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 County of Alameda
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

– Unlimited Civil –

ANTHONY VASQUEZ, MELVIN
 WILLIAMS, JAIME FURLOUGH, and
 MICHAEL CHEN on behalf of themselves and
 all similarly situated persons, and the general
 public,

Plaintiffs,

vs.

XPRESS GLOBAL SYSTEMS LLC and DOES
 1 through 25, inclusive,

Defendant.

Case No.: 23CV034375

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Failure to Reimburse Expenses;
2. Violation of Labor Code sections 510 and 1198;
3. Violation of Labor Code sections 226.7(a) and 512(a) – Improper Meal Periods;
4. Violation of Labor Code section 226.7(a) – Improper Rest Periods;
5. Violation of Labor Code section 226(a) – Improper Wage Statements;
6. Violation of Labor Code sections 201-203 – Wages Not Paid Upon Separation;
7. Violation of Business and Professions Code section 17200, et seq. – Unfair Business Practices; and
8. Violation of Labor Code § 2698 et seq.

COMES NOW PLAINTIFFS ANTHONY VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, MICHAEL CHEN and HEREBY ALLEGE THE FOLLOWING:

1. The allegations in this Complaint, stated on information and belief, have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

NATURE OF THE ACTION

2. This putative class action is brought by Plaintiffs ANTHONY VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, and MICHAEL CHEN against Defendant XPRESS GLOBAL SYSTEMS LLC and Defendant DOES 1 through 25, inclusive based on the defendants' wrongful actions and include the following causes of action: (1) Failure to Reimburse Expenses, (2) Failure to Pay Overtime; (3) Improper Meal Periods; (4) Improper Rest Periods; (5) Improper Wage Statements; (6) Wages Not Paid Upon Separation, (7) Unlawful Business Practices, and (8) Violation of Labor Code § 2698 *et seq.*

3. Plaintiffs petition this Court to allow them to represent and prosecute claims against Defendant in this class action.

THE PARTIES

4. Plaintiffs ANTHONY VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, and MICHAEL CHEN (hereinafter "Plaintiffs") are citizens of California. At all times Plaintiffs were employed by Defendant as drivers for XPRESS GLOBAL SYSTEMS LLC.

5. Defendant XPRESS GLOBAL SYSTEMS LLC (hereinafter "Defendant") was and is, upon information and belief, a Georgia limited liability company, and, at all times mentioned herein, whose employees that are the subject of this class action were/are employed in the State of California. That the true names and capacities, whether individual, corporate, associate, or otherwise of each of the defendants designated herein as a DOE are unknown to Plaintiffs at this time, who therefore, sue said defendants by fictitious names, and will ask leave of this Court for permission to amend this Complaint to show their names and capacities when the same have been ascertained. Plaintiffs are informed and believe and thereon allege that each of the defendants designated as a DOE is legally responsible in

1 some manner for the events and happenings herein referred to, and caused injuries and damages thereby
2 to these Plaintiffs as alleged herein.

3 6. Plaintiffs are informed and believe, and thereon allege, that each of said defendants is in
4 some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
5 and transactions alleged herein.

6 **JURISDICTION AND VENUE**

7 7. Pursuant to Code of Civil Procedure section 410.10, this Court has jurisdiction over the
8 defendants because each defendant is a person or business entity that is a resident or business entity that
9 is established, incorporated and/or has sufficient minimum contacts with the State of California so far
10 as to render exercise of jurisdiction over the defendants consistent with traditional notions of fair play
11 and substantial justice.

12 8. Venue is proper in this Court, pursuant to Code of Civil Procedure section 395.5,
13 because Defendant's obligations and liabilities to Plaintiffs arose in Alameda County, California, the
14 proposed class is a California class and the issues giving rise to the within complaint occurred in
15 Alameda County, California.

16 9. There is no federal jurisdiction in this case for the following reasons:

- 17 a. Plaintiffs allege, pursuant to 28 U.S.C. § 1332(d)(4) a district court shall decline to
18 exercise jurisdiction over a class action where two-thirds or more of the members of
19 all proposed Plaintiffs classes are in the aggregate located within the state.

20 **PRIVATE ATTORNEYS GENERAL ALLEGATIONS**

21 10. In addition, to asserting class claims, Plaintiffs assert claims on behalf of all other Class
22 Members, pursuant to Business and Professions Code section 17200, et seq.

23 11. The purpose of such claims is to require the defendant(s) to disgorge and restore all
24 monies wrongfully obtained by the defendant(s) through their unlawful, unfair and deceptive business
25 practices, which emanated in California, as alleged herein. A private attorneys general action is
26 necessary and appropriate because the defendant(s) have engaged in wrongful acts described herein as a
27 general business practice.
28

INTRODUCTION

12. Defendant employed Plaintiff ANTHONY VASQUEZ from approximately April 2021 through the period ending in or about November 2022.

13. Defendant currently employs Plaintiff MELVIN WILLIAMS, and he was approximately hired in March 2019.

14. Defendant currently employs Plaintiff MICHAEL CHEN, and he was approximately hired in December 2021.

15. Defendant employed Plaintiff JAIME FURLOUGH from approximately June 2021 through the period ending in or about August 2022.

16. Defendant XPRESS GLOBAL SYSTEMS, LLC was/is, upon information and belief, a trucking company that distributes goods, is a Georgia limited liability company in good standing that is registered and authorized to do business in the state of California, with facilities located in Northern and Southern California.

17. Plaintiffs, upon information and belief and based upon such basis, allege that Defendant XPRESS GLOBAL SYSTEMS LLC has employed at least fifty (50) non-exempt drivers during the class period.

18. Plaintiffs ANTHONY VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, and MICHAEL CHEN, upon information and belief and based upon such basis, allege that Defendant XPRESS GLOBAL SYSTEMS LLC failed to reimburse drivers for business expenses, compensate drivers for overtime hours, engaged in violations of meal and rest breaks (or compensation in lieu thereof), failed to provide accurate wage statements, failed to pay wages upon separation, failed to maintain records, and subjected them to unlawful and unfair business practices.

19. Upon information and belief, to date, the Defendant's illegal practices set forth herein this Complaint is present and continuing.

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FACTUAL ALLEGATIONS

20. Plaintiffs and all other similarly situated employees were employed by Defendant in non-exempt, non-managerial positions and similar and incidental positions related to Defendant's trucking company.

21. At all times set forth herein, Defendant employed Plaintiffs and all other similarly situated non-exempt employees in the capacity, such as, local California drivers and long-haul drivers.

22. On information and belief, Plaintiffs are informed and believe, and thereon allege, that Defendant is and was advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws. Defendant had the authority to hire and terminate Plaintiffs and the other Class Members; to set work rules and conditions governing Plaintiffs and the other Class Members' employment; and to supervise their daily employment activities.

23. During the relevant time frame, Plaintiffs and all other similarly situated employees worked well over eight (8) hours in a day and forty (40) hours in a workweek. Defendant required Plaintiffs and Class Members to work overtime but did not pay Plaintiffs and Class Members for all hours worked on any given day or in any given workweek.

24. During the relevant time frame, Plaintiffs and other similarly situated employees frequently worked a minimum of ten (10) hours in a single day and often times worked twelve (12) hours or more in a single day.

25. Upon information and belief, during the relevant time frame, Defendant maintained a series of policies and practices that effectively coerced and pressured its non-exempt employees to work without overtime compensation, have their wages miscalculated, to forego meal and rest periods (or not be paid for their rest breaks), not being reimbursed for business expenses, and not receive accurate wage statements.

26. Upon information and belief, during the relevant time frame, Defendant maintained and enforced an aggressive set of demands for these non-exempt employees with respect to the goals for its drivers or other similar position, thereby requiring Plaintiffs and all other similarly situated employees

1 to interrupt or shorten their lawful meal periods of thirty (30) uninterrupted minutes while being
2 relieved of all duty. Plaintiffs and similarly situated Class Members were forced to work in excess of
3 five (5) hours per day on a regular basis without being provided a daily thirty (30) minute restrictive-
4 free meal period. During all relevant periods, Defendant illegally and unlawfully required Plaintiffs
5 and Class Members to work through meal periods. Wage orders required that Plaintiffs and Class
6 Members be compensated for the meal periods for which Defendant required Plaintiffs and Class
7 Members to work. Defendant failed to compensate Plaintiffs and the Class Members for these meal
8 periods worked on any given day or during any given workweek.

9 27. Upon information and belief, during the relevant time frame, Plaintiffs and all other
10 similarly situated employees did not receive meal periods; in addition, Defendant's work demands and
11 pressure from Defendant's management to complete deliveries, with specific knowledge and/or at the
12 instruction of Defendant, as a result of an implemented policy, regularly required Plaintiffs and all
13 other similarly situated employees to return to work before completing (constitutes a missed meal
14 period) an uninterrupted meal period of thirty (30) minutes. Defendant required Plaintiffs and all other
15 similarly situated employees to answer their personal cell phones during their meal period. Also,
16 Defendant's management clocks Plaintiffs and all other similarly situated employees in and out for
17 their meal periods from the office, despite not knowing whether the driver was being provided an
18 opportunity to take their meal period or being relieved of all duty.

19 28. Upon information and belief, during the relevant time frame, Plaintiffs and all other
20 similarly situated employees often worked shifts in excess of then (10) hours, yet were never provided
21 a second, uninterrupted meal period of thirty (30) minutes for those shifts.

22 29. Despite the above-mentioned meal period violations, Defendant did not compensate
23 Plaintiffs, and on information and belief, never compensated all other similarly situated employees one
24 additional hour of pay at their regular rate as required by California law when meal and rest periods
25 were not provided.

26 30. Upon information and belief, during the relevant time frame, Defendant maintained and
27 enforced a schedule and policies that due to business demands often required Plaintiffs and all other
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1 similarly situated employees to shorten (constitutes a missed rest break) or forego their lawful rest
2 periods of ten (10) minutes for every four (4) hours worked or major fraction thereof. During all
3 relevant periods, Defendant illegally and unlawfully required Plaintiffs and Class Members to work
4 through rest periods. Defendant required Plaintiffs and all other similarly situated employees to answer
5 their personal cell phones during their rest break. Also, Defendant's management clocks Plaintiffs and
6 all other similarly situated employees in and out for their meal periods from the office, despite not
7 knowing whether the driver was being provided an opportunity to take their rest break or being relieved
8 of all duty. Wage orders required that Plaintiffs and the Class Members be compensated for the rest
9 periods for which Defendant required Plaintiffs and the Class Members to work. Defendant failed to
10 compensate Plaintiffs and the Class Members for these rest periods worked on any given day or in any
11 given workweek.

12 31. Despite the above-mentioned rest period violations, Defendant never compensated
13 Plaintiffs, and on information and belief, never compensated all other similarly situated employees one
14 additional hour of pay at their regular rate as required by California law for each day on which rest
15 periods were not authorized or permitted.

16 32. During the relevant time frame, Plaintiffs and all other similarly situated employees
17 worked well over eight (8) hours in a day and forty (40) hours in a workweek. Defendant required
18 Plaintiffs and the Class Members to answer their cell phones before and after work shifts with calls and
19 messages from management, which resulted in unpaid overtime wages.

20 33. Defendant failed to pay when due and on time, Plaintiffs and all other similarly situated
21 employees the legal wages they earned or that were due, failed to provide all authorized meal and rest
22 periods (or failed to pay an hour at the regular rate for meal and rest breaks) owed to Plaintiffs and all
23 other similarly situated employees, and failed to pay one (1) hour wages in lieu of Defendant's failure
24 to provide a meal and rest period, including at such time when employee quit or was discharged. More
25 specifically, as a result of Defendant's failure to account for off-the-clock hours worked, and premium
26 payments due for missed meal and rest breaks, those wage statements issued to Plaintiffs and all
27 similarly situated Class Members are deemed inaccurate and false. Defendant has made it difficult to
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1 account with precision for the unlawfully deducted and/or withheld wages owed to Plaintiffs and all
2 other similarly situated employees without an examination of all records during the liability period and
3 failed to implement, and on information and belief, failed to preserve a lawful record-keeping method
4 to record all non-provided meal and rest breaks owed to employees, as required for non-exempt
5 employees by California Labor Code section 226 and applicable California Wage Orders.
6 Additionally, Defendant instructed its management and supervisors as a part of its schedule, policies,
7 and demands to require that Plaintiffs and all similarly situated employees falsely record meal periods
8 under a threat (of not receiving wages, retaliation, termination, and other similar forms of threats), or
9 that Defendant's management, supervisors, and other persons with authority falsely recorded that meal
10 breaks were offered, provided, and exercised by Plaintiffs and similarly situated employees, when in
11 fact those meal breaks were not offered, provided or exercised by Plaintiffs and other similarly situated
12 employees, which was made pursuant to Defendant's instruction.

13 34. Plaintiffs are informed and believe, and thereon allege, that Defendant knows, should
14 know, knew, and/or should have known that Plaintiffs and all other similarly situated employees were
15 entitled to receive accurate wages for regular and overtime work, and premium wages under Labor
16 Code §226.7(b), but were not receiving accurately calculated compensation.

17 35. Plaintiffs are informed and believe, and thereon allege, that at all times herein
18 mentioned, Defendant knew that they had a duty to accurately compensate Plaintiffs and all other
19 similarly situated employees for all hours worked including overtime wages as well as meal and rest
20 period premiums, and that Defendants had the financial ability to pay such compensation, but willfully,
21 knowingly, recklessly, and/or intentionally failed to do so.

22 36. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or
23 should have known that Defendant had to keep complete and accurate payroll records for Plaintiffs and
24 the other class members in accordance with California law, but, in fact, did not keep complete and
25 accurate payroll records.

26 37. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or
27 should have known that Plaintiffs and the other class members were entitled to reimbursement for
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1 necessary business-related expenses. At all material times set forth herein, Defendant failed to
2 reimburse Plaintiffs and the other class members for necessary business-related expenses and costs
3 such as being required to use their personal cell phone for calls and messages from Defendant,
4 downloading phone applications for work purposes, receiving load and delivery information, uploading
5 of documents, speaking with Defendant's office and/or dispatch, speaking with Defendant's customers,
6 directions, and group chats. At all material times set forth herein, Defendant failed to properly
7 reimburse Plaintiffs and the other class members pursuant to California law in order to increase
8 Defendant's profits.

9 38. Such actions and policies, as described above and further herein, were and continue to
10 be in violation of the California Business and Professions Code section 17200, et seq. (predicate
11 statutes, the FLSA and Cal. Labor Code) and California Labor Code. Plaintiffs, on behalf of
12 themselves and all other similarly situated employees in addition to the claims set forth under
13 California Business and Professions Code section 17200, et seq. for violations of the California Labor
14 Code section 2699, et seq., including without limitation to sections 201, 202, 203, 204, 226, 226.7, 510,
15 512, 558, 1174(d), 1194, 2800, 2802, 2698 et seq., applicable IWC California Wage Orders and
16 California Code of Regulations, Title 8, section 11000, et seq.

17 **CLASS ACTION ALLEGATIONS**

18 39. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other
19 persons similarly situated, and thus, seek class certification.

20 40. All claims alleged herein arise under California law for which Plaintiffs seek relief
21 authorized by California law.

22 41. Plaintiffs propose the following sub-classes be created:

- 23 a) All former and current non-exempt employees of Defendant within four years of the filing
24 of this complaint to the present date.
- 25
- 26 b) All former and current non-exempt employees of Defendant within four years of the filing
27 of this complaint to the present date that used their personal cell phones while employed.
- 28

(hereinafter referred to as “Class Members” or the “Class”)

42. Excluded from the Class are the defendants in this action, any entity in which the defendants have a controlling interest, any officers, directors, and shareholders of the defendants, and any legal representatives, heirs, successors, and assigns of the defendants.

43. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:

- a. Numerosity: The members of the Class are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiffs at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant’s employment records.
- b. Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests of each Class Member with whom they has a well-defined community of interest, and Plaintiffs’ claims (or defenses, if any), are typical of all Class Members as demonstrated herein.
- c. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiffs acknowledge that they have an obligation to the Court to make known any relationship, conflict, or differences with any Class Member. Plaintiffs’ attorneys and proposed Class counsel are well-versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and, throughout the duration of this action, will continue to incur costs and attorneys’ fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.
- d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort,

1 and expense as compared with separate lawsuits, and will avoid inconsistent
2 outcomes because the same issues can be adjudicated in the same manner and at
3 the same time for the entire class.

4 44. There are common questions of law and fact as to the Class that predominate over
5 questions affecting only individual members, including but not limited to:

- 6 a. Whether Defendant failed to pay Plaintiffs and Class overtime and double overtime;
- 7 b. Whether Defendant's failure to pay wages, without abatement or reduction, in
8 accordance with the California Labor Code, was willful;
- 9 c. Whether Defendant complied with wage reporting as required by the California Labor
10 Code; including but not limited to Section 226;
- 11 d. Whether Defendant had a policy or practice of not providing meal periods or paying
12 the premium to employees;
- 13 e. Whether Defendant had a policy or practice of not providing rest periods or paying
14 the premium to employees;
- 15 f. Whether Defendant reimbursed Plaintiffs and Class for business expenses;
- 16 g. Whether Defendant paid all wages due upon separation to Plaintiffs and the Class;
- 17 h. Whether Defendant engaged in unlawful or unfair business practices in violation of
18 Business and Professions Code section 17200, et seq.; and
- 19 i. The appropriate amount of damages, restitution, or monetary penalties resulting from
20 Defendant's violations of California law.

21
22 **FIRST CAUSE OF ACTION**

23 **Violation of California Labor Code section 2800, et seq.**

24 *(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)*

25 45. Plaintiffs incorporate by reference and re-allege as if fully stated herein, the material
26 allegations set forth in paragraphs 1 through 44.

27 46. Plaintiffs and the Class allege this cause of action against Defendant.
28

1 47. “An employer shall in all cases indemnify his employee for losses caused by the
2 employer’s want of ordinary care.” (Cal. Labor Code § 2800.)

3 48. “An employer shall indemnify his or her employee for all necessary expenditures or
4 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
5 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time
6 of obeying the directions, believed them to be unlawful.” (Cal. Labor Code § 2802(a).)

7 49. “All awards made by a court or by the Division of Labor Standards Enforcement for
8 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
9 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
10 necessary expenditure or loss.” (Cal. Labor Code § 2802(b).)

11 50. California Labor Code section 2802(c) provides: “For purposes of this section, the term
12 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to,
13 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

14 51. Defendant owes a duty to Plaintiffs and Class Members to indemnify them for all
15 necessary expenditures, losses, and damages suffered and incurred in direct consequence of the
16 discharge of their duties, or of their obedience to the directions of their employer. Defendants continue
17 to refuse to reimburse and indemnify Plaintiffs and Class Members for all necessary expenditures and
18 losses incurred by them, including but not limited to personal cell phones while performing work for
19 Defendant.

20 52. Plaintiffs and the Class have incurred, and are continuing to incur, necessary
21 expenditures and losses in direct consequence of the discharge of duties, or of obedience to Defendant’s
22 directions as an employer, which at the time of obeying the directions, Plaintiffs and members of the
23 Class believed to be lawful.

24 53. The acts and omissions herein violated California Labor Code section 2802(a), and
25 further violates California Labor Code sections 221 through 224. Plaintiffs and the Class are entitled to
26 attorney’s fees under to California Labor Code section 2802(c).

27 //

54. Plaintiffs seeks reimbursement and indemnification for their and all other Class Members similarly situated for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties, or obedience to the directions of the defendants as an employer.

55. During the relevant time period, Defendants intentionally and improperly failed to reimburse necessary expenditures Plaintiffs and Class Members incurred including but not limited to personal cell phone use.

56. Under the California Labor Code sections cited herein, Plaintiffs and Class Members are entitled to recover the necessary expenditures they incurred for the four years preceding the filing of their original Class Action Complaint, plus reasonable attorney's fees and costs under California Labor Code section 2802.

57. By virtue of Defendant's unlawful failure to reimburse necessary expenditures Plaintiffs and Class Members incurred, Plaintiffs and Class Members have incurred damages in amounts presently unknown to Plaintiffs and the Class.

58. Plaintiffs are informed and believe, and based upon that information and belief allege, that Defendant, knew or should have known that Plaintiffs and Class Members were not being reimbursed for all necessary business expenditures they incurred.

59. As a direct and legal (proximate) result of Defendant's violation of the California Labor Code, Plaintiffs and Class Members have been damaged. Under California Labor Code section 2802, Plaintiffs and the Class are entitled to, and request reimbursement of all necessary expenditures they incurred, interest, penalties, reasonable attorney's fees, and costs, incurred in this action in an amount to be proven at or following trial of this matter.

SECOND CAUSE OF ACTION

Violation of Labor Code sections 510, 1198 & Industrial Welfare Commission Wage Order

9f-2001, §3(A) – Unpaid Overtime and Double Time

(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)

60. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material

1 allegations set forth in paragraphs 1 through 59 of this Complaint.

2 61. At all times herein set forth, California Labor Code section 218 authorizes employees to
3 sue directly for any wages or penalties due to them under this article of the California Labor Code.

4 62. At all times herein set forth, California Labor Code section 1198 provides that it is
5 unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission
6 (hereinafter "IWC").

7 63. At all times herein set forth, IWC Wage Order section 9-2001(3)(A), which is applicable
8 to Plaintiffs and all other similarly situated employees employment with Defendants, has provided that
9 employees working for more than eight (8) hours in one (1) day, and/or more than forty (40) hours in
10 one (1) workweek, are entitled to payment at the rate of one-and-one-half (1 ½) his or her regular rate of
11 pay for all hours worked in excess of eight (8) hours in one (1) day or more than forty (40) hours in one
12 (1) work week. An employee who works more than twelve (12) hours in one (1) day is entitled to
13 overtime compensation at a rate of twice his or her regular rate of pay. During this liability period,
14 Plaintiffs and other similarly situated employees were paid an hourly rate. Plaintiffs and all similarly
15 situated persons worked in excess of eight (8) hours a day and in excess of forty (40) hours per
16 workweek for each workweek while employed by Defendant throughout the course of employment with
17 Defendant, subject to any workweeks wherein Plaintiffs and Class Members missed workdays as a result
18 of sick days, personal emergencies, or anything else that would otherwise interfere with workweek
19 schedules. Defendant required Plaintiffs and the Class to work but did not pay Plaintiffs and the Class
20 for all hours worked on any given day or in any of the given workweeks herein mentioned as a result of
21 Plaintiffs and all similarly situated persons working overtime and double-time, and being required to
22 answer phone calls and messages from Defendant before and after work shift hours and without a record
23 of Defendant tracking such off-the-clock work. Defendant failed to compensate Plaintiffs and all
24 similarly situated persons for work performed in excess of eight (8) hours a day or forty (40) hours per
25 workweek while employed by Defendant, which occurred throughout Plaintiffs and all similarly situated
26 persons' course of employment with Defendant.

1 64. California Labor Code section 510 codifies the right to overtime compensation at one-
2 and-one-half (1 ½) the regular hourly rate for hours worked in excess of eight (8) hours in one (1) day or
3 forty (40) hours in one (1) week or for the first eight (8) hours worked on the seventh day of work, and
4 at twice the regular hourly rate for hours worked in excess of twelve (12) hours in one (1) day or in
5 excess of eight (8) hours on the seventh day of work.

6 65. During the relevant time period, more specifically, three years dating back from the filing
7 of this Complaint, Plaintiffs and all other similarly situated employees worked in excess of eight (8)
8 hours in one (1) workday and forty (40) hours in one (1) workweek. During the relevant time period,
9 more specifically, dating back three years from the filing of this Complaint, Plaintiffs and all other
10 similarly situated employees frequently worked in excess of ten (10) hours and often times worked in
11 excess of twelve (12) hours in one (1) workday.

12 66. On information and belief, Plaintiffs and all similarly situated employees of Defendant
13 were regularly compelled to work without overtime and/or double-time pay due to Defendant requiring
14 Plaintiffs and all similarly situated employees to work hours in excess of regular time and to work off-
15 the-clock. More specifically, Plaintiffs' supervisors (and management) and supervisors (and
16 management) of all similarly situated employees were fully aware that non-exempt employees were not
17 lawfully paid overtime and/or double-time wages for all time worked with Defendant.

18 67. In addition, Defendant failed to pay double time wages owed to Plaintiffs and all other
19 similarly situated employees for work performed in excess of twelve (12) hours.

20 68. Defendants' failure to pay Plaintiffs and all other similarly situated employees the unpaid
21 balance of premium overtime and double-time compensation, as required by California state law,
22 violates the provisions of Labor Code section 510 and 1198 and is therefore unlawful.

23 69. Pursuant to Labor Code section 1194, Plaintiffs and all other similarly situated employees
24 are entitled to recover unpaid overtime and double-time compensation, as well as interest, costs, and
25 attorney's fees.

26 70. Pursuant to Labor Code section 558, Plaintiffs and all other similarly situated employees
27 are entitled to fifty dollars (\$50.00) for each pay period for which the employee was underpaid. This is
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1 in addition to an amount sufficient to recover underpaid wages and for each subsequent violation, one
2 hundred dollars (\$100.00) for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages.

4 **THIRD CAUSE OF ACTION**

5 **Violation of Labor Code sections 226.7, 512(a), and Industrial Welfare Commission Wage Order**

6 **9-2001, § 10 – Improper Meal Periods**

7 *(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)*

8 71. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
9 allegations set forth in paragraphs 1 through 70 of this Complaint.

10 72. At all times herein, Labor Code section 218 authorizes employees to sue directly for any
11 wages or penalty due to them under this article of the California Labor Code.

12 73. At all times herein, Labor Code section 226.7(a) provides that no employer shall require
13 an employee to work during any meal period mandated by an applicable order of the IWC.

14 74. At all times herein, Labor Code section 512(a) provides that an employer may not
15 employ an employee for a work period of more than five (5) hours per day without providing the
16 employee with a meal period of not less than thirty (30) minutes, except that if the total work period per
17 day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent
18 of both the employer and the employee.

19 75. The language of IWC Order No. 9-2001 § 10 (A) relating to meal periods tracks the
20 language of the California Labor Code.

21 76. During the relevant time period, Plaintiffs and all other similarly situated employees,
22 who were scheduled to work in excess of five (5) hours, but not longer than six (6) hours, and who did
23 not waive their legally-mandated meal periods by mutual consent, were required to work in excess of
24 five (5) hours without receiving a meal period of not less than thirty (30) minutes. During the relevant
25 time period, Plaintiffs and all other similarly situated employees, who were scheduled to work for a
26 period of time in excess of six (6) hours, were required to work in excess of five (5) hours, without
27 receiving a meal period of not less than thirty (30) minutes.

1 77. An employer may not employ an employee for a work period of more than ten (10)
2 hours per day without providing the employee with a second meal period of not less than thirty (30)
3 minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period
4 may be waived by mutual consent of the employer and the employee only if the first meal period was
5 not waived.

6 78. The language of IWC Order No. 9-2001 § 10 (B) relating to meal periods tracks the
7 language of the California Labor Code.

8 79. Upon information and belief, during the relevant time frame, Defendant maintained and
9 enforced an aggressive set of demands for these non-exempt employees with respect to Defendant's
10 work demands and pressure from Defendant's management to complete deliveries and Defendant
11 required Plaintiffs and all other similarly situated employees to answer their personal cell phones
12 during their meal period thereby requiring Plaintiffs and all other similarly situated employees to
13 interrupt or shorten their lawful meal periods of thirty (30) uninterrupted minutes while being relieved
14 of all duty. Plaintiffs and all other similarly situated employees were forced to work in excess of five
15 (5) hours per day on a regular basis without being provided a daily thirty (30) minute restrictive-free
16 meal period.

17 80. Upon information and belief, during the relevant time frame, Plaintiffs and all other
18 similarly situated employees did not receive meal periods; in addition, Defendant's work demands and
19 pressure from Defendant's management, with specific knowledge and/or at the instruction of
20 Defendant, as a result of an implemented policy, regularly required Plaintiffs and all other similarly
21 situated employees to return to work before completing (constitutes a missed meal period) an
22 uninterrupted meal period of thirty (30) minutes. Upon information and belief, during the relevant time
23 frame, Plaintiffs and all other similarly situated employees often worked shifts in excess of ten (10)
24 hours, yet were never provided a second, uninterrupted meal period of thirty (30) minutes for those
25 shifts. Additionally, Defendant instructed its management and supervisors as a part of its schedule,
26 policies, and demands to require that Plaintiffs and all similarly situated employees falsely record meal
27 periods under a threat (of not receiving wages, retaliation, termination, and other similar forms of
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1 threats) or that Defendant's management, supervisors, and other persons with authority falsely recorded
2 that meal breaks were offered, provided, and exercised by Plaintiffs and similarly situated employees,
3 when in fact those meal breaks were not offered, provided or exercised by Plaintiffs and other similarly
4 situated employees, which was made pursuant to Defendant's instructions. Also, Defendant's
5 management clocks Plaintiffs and all other similarly situated employees in and out for their meal
6 periods from the office, despite not knowing whether the driver was being provided an opportunity to
7 take their meal period or being relieved of all duty.

8 81. During all relevant periods, Defendants illegally and unlawfully required Plaintiffs and
9 members of the class to work through meal periods. Wage orders required that Plaintiffs and the Class
10 Members be compensated for the meal periods for which Defendant required Plaintiffs and the Class
11 Members to work. Defendant did not provide Plaintiffs and Class Members with a meal break(s) during
12 each workweek throughout the course of employment with Defendant. Defendant failed to compensate
13 Plaintiffs and the Class Members for these meal periods worked on any given day or during any given
14 workweek. Despite the above-mentioned meal period violations, Defendant never compensated
15 Plaintiffs, and on information and belief, never compensated all other similarly situated employees an
16 additional hour of pay at their regular rate as required by California law when meal periods were not
17 provided.

18 82. The acts and omissions herein violated California Labor Code section 226.7 and 512(a),
19 and further violates California Labor Code sections 221, 222, 223, and 224.

20 83. Pursuant to Labor Code section 226.7(b) and Industrial Welfare Commission Wage
21 Order 9-2001, section 10 (A) (B), Plaintiffs and all other similarly situated employees are entitled to
22 recover from Defendant one (1) additional hour of pay at the employee's regular rate of compensation
23 for each workday that a meal period was not provided, for a three-year statutory period dating back
24 from the date of the commencement of this action.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of Labor Code section 226.7(a), and Industrial Welfare Commission Wage Order 9-**
3 **2001, § 11 – Improper Rest Periods**

4 *(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)*

5 84. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
6 allegations set forth in paragraphs 1 through 83 of this Complaint.

7 85. At all times herein, Labor Code section 218 authorizes employees to sue directly for any
8 wages or penalty due to them under this article of the California Labor Code. Labor Code section
9 226.7(a) provides that no employer shall require an employee to work during any rest period mandated
10 by an applicable order of the IWC.

11 86. IWC Order No. 9-2001 § 11, which covers rest periods, provides “[e]very employer
12 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
13 middle of each work period. The authorized rest period time shall be based on the total hours worked
14 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
15 a rest period need not be authorized for employees whose total daily work time is less than three and
16 one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there
17 shall be no deduction from wages.” Plaintiffs allege that Defendant did not provide Plaintiffs and all
18 other similarly situated employees proper uninterrupted rest periods that they were legally entitled to.
19 Upon information and belief, during the relevant time frame, Defendant maintained and enforced a
20 schedule and policies that due to business demands often required Plaintiffs and all other similarly
21 situated employees to shorten (constitutes a missed rest break) or forego their lawful rest periods of ten
22 (10) minutes for every four (4) hours worked or major fraction thereof.

23 87. Defendant instituted a company-wide policy that demanded Plaintiffs and all other
24 similarly situated employees to work through their rest periods. Defendant illegally and unlawfully
25 required Plaintiffs and members of the Class to work through rest periods. Wage orders required that
26 Plaintiffs and the Class Members be compensated for the rest periods for which Defendant required
27 Plaintiffs and the class members to work. Defendant did not provide Plaintiffs and Class Members with
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1 a rest break(s) during each workweek throughout the course of employment with Defendant. Defendant
2 failed to compensate Plaintiffs and the Class Members for these rest periods worked on any given day
3 or in any given workweek by either forcing them to miss their rest breaks or failing to pay Plaintiffs
4 and Class Members the time during their rest breaks.

5 88. “[A]ll hours must be paid at the statutory or agreed rate and no part of this rate may be
6 used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.* (2005) 135
7 Cal.App.4th 314, 324.) “Under the California minimum wage law, employees must be compensated for
8 each hour worked at either the legal minimum wage or the contractual hourly rate, and *compliance*
9 *cannot be determined by averaging hourly compensation.*” (*Bluford v. Safeway Stores, Inc.* (2013) 216
10 Cal.App.4th 864, 872 (emphasis added); *see also Sheppard v. North Orange County Regional*
11 *Occupational Program* (2010) 191 Cal.App.4th 289, 297 n.5 (“Compliance with the minimum wage
12 law is determined by analyzing the compensation paid for each hour worked; *averaging hourly*
13 *compensation is not permitted under California law.*”) (emphasis added).) “[A]ny employee receiving
14 less than the legal minimum wage ... is entitled to recover in a civil action the unpaid balance of the full
15 amount of this minimum wage” (*Cal. Lab. Code* § 1194(a).) “[A]ll hours must be paid at the
16 statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage
17 obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.) “An employer is required to
18 authorize and permit the amount of rest break time called for under the wage order for its industry.”
19 (*Brinker*, 53 Cal.4th at 1033; *see also Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th
20 220, 236 (“An employer has a duty to authorize and permit rest breaks.”).) “No employer shall require
21 any employee to work during any ... rest period mandated by an applicable order of the Industrial
22 Welfare Commission.” (*Cal. Labor Code* § 226.7(a).) “Under Industrial Welfare Commission wage
23 orders, employers are required to ‘authorize and permit all employees to take rest periods’ at the rate of
24 at least 10 minutes for every four hours worked.” (*Bluford*, 216 Cal.App.4th at 871 (*quoting* 8 C.C.R. §
25 11070, § 12); *see also Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104
26 (Employees are entitled to “a paid 10–minute rest period per four hours of work.”).) “The wage order’s
27 requirement not to deduct wages for rest periods presumes [employees] are paid for their rest periods.”
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(*Bluford*, 216 Cal.App.4th at 871.) “Rest periods are considered hours worked and must be compensated.” (*Id.* at 872.). Also see, *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98; also see, LC 226.7.

89. Defendant does not compensate Plaintiffs and all other similarly situated employees when they work through their rest periods, nor does Defendant pay a premium payment for on duty rest breaks. Pursuant to Labor Code section 226.7(b) and Code of Civil Procedure section 338, Plaintiffs and the Class are entitled to recover from Defendant one (1) additional hour of pay at the employee's ‘regular rate’ of compensation for each rest period (a) that was not authorized and permitted, and/or (b) that was not paid time for a three-year statutory period dating back from the date of the commencement of this action. Plaintiffs, on information and belief and based upon such basis, allege that Plaintiffs and the Class, were systematically not permitted and/or authorized and/or paid to take one (1) ten (10) minute rest period (off duty for ten consecutive minutes) for every four (4) hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order 9-2001, section 11. Plaintiffs and the Class were not compensated for rest breaks and were not paid for rest break time. Defendant willfully violated the provisions of Labor Code sections 226.7, 512 and IWC Wage Order No. 9-2001.

90. Defendant’s conduct, as alleged herein, violates Labor Code section 226.7(a), which authorizes that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the IWC.

91. Pursuant to Labor Code section 226.7(b) and Code of Civil Procedure section 338, Plaintiffs and the other Class Members are entitled to recover from Defendant one (1) additional hour of pay at the employee's regular rate of compensation for each workday that a rest period was not provided, for a three-year statutory period dating back from the date of the commencement of this action. Plaintiffs, on information and belief, all aggrieved employees, were systematically not permitted or authorized to take one (1) ten (10) minute rest period for every four (4) hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order 9-2001, section 11.

1 92. On shifts where Plaintiffs worked in excess of three and half hours, they were routinely
2 not permitted and authorized to take lawful rest periods. Plaintiffs and on information and belief, Class
3 Members, were not compensated with one (1) hour of wages for every day in which a rest period was
4 missed or untimely as a result of Defendant's policies, practices, or work demands. By failing to
5 authorize and permit a ten-minute rest period for every four (4) hours or major fraction thereof worked
6 per day by its non-exempt employees, and by failing to provide compensation for such non-provided or
7 shortened rest periods, as alleged above, Defendant willfully violated the provisions of Labor Code
8 sections 226.7, 512 and IWC Wage Order No. 9-2001.

9 93. The acts and omissions herein violated California Labor Code section 226.7, and further
10 violates California Labor Code sections 221, 222, 223, and 224.

11 **FIFTH CAUSE OF ACTION**

12 **Violation of Labor Code section 226(a) – Improper Wage Statements**

13 *(Plaintiffs, individually, and on behalf of all similarly aggrieved employees, against all Defendants)*

14 94. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
15 allegations set forth in paragraphs 1 through 93 of this Complaint.

16 95. Labor Code section 226(a) mandates that employers provide their employees, along with
17 the employees' paychecks, "an accurate itemized statement in writing showing (1) gross wages earned,
18 (2) total hours worked by the employee, except for any employee whose compensation is solely based
19 on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
20 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
21 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
22 all deductions made on written orders of the employee may be aggregated and shown as one item, (5)
23 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
24 the employee and his or her social security number, except that by January 1, 2008, only the last four
25 digits of his or her social security number or an employee identification number other than a social
26 security number may be shown on the itemized statement, (8) the name and address of the legal entity
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1 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.”

3 96. Plaintiffs, on information and belief and based upon such basis, allege that Plaintiffs and
4 the other Class Members were intentionally not provided accurate wage statements, pursuant to Labor
5 Code section 226(a) by Defendant, because it was Defendant’s intent to avoid paying Plaintiffs and all
6 other similarly situated employees, the correct wages that Plaintiffs and all other similarly situated
7 employees were legally entitled to in order for Defendant to generate greater profits at the expense of
8 Plaintiffs and all similarly situated employees.

9 97. Defendant also violated California Labor Code section 226, which requires wage
10 statements to list “all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee.” Defendant has knowingly and
12 intentionally failed to comply with Labor Code § 226(a) on wage statements which should have been
13 properly provided to Plaintiffs and all other similarly situated employees, and such violations flow from
14 Defendant’s improper policies and practices, their implementation and enforcement by Defendant, and
15 the violations alleged in the preceding causes of action and herein. More specifically, due to non-
16 payment of overtime and double-time hours worked, off-the-clock hours worked, and premium wage
17 payments for missed meal and rest breaks, which should have been itemized on the wage statements
18 issued by Defendant to Plaintiffs and all similarly situated employees constitutes a violation of
19 California Labor Code section 226. Defendant’s intentional conduct by failing to provide Plaintiffs and
20 all similarly situated employees with accurate wage statements has caused Plaintiffs and all similarly
21 situated employees to suffer injury in fact by depriving them of their wage records. In order to
22 determine if they had been paid the correct amount and rate for all hours worked, Plaintiffs and all other
23 similarly situated employees have been, would have been, and are compelled to discover for accuracy,
24 the required information missing from their wage statements and to perform calculations in light of the
25 inaccuracies and incompleteness of the wage statements Defendant provided to them. Given the
26 violations addressed above and the resulting inaccuracies in the wage statements provided by
27 Defendant to Plaintiffs and all other similarly situated employees, Defendant has made it very difficult
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1 to determine from the wage statements themselves such important items of information as the
2 appropriate pay rate to apply to their hours worked. Defendant's Labor Code section 226 violations
3 further injured Plaintiffs and Class Members by rendering them unaware of the full compensation to
4 which there were entitled under applicable provisions of the California Labor Code and applicable IWC
5 Wage Orders, and Defendant's aggrieved employees have been accordingly rendered unaware of how
6 to calculate such compensation.

7 98. Plaintiffs, on information and belief and based upon such basis, allege that Plaintiffs and
8 all other similarly situated employees are entitled to recover from Defendant the greater of their actual
9 damages caused by Defendant's failure to comply with Labor Code Section 226(a) or an aggregate
10 penalty not exceeding \$4,000, and an award of costs and reasonable attorneys' fees pursuant to Labor
11 Code Section 226(e).

12 SIXTH CAUSE OF ACTION

13 **Violation of Labor Code sections 201-203 – Wages Not Paid Upon Separation**

14 *(Plaintiffs, Anthony Vasquez and Jaime Furlough individually, and on behalf of all similarly aggrieved*
15 *employees, against all Defendants)*

16 99. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
17 allegations set forth in paragraphs 1 through 98 of this Complaint.

18 100. At all times herein set forth, Labor Code section 218 authorizes employees to sue
19 directly for any wages or penalties due to them under this article of the California Labor Code.

20 101. At all times herein set forth, Labor Code sections 201-203 provide that if an employer
21 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
22 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall
23 become due and payable not later than seventy-two (72) hours thereafter; unless the employee has
24 given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
25 is entitled to his or her wages at the time of quitting.

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1 102. During the relevant time period, Defendant failed to pay Plaintiffs and all other similarly
2 situated employees, who are no longer employed by Defendant, all their wages, earned and unpaid,
3 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

4 103. Defendant also willfully violated Labor Code sections 201-203 by failing to provide all
5 owed wages at separation from employment. Labor Code sections 201 and 202 require Defendant to
6 pay their employees all wages due either at time of firing, or within seventy-two (72) hours of
7 voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer
8 willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject
9 employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot
10 exceed thirty (30) days of wages. Plaintiffs and all other similarly situated employees who were
11 separated from employment are entitled to compensation for all forms of wages earned, including but
12 not limited to unpaid overtime and double-time compensation and premium payments for non-provided
13 meal and rest periods, but to date have not received such compensation, therefore entitling to wages.

14 104. Defendant's failure to pay Plaintiffs and all other similarly situated employees, who are
15 no longer employed by Defendant, all wages earned at the time of their discharge, or within seventy-
16 two (72) hours of their leaving Defendant's employ, is in violation of Labor Code sections 201-203.

17 105. Labor Code section 203 provides that if an employer willfully fails to pay wages owed,
18 in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty
19 from the due date, and at the same rate until paid or until an action is commenced; but the wages shall
20 not continue for more than thirty (30) days. Plaintiffs and all other similarly situated employees, who
21 are no longer employed by Defendant, are entitled to recover from Defendant the statutory penalty for
22 each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum,
23 pursuant to Labor Code section 203.

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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of Business and Professions Code section 17200, et seq.**

3 *(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)*

4 106. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
5 allegations set forth in paragraphs 1 through 105.

6 107. Defendant's conduct, as alleged herein, including not paying Plaintiffs and the other
7 Class Members for all wages owed, including overtime and double-time wages, wages for missed meal
8 periods and missed rest periods, not providing Plaintiffs and all other similarly situated employees with
9 inaccurate wage statements; not reimbursing Plaintiffs and all other similarly situated employees for
10 business expenses; and not paying Plaintiffs and all other similarly situated employees all wages due
11 upon separation from Defendant, has been, and continues to be unlawful and unfair, and harmful to
12 Plaintiffs and all other similarly situated employees, and the general public.

13 108. Defendant's activities as alleged herein are in violation of California law, and constitute
14 unlawful and unfair business practices in violation of Business and Professions Code section 17200, et
15 seq., which justify the issuance of an injunction, restitution, and other equitable relief pursuant to
16 California Business and Professions Code §17203.

17 109. Plaintiffs and all other similarly situated employees have been personally aggrieved by
18 Defendant's unlawful and unfair business practices as alleged herein, including, but not necessarily
19 limited to, the loss of money or property.

20 110. Defendant has failed and refused to pay Plaintiffs and Class Members overtime and
21 double-time wages in violation of the wage and hour overtime regulations established by California
22 law, wherein Plaintiffs and all other similarly situated employees are non-exempt. More specifically,
23 Defendant's conduct violated laws by failing to pay overtime wages to Plaintiffs and all other similarly
24 situated employees, who regularly worked in excess of eight (8) hours a day and in excess of forty (40)
25 hours per workweek. Defendant has failed and refused to provide Plaintiffs and Class Members with
26 meal and rest breaks in violation of the California Labor Code §§226.7(a) and 512. Defendant has
27 failed to reimburse Plaintiffs and Class Members business expenses pursuant to California Labor Code
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§2800 and 2802. Defendant has failed to provide Plaintiffs and similarly situated employees with accurate wage statements pursuant to California Labor Code section 226 as a result of failing to lawfully compensate Plaintiffs and similarly situated employees and failed to provide Plaintiffs and similarly situated employees with the wages owed upon separation pursuant to California Labor Code section 201-203. Defendant has failed to keep accurate payroll records, have unlawfully deducted wages, and failed to pay minimum wages. Defendant violated California Business and Professions Code §17200, et seq. as a result of violating these statutory provisions, where Plaintiff and Class Members suffered an economic hardship in order for Defendant to pursue monetary gain.

111. Plaintiffs and all other similarly situated employees seek restitution for Defendant knowingly and willfully (or should have known) that Plaintiffs and all other similarly situated employees were non-exempt employees, but refused to pay Plaintiffs and all similarly situated employees in order for Defendant to financially benefit from its illegal and unfair practices at the expense and work of Plaintiffs and all similarly situated employees.

112. A violation of Business and Professions Code section 17200, et seq. may be predicated on the violation of any state and/or federal law.

113. Pursuant to Business and Professions Code section 17200, et seq., Plaintiffs and the other all other similarly situated employees are entitled to restitution of the overtime wages withheld and retained by Defendant during a period that commences four (4) years prior to the filing of this Complaint; missed meal periods and missed rest periods; waiting time penalties; reimbursement; a declaration that the above business practices are unlawful and unfair; a permanent injunction requiring Defendant to pay all outstanding wages due to Plaintiffs and all other similarly situated employees. Plaintiffs, individually, on behalf of all similarly situated employees, and on behalf of the general public through their respective attorneys are serving to enforce an important right of the prompt payment of wages due to employees that affects the affecting a significant public interest.

114. Plaintiffs through this action are conferring a substantial benefit on the general public by ensuring the prompt payment of wages due to employees and a large class of persons (at this time believed to exceed 50 class members), there exists a necessity (Defendant has maintained this illegal

practice for at least four years) and financial burden of private enforcement makes an award of attorney's fees appropriate, which should not in the interest of justice be taken out of any award since these any disgorgement or restitution to Plaintiffs and Class Members are owed to them as wages for time worked while employed by Defendant.

EIGHTH CAUSE OF ACTION

Violation of Labor Code Section 2698, et seq.

(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)

115. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material allegations set forth in paragraphs 1 through 114.

116. Plaintiffs are seeking to represent all California non-exempt former and current Drivers with routes restricted within the State of California, employed by Defendant, at any time from April 19, 2022 to the present date ("Aggrieved Employees"). This cause of action under the Private Attorneys General Act ("PAGA") is a representative action and not a class action.

117. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the 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 himself or herself, and other current or former employees.

118. On April 19, 2023, Plaintiffs provided written notice to the LWDA and Defendant of the specific provisions of the Labor Codes they contend were violated, and the theories supporting their contentions. Plaintiff believes that on or about, June 23, 2023, the sixty-five (65) day notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiffs have exhausted the statutory time period to bring this action.

119. Plaintiffs and the other non-exempt employees of Defendant in the state of California are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current and former non-exempt Driver employees of Defendant, and one or more of the alleged violations was committed against them.

1 **Failure to Timely Pay Wages Upon Separation**

2 120. At all times relevant herein, Defendant was required to pay their employees all wages
3 owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

4 121. As a result of Defendant’s Labor Code violations alleged herein, Defendant failed to pay
5 Plaintiffs and Aggrieved Employees their final wages pursuant to Labor Code §§ 201 to 204 and
6 accordingly owe waiting time penalties pursuant to Labor Code § 203.

7 **Failure to Timely Pay Wages During Employment**

8 122. At all times relevant herein, Defendant was required to pay their employees within a
9 specified time period pursuant to the mandate of Labor Code §§ 204 and 210.

10 123. As a pattern and practice, Defendant regularly failed to timely pay Plaintiffs and
11 Aggrieved Employees all wages due and owing them within the required time period.

12 **Failure to Maintain Accurate Employment Records**

13 124. Pursuant to Labor Code §§ 1174, 1174.5, and 2810.5, Defendant was required to
14 maintain accurate employment records for Plaintiff and Aggrieved Employees of including but not
15 limited to time records, pay stubs, clock in and clock out, meal break periods, rest break periods, and
16 the employment file itself.

17 125. As a pattern and practice, Defendant failed to maintain accurate employment records
18 regarding employment for Plaintiff and Aggrieved Employees and as a result, Defendant has violated
19 Labor Code §§ 1174, 1174.5, and 2810.5.

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

21 126. Defendant did not comply with the requirements of Labor Code Section 226 which
22 requires that “every employer shall, semimonthly or at the time of each payment of wages, furnish each
23 of his or her employees, either as a detachable part of the check, draft, or voucher paying the
24 employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized
25 statement in writing showing:

26 (1) gross wages earned,

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

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

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

8 (5) net wages earned,

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

10 (7) the name of the employee (and the last four digits of his or her social security
11 number or an employee identification number other than a social security number *may* be shown
12 on the itemized statement),

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

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

16 Defendant failed to provide accurate and complete information set forth in section 226(a).

17 127. California Labor Code Section 226(e) provides: "An employee suffering injury as a
18 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be
19 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
20 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
21 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall
22 be entitled to an award of costs and reasonable attorney's fees." Plaintiff and the other aggrieved
23 employees suffered injuries as defined and set forth in California Labor Code Section 226(e) because,
24 in addition to Defendant's failure to provide accurate and complete information, as set forth in section
25 226(a), Plaintiffs and the other aggrieved employees could not "promptly and easily determine" from
26 the wage statements alone the correct hourly rate in effect during the pay period (i.e., without reference
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to other documents or information), nor was the overtime rate or the hours worked provided in the statements accurate.

128. During the applicable time period, Defendant failed to provide Plaintiffs and the Aggrieved Employees with timely and accurate wage and hour statements showing gross wages earned, net wages earned, overtime pay, commission, bonus and incentive payments, and all applicable hourly rates in effect during each pay period with the corresponding number of hours worked at each hourly rate by that individual.

129. As alleged herein, Plaintiffs and Aggrieved Employees are/were not exempt from the requirements of California's labor laws and regulations. Plaintiffs and Aggrieved Employees were and will be injured by Defendant's failure to comply with the aforementioned requirements for time records and wage statements.

130. At all times relevant herein, Defendant was required to both provide and keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

131. As a result of Defendant's various Labor Code violations, Defendant failed to keep accurate records regarding Plaintiffs and Aggrieved Employees. For example, Defendant failed in their affirmative obligation to keep accurate records regarding Plaintiffs and Aggrieved Employees' gross wages earned, total hours worked, all deductions, net wages earned, commission, bonus and incentive payments, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Pay Overtime Wages

132. At all times relevant herein, Defendant was required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198. Plaintiffs and Aggrieved Employees worked off the clock without being properly compensated for overtime hours worked. Plaintiffs and Aggrieved Employees were required to work off the clock including but not limited to respond to calls, text messages, and use of the XPRESS app. Plaintiffs and Aggrieved Employees frequently worked more than eight (8) hours in a day or forty

(40) hours in a workweek. Plaintiffs and Aggrieved Employees frequently worked in excess of ten (10) hours and often times worked in excess of twelve (12) hours in one (1) workday.

133. As a pattern and practice, Defendants failed to compensate Plaintiffs and Aggrieved Employees for all hours worked, including for all overtime wages and double time, where applicable.

Failure to Provide Meal Periods and Authorize and Permit Rest Breaks

134. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendant was required to authorize and permit their non-exempt employees to take a paid off duty 10-minute rest break for every four (4) hours worked or major fraction thereof, and were further required to provide their non-exempt employees with an off duty 30-minute meal period for every five (5) hours worked.

135. As a pattern and practice, Defendant failed to provide Plaintiffs and Aggrieved Employees with legally mandated meal periods and failed to authorize and permit legally-mandated rest breaks, and failed to compensate them premium wages.

Failure to Reimburse Expenses

136. Under California Labor Code section 2802, Defendant must reimburse and indemnify Plaintiffs and Aggrieved Employees for all necessary expenditures Plaintiffs and Aggrieved Employees incurred. At all times relevant herein, Defendant was required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of California Labor Code sections 2800 and 2802. As a pattern and practice, Defendant failed to pay Plaintiffs and Aggrieved Employees all business expenses incurred and owing them within the required time period. Plaintiffs and Aggrieved Employees incurred cell phone charges while performing work for Defendant. Plaintiffs and Aggrieved Employees were required to use their cell phones for a variety of purposes including but not limited calling and texting and were required to download the company app to update status on loads and deliveries (dispatch & office), customers, load info, address info, delivery info, directions (GPS), bill of lading sent, and group chat. Defendant failed to reimburse Plaintiffs and Aggrieved Employees for any of the expenses they incurred while working on behalf of Defendant.

137. Defendant violated Labor Code Section 2800, et seq. by failing to reimburse Plaintiffs and Aggrieved Employees for expenses incurred on behalf of Defendant while performing work on behalf of Defendant. Plaintiffs and Aggrieved Employees incurred expenses such as cell phone charges while performing work for Defendant. Defendant failed to reimburse Plaintiffs and all Aggrieved Employees for any of the expenses they incurred while working on behalf of Defendant.

138. Because Defendant has failed and continues to fail to reimburse these necessary business expenses to Plaintiffs and Aggrieved Employees, and for its failure to pay interest under California Labor Code section 2802(b), Defendant has violated California Labor Code section 2802.

Penalties

139. Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on behalf of Aggrieved Employees, request and are entitled to recover from Defendant, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendant, and each of them, including but not limited to:

140. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

141. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

142. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

143. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

144. Any and all additional penalties as provided by the Labor Code and/or other statutes;

1 and

2 145. Plaintiffs request penalties against Defendant as provided under Lab. Code Section
3 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

4 **REQUEST FOR JURY TRIAL**

5 Plaintiffs hereby request a trial by jury.

6 **PRAYER FOR RELIEF**

7 Plaintiffs, on behalf of themselves and all other Class Members, pray for relief and judgment
8 against Defendant, as follows:

- 9 1. That this action be certified as a class action;
- 10 2. That Plaintiffs are appointed as the representatives of the Class;
- 11 3. That counsel for Plaintiffs is appointed as Class Counsel;
- 12 4. For general unpaid wages at overtime wage rates and such general and special damages
13 as may be appropriate;
- 14 5. For pre-judgment interest on any unpaid overtime compensation from the date such
15 amounts were due pursuant to Labor Code sections 218.6 and 1194;
- 16 6. For civil penalties pursuant to Labor Code section 558;
- 17 7. For payments pursuant to Labor Code section 226.7(b);
- 18 8. Reimbursement of expenses;
- 19 9. For costs of suit incurred herein;
- 20 10. For such other and further relief as the Court may deem equitable and appropriate;
- 21 11. For statutory penalties pursuant to Labor Code section 226(e);
- 22 12. For statutory penalties pursuant to Labor Code section 225.5;
- 23 13. Restitution and disgorgement;
- 24 14. Waiting time penalties pursuant to Labor Code section 203;
- 25 15. For statutory penalties pursuant to Labor Code section 204;
- 26 16. For the disgorgement of any and all "unpaid wages" and incidental losses, according to
27 proof;

- 1 17. For restitution of "unpaid wages" to Plaintiffs and all other Class Members and pre-
2 judgment interest from the day such amounts were due and payable;
- 3 18. For the appointment of a receiver to receive, manage, and distribute any and all funds
4 disgorged from Defendant and determined to have been wrongfully acquired by
5 Defendant as a result of violations of Business and Professions Code section 17200, et
6 seq.;
- 7 19. Enter a declaratory judgment declaring that the Defendant has willfully and wrongfully
8 violated their statutory and legal obligations and deprived Plaintiffs and all others who
9 are also similarly situated of their rights, privileges, protections, compensation, benefits
10 and entitlements under the law, as alleged herein;
- 11 20. Order a complete and accurate accounting of all the compensation to which the Plaintiffs
12 and all others who are similarly situated are entitled;
- 13 21. For compensatory damages against Defendant to be paid to the California class,
14 including all wages and overtime pay, and statutory damages for violation of California
15 Labor Code Sections 1194, 1197, 1197.1, 1198, 510, 226 owed to the California class
16 under California law;
- 17 22. For "waiting time penalties," pursuant to Section 203 of the California Labor Code,
18 against Defendants to be paid to members of the Class whose employment has
19 terminated with Defendant and who were not timely paid all wages due and owing to
20 them at the time of such termination;
- 21 23. For statutory penalties pursuant to Labor Code section 1174.5;
- 22 24. For attorneys' fees and costs as allowed by Section 1021.5 of the California Code of Civil
23 Procedure and the PAGA;
- 24 25. For an order requiring Defendant to pay restitution for its unlawful conduct in the State
25 of California;
- 26 26. Restitution and disgorgement;
- 27 27. Pre-judgment interest;
- 28

- 1 28. Statutory damages, civil penalties;
2 29. For reasonable attorneys' fees and costs; and
3 30. For such other and further relief as the Court deems proper.
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6 DATED: July 26, 2023

NATHAN & ASSOCIATES, APC

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8 BY: /s/ Reuben D. Nathan
9 Reuben D. Nathan, Esq.
10 Attorneys for Plaintiffs,
11 ANTHONY VASQUEZ
12 MELVIN WILLIAMS
13 JAIME FURLOUGH
14 MICHAEL CHEN
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