction, in
7 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
8 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
9 more than 30 days.

10 75. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
11 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
12 required by law.

13 76. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
14 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and
15 who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay
16 as penalty for not paying all wages due at time of termination for all employees who terminated
17 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an
18 accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

19
20 **FIFTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code § 2802]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

25 77. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
26 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
27 76 of this Complaint.

28 78. Cal. Lab. Code § 2802 provides, in relevant part, that:

1 An employer shall indemnify his or her employee for all necessary expenditures
2 or losses incurred by the employee in direct consequence of the discharge of his
3 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.

4 79. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
5 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
7 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA
8 LABOR SUB-CLASS members for expenses which included, but were not limited to, costs
9 related to using their personal cellular phones all on behalf of and for the benefit of
10 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
11 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting
12 from using their personal cellular phones for DEFENDANT within the course and scope of their
13 employment for DEFENDANT. These expenses were necessary to complete their principal job
14 duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
15 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and
16 the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
17 reimburse the PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
18 expenses as an employer is required to do under the laws and regulations of California.

19 80. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
20 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
21 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
22 at the statutory rate and costs under Cal. Lab. Code § 2802.

23 ///

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1 **SIXTH CAUSE OF ACTION**

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

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

4 **(By PLAINTIFF and Against All Defendants)**

5 81. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
6 1-74, supra, as though fully set forth at this point.

7 82. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 83. PLAINTIFF, and such persons that may be added from time to time that satisfy
18 the administrative procedures under the Private Attorneys General Act, brings this
19 Representative Action on behalf of the State of California with respect to himself and all
20 individuals who are or previously were employed by DEFENDANT in a California as Truck
21 Driver employees during the time period of May 10, 2015 until the present (the "AGGRIEVED
22 EMPLOYEES").

23 84. On May 18, 2016, PLAINTIFF gave written notice by certified mail to the Labor
24 and Workforce Development Agency (the "Agency") and the employer of the specific
25 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
26 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
27 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
28 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action

1 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to
2 all AGGRIEVED EMPLOYEES as herein defined.

3 85. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
5 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime
6 hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements,
7 and (c) failed to timely pay wages, all in violation of the applicable Labor Code sections listed
8 in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a),
9 226.7, 256, 512, 1194, 1197, 1197.1 and the applicable Industrial Wage Order(s), and thereby
10 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery
11 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
12 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
13 the other AGGRIEVED EMPLOYEES.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

1 2. On behalf of the CALIFORNIA LABOR SUBCLASS:

- 2 A) That the Court certify the Second, Third and Fourth Causes of Action asserted by
3 the CALIFORNIA LABOR SUBCLASS as a class action pursuant to Cal. Code
4 of Civ. Proc. § 382;
- 5 B) Compensatory damages, according to proof at trial, including compensatory
6 damages for minimum compensation due PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUBCLASS, during the applicable CALIFORNIA
8 LABOR SUBCLASS PERIOD plus interest thereon at the statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUBCLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) for
13 PLAINTIFF and each respective member of the CALIFORNIA LABOR
14 SUBCLASS , and an award of costs for violation of Cal. Lab. Code § 226;
- 15 D) The wages of all terminated employees in the CALIFORNIA LABOR
16 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
17 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
18 and,
- 19 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
20 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
21 costs of suit.

22 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- 23 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
24 General Act of 2004.

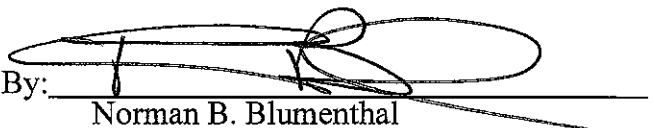
25 4. On all claims:

- 26 A) An award of interest, including prejudgment interest at the legal rate;
27 B) Such other and further relief as the Court deems just and equitable; and,
28 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the

1 law, including, but not limited to, pursuant to Cal. Labor Code §218.5, and/or
2 §226, §1194.

3 Dated: September 30, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

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6 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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Dated: September 30, 2016

BLUMENTHAL, NORDREHAUG & BHOWMIK

By:

Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT #1

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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.

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Htc- 55
Sacramento, CA 95814

2. Article Number

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CA1252

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☐ Addressee

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Trust Inc.
Tehal Singh Thandi
4692 E. Lincoln Ave.
Fowler, CA 93625

CA12S2

2. Article Number
(Transfer from service label)

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PS Form 3811, July 2013

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x Julie Aguilar

- ☐ Agent
☐ Addressee

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