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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Grace Powell, DEPUTY

Attorneys for Plaintiffs PHILLIP BERNAL and TRUHILL NOEL, on behalf of themselves
and all others similarly situated

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

PHILLIP BERNAL, TRUHILL NOEL,
KHYELL MARTIN, DAMIEN
MCNORTON, WADDIE EARNEST,
GILBERT ESTRADA, CARMEN
HERNANDEZ, and WENDY QUINTERO,
individually, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

EXPRESS MESSENGER SYSTEMS, INC.,
dba ONTRAC, a Minnesota Corporation,
ONTRAC LOGISTICS, INC., a Delaware
Corporation, and DOES 2-10, Inclusive,

Defendants.

Case No. CIVSB2319614

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) FAILURE TO PAY MINIMUM, REGULAR,
OVERTIME, AND/OR DOUBLE TIME
WAGES;**
 - (2) FAILURE TO PAY REPORTING TIME
PAY;**
 - (3) FAILURE TO PAY SPLIT-SHIFT
PREMIUMS;**
 - (4) FAILURE TO PAY VACATION WAGES;**
 - (5) FAILURE TO PROVIDE MEAL PERIODS;**
 - (6) FAILURE TO PROVIDE REST
PERIODS;**
 - (7) FAILURE TO FURNISH TIMELY
AND ACCURATE WAGE STATEMENTS;**
 - (8) FAILURE TO REIMBURSE BUSINESS
EXPENSES;**
 - (9) FAILURE TO PAY ALL WAGES DUE
DURING EMPLOYMENT;**
 - (10) FAILURE TO PAY ALL WAGES DUE
UPON TERMINATION;**
 - (11) FAILURE TO PRODUCE
EMPLOYMENT RECORDS;**
 - (12) UNLAWFUL DEDUCTION OF WAGES;**
 - (13) UNLAWFUL AGREEMENTS;**
 - (14) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW ("UCL"),
Bus. & Prof. Code §§ 17200, *et seq.*;**
 - (15) VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**
- DEMAND FOR JURY TRIAL**

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1 Plaintiffs PHILLIP BERNAL, TRUHILL NOEL, KHYELL MARTIN, DAMIEN
2 MCNORTON, WADDIE EARNEST, GILBERT ESTRADA, CARMEN HERNANDEZ, and
3 WENDY QUINTERO (“Plaintiffs”), by and through their attorneys of record, bring this Class and
4 Representative Action Complaint against EXPRESS MESSENGER SYSTEMS, INC., dba
5 ONTRAC, ONTRAC LOGISTICS, INC. (substituted for Doe Defendant One) (“OnTrac” or
6 collectively, “Defendants”), and respectfully allege the following:

7 **NATURE OF THE ACTION**

8 1. This is a class action for wage and labor violations arising out of Defendants’ failure
9 to pay wages for all time worked and failure to provide timely and uninterrupted meal and rest
10 periods, and for derivative claims.

11 2. As set forth below, Defendants: failed to pay their employees wages for time they
12 were required to attend meetings before their shift, and for time they were required to perform work
13 during their meal periods, including for overtime wages for work in excess of eight hours a day or
14 40 hours a week; failed to provide timely and uninterrupted meal and rest periods to their California
15 non-exempt employees in violation of California Labor Code sections 512 and 226.7, and the
16 applicable Industrial Wage Order; failed to pay their employees one hour of pay at the regular rate
17 of compensation for each instance that Defendants failed to provide statutorily mandated rest
18 periods and timely off-duty meal periods; failed to furnish timely and accurate wage statements;
19 failed to reimburse their California non-exempt employees for necessary business expenses
20 incurred; failed to pay all wages due upon termination; and, are in violation of California’s Unfair
21 Competition Law (“UCL”).

22 3. Plaintiffs seek to represent all those similarly situated who are or were residents of
23 the State of California.

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over this action because this is a civil action where the
26 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
27 Court. The acts and omissions complained of in this action took place in the State of California.
28 Venue is proper because upon information and belief, Defendants conduct substantial business in

1 this county and maintains offices in California in this county.

2 **PARTIES**

3 5. Plaintiff PHILLIP BERNAL is a resident of Riverside, California. Plaintiff was
4 employed by Defendants in Redlands, California, from approximately November 2021 to
5 approximately August 2022, as a Loader.

6 6. Plaintiff TRUHILL NOEL is a resident of Palo Alto, California. Plaintiff was employed
7 by Defendants in Fremont, California, from approximately December 2022 to approximately July 2023,
8 as a Warehouse Package Handler.

9 7. Plaintiff KHYELL MARTIN is a resident of Los Angeles, California. Plaintiff was
10 employed by Defendants in California, from approximately October 17, 2017 to approximately October
11 17, 2022, as a Lead Sorter.

12 8. Plaintiff DAMIEN MCNORTON is a resident of San Francisco, California. Plaintiff
13 was employed by Defendants in California, from approximately April 3, 2023 to approximately May 8,
14 2023, as a Loader/Unloader and Warehouse Associate.

15 9. Plaintiff WADDIE EARNEST is a resident of San Joaquin, California. Plaintiff was
16 employed by Defendants in California, from approximately September 2023 to approximately October
17 2023, as a warehouse employee.

18 10. Plaintiff GILBERT ESTRADA is a resident of San Bernardino, California. During the
19 relevant time period, Plaintiff was employed by Defendants in California, as a warehouse employee.

20 11. Plaintiff CARMEN HERNANDEZ is a resident of Los Angeles, California. Plaintiff
21 was employed by Defendants in California, from approximately October 2021 to approximately May
22 2024, as a warehouse employee.

23 12. Plaintiff WENDY QUINTERO is a resident of Los Angeles, California. Plaintiff was
24 employed by Defendants in California, from approximately October 2021 to approximately May 2024,
25 as a warehouse employee.

26 13. At all times material herein, Defendant EXPRESS MESSENGER SYSTEMS, INC.
27 dba ONTRAC was a Minnesota corporation authorized to do business in California, including but
28 not limited to conducting business within the County of San Bernardino. On April 7, 2021,

1 Defendant EXPRESS MESSENGER SYSTEMS, INC. dba ONTRAC filed an Amended Statement
2 by Foreign Corporation with the California Secretary of State changing its name to ONTRAC
3 LOGISTICS, INC.

4 14. At all times material herein, Defendant ONTRAC LOGISTICS, INC. is a Delaware
5 corporation authorized to do business in California, including but not limited to conducting
6 business within the County of San Bernardino.

7 15. Defendants are in the Logistics and Courier Services Industry. On information and
8 belief, Defendants are a regional overnight package delivery service provider. OnTrac operates
9 throughout California, Arizona, Nevada, Oregon, Washington, Utah, and Colorado. At all relevant
10 times alleged herein, Plaintiffs are informed and believe that Defendants are authorized to and
11 conduct business in California, including but not necessarily limited to the County of San
12 Bernardino. Defendants employed Plaintiffs at their Redlands Fremont, San Francisco, and Los
13 Angeles, California locations, and employ/employed other Loaders, Warehouse Package Handlers,
14 and Sorters all throughout the State of California.

15 16. Plaintiffs are informed and believe, and on that basis allege, that OnTrac is engaged
16 in selling, processing and shipping packages to customers as part of the interstate and international
17 commerce.

18 17. Plaintiffs are currently unaware of the true names and capacities, whether individual,
19 corporate, associate, or otherwise, of the defendants sued herein under fictitious names Does 2
20 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will
21 seek leave to amend this complaint to allege the true names and capacities of said fictitiously
22 named defendants when their true names and capacities have been ascertained. Plaintiffs are
23 informed and believe, and thereon allege, that each of the fictitiously named defendants is legally
24 responsible in some manner for the events and occurrences alleged herein, and for the damages
25 suffered by the Class.

26 18. Plaintiffs are informed and believe, and thereon allege, that all defendants, including
27 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
28 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged

1 herein occurred within the course and scope of said agency, employment, partnership, and joint
2 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
3 consent, authorization and ratification of their co-defendants.

4 **FACTS**

5 19. Between approximately November 2021 and approximately August 2022, Plaintiff
6 BERNAL was employed by Defendants, as a non-exempt, hourly-paid Loader at Defendants'
7 warehouse in Redlands, California. Plaintiff's duties included unloading merchandise from trucks,
8 scanning incoming packages, labelling and handing packages off to a sorter, and occasionally
9 assisting the sorters in sorting packages and loading onto the trucks for transport and delivery. The
10 packages Plaintiff BERNAL handled included packages moving from other states into California.

11 20. Between approximately December 2022 to approximately July 2023, Plaintiff NOEL
12 was employed by Defendants, as a non-exempt, hourly-paid Warehouse Package Handler at
13 Defendants' warehouse in Fremont, California. Plaintiff's duties included unloading merchandise
14 from trucks, sorting packages, and loading them onto smaller trucks for transport and delivery. The
15 packages Plaintiff NOEL handled included packages moving from other states into California.

16 21. Between approximately October 2017 and approximately October 2022, Plaintiff
17 KHYELL MARTIN was employed by Defendants, as a non-exempt, hourly-paid Lead Sorter at
18 Defendants' warehouse in California.

19 22. Between approximately April 2023 and approximately May 2023, Plaintiff
20 DAMIEN MCNORTON was employed by Defendants, as a non-exempt, hourly-paid
21 Loader/Unloader and Warehouse Associate at Defendants' warehouse in California.

22 23. Between approximately September 2023 and approximately October 2023, Plaintiff
23 WADDIE EARNEST was employed by Defendants, as a non-exempt, hourly-paid employee at
24 Defendants' warehouse in California.

25 24. During the relevant time period, Plaintiff GILBERT ESTRADA was employed by
26 Defendants, as a non-exempt, hourly-paid employee at Defendants' warehouse in California.

27 25. Between approximately October 2021 and approximately May 2024, Plaintiff
28 CARMEN HERNANDEZ was employed by Defendants, as a non-exempt, hourly-paid employee

1 at Defendants' warehouse in California.

2 26. Between approximately October 2021 and approximately May 2024, Plaintiff
3 WENDY QUINTERO was employed by Defendants, as a non-exempt, hourly-paid employee at
4 Defendants' warehouse in California.

5 27. The Defendants are in the business of selling, processing, and shipping packages to
6 customers as part of interstate and international commerce. Defendants employ Class Members,
7 such as Plaintiffs, who handle packages to deliver to customers as part of international and
8 interstate commerce. Thus, Plaintiffs and members of the Class are within a class of workers
9 engaged in interstate commerce, and any arbitration agreements with class action waivers signed by
10 Plaintiffs and Class Members, to the extent they exist, are not enforceable under the exemption in
11 section 1 of the Federal Arbitration Act. *See Southwest Airlines Co. v. Saxon*, 142 S.Ct. 1783
12 (2022).

13 28. Plaintiffs were typically scheduled to work five to six hours per shift, but on busier
14 days, they would work up to eight hours. Plaintiff MARTIN worked in excess of twelve hours on
15 occasion. Plaintiffs typically worked five days per week, but worked six days per week on
16 occasion.

17 29. Plaintiff BERNAL was required to start working five to ten minutes early to attend
18 meetings, and then clock in for his shift. Plaintiff BERNAL was not paid for this time, even
19 though: (1) no practical administrative difficulty of recording the additional time exists or existed
20 for Defendants during the relevant time period; (2) it is or was feasible for Defendants to determine
21 or estimate the average time it takes each employee to attend these pre-shift meetings, as Class
22 Members and other aggrieved employees at issue in this action were required to attend pre-shift
23 meetings prior to clocking in for the day. *See Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

24 30. Plaintiffs were required to perform other pre- and post-shift work. For example,
25 upon arriving at work but prior to clocking in for the start of their shifts, Plaintiff MCNORTON,
26 Class Members and other aggrieved employees were required to form a line and wait behind other
27 employees in order to access Defendants' electronic timekeeping system and/or terminal(s) so that
28 Plaintiff MCNORTON, Class Members and other aggrieved employees could then clock in for the

1 start of their shifts. This time spent under Defendants' control, including but not limited to, time
2 spent waiting in line behind other employees and/or time spent booting up and/or reinitiating
3 Defendants' electronic timekeeping system was not recorded and not compensated resulting in
4 approximately at least four (4) minutes of pre-shift off-the-clock work per shift and denied
5 minimum wages and overtime wages owed to Plaintiff MCNORTON.

6 31. Moreover, Plaintiff MCNORTON was frequently approached by his supervisor and
7 required to discuss work-related matters prior to clocking in for the start of his shift, resulting in
8 off-the-clock work and the underpayment of wages owed to Plaintiff MCNORTON. Based on
9 information and belief, Defendants have a policy and practice of requiring other Class Members
10 and other aggrieved employees to discuss work-related matters and/or otherwise engage in off-the-
11 clock work-related communications, such as responding to phone calls and text messages, resulting
12 in the underpayment of wages owed.

13 32. Based on information and belief, Plaintiffs, Class Members, and other aggrieved
14 employees were required to be at their machines/respective workstations on the production line at
15 their scheduled shift start time or face discipline. As such, Plaintiffs, Class Members, and other
16 aggrieved employees typically arrived at work prior to their scheduled shift start times so that they
17 could perform any required pre-shift work, including but not limited to, bestow personal items in
18 employee lockers/storage area, retrieve and/or compile work tools/equipment, make any necessary
19 adjustments to tools/equipment and/or perform any required maintenance tasks, don work
20 clothing/uniforms and/or protective equipment, and/or complete other work tasks so as to be ready
21 to be at their respective work stations at the their scheduled shift start time as mandated by
22 Defendants. This pre-shift off-the-clock work was neither recorded nor compensated resulting in
23 the substantial underpayment of wages owed to Plaintiffs, Class Members, and other aggrieved
24 employees.

25 33. Based on information and belief, Plaintiffs, Class Members, and other aggrieved
26 employees were also required to perform post-shift off-the-clock work that was neither recorded
27 nor compensated. For example, based on information and belief, Plaintiffs, Class Members, and
28 other aggrieved employees were required to put away their work tools/equipment, change out of

1 their work clothing/uniforms and/or protective gear after clocking out for the end of their shifts.
2 Based on information and belief, Defendants required Plaintiffs, Class Members, and other
3 aggrieved employees to undergo COVID-19 temperature screenings and/or complete
4 questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby,
5 resulting in pre-shift off-the-clock work.

6 34. Based on information and belief, Defendants failed to pay Plaintiffs, Class
7 Members, and other aggrieved employees for time they were required to spend completing
8 orientation, policy questionnaires, and/or time spent completing the onboarding process including
9 but not limited to reviewing various documents and policies provided by Defendants. Based on
10 information and belief, this work time was completed off-the-clock and was not compensated.

11 35. Even though Plaintiffs were typically scheduled for five to six-hour shifts,
12 particularly during the “Peak”, or busy, season, Class Members and other aggrieved employees
13 would work up to eight to eight and a half hours on some days. Some Class Members and other
14 aggrieved employees, like Plaintiff MARTIN, worked in excess of twelve hours on some days.
15 Defendants failed to properly compensate Plaintiffs, Class Members, and other aggrieved
16 employees for all hours worked at the appropriate overtime rate, including double time, for time
17 that Plaintiffs, Class Members, and other aggrieved employees spent in pre-shift meetings and
18 performing other pre- and post-shift work, and performing work during meal breaks, including
19 responding to interruptions from management, and also due to Defendants’ automatic deduction
20 and time rounding policies (for shift start and end times and meal period start and end times).

21 36. Based on information and belief, Defendants implemented a time-rounding system
22 that as applied systematically deprived Plaintiffs, Class Members, and other aggrieved employees
23 of compensable time because the time-rounding system implemented by Defendants would almost
24 always, if not always, result in understating actual compensable work time.

25 37. Based on information and belief, Defendants failed and continue to fail to pay
26 Plaintiffs, Class Members, and other aggrieved employees two times their regular rate of pay for
27 time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on
28 the seventh consecutive day of work in a work week, in violation of California's overtime laws.

1 38. Based on information and belief, Defendants failed to incorporate all non-
2 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
3 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
4 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of
5 overtime wages owed to Plaintiffs, Class Members, and other aggrieved employees.

6 39. Further, there were times when Plaintiffs, Class Members, and other aggrieved
7 employees reported to work and were not put to work or only worked for one to two hours and
8 were sent home early. Plaintiffs were not paid the proper reporting time pay for each instance they
9 reported to work and were sent home after one to two hours.

10 40. Based on information and belief, Defendants routinely scheduled Plaintiffs, Class
11 Members, and other aggrieved employees for multiple different shifts throughout the same
12 workday, separated by periods other than *bona fide* rest or meal breaks. Defendants failed to pay
13 Plaintiffs, Class Members, and other aggrieved employees one (1) hour's pay at the applicable
14 minimum wage, which resulted in Plaintiffs, Class Members, and other aggrieved employees being
15 paid less than the applicable minimum wage for that day. As a further consequence, Defendants
16 also failed to separately list "split-shift" payments on Plaintiffs, Class Members, and other
17 aggrieved employees wage statements.

18 41. Based on information and belief, Defendants had and continue to have a uniform
19 policy and practice of failing to allow Plaintiffs, Class Members, and other aggrieved employees to
20 use their earned vacation/paid time off during their employment and failing to pay all vested,
21 accrued paid time off to Plaintiffs, Class Members, and other aggrieved employees upon separation
22 of employment, in violation of California law, including but not limited to, Labor Code section
23 227.3.

24 42. Plaintiffs, Class Members, and other aggrieved employees were required to work
25 through their meal breaks because of understaffing, inadequate coverage, unreasonably high
26 workload and expectations, and/or other actions, inactions, or decisions made by and within the
27 sole control and discretion of Defendants. Sometimes, Plaintiff BERNAL would only receive one
28 rest break during his entire shift in lieu of a meal break. Plaintiff NOEL was often interrupted

1 during his meal breaks by his managers asking him work-related questions or to address work-
2 related issues. During Peak season, Plaintiffs, Class Members, and other aggrieved employees
3 would end up working longer hours, but no meal breaks were scheduled. Moreover, based on
4 information and belief, Defendants denied employees permission to leave the premises for any
5 meal period. Plaintiffs, Class Members, and other aggrieved employees were not paid a meal period
6 premium for these missed or interrupted meal periods.

7 43. Moreover, based on information and belief, Plaintiffs, Class Members, and other
8 aggrieved employees did not receive a timely, uninterrupted second meal period when working
9 shifts over ten (10) hours in a workday.

10 44. Based on information and belief, Defendants had and continue to have a policy of
11 rounding the start and end times of employees' meal periods and/or automatically deducting thirty
12 minutes per shift despite having actual and/or constructive knowledge that Plaintiffs, Class
13 Members, and other aggrieved employees did not receive compliant meal periods.

14 45. In addition, due to press of business and management interruptions, Defendants
15 often failed to provide Plaintiffs, Class Members, and other aggrieved employees with rest breaks
16 in violation of Labor Code section 226.7. If a rest break was provided, it was often late, interrupted,
17 cut short, on duty, and/or otherwise subject to Defendants' control. Plaintiffs, Class Members, and
18 other aggrieved employees were not paid a rest period premium for these non-compliant rest
19 periods.

20 46. Based on information and belief, Defendants implemented policies and/or practices
21 that failed to relieve Plaintiffs, Class Members, and other aggrieved employees of all duties and
22 employer control during rest periods. Based on further information and belief, Plaintiffs, Class
23 Members, and other aggrieved employees were pressured to complete their work duties according
24 to a designated schedule such that rest periods were only taken once tasks were completed, and/or
25 as time permitted.

26 47. As a result, Plaintiffs, Class Members, and other aggrieved employees did not
27 receive legally compliant first, second, or third rest periods as required by California law.

28 ///

1 48. Defendants knew, or should have known, that their behavior caused Plaintiffs, Class
2 Members, and other aggrieved employees to work through the above-described meal and/or rest
3 periods. As a company-wide policy, Defendants still chose not to pay meal and rest period
4 premiums required by law.

5 49. Further, Plaintiffs and other Class Members' wage statements failed to correctly
6 state the rate of pay for minimum, regular, overtime, double time, reporting time, and/or vacation
7 wages, meal and rest break and split-shift premiums, and consequently the gross and net wages due,
8 among other required information. Because of Defendants' failure to list the correct gross wages
9 earned, net wages, and meal and rest break premiums earned on wage statements, Plaintiffs, Class
10 Members, and other aggrieved employees have been prevented from verifying, solely from
11 information on the wage statements themselves, that they were paid correctly and in full.

12 50. The statements in question are deficient in many other ways, including, but not
13 limited to: failure to list total hours worked, failing to list applicable hourly rates and the numbers
14 of hours worked at each rate, failure to list piece-rate units earned and the applicable piece-rate,
15 failure to list deductions, failure to track sick leave, failure to list the employee and SSN/EID
16 properly, failure to list the full legal name and address of the employer, failure to list inclusive
17 dates for which employees are paid, and failure to provide employees with the ability to easily
18 access wage statements and get hard copies at no expense to the employee.

19 51. Also, during the relevant time period, Plaintiffs, Class Members, and other
20 aggrieved employees were required to use their personal cellphones for work purposes. Supervisors
21 would call Plaintiffs, Class Members, and other aggrieved employees on their personal cellphones.
22 Plaintiffs would also need to contact their supervisors using their personal cellphone, because no
23 company phone was provided. Sometimes, Plaintiffs would receive calls from supervisors asking
24 work-related questions while they were off-the-clock, including on their days off. Furthermore, on
25 information and belief, Plaintiffs, Class Members, and other aggrieved employees also incurred
26 travel and parking expenses while performing their job duties. Plaintiffs, Class Members, and other
27 aggrieved employees have not been reimbursed for all cellphone expenses.

28 ///

1 52. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
2 or should have known that Plaintiffs, Class Members, and other aggrieved employees were entitled
3 to receive all wages owed to them during their employment. Plaintiffs, Class Members, and other
4 aggrieved employees did not receive payment of all wages, including minimum, regular, overtime,
5 double time, and reporting time wages and meal and rest period and split-shift premiums, within
6 any time permissible under California Labor Code section 204.

7 53. Based on information and belief, Defendants failed and continue to fail to timely pay
8 final wages to Plaintiffs, Class Members, and other aggrieved employees upon separation of
9 employment in violation of Labor Code sections 201-202. Moreover, final paychecks once
10 provided to Plaintiffs, Class Members, and other aggrieved employees did not include all wages
11 owed as they are devoid of, including but not limited to, all owed minimum, regular, overtime,
12 double time, and reporting time wages, premium wages, split-shift premiums, vacation pay, and all
13 owed sick leave and/or paid time off wages at the properly accrued rates. For example, based on
14 information and belief, Defendants failed to furnish Plaintiff MCNORTON with any final paycheck
15 until at least twenty-four hours following Plaintiff MCNORTON's termination.

16 54. Based on information and belief, Defendants failed to produce Plaintiffs'
17 employment records when requested. For example, Plaintiff QUINTERO requested her records on
18 June 12, 2024, but did not timely receive the requested records. Based on information and belief,
19 Defendants at times failed to timely produce complete payroll and personnel records when
20 requested by Class Members and other aggrieved employees. Based on information and belief,
21 Defendants failed and continue to fail to timely produce complete time, pay, and personnel records
22 when requested by Class Members and other aggrieved employees.

23 55. Based on information and belief Defendants made unlawful deductions from
24 Plaintiffs', Class Members', and other aggrieved employees' paychecks during the Class Period,
25 including but not limited to, deducting costs of uniforms and/or other business costs and/or
26 deducting wages for purported overpayments from previous pay periods and/or unlawfully
27 deducting wages for negligently damaged property.

28 ///

1 56. Based on information and belief, Defendants required and continue to require
2 Plaintiffs, Class Members, and other aggrieved employees to agree in writing to unlawful
3 conditions of employment including but not limited to unlawful non-solicitation/non-compete
4 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
5 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
6 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
7 employment in violation of Labor Code section 432.5.

8 57. Based on information and belief, Defendants ordered unlawful financial credit
9 checks on Plaintiffs, Class Members, and other aggrieved employees, in violation of Labor Code
10 section 1024.5, and required them to provide ongoing written consent to the unlawful credit checks
11 as a condition of employment.

12 58. Based on information and belief, Defendants required Plaintiffs, Class Members,
13 and other aggrieved employees to submit and/or agree to submit in writing to unlawful criminal
14 background checks as a condition of obtaining and/or holding employment in violation of the
15 Investigative Consumer Reporting Agencies Act (“ICRAA”), CA Civil Code sections 1786, *et seq.*
16 and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. sections 1681, *et seq.*

17 59. Based on further information and belief, Defendants required Plaintiffs, Class
18 Members, and other aggrieved employees to agree in writing to provide Defendants with ongoing
19 consent to conduct background checks throughout the duration of employment, in violation of the
20 ICRAA and/or FCRA and/or other applicable laws.

21 60. Based on further information and belief, Defendants knew that requiring Plaintiffs,
22 Class Members, and other aggrieved employees to agree to unlawful criminal and/or financial
23 background checks as a condition of obtaining and/or holding employment was unlawful.

24 61. Upon information and belief, Defendants, in violation of California law, including
25 but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”),
26 asked Plaintiffs, Class Members, and other aggrieved employees about convictions prior to
27 extending an offer of employment and/or otherwise impermissibly inquired into criminal history on
28 its employment application in violation of California law.

1 62. By asking about arrests not resulting in convictions, Defendants violated Labor
2 Code section 432.7. By asking about convictions at the application phase or prior to extending an
3 employment offer, Defendants violated California's Fair Chance Act, and thereby violated Labor
4 Code section 432.5 by unlawfully requiring Plaintiffs, Class Members, and other aggrieved
5 employees to agree in writing to disclose arrests and/or convictions as a condition of employment.

6 63. Additionally, Defendants violated Labor Code section 432.5 by requiring Plaintiffs,
7 Class Members, and other aggrieved employees to agree in writing to other unlawful agreements,
8 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a
9 condition of employment.

10 64. Upon information and belief, the above-mentioned unlawful employment practices
11 by Defendants were applied the same to all Loaders/Unloaders, Warehouse Package Handlers,
12 Warehouse Associates, and Sorters in all of Defendants' warehouses in the State of California.

13 65. Defendants' conduct, as alleged here, has caused Plaintiffs and Class Members
14 damages including, but not limited to, loss of wages and compensation. Defendants are liable to
15 Plaintiffs and the Class for failing to pay meal and rest break and split-shift premiums, failing to
16 pay all minimum, straight-time, overtime, double-time, and/or reporting time wages owed for each
17 pay period, failing to provide vacation wages, failing to provide timely and accurate wage
18 statements, failing to pay all wages due during employment and upon termination of employment,
19 and unfair competition.

20 66. Plaintiffs are members of, and seek to be representatives for, the Class of similarly-
21 situated employees who all have been exposed to, have suffered, and/or were permitted to work
22 under Defendants' unlawful employment practices as alleged herein.

23 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

24 67. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and
25 QUINTERO exhausted the notice requirement by filing a complaint with the Labor and Workforce
26 Development Agency ("LWDA") in their letters dated January 31, 2023, May 19, 2023, November
27 7, 2023, January 17, 2024, and August 5, 2024, respectively, as required under the California Labor
28 Code Private Attorneys General Act ("PAGA"), and are incorporated herein by reference. The

1 LWDA did not assume jurisdiction over the applicable penalty claims alleged; therefore, Plaintiffs
2 KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and QUINTERO have exhausted
3 the procedural requirement under the PAGA to pursue any and all penalty claims as provided under
4 the PAGA. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and
5 QUINTERO seek civil penalties under the PAGA as representatives of the State of California and
6 have standing as aggrieved employees. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA,
7 HERNANDEZ, and QUINTERO seek to represent all Defendants’ non-exempt employees in the
8 State of California who suffered one or more of the violations alleged (“aggrieved employees”)
9 during the “PAGA Period” (from February 1, 2022 through May 24, 2025). Labor Code §§ 2698, *et*
10 *seq.*, 2699.3(a)(2)(C).

11 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

12 68. Plaintiffs bring this action on behalf of themselves and on behalf of all others
13 similarly situated, and as members of the Class they seek to represent. The class period is from four
14 years prior to the filing of the Complaint in this action until the trial of this action (“Class Period.”)
15 The Class is defined as:

16 *All current and former non-exempt employees employed by Defendants from July 23,*
17 *2019 through May 24, 2025, excluding any period covered by the PAGA settlement of*
18 *Knox et al. v. Express Messenger Systems, Inc. dba OnTrac (San Bernardino County*
19 *Superior Court Case No. CIV-DS-1932323) (“Class Period”), whether or not they*
signed arbitration agreements with the Defendants, and regardless of their job title(s)
while employed with Defendants.

20 69. Plaintiffs further seek to represent the following subclasses:

21 **The Regular Wages Subclass**

22 “All current and former non-exempt employees employed by Defendants during the Class
23 Period, whether or not they signed arbitration agreements with the Defendants, and
24 regardless of their job title(s) while employed with Defendants, who worked at least one
shift less than eight hours in a workday and/or worked less than 40 hours during the
workweek.”

25 **The Overtime Wages Subclass**

26 “All current and former non-exempt, employees employed by Defendants during the Class
27 Period, whether or not they signed arbitration agreements with the Defendants, and
28 regardless of their job title(s) while employed with Defendants and who worked at least one
shift longer than eight hours in a workday and/or worked more than 40 hours during the
workweek.”

1 **The Double Time Wages Subclass**

2 “All current and former non-exempt employees employed by Defendants during the Class
3 Period, whether or not they signed arbitration agreements with the Defendants, and
4 regardless of their job title(s) while employed with Defendants, who worked at least one
5 shift longer than twelve hours in a workday.”

6 **The Reporting Time Pay Subclass**

7 “All current and former non-exempt employees employed by Defendants during the Class
8 Period, whether or not they signed arbitration agreements with the Defendants, and
9 regardless of their job title(s) while employed with Defendants, who worked less than half
10 their scheduled day’s work.”

11 **The Split-Shift Subclass**

12 “All current and former non-exempt employees employed by Defendants during the Class
13 Period, whether or not they signed arbitration agreements with the Defendants, and
14 regardless of their job title(s) while employed with Defendants, who worked at least one
15 shift that was interrupted by non-paid and non-working time (longer than a bona fide meal
16 period) in the same workday.”

17 **The Vacation Wages Subclass**

18 “All current and former non-exempt employees employed by Defendants during the Class
19 Period, whether or not they signed arbitration agreements with the Defendants, and
20 regardless of their job title(s) while employed with Defendants, who were denied use of
21 their earned vacation/paid time off during their employment and/or were not paid all vested,
22 accrued paid time off.”

23 **The Meal Break Subclass**

24 “All current and former non-exempt employees employed by Defendants during the Class
25 Period, whether or not they signed arbitration agreements with the Defendants, and
26 regardless of their job title(s) while employed with Defendants, who worked at least one
27 shift longer than five hours in a workday.”

28 **The Rest Break Subclass**

 “All current and former non-exempt employees employed by Defendants during the Class
 Period, whether or not they signed arbitration agreements with the Defendants, and
 regardless of their job title(s) while employed with Defendants, who worked at least one
 shift longer than three and a half hours in a workday.”

The Itemized Wage Statement Subclass

 “All current and former non-exempt employees employed by Defendants during the Class
 Period, whether or not they signed arbitration agreements with the Defendants, and
 regardless of their job title(s) while employed with Defendants, who have received at least
 one wage statement from Defendants.”

The Expense Reimbursement Subclass

 “All current and former non-exempt employees employed by Defendants during the Class
 Period, whether or not they signed arbitration agreements with the Defendants, and
 regardless of their job title(s) while employed with Defendants, who incurred business

1 expenses in performance of their work duties.”

2 **The Waiting Time Penalties Subclass**

3 “All members of the Class, the Regular Wages Subclass, the Overtime Wages Subclass, the
4 Double Time Wages Subclass, the Reporting Time Pay Subclass, the Split-Shift Subclass,
5 the Vacation Wages Subclass, the Meal Break Subclass, the Rest Break Subclass, and the
Wage Deduction Subclass who separated employment with Defendants at any point during
the past three (3) years prior to the filing of this action.”

6 **The Employment Records Subclass**

7 “All current and former non-exempt employees employed by Defendants during the Class
8 Period, whether or not they signed arbitration agreements with the Defendants, and
regardless of their job title(s) while employed with Defendants, who requested their
employment records.”

9 **The Wage Deduction Subclass**

10 “All current and former non-exempt employees employed by Defendants during the Class
11 Period, whether or not they signed arbitration agreements with the Defendants, and
12 regardless of their job title(s) while employed with Defendants, who incurred unlawful
wage deductions.”

13 **The Unlawful Agreements Subclass**

14 “All current and former non-exempt employees employed by Defendants during the Class
15 Period, whether or not they signed arbitration agreements with the Defendants, and
regardless of their job title(s) while employed with Defendants, who were required to sign
unlawful agreements as a condition of their employment.”

16 **The UCL Subclass**

17 “All current and former non-exempt employees employed by Defendants during the Class
18 Period, whether or not they signed arbitration agreements with the Defendants, and
19 regardless of their job title(s) while employed with Defendants, regarding whom
Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices
prohibited by Bus. & Prof. Code sections 17200, *et seq.* as specifically described herein.”

20 **The Criminal and Background History Subclass**

21 “All current and former non-exempt employees employed by Defendants during the Class
22 Period, whether or not they signed arbitration agreements with the Defendants, and
23 regardless of their job title(s) while employed with Defendants, who were subject to
unlawful criminal background checks as a condition of obtaining and/or holding
employment.”

24 70. Plaintiffs reserve the right to amend or otherwise alter the class definition, or to
25 propose or eliminate subclasses, in response to facts learned through discovery, legal arguments
26 advanced by Defendants or otherwise.

27 71. This action has been brought and may be properly maintained as a class action
28 pursuant to the provisions of Code of Civil Procedure section 382 and other applicable law.

1 72. **Numerosity of the Class:** Pursuant to Code of Civil Procedure section 382,
2 members of the Class are so numerous that their individual joinder is impracticable. Plaintiffs
3 estimate, on information and belief, that there are several hundred current and former non-exempt
4 employees of Defendants employed in warehouses in California during the Class Period. The
5 precise number of Class Members and their addresses are known to Plaintiffs or will be known to
6 Plaintiffs through discovery. Class Members may be notified of the pendency of this action by
7 mail, electronic mail, the Internet, or published notice.

8 73. **Existence of Predominance of Common Questions of Law and Fact:** Pursuant to
9 Code of Civil Procedure section 382, common questions of law and fact and common answers exist
10 as to all members of the Class. These questions predominate over any questions affecting only
11 individual Class Members. These common legal and factual questions and answers include:

- 12 a. Whether Defendants had a policy or practice of not paying for time spent in pre-shift
13 meetings, time spent waiting in line to clock in and out of shifts, time spent
14 completing orientation, policy questionnaires, and/or time spent completing the
15 onboarding process including but not limited to reviewing various documents and
16 policies provided by Defendants, and other pre- or post-shift work;
- 17 b. Whether Defendants had a policy or practice of rounding time entries for shift start
18 and end times and meal period start and end times;
- 19 c. Whether members of the Class were not paid all wages owed to them, including
20 minimum, regular, overtime, double time wages, and at the correct rate;
- 21 d. Whether Defendants failed to pay premium wages required by the applicable Wage
22 Order's Reporting Time Pay regulations;
- 23 e. Whether Defendants failed to pay premium wages required by the applicable Wage
24 Order's Split-Shift Pay regulations;
- 25 f. Whether Defendants had a policy or practice of denying members of the Class use of
26 their earned vacation/paid time off during their employment;
- 27 g. Whether Defendants had a policy or practice of failing to pay members of the Class
28 all vested, accrued paid time off;

- h. Whether Defendants had a policy or practice of not paying meal or rest period premiums;
- i. Whether Defendants violated Labor Code section 226.7 and/or 512 and engaged in a pattern or practice of failing to provide timely, off-duty thirty (30) minute meal periods to Plaintiffs and members of the Class;
- j. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the members of the Class from taking statutory off-duty thirty (30) minute meal periods on a timely basis;
- k. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiffs and the members of the Class for missed, untimely or on-duty meal periods as required by California law;
- l. Whether Defendants violated the applicable California Industrial Welfare Commission Order by failing to provide Plaintiffs and the members of the Class with timely off-duty thirty (30) minute meal periods;
- m. Whether members of the Class were not provided with accurate wage statements as required by Labor Code section 226;
- n. Whether members of the Class were provided with wage statements in violation of Labor Code section 226, where the wage statements fail to identify and distinguish between meal and rest break premium payments;
- o. Whether Defendants violated Labor Code section 2802, by failing to reimburse Plaintiffs and Class Members incurred necessary business expenses;
- p. Whether Defendants engaged in unfair practices and violated California Business & Professions Code section 17200 by failing to provide Plaintiffs and the members of the Class with their statutory off-duty meal and rest periods on a timely basis;
- q. Whether Defendants engaged in unfair practices and violated California Business & Professions Code section 17200 by failing to pay Plaintiffs and the members of the Class for all time worked, and failing to provide meal and rest periods nor pay

- 1 premiums;
- 2 r. Whether Defendants maintained accurate time records of off-duty thirty (30) minute
- 3 meal breaks taken by Plaintiffs and members of the Class in accordance with the
- 4 applicable Industrial Wage Order;
- 5 s. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate
- 6 itemized wage statements to Plaintiffs and members of the Class that failed to
- 7 include payments for missed, untimely, and/or on-duty meal periods among wages
- 8 earned throughout the Class Period;
- 9 t. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate
- 10 itemized wage statements to Plaintiffs and members of the Class that failed to
- 11 include payment for all hours worked;
- 12 u. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate
- 13 itemized wage statements to Plaintiffs and members of the Class that failed to
- 14 accurately state the total hours worked, to the detriment of Plaintiffs and the Class;
- 15 v. Whether Defendants failed to compensate, and therefore violated Labor Code
- 16 sections 226(a) and 226.7, and the applicable Industrial Wage Order by failing to
- 17 provide ten (10) minute, uninterrupted rest periods as contemplated by California
- 18 law for work periods in excess of three and one-half (3 ½) hours;
- 19 w. Whether Defendants engaged in a pattern or practice of failing to properly
- 20 compensate Plaintiffs and the members of the Class for failing to provide ten (10)
- 21 minute, uninterrupted rest periods as contemplated by California law for work
- 22 periods in excess of three and one-half (3 ½) hours;
- 23 x. Whether Defendants violated Labor Code section 1197 due to failure to compensate
- 24 Plaintiffs and members of the class for those acts Defendants required Plaintiffs and
- 25 members of the Class to perform for the benefit of Defendants;
- 26 y. Whether Defendants violated Labor Code section 204 by failing to timely pay all
- 27 wages due during employment to all Class Members;
- 28 z. Whether Defendants violated Labor Code sections 201-203 by failing to pay all

wages due upon termination to all Class Members who were terminated or voluntarily quit;

aa. Whether Defendants violated Labor Code sections 226, 1198.5, and 432 by failing to produce employment records when requested by members of the Class;

bb. Whether Defendants had a policy or practice of unlawfully deducting wages from members of the Class for rounded time, work performed during meal periods, uniform costs, and damaged property;

cc. Whether Defendants had a policy or practice of requiring members of the Class to enter into unlawful agreements as a condition of employment, including unlawful financial and criminal background checks;

dd. The nature and extent of class-wide injury and the measure of damages or restitution.

74. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent because Plaintiffs, as non-exempt employees of Defendants, were exposed and subjected to the same unlawful business practices as other employees employed by Defendants during the Class Period. Plaintiffs and the members of the Class they seek to represent sustained the same types of damages and losses.

75. **Adequacy:** Plaintiffs are adequate representatives of the class they seek to represent because their interests do not conflict with the interests of the members of the Class Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of the class will be fairly and adequately protected by Plaintiffs and their counsel.

76. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and the Class Members' claims. The damages suffered by each individual Class Member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class Members to redress the wrongs done to them on an individual basis. Even if members of the

1 Class themselves could afford such individual litigation, the court system could not. Individualized
2 litigation increases the delay and expense to all parties and the court system due to the complex
3 legal and factual issues of the case. By contrast, the class action device presents far fewer
4 management difficulties and provides the benefits of single adjudication, economy of scale, and
5 comprehensive supervision by a single court.

6 77. The Class should also be certified because:

- 7 a. The prosecution of separate actions by individual members of the Class would create
8 a risk of inconsistent or varying adjudications with respect to individual Class
9 Members which would establish incompatible standards of conduct for Defendants;
10 b. The prosecution of separate actions by individual members of the Class would create
11 a risk of adjudication with respect to them, which would, as a practical matter, be
12 dispositive of the interests of the other Class Members not parties to the
13 adjudications, or substantially impair or impede their ability to protect their
14 interests; and
15 c. Defendants have acted or refused to act on grounds generally applicable to the
16 Class, and/or the general public, thereby making appropriate final and injunctive
17 relief with respect to the Class as a whole.

18 **FIRST CAUSE OF ACTION**
19 **FAILURE TO PAY MINIMUM, REGULAR, OVERTIME, AND/OR DOUBLE TIME**
20 **WAGES**
21 **(Violation of Labor Code §§ 218, 218.5, 218.6, 510, 1194, 1194.2, 1197, 1197.1, 1198, and the**
22 **applicable Wage Order)**
23 **(Against all Defendants)**

24 78. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
25 herein.

26 79. The California Labor Code establishes the fundamental right of all employees in
27 the State of California to be paid wages in a timely fashion for their work.

28 80. The applicable Industrial Wage Order provides that an employer may not pay
employees less than the applicable minimum wage for all hours worked.

81. Pursuant to the applicable Industrial Wage Order, Defendants are required to pay

1 Plaintiffs, and the members of the Class, for all hours worked, meaning the time which an
2 employee is subject to the control of the employer.

3 82. At all relevant times during the Class Period, Defendants failed to pay Plaintiffs and
4 other members of the Class wages for all hours worked, in that Plaintiffs and the Class performed
5 work or were interrupted with work-related issues while not clocked in to Defendants' timekeeping
6 program, resulting in unpaid wages. Additionally, Plaintiffs were not paid premiums for each
7 instance their meal periods were interrupted. As a result, Plaintiffs and other Class Members
8 worked hours they were not paid for, including overtime in the instances Plaintiffs and other Class
9 Members worked over eight hours in a day and/or 40 hours a week and double time in the instances
10 Plaintiffs and other Class Members worked over twelve hours in a day during the Peak season.
11 Plaintiffs and the Class Members therefore seek unpaid wages and penalties.

12 83. Labor Code section 510 and the applicable Wage Order provide that employees in
13 California shall not be employed more than eight hours in any workday or forty hours in a
14 workweek unless they receive additional compensation beyond their regular wages in amounts
15 specified by law. Specifically, Labor Code section 510(a) requires that: Any work in excess of
16 eight hours in one workday and any work in excess of 40 hours in any one workweek shall be
17 compensated at the rate of no less than one and one-half times the regular rate of pay for an
18 employee.

19 84. Labor Code section 510 and the applicable Wage Order further provide that
20 employees in California shall not be employed more than twelve hours in any workday unless they
21 receive additional compensation beyond their regular wages in amounts specified by law.
22 Specifically, Labor Code section 510(a) requires that: Any work in excess of twelve hours in one
23 workday shall be compensated at the rate of no less than two times the regular rate of pay for an
24 employee and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
25 work in a work week.

26 85. Labor Code section 1194 establishes an employee's right to recover unpaid
27 overtime compensation, and interest thereon, together with the costs of suit, and attorneys' fees.
28 Labor Code section 1198 makes employment of an employee for longer hours than the IWC set or

1 under conditions the IWC prohibits unlawful.

2 86. During the Class Period, Plaintiffs and other Class Members have worked more
3 than eight hours in a workday, and/or more than forty hours in a workweek.

4 87. During the Class Period, Plaintiffs and other Class Members have worked more
5 than twelve hours in a workday, and/or more than forty hours in a workweek, and/or in excess of
6 eight (8) hours on the seventh consecutive day of work in a work week.

7 88. During the Class Period, Defendants has failed to pay Plaintiffs and other Class
8 Members the overtime and double time compensation premium for those unpaid hours they have
9 worked in excess of the maximum hours permissible by law as required by Labor Code sections
10 510, 1197, and 1198, and the applicable Wage Order.

11 89. In committing the violations of state law as herein alleged, Defendants has
12 knowingly and willfully refused to perform their obligations to compensate Plaintiffs and
13 members of the Class for all wages earned and all hours worked. As a direct result, Plaintiffs and
14 other members of the Class have suffered and continue to suffer, substantial losses related to the
15 use and enjoyment of such compensation, wages and lost interest on such monies and expenses
16 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state
17 law, all to their respective damage in amounts according to proof at trial and within the
18 jurisdiction of this Court.

19 90. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of
20 the unpaid wages resulting from Defendants' minimum, regular, overtime, and double time wage
21 violations including interest thereon, reasonable attorney's fees and costs of suit, and liquidated
22 damages to the fullest extent permissible pursuant to Labor Code sections 218, 218.5, 218.6,
23 1194(a), 1194.2, 1197.1.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY REPORTING TIME**
26 **(The Applicable Wage Order and Labor Code § 558)**
(Against All Defendants)

27 91. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
28 herein.

1 92. The applicable wage order provides that, “(A) Each workday an employee is
2 required to report for work and does report, but is not put to work or is furnished less than half said
3 employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or
4 scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at
5 the employee’s regular rate of pay, which shall not be less than the minimum wage.”

6 93. Multiple times, Plaintiff BERNAL reported to work and only worked for one to two
7 hours and was sent home early. Since Defendants require that Plaintiffs and the proposed Class
8 Members report to work, but are not put to work and sent home early, and did not and do not
9 compensate Plaintiffs and Class Members for the proper reporting time pay, Plaintiffs and the
10 proposed Class Members are entitled to their full wages for the time they were required to report to
11 work, and were not put to work, and sent home during the Class Period.

12 94. As further alleged herein above, in addition to the premium wages for Reporting
13 Time Pay, Plaintiffs and Class Members are entitled to a civil penalty under the applicable Wage
14 Order and Labor Code section 558, for Defendants’ violation of the applicable Wage Order. The
15 amount of the civil penalty is equal to \$50 for the first violation and \$100 for each subsequent
16 violation, for each employee suffering from the violation.

17 95. Plaintiffs, and the other members of the Class, are entitled to seek and recover
18 reasonable attorneys’ fees and costs for the successful prosecution of this claim.

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO PAY SPLIT-SHIFT PREMIUMS**
21 **(Violation of Labor Code §§ 510, 1194, 1198, Cal. Code Reg. Title 8, § 11070, and the**
22 **Applicable Wage Order)**
23 **(Against all Defendants)**

24 96. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
25 herein.

26 97. Labor Code section 510 and the applicable Wage Order provide that employees in
27 California shall not be employed more than eight hours in any workday or forty hours in a
28 workweek unless they receive additional compensation beyond their regular wages in amounts
specified by law.

 98. Labor Code section 1194 establishes an employee’s right to recover unpaid

1 overtime compensation, and interest thereon, together with the costs of suit, and attorneys' fees.
2 Labor Code section 1198 makes employment of an employee for longer hours than the IWC set or
3 under conditions the IWC prohibits unlawful.

4 99. California Code of Regulations Title 8, Section 11070, Subdivision 4(c) requires
5 that "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
6 in addition to the minimum wage for that workday, except when the employee resides at the place
7 of employment."

8 100. Paragraph 2(M) of the applicable Wage Order defines "split shift" as a "work
9 schedule which is interrupted by non-paid non-working periods established by the employer, other
10 than bona fide rest or meal periods."

11 101. Defendants routinely scheduled some employees, for example Plaintiffs MARTIN
12 and MCNORTON, to work split-shifts, but they were not paid the mandatory minimum wage
13 premiums associated with split-shifts in accordance with the Wage Order.

14 102. As a result of the wrongful and unlawful acts of Defendants alleged herein,
15 Plaintiffs and the other members of the Class have been deprived of split-shift premium pay in
16 amounts to be determined, and are entitled to recovery of said amounts according to proof, interest
17 thereon, injunctive relief, attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**
19 **FAILURE TO PAY VACATION WAGES**
20 **(Violation of Labor Code § 227.3 and the Applicable Wage Order)**
(Against all Defendants)

21 103. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
22 herein.

23 104. California Labor Code section 227.3 provides that when an employer's policy
24 provides for paid vacations and/or paid time off, and an employee is terminated without having
25 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as
26 wages at the employee's final rate in accordance with such contract of employment or employer
27 policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation
28 time or paid time off upon termination.

105. Based on information and belief, Defendants have and continue to have a uniform policy and practice of failing to allow Plaintiffs and Class Members to use their earned vacation/paid time off during their employment and/or failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to Plaintiffs and Class Members upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

106. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of vacation wages in amounts to be determined, and are entitled to recovery of said amounts according to proof, interest thereon, injunctive relief, attorneys' fees and costs.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Violation of Labor Code §§ 226.7, 512, and the Applicable Wage Order)
(Against all Defendants)

107. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

108. California Labor Code section 226.7(b) provides: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable... order of the Industrial Welfare Commission....”

109. The applicable wage order provides, in pertinent part: “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

110. Labor Code section 512(a) provides, in pertinent part: “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not

1 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
2 meal period may be waived by mutual consent of the employer and the employee only if the first
3 meal period was not waived.”

4 111. As alleged herein, Defendants failed to authorize and permit timely and
5 uninterrupted meal periods during the Class Period. Plaintiffs and members of the Class were
6 routinely required to work without a timely and uninterrupted meal break at the direction of
7 Defendants and/or with Defendants’ knowledge and acquiescence.

8 112. By their actions in requiring their employees to work through meal periods and/or
9 their failure to relieve the employees of their duties for their off-duty meal periods, Defendants
10 have violated California Labor Code sections 226.7 and 512 and the applicable wage order, and are
11 liable to Plaintiffs and the Class.

12 113. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
13 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code sections
14 226.7(c) and 512 and the applicable wage order, in the amount of one additional hour of pay at the
15 employee’s regular rate of compensation for each workday in which Defendants failed to provide
16 its employees with timely statutory off-duty meal periods.

17 114. Plaintiffs, and the other members of the Class, are entitled to seek and recover
18 reasonable attorneys’ fees and costs pursuant to Labor Code sections 226.7 and 512.

19 **SIXTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE REST PERIODS**
21 **(Violation of Labor Code § 226.7 and the applicable Wage Order)**
22 **(Against all Defendants)**

23 115. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
24 herein.

25 116. California Labor Code section 226.7(b) provides: “An employer shall not require an
26 employee to work during a meal or rest or recovery period mandated pursuant to an applicable,,
27 order of the Industrial Welfare Commission....”

28 117. The applicable Industrial Wage Order provides, in pertinent part: “[e]very employer
shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in

1 the middle of each work period. The authorized rest period time shall be based on the total hours
2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
3 thereof. However, a rest period need not be authorized for employees whose total daily work time is
4 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
5 worked for which there shall be no deduction from wages.”

6 118. The applicable Industrial Wage Order further provides: “[i]f an employer fails to
7 provide an employee with a rest period in accordance with the applicable provisions of this order,
8 the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
9 compensation for each workday that the rest period is not provided.”

10 119. In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1029 (2012), the
11 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
12 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
13 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. The rest
14 period requirement obligates employers to permit and authorize employees to take off-duty rest
15 periods, meaning employers must relieve employees of all duties and relinquish control over how
16 employees spend their time. *Augustus v. ABM Security Services, Inc.*, 5 Cal.5th 257 (2016).

17 120. As alleged herein, Defendants failed to authorize and permit rest breaks during the
18 Class Period. Plaintiffs and members of the Class were routinely required to work through rest
19 periods at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.

20 121. By their actions in requiring their employees during the Class Period to work
21 through rest periods and/or their failure to relieve the employees of their duties for their rest
22 periods, Defendants violated the applicable Industrial Wage Order and California Labor Code
23 section 226.7 and are liable to Plaintiffs and the Class.

24 122. Defendants’ unlawful conduct alleged herein occurred in the course of employment
25 of Plaintiffs and all others similarly situated and such conduct has continued through the filing of
26 this complaint.

27 123. As a direct and proximate result of Defendants’ unlawful action, Plaintiffs and the
28 Class have been deprived of timely rest periods and/or were not paid for rest periods taken during

1 the Class Period, and are entitled to recovery under Labor Code section 226.7(c) in the amount of
2 one additional hour of pay at the employee's regular rate of compensation for each workday in
3 which Defendants failed to provide employees with timely and/or paid rest periods.

4 124. Plaintiffs, and the other members of the Class, are entitled to seek and recover
5 reasonable attorneys' fees and costs pursuant to Labor Code section 226.7.

6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
8 **(Violation of Labor Code §§ 226, 245-248.5)**
9 **(Against all Defendants)**

10 125. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
11 herein.

12 126. California Labor Code section 226(a) provides: "[e]very employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
14 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
15 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
16 (1) gross wages earned, (2) total hours worked by the employee [...], (3) the number of piece-rate
17 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
18 deductions, provided that all deductions made on written orders of the employee may be aggregated
19 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
20 employee is paid, (7) the name of the employee and only the last four digits of his or her social
21 security number, [...], (8) the name and address of the legal entity that is the employer, and (9) all
22 applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate by the employee..."

24 127. Labor Code section 226(e) provides that an employee is entitled to recover \$50 for
25 the initial pay period in which a violation of Labor Code section 226 occurs and \$100 for each
26 subsequent pay period, for all pay periods in which the employer knowingly and intentionally failed
27 to provide accurate itemized statements to the employee causing the employee to suffer injury.

28 128. Plaintiffs are informed, believe, and thereon allege that at all times relevant,
Defendants knowingly and intentionally failed to furnish and continues to knowingly and

1 intentionally fail to furnish Plaintiffs and each Class Member with timely and accurate itemized
2 statements showing the gross wages earned by each of them, as required by Labor Code section
3 226(a), in that the premiums owed to Plaintiffs and the members of the Class for split-shifts and
4 missed meal and rest periods were not included in gross wages earned by Plaintiffs and the Class.

5 129. Further, wages owed to Plaintiffs and members of the Class for time they worked
6 before and after their shift, time spent being on-call, and the time worked through meal breaks, were
7 not included in gross wages earned by Plaintiffs and the Class.

8 130. In addition, California Labor Code section 246(i) required employer to provide an
9 employee with written notice that sets forth the amount of paid sick leave available, or paid time off
10 leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage
11 statement described in Section 226 or in a separate writing provided on the designated pay date with
12 the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited
13 paid time off to an employee, the employer may satisfy this section by indicating on the notice or
14 the employee's itemized wage statement "unlimited."

15 131. Defendants' failure to provide Plaintiffs and members of the Class that work for
16 Defendants for more than 30 days with written notice setting the amount of sick leave available (or
17 paid time off in lieu thereof) for use in their itemized wage statements or in a separate writing
18 accompanying such statements constitutes unlawful and/or unfair activity prohibited by California
19 Labor Code section 246.

20 132. Defendants' failure to provide Plaintiffs and members of the Class with accurate
21 itemized wage statements during the Class Period has caused Plaintiffs and members of the Class to
22 incur economic damages in that they were not aware that they were owed and not paid
23 compensation for missed rest periods and on-duty meal periods, and for all hours worked. In
24 addition, Defendants provided inaccurate information regarding hours worked, which masked its
25 underpayment of wages to Plaintiffs and the Class.

26 133. As a result of Defendants' issuance of inaccurate itemized wage statements to
27 Plaintiffs and members of the Class in violation of Labor Code sections 226(a) and 246(i), Plaintiffs
28 and the members of the Class are each entitled to recover penalties pursuant to Labor Code sections

1 226(e) and 246(i).

2 134. Plaintiffs and the Class are also entitled to injunctive relief, as well as an award of
3 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code
4 section 226(h).

5 **EIGHTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**
7 **(Violation of Labor Code §§ 2800, 2802, *et seq.*)**
8 **(Against all Defendants)**

9 135. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
10 herein.

11 136. California Labor Code sections 2800 and 2802 provides that an employer must
12 reimburse employees for all necessary expenditures.

13 137. At all relevant times during the class period, Plaintiffs and other Class Members
14 incurred necessary business-related expenses and costs that were not fully reimbursed by
15 Defendants, including, but not limited to, personal cellphone usage.

16 138. Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and
17 Class Members for necessary business-related expenses and costs. Defendants' conduct violates
18 California Labor Code sections 2800 and 2802.

19 139. Plaintiffs and Class Members are entitled to recover from Defendants their business-
20 related expenses incurred during the course and scope of their employment, plus interest, pursuant
21 to California Labor Code sections 2800 and 2802.

22 **NINTH CAUSE OF ACTION**
23 **FAILURE TO PAY ALL WAGES DUE DURING EMPLOYMENT**
24 **(Violation of Labor Code §§ 204, 210)**
25 **(Against all Defendants)**

26 140. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
27 herein.

28 141. Labor Code section 204 requires all wages earned for labor in excess of the normal
work period shall be paid no later than the payday for the next regular payroll period. Alternatively,
Labor Code section 204 provides that the requirements of this section are deemed satisfied by the

1 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
2 than seven calendar days following the close of the payroll period. During the Class Period,
3 Defendants failed to pay Plaintiffs and Class Members all wages due to them within the time period
4 specified by Section 204.

5 142. Plaintiffs and Class Members were not paid timely all wages owed, including
6 minimum and regular wages, and overtime and/or double time wages when applicable, when they
7 worked through meal breaks and/or when they performed work off-the-clock. As such, they were not
8 paid all wages owed during employment.

9 143. Therefore, Plaintiffs and members of the Class are entitled to penalties pursuant to
10 Labor Code section 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay
11 each Class Member; and (2) for each of Defendants' subsequent violations, or any willful or
12 intentional violation, \$200 for each failure to pay each Class Member, plus 25 percent of the
13 amount unlawfully withheld.

14 **TENTH CAUSE OF ACTION**
15 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**
16 **(Violation of Labor Code §§ 201-203)**
(Against all Defendants)

17 144. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
18 herein.

19 145. California Labor Code sections 201-203 provide that if an employer discharges an
20 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
21 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
22 due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-
23 two hours prior notice of his or her intention to quit in which case the employee is entitled to his or
24 her wages at the time of quitting.

25 146. During the Class Period, Defendants willfully failed to pay Plaintiffs and other Class
26 Members who are no longer employed by Defendants all their earned wages, specifically, meal and
27 rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all
28 hours worked, including reporting time pay, either at the time of discharge or within seventy-two

1 hours of their leaving Defendants' employ in violation of California Labor Code sections 201, 202,
2 and 203.

3 147. Therefore, Plaintiffs and members of the Class are entitled to waiting time penalties
4 for each day that has passed that they have not received all wages owed to them, up to 30 days.

5 **ELEVENTH CAUSE OF ACTION**
6 **FAILURE TO PRODUCE EMPLOYMENT RECORDS**
7 **(Violation of Labor Code §§ 226(f), 432, and 1198.5(a))**
8 **(Against all Defendants)**

9 148. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
10 herein.

11 149. California Labor Code section 226 provides: "An employer who receives a written
12 or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or
13 former employee [records of hours worked and wages paid]...shall comply with the request as soon
14 as practicable, but no later than 21 calendar days from the date of the request."

15 150. California Labor Code section 432 provides: "If an employee signs any instrument
16 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
17 request."

18 151. California Labor Code section 1198.5 provides that every employee shall be
19 permitted to inspect and obtain a copy of their personnel records upon request.

20 152. In accordance with the process set out in Labor Code section 226, some Plaintiffs,
21 Plaintiffs MARTIN, MCNORTON, and QUINTERO for example, requested in writing that
22 Defendants provide them with their wage and payroll history, all documents signed by them
23 pursuant to Labor Code section 432, and a copy of their personnel records pursuant to Labor Code
24 section 1198.5.

25 153. The time periods provided to Defendants by Labor Code sections 226, 432, 1198.5
26 and any other relevant statutes have elapsed since Defendants received Plaintiffs' correspondence
27 requesting documents pursuant to Labor Code sections 226, 432, and 1198.5, and a copy of
28 Plaintiffs' personnel records pursuant to Labor Code section 1198.5. However, Defendants failed to
provide Plaintiffs with all of the employment documents to which he/she is entitled.

1 154. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
2 to provide records in compliance with Labor Code sections 226, 432, and 1198.5 to other Class
3 Members in response to their requests.

4 155. Defendants' failure to provide Plaintiffs and members of the Class with employment
5 records constitutes unlawful and/or unfair activity and is prohibited by California Labor Code
6 sections 226, 432, and 1198.5.

7 156. Pursuant to California Labor Code section 226, Plaintiffs are entitled to a penalty of
8 seven hundred fifty dollars (\$750) from Defendants, injunctive relief in the form of compliance
9 with section 226, and attorneys' fees and cost.

10 157. Pursuant to California Labor Code section 1198.5, Plaintiffs and the Class are
11 entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants, injunctive relief in the
12 form of compliance with section 1198.5, and attorneys' fees and costs.

13 **TWELFTH CAUSE OF ACTION**
14 **UNLAWFUL DEDUCTION OF WAGES**
15 **(Violation of Labor Code §§ 221 and 224)**
 (Against all Defendants)

16 158. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
17 herein.

18 159. California Labor Code sections 221 and 224 provide that an employer may only
19 lawfully withhold amounts from an employee's wages when (1) required or empowered to do so by
20 state or federal law; (2) when a deduction is expressly authorized in writing by the employee to cover
21 insurance premiums, benefit plan contributions, or other deductions not amounting to a rebate on the
22 employee's wages; or (3) when a deduction to cover health, welfare or pension contributions is
23 expressly authorized by a wage or collective bargaining agreement.

24 160. Based on information and belief Defendants made unlawful deductions from
25 Plaintiffs' and Class Members' paychecks during the Class Period, including but not limited to,
26 deducting time from start and end of employees' shifts and meal periods and/or automatically
27 deducting thirty minutes per shift for purported meal periods, deducting costs of uniforms and/or
28 other business costs and/or deducting wages for purported overpayments from previous pay periods

1 and/or unlawfully deducting wages for negligently damaged property.

2 161. Defendants' conduct as alleged herein has violated California Labor Code sections 221-
3 224 insofar as Defendants deducted wages based on their time rounding practices, for hours worked
4 during meal periods, for uniforms, and for alleged damaged property.

5 162. Pursuant to California Labor Code sections 218, 218.5, and 218.6, Plaintiffs and the
6 Class are entitled to payment of unpaid wages or compensation, including interest thereon, as well as
7 reasonable attorney's fees, and costs of suit.

8 **THIRTEENTH CAUSE OF ACTION**
9 **UNLAWFUL AGREEMENTS**
10 **(Violation of Labor Code §§ 432.5, 432.7, 1024.5, CA Civil Code §§ 1786, *et seq.*, and 15 U.S.C.**
11 **§§ 1681, *et seq.*)**
12 **(Against all Defendants)**

13 163. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
14 herein.

15 164. Labor Code section 432.5 provides that "no employer...shall require any employee
16 or applicant for employment to agree, in writing, to any term or condition which is known by such
17 employer...to be prohibited by law." Defendants required and continue to require Plaintiffs,
18 Plaintiff MCNORTON for example, and Class Members to agree in writing to unlawful conditions
19 of employment including but not limited to unlawful non-solicitation/non-compete agreements,
20 unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers,
21 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
22 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
23 violation of Labor Code section 432.5.

24 165. The California Labor Code places certain procedural and substantive limits on an
25 employers' ability to conduct employee background checks and on how employers can use the
26 information they obtain through those background checks. Labor Code section 1024.5 states that
27 employers, except for financial institutions, may order a credit check only if the individual works
28 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
Act ("ICRAA"), California Civil Code sections 1786, *et seq.*, and the Fair Credit Reporting Act

1 (“FCRA”), 15 U.S.C. sections 1681, *et seq.*, mandate several requirements prior to and following an
2 employee background check, including but not limited to identifying an appropriate reason for the
3 background check, a separate consent form with required disclosures and certain formatting
4 requirements, additional forms such as a summary of rights, a way by which to request a copy of
5 the report, as well as proper notice of adverse actions taken, among other statutory requirements.

6 166. Based on information and belief, Defendants required Plaintiffs and Class Members
7 to agree in writing to unlawful conditions of employment including but not limited to unlawful non-
8 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
9 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
10 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
11 and/or continuing employment in violation of Labor Code section 432.5.

12 167. Based on information and belief, Defendants ordered unlawful financial credit
13 checks on Plaintiffs and Class Members, in violation of Labor Code section 1024.5, and required
14 Plaintiffs and Class Members to provide ongoing written consent to the unlawful credit checks as a
15 condition of employment, in violation of California and Federal law, which results in a further
16 violation of Labor Code section 432.5.

17 168. Based on information and belief, Defendants also required Plaintiffs and Class
18 Members to submit and/or agree to submit in writing to unlawful criminal background checks as a
19 condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA as
20 alleged above.

21 169. Based on information and belief, Defendants required Plaintiffs and Class Members
22 to agree in writing to provide Defendants with ongoing consent to conduct background checks
23 throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other
24 applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants
25 and employees to agree to an unlawful provision as a condition of employment.

26 170. By requiring Plaintiffs and Class Members to agree in writing to unlawful criminal
27 and/or financial checks not in conformance with the applicable laws, Defendants violated Labor
28 Code section 432.5.

1 171. Labor Code section 432.7 prohibits an employer from asking applicants about past
2 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
3 information and belief, Defendants asked Plaintiffs and Class Members about arrests not resulting
4 in convictions on its employment application, in violation of California law.

5 172. Upon information and belief, Defendants, in violation of California law including
6 but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”),
7 asked Plaintiffs and Class Members about convictions prior to extending an offer of employment
8 and/or otherwise impermissibly inquired into criminal history on their employment application in
9 violation of California law, and in violation of Labor code section 432.5.

10 173. Additionally, Defendants violated Labor Code section 432.5 by requiring Plaintiffs
11 and Class Members to agree in writing to other unlawful agreements, including but not limited to,
12 an unlawful waiver of PAGA and or representative actions as a condition of employment.

13 174. An action pursuant to the PAGA “...is a representative action on behalf of the
14 state” *Kim v Reins Int’l California, Inc.*, 9 Cal. 5th 73, 86-87 (2020). It is well settled that
15 agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to
16 California law and unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC*, 59 Cal.
17 4th 348, 384 (2014) (“We conclude that where, as here, an employment agreement compels the
18 waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable
19 as a matter of state law.”).

20 175. Moreover, the California Supreme Court has ruled that a court cannot compel
21 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
22 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, 9 Cal. 5th 73, 86-87 (2020) (“There is
23 no individual component to a PAGA action because ‘every PAGA action ... is a representative
24 action on behalf of the state.’”).

25 176. Upon information and belief, Defendants required Plaintiffs and Class Members to
26 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
27 requiring Plaintiffs and Class Members to agree, in writing, to an unlawful PAGA waiver,
28 Defendants required written agreement to an unlawful provision as a condition of employment

1 which is a violation of Labor Code section 432.5.

2 **FOURTEENTH CAUSE OF ACTION**
3 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
4 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*)**
5 **(Against all Defendants)**

6 177. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
7 herein.

8 178. Section 17200 of the California Business and Professions Code (the "UCL")
9 prohibits any unlawful, unfair, or fraudulent business practices.

10 179. Through its action alleged herein, Defendants have engaged in unfair competition
11 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful,
12 unfair, and/or fraudulent business practices under the UCL.

13 180. Defendants' unlawful conduct under the UCL includes, but is not limited to,
14 violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not
15 limited to, failure to pay Class Members wages and compensation they earned through labor
16 provided, and failing to otherwise compensate Class Members as alleged herein. Defendants'
17 fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or
18 misleading information about the time the Class Members worked and the amount of wages or
19 compensation due.

20 181. Plaintiffs have standing to assert this claim because they have suffered injury in fact
21 and have lost money as a result of Defendants' conduct.

22 182. Plaintiffs and the Class seek restitutionary disgorgement from Defendants of monies
23 owed for all hours worked and for unpaid meal and rest period premiums.

24 183. Plaintiffs have assumed the responsibility of enforcement of the laws and public
25 policies specified here by suing on behalf of themselves and other similarly-situated Class
26 Members previously or presently working for Defendants in California. Plaintiffs' success in this
27 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
28 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure section 1021.5.

FIFTHTEENTH CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)
(Violation of Cal. Lab. Code §§ 2698, *et seq.*)
(Against all Defendants)

184. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

185. Labor Code sections 2698 and 2699 (The California Private Attorneys General Act of 2004, or “PAGA”) expressly establish that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by The Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of other current or former employees.

186. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

187. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and QUINTERO are “aggrieved employee[s]” as defined by Labor Code section 2699(c), because they are or were employees of Defendants, and personally experienced the Labor Code violations alleged herein during the relevant time period, including:

Failure to Pay Minimum, Regular, Overtime, and/or Double Time Wages

188. Defendants’ failure to pay Plaintiffs and other aggrieved employees minimum, regular, overtime, and/or double time wages owed, as described above, violates Labor Code sections 218, 218.5, 218.6, 510, 1182.2, 1194, 1194.2, 1197, 1197.1, 1198 and the applicable wage orders, including but not limited to claims alleging failure to pay for all hours worked, “off the clock” work, and failure to pay overtime and double time at the correct regular rate of pay.

Failure to Pay Reporting Time Pay

189. Defendants’ failure to pay Plaintiffs and other aggrieved employees reporting time pay, as described above, violates Labor Code section 558 and the applicable wage orders.

1 **Failure to Pay Split-Shift Premiums**

2 190. Defendants' failure to pay Plaintiffs and other aggrieved employees split shift wages
3 and/or premiums, as described above, violates Labor Code sections 510 and 1194, Cal. Code Regs.
4 Tit. 8, section 11050, and the applicable wage orders.

5 **Failure to Pay Vested Vacation/Paid Time Off**

6 191. Defendants' failure to pay vested vacation/paid time off, as described above,
7 violates Labor Code section 227.3.

8 **Failure to Provide Meal Periods**

9 192. Defendants' failure to provide Plaintiffs and other aggrieved employees lawful meal
10 periods or premiums in lieu thereof, as described above, violates Labor Code sections 226.7 and
11 512(a), and the applicable wage orders.

12 **Failure to Provide Rest Periods**

13 193. Defendants' failure to authorize and permit rest periods or premiums in lieu thereof
14 to Plaintiffs and other aggrieved employees, as described above, violates Labor Code section 226.7
15 and the applicable wage orders.

16 **Failure to Provide Complete and Accurate Wage Statements**

17 194. Defendants' knowing and intentional failure to comply with itemized wage
18 statement provisions, as described above, violates Labor Code section 226.

19 **Failure to Reimburse Necessary Business-Related Expenses**

20 195. Defendants' failure to reimburse the business expenses of Plaintiffs and other
21 aggrieved employees, as described above, violates Labor Code sections 2800 and 2802.

22 **Failure to Pay All Wages Due During Employment**

23 196. Defendants' failure to timely pay wages owed semi-monthly to Plaintiffs and other
24 aggrieved employees during employment, violates Labor Code sections 204 and 226.

25 **Failure to Pay All Wages Due Upon Termination**

26 197. Defendants' failure to timely pay wages owed to Plaintiffs and other aggrieved
27 employees upon separation from employment violates Labor Code sections 201-203.

28 ///

1 **Failure to Produce Employment Records**

2 198. Defendants’ failure to produce requested employment records to Plaintiffs and other
3 aggrieved employees, as described above, violates Labor Code sections 1198.5(a), 226(f), and 432.

4 **Unlawful Deductions**

5 199. Defendants’ unlawful deductions from the wages of Plaintiffs and other aggrieved
6 employees, as described above, violates Labor Code section 221.

7 **Unlawful Agreements**

8 200. Defendants’ unlawful criminal and background history inquiries, as described
9 above, violates Labor Code sections 432.5, 432.7, and 1024.5, Cal. Civ. Code sections 1786, *et*
10 *seq.*, and 15 U.S.C. section 1681.

11 201. Defendants’ unlawful PAGA waiver, as described above, violates Labor Code
12 section 432.5.

13 **Failure to Keep Accurate Records**

14 202. California Labor Code section 1174 requires employers to keep “accurate and
15 complete” payroll records showing, among other things, the hours worked daily by all non-exempt
16 employees. Section 7 of all applicable Wage Orders similarly requires employers to keep time
17 records reflecting the times during which all owed meal periods were provided each day.

18 203. During the PAGA Period, Defendants failed, and continue to fail, to keep accurate
19 and complete records as required by law, including but not limited to the following records: total
20 daily hours worked, applicable rates of pay, time records showing when Plaintiff and other
21 aggrieved employees began and ended each work period, time records of meal periods, and
22 accurate itemized wage statements.

23 204. Defendants’ failure to keep “accurate and complete” payroll records for Plaintiffs
24 and other aggrieved employees violates Labor Code sections 1174, 1198, 1199, and all applicable
25 Wage Orders, section 7. These violations subject Defendants to civil penalties under Labor Code
26 sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage
27 Order provision results in a separate civil penalty, for each aggrieved employee for each pay period
28

1 during which the referenced statutes and Wage Order provisions were violated.¹

2 **Standard Conditions of Labor Violations**

3 205. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
4 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
5 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
6 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Defendants’
7 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
8 minimum/regular/overtime/double time wages, and other violations described herein result in
9 separate violations of sections 1198 and 1199, which subject Defendants to civil penalties under
10 Labor Code sections 1197.1 and 2699.

11 **Failure to Provide Suitable Seating**

12 206. Per Sections 14(A)-(B) of all applicable IWC Wage Orders, employees shall be
13 provided with suitable seats when the nature of the work reasonably permits the use of seats and
14 when they are not actively engaged in the work duties that would not permit them to be seated.

15 207. Sections 14(A)-(B) of all applicable IWC Wage Orders provide:

16 (A) All working employees shall be provided with suitable seats when
17 the nature of the work reasonably permits the use of seats.

18 (B) When employees are not engaged in the active duties of their
19 employment and the nature of the work requires standing, an adequate
20 number of suitable seats shall be placed in reasonable proximity to the
work area and employees shall be permitted to use such seats when it
does not interfere with the performance of their duties.

21 208. Suitable seating is one of the worker protections covered by California’s Wage
22 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
23 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

24 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per
25 pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee
26 for each pay period for which the employee was underpaid”); All applicable wage orders, § 20
27 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any
28 other person acting on behalf of the employer who violates, or causes to be violated, the provisions
of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period
during which the employee was underpaid”) (emphasis added).

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

2 209. Based on information and belief, Defendants failed to provide Plaintiffs and other
3 aggrieved employees with suitable seating, and when such employees were not engaged in duties
4 which required them to stand, no seating was placed in reasonable proximity to their workstations.

5 210. Moreover, based on information and belief, the nature of the work reasonably
6 permitted the use of seats for at least part of the time that Plaintiffs and other aggrieved employees
7 were working. Lastly, there were periods of time when Plaintiffs and other aggrieved employees
8 were not engaged in active duties of their employment, yet there were no suitable seats in
9 reasonable proximity to the work area and use of seats would not interfere with the performance of
10 their duties.

11 211. Defendants' failure to provide suitable seating violates the applicable wage orders.

12 **Failure to Provide Suitable Resting Facilities**

13 212. Per section 13 of all applicable IWC Wage Orders, including but not limited to
14 Wage Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the
15 Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the
16 toilet rooms and shall be available to employees during work hours."

17 213. Defendants' locations/facilities are generally similar in layout and design, and there
18 was, and continues to be, space that allows for a resting facility that employees may use to cease
19 work and recover during meal or rest periods. Defendants could have provided Plaintiffs and other
20 aggrieved employees with a resting facility within Defendants' facilities/locations with reasonable
21 or no modification, but instead denied and continues to deny, employees with suitable areas to rest
22 (e.g. a breakroom). As a result, Plaintiffs and other aggrieved employees were forced to adjust to
23 areas not conducive to resting, including but not limited to leaning up against the wall, or search for
24 facilities outside of Defendants' premises which are not designated or reserved for their rest, such
25 as their personal vehicles.

26 214. Defendants did not provide Plaintiffs and other aggrieved employees with suitable
27 resting facilities during their hours of work, particularly during meal and/or rest periods.

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1 215. Defendants’ failure to provide suitable resting facilities violates the applicable wage
2 orders.

3 **Violation of California’s Day of Rest Law**

4 216. Under California law, every employee in California is “entitled” to “one day’s rest
5 [from labor] in seven”; and, no employer may “cause” its employees “to work more than six days
6 in seven.” *See* Labor Code sections 551 and 552. Labor Code section 553 provides that a violation
7 of the foregoing sections is a misdemeanor.

8 217. Based on information and belief, Defendants have and continue to have a uniform
9 policy and practice of requiring Plaintiffs and other aggrieved employees to work at least seven
10 days consecutively in a workweek, in violation of including but not limited to, Labor Code section
11 551. Based on information and belief, Plaintiffs and/or other aggrieved employees were suffered,
12 permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of
13 California law, including but not limited to Labor Code section 551.

14 218. Defendants’ conduct violates of California’s Day of Rest Law under Labor Code
15 sections 551 and 552.

16 **Sick Leave Violations**

17 219. Throughout the PAGA Period, Defendants failed to provide proper paid sick leave
18 to Plaintiffs and other aggrieved employees. Defendants either failed to provide paid sick leave at
19 all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to Plaintiffs
20 and other aggrieved employees by failing to base the accrued sick leave hours on the correct
21 number of hours worked (as a result of the rounding/automatic deduction policies and practices for
22 meal periods and/or shift start and end times/other required off-the-clock work including but not
23 limited to unpaid meal periods) and by failing to incorporate multiple rates of pay and/or all non-
24 discretionary remuneration, including but not limited to, non-discretionary bonuses, shift
25 differential pay, and/or other non-discretionary compensation into the sick leave pay rate
26 calculation.

27 220. Upon information and belief, Defendants further failed to place Plaintiffs and other
28 aggrieved employees on notice of their paid sick leave rights – or thereby putting their entitlement

1 to sick leave in a Labor Code section 2810.5 notice. Based on information and belief, Defendants
2 failed to provide notice of the correct sick leave amount balance available to Plaintiffs and other
3 aggrieved employees on their wage statements or other written statement. Moreover, based on
4 information and belief, Defendants failed to maintain accurate records of used sick leave and the
5 balance of paid sick leave.

6 221. Based on information and belief, throughout the PAGA Period, Defendants failed to
7 provide notice of the balance of sick leave pay left for Plaintiffs and other aggrieved employees,
8 thus affecting their intelligent exercise of their paid sick leave. But for this failure, Plaintiffs and
9 other aggrieved employees would have used their paid sick leave at least prior to their respective
10 separations, for as on several occasions thereafter, he or she would have been entitled to use the
11 banked sick leave and earn appropriate compensation.

12 222. Upon information and belief, Defendants failed and continue to fail to comply with
13 Labor Code section 246, by failing to provide Plaintiffs and other aggrieved employees with a
14 Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
15 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
16 wages.

17 223. As such, Defendants have violated California's paid sick leave laws and unlawfully
18 retained and continue to retain paid sick leave that should have been paid and was not as a result of
19 Defendants' failure to properly institute a lawful paid sick leave program. These unlawful practices
20 and policies violate Labor Code sections 245-248.5.

21 **Failure to Provide Supplemental Paid Sick Leave**

22 224. Labor Code section 248.2 provides that all employers with 26 or more employees
23 are required to provide up to 80 hours for covered employees to take 2021 COVID-19
24 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is
25 vaccine-related. Based on information and belief, DEFENDANTS violated Labor Code section
26 248.2 by not providing Aggrieved Employees with required 2021 COVID-19 Supplemental Paid
27 Sick Leave.

28 ///

225. Defendants' failure to provide supplemental paid sick leave in 2021 violates Labor Code sections 248.2 and 248.6;

Failure to Provide a Safe and Healthful Workplace

226. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act ("Cal OSHA") must maintain a safe and healthful place of employment. Specifically, Labor Code section 6400(a) requires: "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein."

227. Labor Code section 6401 provides: "Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees."

228. Labor Code section 6402 states: "No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful."

229. Similarly, Labor Code section 6404 provides: "No employer shall occupy or maintain any place of employment that is not safe and healthful."

230. In addition to the above, Labor Code section 6403 requires that employers provide safety devices to its employees. Labor Code section 6403 states:

No employer shall fail or neglect to do any of the following:

(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

231. Similarly, Labor Code section 6406(d) states: "No person shall do any of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees."

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1 232. Finally, Labor Code section 6407 provides: “Every employer and every employee
2 shall comply with occupational safety and health standards, with Section 25910 of the Health and
3 Safety Code, and with all rules, regulations, and orders pursuant to this division which are
4 applicable to his own actions and conduct.”

5 233. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or
6 representative of employer) must take within one business day of receiving notice of potential
7 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

8 234. At all relevant times, Defendants employed Plaintiffs and other aggrieved employees
9 who were subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
10 Defendants had and have a policy and practice of failing to furnish and use safety devices and
11 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
12 which are reasonably adequate to render such employment and place of employment safe and
13 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times,
14 Defendants had and have a policy and practice of requiring or permitting employees to go or be in
15 in any employment or place of employment which is not safe and healthful, pursuant to Labor Code
16 section 6402. At all relevant times, Defendants had and have a policy and practice of failing or
17 neglecting to: provide and use safety devices and safeguards reasonably adequate to render the
18 employment and place of employment safe; adopt and use methods and processes reasonably
19 adequate to render the employment and place of employment safe; and do every other thing
20 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
21 section 6403.

22 235. Based on information and belief, Plaintiffs allege that these failures include, without
23 limitation, failing to disinfect time clocks and other surfaces after use by Plaintiffs, Plaintiff
24 MCNORTON for example, and/or other aggrieved employees; failing to provide adequate
25 protection equipment (e.g., face masks) to Plaintiffs, Plaintiff MCNORTON for example, and/or
26 other aggrieved employees; and failing to provide adequate distance in working conditions between
27 Plaintiffs, Plaintiff MCNORTON for example, and/or other aggrieved employees.

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1 236. At all relevant times, Defendants had a policy and practice of failing to give
2 sufficient, adequate, and proper notice to Plaintiffs, Plaintiff MCNORTON for example, and/or
3 other aggrieved employees of the COVID-19 exposure within one business day of receiving notice
4 of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code
5 section 6409.6. Plaintiffs are informed and believe that numerous employees contracted COVID-19
6 during the PAGA Period, but that Defendants failed to provide notice to employees. Based on
7 further information and belief, Defendants do not or did not keep adequate records of written
8 notifications required in Subdivision (a) for a period of at least three years.

9 237. At all relevant times, Defendants had and have a policy and practice of failing within
10 one business day after Defendants or a representative of Defendants received notice of potential
11 exposure to COVID-19 to provide written notice to Plaintiffs, other aggrieved employees, and/or
12 their exclusive representatives, who were on the premises at the same worksite as a qualifying
13 individual who was within the infectious period that they may have been exposed to COVID-19.
14 Based on further information and belief, Defendants had and have a policy and practice of failing
15 within one business day after Defendants or a representative of Defendants received a notice of
16 potential exposure to COVID-19 to provide Plaintiffs and other aggrieved employees who were on
17 the premises at the same worksite as the qualifying individual within the infectious period and the
18 exclusive representative, if any, with information regarding COVID-19-related benefits to which
19 the employees may be entitled under applicable federal, state or local laws, including but not
20 limited to, workers' compensation, and options for exposed employees, including COVID-19-
21 related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated
22 leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As
23 such, Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

24 238. At all relevant times, Defendants had and have a policy and practice of failing within
25 one business day after Defendants or a representative of Defendants received a notice of potential
26 exposure to COVID-19 to notify Plaintiffs and other aggrieved employees who were on the
27 premises at the same worksite as the qualifying individual within the infectious period, and the
28 employers of the subcontracted employees who were on the premises at the same worksite as the

1 qualifying individual within the infectious period and the exclusive representative if any, of the
2 cleaning and disinfection plan that the employer is implementing per the guidelines of the federal
3 Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-
4 OSHA COVID-19 Emergency Temporary Standards. As such, Defendants violated, without
5 limitation, Labor Code sections 6409.6 and 6432.

6 239. At all relevant times, Defendants had and have a policy and practice of failing to
7 notify the local public health agency in the jurisdiction of the worksite of the names, number,
8 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
9 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
10 health care provider; a COVID-19 related order to isolate provided by a public health official; or
11 died due to COVID-19, in the determination of a county public health department or per inclusion
12 in the COVID-19 statistics of a county. As such, Defendants violated, without limitation, Labor
13 Code sections 6409.6 and 6432.

14 240. Based on information and belief, Plaintiffs allege that Defendants violated
15 California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing to provide
16 adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and
17 supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an
18 adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient
19 number of toilets to be used by each of sex of employee.

20 241. Based on information and belief, Plaintiffs allege that Defendants violated the Labor
21 Code sections described herein, including without limitation, for failure to: furnish and use safety
22 devices and safeguards; give sufficient, adequate, and proper notice to employees of COVID-19
23 exposures, to provide written notice to Plaintiffs and/or other aggrieved employees, who were on
24 the premises at the same worksite as a qualifying individual who was within the infectious period
25 that they may have been exposed to COVID-19 pursuant to California and local laws.

26 242. Based on information and belief, Defendants failed to protect aggrieved employees
27 from exposure to COVID-19 due to, including but not limited to, failing to maintain/update
28 Defendants' workplace safety plans and/or procedures to properly address hazards related to the

1 COVID-19 virus.

2 243. As such, Defendants failed to comply with the occupational safety and health
3 standards, failed to do everything reasonably necessary to protect the health and safety of
4 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety
5 devices necessary to maintain a safe and healthful workplace.

6 244. Defendants' failure to provide a safe and healthful workplace violates Labor Code
7 sections 6400-6404 and 6406-6407, as well as Cal-OSHA COVID-19 Emergency Temporary
8 Standards.

9 **Unlawful Practices**

10 245. Upon information and belief, Defendants engaged in these same herein described
11 unlawful practices, which led to violations of the California Labor Code as further alleged below,
12 and that Defendants applied these same herein described unlawful practices to all of their employees
13 that they applied to Plaintiffs.

14 246. Defendants' conduct violates the Unfair Competition Law, Bus. & Prof. Code
15 sections 17200, *et seq.*

16 247. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and
17 QUINTERO assert all of their claims in this Complaint against Defendants on behalf of all
18 aggrieved employees, as well as the general public, each in their capacity as a "private attorney
19 general," and seek all statutory penalties available under the Labor Code.

20 248. By reason of the above and pursuant to Labor Code section 2699, Plaintiffs KYELL,
21 MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and QUINTERO, on behalf of all
22 aggrieved employees, as well as the general public, are entitled to payment of penalties, plus
23 interest, as provided in the PAGA statute.

24 249. In addition, Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA,
25 HERNANDEZ, and QUINTERO, on behalf of all aggrieved employees, as well as the general
26 public, seek and are entitled to have 65% of all recovered penalties and interest allocated to the
27 LWDA and 35% to the aggrieved employees. Further, Plaintiffs KYELL, MCNORTON,
28 EARNEST, ESTRADA, HERNANDEZ, and QUINTERO are entitled to seek and recover

1 reasonable attorneys' fees, expenses and costs pursuant to Labor Code section 2699, and any other
2 applicable statutes.

3 250. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and
4 QUINTERO complied with the notice requirements of Labor Code section 2699.3(a)(1) prior to
5 commencing this action. The notices submitted to the California LWDA on January 31, 2023, May
6 19, 2023, November 7, 2023, and August 5, 2024, respectively, via online filing, and copied to
7 Defendant's Agent for Service of Process in California on the same dates, via certified mail, in
8 accordance with Section 2699.3(a), are by reference incorporated herein.

9 251. As of today's date, the LWDA has not responded to any of the Plaintiffs' notices.

10 252. Plaintiffs KYELL, MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and
11 QUINTERO and/or aggrieved employees, are also entitled to reasonable attorneys' fees and costs,
12 pursuant to the PAGA statute, California Labor Code sections 2698, *et seq.*

13 **PRAYER**

14 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for
15 judgment against Defendants as to the appropriate causes of action as follows:

16 **ON THE FIRST CAUSE OF ACTION**

- 17 1. For all minimum, straight-time, overtime, and/or double time wages owed to Plaintiffs and
18 each Class Member for all hours worked;
- 19 2. For other compensatory damages and/or statutory damages and statutory penalties resulting
20 from improper compensation according to proof;
- 21 3. For statutory attorney fees according to proof;
- 22 4. For statutory interest according to proof; and
- 23 5. For reasonable attorneys' fees and costs pursuant to the California Labor Code.

24 **ON THE SECOND CAUSE OF ACTION**

- 25 1. For compensatory damages and /or statutory damages and statutory penalties resulting from
26 improper compensation according to proof;
- 27 2. For interest on any compensatory damages; and
- 28 3. For reasonable attorneys' fees and costs pursuant to the California Labor Code.

1 **ON THE THIRD CAUSE OF ACTION**

- 2 1. For all split-shift pay owed to Plaintiffs and each Class Member according to proof;
- 3 2. For interest on any compensatory damages;
- 4 3. For any statutory penalties according to proof; and
- 5 4. For reasonable attorneys' fees and costs pursuant to the Labor Code.

6 **ON THE FOURTH CAUSE OF ACTION**

- 7 1. For unpaid vested vacation wages owed to Plaintiffs and each Class Member according to
- 8 proof;
- 9 2. For interest on any compensatory damages; and
- 10 3. For reasonable attorneys' fees and costs pursuant to the Labor Code.

11 **ON THE FIFTH CAUSE OF ACTION**

- 12 1. For one hour of wages due to Plaintiffs and each Class Member for each work period of
- 13 more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal
- 14 period;
- 15 2. For waiting time penalties according to proof;
- 16 3. For statutory costs according to proof; and
- 17 4. For statutory interest according to proof.

18 **ON THE SIXTH CAUSE OF ACTION**

- 19 1. For one hour of wages due to Plaintiffs and each Class Member for each work period of
- 20 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten
- 21 (10) minute rest period for each four (4) hours or major fraction thereof worked;
- 22 2. For waiting penalties according to proof;
- 23 3. For statutory costs according to proof; and
- 24 4. For statutory interest according to proof.

25 **ON THE SEVENTH CAUSE OF ACTION**

- 26 1. For statutory compensation for any harm caused;
- 27 2. For compensatory damages and interest thereon for actual harm caused; and
- 28 3. For statutory penalties under Labor Code section 226(e) according to proof;

4. For statutory interest according to proof; and
5. For reasonable attorneys' fees and costs pursuant to the Labor Code.

ON THE EIGHTH CAUSE OF ACTION

1. For reimbursement of incurred necessary business expenses under Labor Code section 2802;
2. For statutory interest according to proof; and
3. For reasonable attorney's fees and costs pursuant to the Labor Code.

ON THE NINTH CAUSE OF ACTION

1. For statutory penalties incurred under Labor Code section 210 per underpaid employee for all wages not timely paid during employment;
2. For statutory interest according to proof; and
3. For reasonable attorneys' fees and costs pursuant to the Labor Code.

ON THE TENTH CAUSE OF ACTION

1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for all wages not timely paid upon termination;
2. For penalty enhancement for willful conduct;
3. For statutory interest according to proof; and
4. For reasonable attorney's fees and costs pursuant to the Labor Code.

ON THE ELEVENTH CAUSE OF ACTION

1. For all actual damages according to proof;
2. For any statutory penalties according to proof; and
3. For reasonable attorneys' fees and costs pursuant to the Labor Code.

ON THE TWELFTH CAUSE OF ACTION

1. For reimbursement of wage deductions that are owed to Plaintiffs and each Class Member;
2. For interest on any compensatory damages;
3. For any statutory penalties according to proof;
4. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and
5. For reasonable attorneys' fees and costs pursuant to the Labor Code.

1 **ON THE THIRTEENTH CAUSE OF ACTION**

- 2 1. For any statutory penalties according to proof; and
3 2. For reasonable attorneys' fees and costs pursuant to the Labor Code.

4 **ON THE FOURTEENTH CAUSE OF ACTION**

- 5 1. For the equitable, injunctive and declaratory relief;
6 2. For liquidated damages pursuant to Labor Code section 1194.2; and
7 3. For restitutionary disgorgement pursuant to the UCL.

8 **ON THE FIFTEENTH CAUSE OF ACTION**

- 9 1. That this action be maintained as a PAGA representative action, and that Plaintiffs KYELL,
10 MCNORTON, EARNEST, ESTRADA, HERNANDEZ, and QUINTERO and their counsel
11 be provided with all enforcement capability as if the action were brought by the California
12 Division of Labor Standards Enforcement;
13 2. For recovery of civil penalties pursuant to Labor Code section 2699(a) or, in the alternative,
14 section 2699(f)(2); and
15 3. For reasonable attorneys' fees and costs pursuant to the Labor Code.

16 **ON CAUSES OF ACTION ONE THROUGH FOURTEEN**

- 17 1. An order that this action may proceed and be maintained as a class action;
18 2. General, special and consequential damages, to the extent allowed by law;
19 3. Costs of suit;
20 4. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5;
21 5. Prejudgment interest at the maximum legal rate; and
22 6. Such other relief as the Court may deem just and proper.

23 **THE MARKHAM LAW FIRM**
24 **COHELAN KHOURY & SINGER**

25 Dated: November 19, 2025

26 By: Maggie Realin

27 Maggie Realin
28 *Attorneys for Plaintiffs and all others similarly
situated*

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and the Class Members on all claims so triable.

**THE MARKHAM LAW FIRM
COHELAN KHOURY & SINGER**

Dated: November 19, 2025

By: MRealin

Maggie Realin
*Attorneys for Plaintiffs and all others similarly
situated*

1 **PROOF OF SERVICE**

2 *Bernal, et al. v. Express Services Inc. dba OnTrac*

3 San Bernardino Superior Court Case No. CIVSB2319614

4 I, Karla Sousa, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

7 On November 19, 2025, I instituted service of the forgoing document(s) described as:

8 **SECOND AMENDED CLASS AND REPRESENTATIVE CLASS ACTION COMPLAINT**

9 on the following interested parties:

10 **SEE ATTACHED SERVICE LIST**

11 in the manner described below:

12 **[XX] BY ELECTRONIC SERVICE – ONE LEGAL:** Pursuant to Cal. Rules of Court, Rule
13 2.251(c)(3), I submitted an electronic version of the document(s) through the user interface of the
14 e-filing vendor at www.onelegal.com.

15 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on November 19, 2025, at San Diego, California.

18 

19 _____
20 Karla Sousa
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Bernal, et al. v. Express Services Inc. dba OnTrac
San Bernardino Superior Court Case No. CIVSB2319614
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