

06/05/2024

Chad Finke, Executive Officer / Clerk of the Court

By: D. Franklin Deputy

REUBEN D. NATHAN, Esq. (SBN: 208436)

rnathan@nathanlawpractice.com

NATHAN & ASSOCIATES, APC

2901 W. Coast Highway, Suite 200

Newport Beach, California 92663

TEL: (949) 270-2798

FAX: (949) 209-0303

BRIAN J. KOWALSKI (SBN: 266837)

brian@kowalskilawfirm.com

KOWALSKI EMPLOYMENT LAW CORP.

1941 California Avenue, #79453

Corona, California 92877

TEL: (925) 570-5673

Attorneys for Plaintiffs ANTHONY VASQUEZ, MELVIN WILLIAMS,
JAIME FURLOUGH, MARTHA LOPEZ and MICHAEL CHEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

- Unlimited Civil -

ANTHONY VASQUEZ, MELVIN
WILLIAMS, JAIME FURLOUGH, MARTHA
LOPEZ 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

) **SECOND 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 MARTHA LOPEZ 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, MARTHA LOPEZ 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, MARTHA LOPEZ 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 some

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

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

JURISDICTION AND VENUE

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

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

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

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

PRIVATE ATTORNEYS GENERAL ALLEGATIONS

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

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

//

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 employed Plaintiff MARTHA LOPEZ from approximately February 2022 through the period ending in or about December 2023.

17. 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.

18. 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.

19. Plaintiffs ANTHONY VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, MARTHA LOPEZ 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.

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

//

//

1 **FACTUAL ALLEGATIONS**

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

5 22. At all times set forth herein, Defendant employed Plaintiffs and all other similarly situated
6 non-exempt employees in the capacity, such as, local California drivers and long-haul drivers, as well as
7 administrative staff involved in dispatch.

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

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

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

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

25 27. Upon information and belief, during the relevant time frame, Defendant maintained and
26 enforced an aggressive set of demands for these non-exempt employees with respect to the goals for its
27 drivers or other similar position, thereby requiring Plaintiffs and all other similarly situated employees to
28 interrupt or shorten their lawful meal periods of thirty (30) uninterrupted minutes while being relieved of

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

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

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

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

31. Upon information and belief, during the relevant time frame, Defendant maintained and enforced a schedule and policies that due to business demands often required Plaintiffs and all other similarly situated employees to shorten (constitutes a missed rest break) or forego their lawful rest periods of ten (10) minutes for every four (4) hours worked or major fraction thereof. During all relevant periods,

1 Defendant illegally and unlawfully required Plaintiffs and Class Members to work through rest periods.
2 Defendant required Plaintiffs and all other similarly situated employees to answer their personal cell
3 phones during their rest break. Also, Defendant's management clocks Plaintiffs and all other similarly
4 situated employees in and out for their meal periods from the office, despite not knowing whether the
5 driver was being provided an opportunity to take their rest break or being relieved of all duty. Wage
6 orders required that Plaintiffs and the Class Members be compensated for the rest periods for which
7 Defendant required Plaintiffs and the Class Members to work. Defendant failed to compensate Plaintiffs
8 and the Class Members for these rest periods worked on any given day or in any given workweek.

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

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

17 34. Defendant failed to pay when due and on time, Plaintiffs and all other similarly situated
18 employees the legal wages they earned or that were due, failed to provide all authorized meal and rest
19 periods (or failed to pay an hour at the regular rate for meal and rest breaks) owed to Plaintiffs and all
20 other similarly situated employees, and failed to pay one (1) hour wages in lieu of Defendant's failure to
21 provide a meal and rest period, including at such time when employee quit or was discharged. More
22 specifically, as a result of Defendant's failure to account for off-the-clock hours worked, and premium
23 payments due for missed meal and rest breaks, those wage statements issued to Plaintiffs and all similarly
24 situated Class Members are deemed inaccurate and false. Defendant has made it difficult to account with
25 precision for the unlawfully deducted and/or withheld wages owed to Plaintiffs and all other similarly
26 situated employees without an examination of all records during the liability period and failed to
27 implement, and on information and belief, failed to preserve a lawful record-keeping method to record
28 all non-provided meal and rest breaks owed to employees, as required for non-exempt employees by

1 California Labor Code section 226 and applicable California Wage Orders. Additionally, Defendant
2 instructed its management and supervisors as a part of its schedule, policies, and demands to require that
3 Plaintiffs and all similarly situated employees falsely record meal periods under a threat (of not receiving
4 wages, retaliation, termination, and other similar forms of threats), or that Defendant's management,
5 supervisors, and other persons with authority falsely recorded that meal breaks were offered, provided,
6 and exercised by Plaintiffs and similarly situated employees, when in fact those meal breaks were not
7 offered, provided or exercised by Plaintiffs and other similarly situated employees, which was made
8 pursuant to Defendant's instruction.

9 35. Plaintiffs are informed and believe, and thereon allege, that Defendant knows, should
10 know, knew, and/or should have known that Plaintiffs and all other similarly situated employees were
11 entitled to receive accurate wages for regular and overtime work, and premium wages under Labor Code
12 §226.7(b), but were not receiving accurately calculated compensation.

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

18 37. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or
19 should have known that Defendant had to keep complete and accurate payroll records for Plaintiffs and
20 the other class members in accordance with California law, but, in fact, did not keep complete and
21 accurate payroll records.

22 38. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or
23 should have known that Plaintiffs and the other class members were entitled to reimbursement for
24 necessary business-related expenses. At all material times set forth herein, Defendant failed to reimburse
25 Plaintiffs and the other class members for necessary business-related expenses and costs such as being
26 required to use their personal cell phone for calls and messages from Defendant, downloading phone
27 applications for work purposes, receiving load and delivery information, uploading of documents,
28 speaking with Defendant's office and/or dispatch, speaking with Defendant's customers, directions,

1 dispatchers calling Defendant's drivers and customers, and group chats. At all material times set forth
2 herein, Defendant failed to properly reimburse Plaintiffs and the other class members pursuant to
3 California law in order to increase Defendant's profits.

4 39. Such actions and policies, as described above and further herein, were and continue to be
5 in violation of the California Business and Professions Code section 17200, et seq. (predicate statutes,
6 the FLSA and Cal. Labor Code) and California Labor Code. Plaintiffs, on behalf of themselves and all
7 other similarly situated employees in addition to the claims set forth under California Business and
8 Professions Code section 17200, et seq. for violations of the California Labor Code section 2699, et seq.,
9 including without limitation to sections 201, 202, 203, 204, 226, 226.7, 246 – 248.7, 510, 512, 558,
10 1174(d), 1194, 2800, 2802, 2698 et seq., applicable IWC California Wage Orders and California Code
11 of Regulations, Title 8, section 11000, et seq.

12 **CLASS ACTION ALLEGATIONS**

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

15 41. All claims alleged herein arise under California law for which Plaintiffs seek relief
16 authorized by California law.

17 42. Plaintiffs propose the following sub-classes be created:

18 a) All former and current non-exempt employees of Defendant within four years of the filing of
19 this complaint to the present date.

20 b) All former and current non-exempt employees of Defendant within four years of the filing of
21 this complaint to the present date that used their personal cell phones while employed.

22 (hereinafter referred to as "Class Members" or the "Class")

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

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

28 //

1 a. Numerosity: The members of the Class are so numerous that joinder of all members
2 would be unfeasible and impractical. The membership of the Class is unknown to
3 Plaintiffs at this time. However, the Class is estimated to be greater than fifty (50)
4 individuals and the identity of such membership is readily ascertainable by
5 inspection of Defendant's employment records.

6 b. Typicality: Plaintiffs are qualified to and will fairly and adequately protect the
7 interests of each Class Member with whom they has a well-defined community of
8 interest, and Plaintiffs' claims (or defenses, if any), are typical of all Class Members
9 as demonstrated herein.

10 c. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect the
11 interests of each Class Member with whom they have a well-defined community of
12 interest and typicality of claims, as alleged herein. Plaintiffs acknowledge that they
13 have an obligation to the Court to make known any relationship, conflict, or
14 differences with any Class Member. Plaintiffs' attorneys and proposed Class
15 counsel are well-versed in the rules governing class action discovery, certification,
16 and settlement. Plaintiffs have incurred, and, throughout the duration of this action,
17 will continue to incur costs and attorneys' fees that have been, are, and will be
18 necessarily expended for the prosecution of this action for the substantial benefit of
19 each Class Member.

20 d. Superiority: The nature of this action makes the use of class action adjudication
21 superior to other methods. A class action will achieve economies of time, effort,
22 and expense as compared with separate lawsuits, and will avoid inconsistent
23 outcomes because the same issues can be adjudicated in the same manner and at
24 the same time for the entire class.

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

27 a. Whether Defendant failed to pay Plaintiffs and Class overtime and double overtime;
28

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

FIRST CAUSE OF ACTION

Violation of California Labor Code section 2800, et seq.

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

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

47. Plaintiffs and the Class allege this cause of action against Defendant.

48. "An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care." (Cal. Labor Code § 2800.)

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

50. "All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as

1 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
2 necessary expenditure or loss.” (Cal. Labor Code § 2802(b).)

3 51. California Labor Code section 2802E provides: “For purposes of this section, the term
4 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to,
5 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

6 52. Defendant owes a duty to Plaintiffs and Class Members to indemnify them for all
7 necessary expenditures, losses, and damages suffered and incurred in direct consequence of the discharge
8 of their duties, or of their obedience to the directions of their employer. Defendants continue to refuse to
9 reimburse and indemnify Plaintiffs and Class Members for all necessary expenditures and losses incurred
10 by them, including but not limited to personal cell phones while performing work for Defendant.

11 53. Plaintiffs and the Class have incurred, and are continuing to incur, necessary expenditures
12 and losses in direct consequence of the discharge of duties, or of obedience to Defendant’s directions as
13 an employer, which at the time of obeying the directions, Plaintiffs and members of the Class believed
14 to be lawful.

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

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

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

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

28 //

58. 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.

59. 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.

60. 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)

61. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material allegations set forth in paragraphs 1 through 60 of this Complaint.

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

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

64. At all times herein set forth, IWC Wage Order section 9-2001(3)(A), which is applicable to Plaintiffs and all other similarly situated employees employment with Defendants, has provided that employees working for more than eight (8) hours in one (1) day, and/or more than forty (40) hours in one (1) workweek, are entitled to payment at the rate of one-and-one-half (1 ½) his or her regular rate of pay for all hours worked in excess of eight (8) hours in one (1) day or more than forty (40) hours in one (1) work week. An employee who works more than twelve (12) hours in one (1) day is entitled to overtime

1 compensation at a rate of twice his or her regular rate of pay. During this liability period, Plaintiffs and
2 other similarly situated employees were paid an hourly rate. Plaintiffs and all similarly situated persons
3 worked in excess of eight (8) hours a day and in excess of forty (40) hours per workweek for each
4 workweek while employed by Defendant throughout the course of employment with Defendant, subject
5 to any workweeks wherein Plaintiffs and Class Members missed workdays as a result of sick days,
6 personal emergencies, or anything else that would otherwise interfere with workweek schedules.
7 Defendant required Plaintiffs and the Class to work but did not pay Plaintiffs and the Class for all hours
8 worked on any given day or in any of the given workweeks herein mentioned as a result of Plaintiffs and
9 all similarly situated persons working overtime and double-time, and being required to answer phone calls
10 and messages from Defendant before and after work shift hours and without a record of Defendant tracking
11 such off-the-clock work. Defendant failed to compensate Plaintiffs and all similarly situated persons for
12 work performed in excess of eight (8) hours a day or forty (40) hours per workweek while employed by
13 Defendant, which occurred throughout Plaintiffs and all similarly situated persons' course of employment
14 with Defendant.

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

20 66. During the relevant time period, more specifically, three years dating back from the filing
21 of this Complaint, Plaintiffs and all other similarly situated employees worked in excess of eight (8) hours
22 in one (1) workday and forty (40) hours in one (1) workweek. During the relevant time period, more
23 specifically, dating back three years from the filing of this Complaint, Plaintiffs and all other similarly
24 situated employees frequently worked in excess of ten (10) hours and often times worked in excess of
25 twelve (12) hours in one (1) workday.

26 67. On information and belief, Plaintiffs and all similarly situated employees of Defendant
27 were regularly compelled to work without overtime and/or double-time pay due to Defendant requiring
28 Plaintiffs and all similarly situated employees to work hours in excess of regular time and to work off-the-

1 clock. More specifically, Plaintiffs' supervisors (and management) and supervisors (and management) of
2 all similarly situated employees were fully aware that non-exempt employees were not lawfully paid
3 overtime and/or double-time wages for all time worked with Defendant.

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

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

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

12 71. Pursuant to Labor Code section 558, Plaintiffs and all other similarly situated employees
13 are entitled to fifty dollars (\$50.00) for each pay period for which the employee was underpaid. This is in
14 addition to an amount sufficient to recover underpaid wages and for each subsequent violation, one
15 hundred dollars (\$100.00) for each pay period for which the employee was underpaid in addition to an
16 amount sufficient to recover underpaid wages.

17 **THIRD CAUSE OF ACTION**

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

19 **9-2001, § 10 – Improper Meal Periods**

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

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

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

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

27 75. At all times herein, Labor Code section 512(a) provides that an employer may not employ
28 an employee for a work period of more than five (5) hours per day without providing the employee with

1 a meal period of not less than thirty (30) minutes, except that if the total work period per day of the
2 employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee.

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

6 77. During the relevant time period, Plaintiffs and all other similarly situated employees, who
7 were scheduled to work in excess of five (5) hours, but not longer than six (6) hours, and who did not
8 waive their legally-mandated meal periods by mutual consent, were required to work in excess of five
9 (5) hours without receiving a meal period of not less than thirty (30) minutes. During the relevant time
10 period, Plaintiffs and all other similarly situated employees, who were scheduled to work for a period of
11 time in excess of six (6) hours, were required to work in excess of five (5) hours, without receiving a
12 meal period of not less than thirty (30) minutes.

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

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

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

27 81. Upon information and belief, during the relevant time frame, Plaintiffs and all other
28 similarly situated employees did not receive meal periods; in addition, Defendant's work demands and

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

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

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

84. Pursuant to Labor Code section 226.7(b) and Industrial Welfare Commission Wage Order 9-2001, section 10 (A) (B), Plaintiffs and all other similarly situated employees 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 meal period was not provided, for a three-year statutory period dating back from the date of the commencement of this action.

FOURTH CAUSE OF ACTION

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

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

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

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

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

//

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

10 89. “[A]ll hours must be paid at the statutory or agreed rate and no part of this rate may be
11 used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App⁴th
12 314, 324.) “Under the California minimum wage law, employees must be compensated for each hour
13 worked at either the legal minimum wage or the contractual hourly rate, and *compliance cannot be*
14 *determined by averaging hourly compensation.*” (*Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App⁴th
15 864, 872 (emphasis added); *see also Sheppard v. North Orange County Regional Occupational Program*
16 (2010) 191 Cal.App⁴th 289, 297 n.5 (“Compliance with the minimum wage law is determined by
17 analyzing the compensation paid for each hour worked; *averaging hourly compensation is not permitted*
18 *under California law.*”) (emphasis added).) “[A]ny employee receiving less than the legal minimum
19 wage ... is entitled to recover in a civil action the unpaid balance of the full amount of this minimum
20 wage” (*Cal. Lab. Code* § 1194(a).) “[A]ll hours must be paid at the statutory or agreed rate and no
21 part of this rate may be used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.*
22 (2005) 135 Cal.App.4th 314, 324.) “An employer is required to authorize and permit the amount of rest
23 break time called for under the wage order for its industry.” (*Brinker*, ⁵³ Cal.4th at 1033; *see also*
24 *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 236 (“An employer has a duty to
25 authorize and permit rest breaks.”).) “No employer shall require any employee to work during any ...
26 rest period mandated by an applicable order of the Industrial Welfare Commission.” (*Cal. Labor Code*
27 § 226.7(a).) “Under Industrial Welfare Commission wage orders, employers are required to ‘authorize
28 and permit all employees to take rest periods’ at the rate of at least 10 minutes for every four hours

worked.” (*Bluford*, 2¹⁶ Cal.App.4th at 871 (*quoting* 8 C.C.R. § 11070, § 12); *see also* *Murphy v. Kenneth Cole Productions, Inc.* (20⁰⁷) 40 Cal.4th 1094, 1104 (Employees are entitled to “a paid 10–minute rest period per four hours of work.”).) “The wage order’s requirement not to deduct wages for rest periods presumes [employees] are paid for their rest periods.” (*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.

90. 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 ‘he 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.

91. 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.

92. 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 ‘he 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 93. 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 94. 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 95. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
15 allegations set forth in paragraphs 1 through 94 of this Complaint.

16 96. 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 any
21 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
22 deductions made on written orders of the employee may be aggregated and shown as one item, (5) net
23 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
24 employee and his or her social security number, except that by January 1, 2008, only the last four digits
25 of his or her social security number or an employee identification number other than a social security
26 number may be shown on the itemized statement, (8) the name and address of the legal entity that is the
27 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number
28 of hours worked at each hourly rate by the employee."

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

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

California Labor Code and applicable IWC Wage Orders, and Defendant's aggrieved employees have been accordingly rendered unaware of how to calculate such compensation.

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

SIXTH CAUSE OF ACTION

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

(Plaintiffs, Anthony Vasquez, Melvin Williams, Martha Lopez, and Jaime Furlough individually, and on behalf of all similarly aggrieved employees, against all Defendants)

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

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

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

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

104. Defendant also willfully violated Labor Code sections 201-203 by failing to provide all owed wages at separation from employment. Labor Code sections 201 and 202 require Defendant to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer willfully fails to

1 timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's wages
2 until the back wages are paid in full or an action is commenced. The penalty cannot exceed thirty (30)
3 days of wages. Plaintiffs and all other similarly situated employees who were separated from
4 employment are entitled to compensation for all forms of wages earned, including but not limited to
5 unpaid overtime and double-time compensation and premium payments for non-provided meal and rest
6 periods, but to date have not received such compensation, therefore entitling to wages.

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

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

17 SEVENTH CAUSE OF ACTION

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

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

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

22 108. Defendant's conduct, as alleged herein, including not paying Plaintiffs and the other Class
23 Members for all wages owed, including overtime and double-time wages, wages for missed meal periods
24 and missed rest periods, not providing Plaintiffs and all other similarly situated employees with
25 inaccurate wage statements; not reimbursing Plaintiffs and all other similarly situated employees for
26 business expenses; and not paying Plaintiffs and all other similarly situated employees all wages due
27 upon separation from Defendant, has been, and continues to be unlawful and unfair, and harmful to
28 Plaintiffs and all other similarly situated employees, and the general public.

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

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

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

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

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

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

12 115. Plaintiffs through this action are conferring a substantial benefit on the general public by
13 ensuring the prompt payment of wages due to employees and a large class of persons (at this time believed
14 to exceed 50 class members), there exists a necessity (Defendant has maintained this illegal practice for
15 at least four years) and financial burden of private enforcement makes an award of attorney's fees
16 appropriate, which should not in the interest of justice be taken out of any award since these any
17 disgorgement or restitution to Plaintiffs and Class Members are owed to them as wages for time worked
18 while employed by Defendant.

19 EIGHTH CAUSE OF ACTION

20 Violation of Labor Code Section 2698, et seq.

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

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

24 117. Plaintiffs are seeking to represent all California non-exempt former and current Drivers
25 with routes restricted within the State of California, employed by Defendant, at any time from April 19,
26 2022 to the present date ("Aggrieved Employees"). This cause of action under the Private Attorneys
27 General Act ("PAGA") is a representative action and not a class action.
28

1 118. PAGA expressly establishes that any provision of the California Labor Code which
2 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions,
3 commissions, boards, agencies, or employees for a violation of the California Labor Code, may be
4 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and
5 other current or former employees.

6 119. On April 19, 2023, Plaintiffs provided written notice to the LWDA and Defendant of the
7 specific provisions of the Labor Codes they contend were violated, and the theories supporting their
8 contentions. Plaintiff believes that on or about, June 23, 2023, the sixty-five (65) day notice period expired
9 and the LWDA did not take any action to investigate or prosecute this matter. On March 21, 2024
10 Plaintiffs provided their amended written notice to the LWDA and on March 22, 2024, Plaintiffs provided
11 Defendant with written notice of additional Labor Codes they contend were violated. Plaintiffs believe
12 that on or about, May 28, 2024, the sixty-five (65) day notice period expired and the LWDA did not take
13 any action to investigate or prosecute this matter. Therefore, Plaintiffs have exhausted the statutory time
14 period to bring this action.

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

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

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

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

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

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

28 124. As a pattern and practice, Defendant regularly failed to timely pay Plaintiffs and

Aggrieved Employees all wages due and owing them within the required time period.

Failure to Maintain Accurate Employment Records

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

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

Failure to Provide Complete and Accurate Wage Statements

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee (and the last four digits of his or her social security number or an employee identification number other than a social security number *may* be shown on the itemized statement),

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

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

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

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

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

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

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

27 132. As a result of Defendant's various Labor Code violations, Defendant failed to keep
28 accurate records regarding Plaintiffs and Aggrieved Employees. For example, Defendant failed in their

1 affirmative obligation to keep accurate records regarding Plaintiffs and Aggrieved Employees' gross
2 wages earned, total hours worked, all deductions, net wages earned, commission, bonus and incentive
3 payments, and all applicable hourly rates and the number of hours worked at each hourly rate.

4 **Failure to Pay Overtime Wages**

5 133. At all times relevant herein, Defendant was required to compensate their non-exempt
6 employees minimum wages for all hours worked and overtime wages for all hours worked in excess of
7 eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510,
8 1194, 1197, and 1198. Plaintiffs and Aggrieved Employees worked off the clock without being properly
9 compensated for overtime hours worked. Plaintiffs and Aggrieved Employees were required to work off
10 the clock including but not limited to respond to calls, text messages, and use of the XPRESS app.
11 Plaintiffs and Aggrieved Employees frequently worked more than eight (8) hours in a day or forty (40)
12 hours in a workweek. Plaintiffs and Aggrieved Employees frequently worked in excess of ten (10) hours
13 and often times worked in excess of twelve (12) hours in one (1) workday.

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

16 **Failure to Provide Meal Periods and Authorize and Permit Rest Breaks**

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

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

24 **Failure to Reimburse Expenses**

25 137. Under California Labor Code section 2802, Defendant must reimburse and indemnify
26 Plaintiffs and Aggrieved Employees for all necessary expenditures Plaintiffs and Aggrieved Employees
27 incurred. At all times relevant herein, Defendant was required to reimburse its employees for any and all
28 necessary expenditures or losses incurred by the employees in direct consequences of the discharge or

1 his or her duties pursuant to the mandate of California Labor Code sections 2800 and 2802. As a pattern
2 and practice, Defendant failed to pay Plaintiffs and Aggrieved Employees all business expenses incurred
3 and owing them within the required time period. Plaintiffs and Aggrieved Employees incurred cell phone
4 charges while performing work for Defendant. Plaintiffs and Aggrieved Employees were required to use
5 their cell phones for a variety of purposes including but not limited calling and texting and were required
6 to download the company app to update status on loads and deliveries (dispatch & office), customers,
7 load info, address info, delivery info, directions (GPS), bill of lading sent, and group chat. Defendant
8 failed to reimburse Plaintiffs and Aggrieved Employees for any of the expenses they incurred while
9 working on behalf of Defendant.

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

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

18 **Failure to Provide Paid Sick Leave**

19 140. Under California Labor Code section 246, Defendant must provide paid sick days to
20 Plaintiffs and Aggrieved Employees. (a) (1) An employee who, on or after July 1, 2015, works in
21 California for the same employer for 30 or more days within a year from the commencement of
22 employment is entitled to paid sick days as specified in this section. (b) (1) An employee shall accrue
23 paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the
24 commencement of employment or the operative date of this article, whichever is later, subject to the use
25 and accrual limitations set forth in this section. (d) Accrued paid sick days shall carry over to the
26 following year of employment. However, an employer may limit an employee's use of accrued paid sick
27 days to 40 hours or five days in each year of employment, calendar year, or 12-month period. This section
28 shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the

beginning of each year of employment, calendar year, or 12-month period. The term “full amount of leave” means five days or 40 hours.

141. At all times relevant herein, Defendant was required to provide paid sick days to its employees pursuant to the mandate of California Labor Code section 246. As a pattern and practice, Defendant failed to pay Plaintiffs and Aggrieved Employees for all sick days owing them within the required time period.

142. Pursuant to Labor Code Section 246(1), Defendant was/is required to pay sick time pay to non-exempt employees at the employee’s “regular rate of pay.” Under California law, the determination of regular rate of pay for purposes of determining sick leave pay must include the employee’s commissions, bonuses, or other non-hourly compensation. Plaintiffs and Aggrieved Employees were not paid all accrued sick leave due to Defendant not including the method of calculating the regular rate. Pursuant to Labor Code Section 233, “any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee’s accrued and available sick leave entitlement, in an amount not less than sick leave that would be accrued during six months at the employee’s then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.” Defendant failed to pay Plaintiffs and Aggrieved employees their sick leave.

143. As stated herein above, Labor Code Section 233 (d) states, “Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief” and allows for an employee to bring a civil action for the remedies provided under Labor Code Section 233 and for reasonable attorney’s fees.

144. Defendant violated Labor Code Sections 246, et seq. and 233, by failing to pay Plaintiffs and Aggrieved Employees for paid sick days that Plaintiffs and Aggrieved Employees earned and are entitled to under the California Labor Code.

145. Because Defendant has failed and continues to fail to provide paid sick days to Plaintiffs and Aggrieved Employees, Defendant has violated California Labor Code sections 246, *et seq.* and 233. Plaintiffs and Aggrieved Employees seek unpaid sick leave pay, interest, penalties, and attorney’s fees and costs.

//

1 **Penalties**

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

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

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

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

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

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

21 152. Plaintiffs request penalties against Defendant as provided under Lab. Code Section
22 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

23 153. Plaintiffs and Aggrieved Employees are also entitled to penalties under Labor Code
24 section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these amounts in addition
25 to interest, attorneys' fees, and costs to the extent permitted by law.

26 **REQUEST FOR JURY TRIAL**

27 Plaintiffs hereby request a trial by jury.

28 //

PRAYER FOR RELIEF

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

1. That this action be certified as a class action;
2. That Plaintiffs are appointed as the representatives of the Class;
3. That counsel for Plaintiffs is appointed as Class Counsel;
4. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
5. For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due pursuant to Labor Code sections 218.6 and 1194;
6. For civil penalties pursuant to Labor Code section 558;
7. For payments pursuant to Labor Code section 226.7(b);
8. Reimbursement of expenses;
9. For costs of suit incurred herein;
10. For such other and further relief as the Court may deem equitable and appropriate;
11. For statutory penalties pursuant to Labor Code section 226(e);
12. For statutory penalties pursuant to Labor Code section 225.5;
13. Restitution and disgorgement;
14. Waiting time penalties pursuant to Labor Code section 203;
15. For statutory penalties pursuant to Labor Code section 204;
16. For the disgorgement of any and all "unpaid wages" and incidental losses, according to proof;
17. For restitution of "unpaid wages" to Plaintiffs and all other Class Members and pre-judgment interest from the day such amounts were due and payable;
18. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result of violations of Business and Professions Code section 17200, et seq.;

19. Enter a declaratory judgment declaring that the Defendant has willfully and wrongfully violated their statutory and legal obligations and deprived Plaintiffs and all others who are also similarly situated of their rights, privileges, protections, compensation, benefits and entitlements under the law, as alleged herein;
20. Order a complete and accurate accounting of all the compensation to which the Plaintiffs and all others who are similarly situated are entitled;
21. For compensatory damages against Defendant to be paid to the California class, including all wages and overtime pay, and statutory damages for violation of California Labor Code Sections 1194, 1197, 1197.1, 1198, 510, 226 owed to the California class under California law;
22. For “waiting time penalties,” pursuant to Section 203 of the California Labor Code, against Defendants to be paid to members of the Class whose employment has terminated with Defendant and who were not timely paid all wages due and owing to them at the time of such termination;
23. For statutory penalties pursuant to Labor Code section 1174.5;
24. For attorneys’ fees and costs as allowed by Section 1021.5 of the California Code of Civil Procedure and the PAGA;
25. For an order requiring Defendant to pay restitution for its unlawful conduct in the State of California;
26. Restitution and disgorgement;
27. Pre-judgment interest;
28. Statutory damages, civil penalties;
29. For reasonable attorneys’ fees and costs; and
30. For such other and further relief as the Court deems proper.

//

//

1 DATED: June 5, 2024

NATHAN & ASSOCIATES, APC

2
3 BY: /s/ Reuben D. Nathan
4 Reuben D. Nathan, Esq.
5 Attorneys for Plaintiffs,
6 ANTHONY VASQUEZ
7 MELVIN WILLIAMS
8 JAIME FURLOUGH
9 MICHAEL CHEN
10 MARTHA LOPEZ
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28