

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Robert Myong (SBN 262097)
Robert.Myong@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1860
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Bassil A. Hamideh (SBN 261233)
Jordan A. Gonzales (SBN 286730)
THE HAMIDEH FIRM, P.C.
9465 Wilshire Boulevard, 3rd Floor
Beverly Hills, California 90212
Telephone: (310) 207-8088
Facsimile: (310) 733-5699
E-mail: bhamideh@hamidehfirm.com

Attorneys for Plaintiffs Gerardo Cruz
and Nathaniel Hidalgo

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

GERARDO CRUZ, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to Private
Attorneys General Act ("PAGA"); and
NATHANIEL HIDALGO, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiffs,

vs.

UPDIKE DISTRIBUTION LOGISTICS,
LLC, a Delaware limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2600676

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUL - 2 2026

BY  VERONICA GONZALEZ, DEPUTY

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- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Gerardo Cruz, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees;
3 and Nathaniel Hidalgo, individually and on behalf of all other members of the public similarly
4 situated, allege as follows:

5 JURISDICTION AND VENUE

6 1. This class action is brought pursuant to California Code of Civil Procedure
7 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
8 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
9 current and former employees who worked for Defendants as delivery drivers and who were
10 misclassified as independent contractors in California and against whom one or more
11 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
12 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
13 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
14 and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior
15 Court and will be established according to proof at trial. This Court has jurisdiction over this
16 action pursuant to the California Constitution, Article VI, section 10. The statutes under
17 which this action is brought do not specify any other basis for jurisdiction. Each Plaintiffs’
18 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

19 2. This Court has jurisdiction over Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play
23 and substantial justice.

24 3. Venue is proper in this Court because Defendants employ persons in this
25 county, and employed Plaintiffs in this county, and thus a substantial portion of the
26 transactions and occurrences related to this action occurred in this county.

27 THE PARTIES

28 4. Plaintiff Gerardo Cruz (“Plaintiff Cruz”) is a resident of Altadena, in Los

1 Angeles County, California. Defendants employed Plaintiff Cruz from approximately
2 February 2021 to August 2025. Plaintiff Cruz worked as a Delivery Driver for Defendants out
3 of their warehouse location in Redlands, California (located at 26759 Almond Avenue, Suite
4 100, Redlands, California 92374). During his employment, Plaintiff Cruz typically worked
5 seven (7) to ten (10) hours or more per day, and five (5) days per week. At the time Plaintiff
6 Cruz's employment with Defendants ended, he was compensated approximately \$575-\$675
7 per day. Plaintiff Cruz's primary job duties included, without limitation, operating a 24-foot
8 box truck, loading inventory, driving to delivery locations, completing deliveries, and
9 assembling furniture.

10 5. Plaintiff Nathaniel Hidalgo ("Plaintiff Hidalgo") is a resident of Hacienda
11 Heights, in Los Angeles County, California. Defendants employed Plaintiff Hidalgo from
12 approximately October 2019 to March 2024. Plaintiff Hidalgo worked as a Delivery Driver
13 for Defendants out of their warehouse location in Redlands, California (located at 26759
14 Almond Avenue, Suite 100, Redlands, California 92374). During his employment, Plaintiff
15 Hidalgo typically worked 14 hours or more per day, and five (5) days per week. At the time
16 Plaintiff Hidalgo's employment with Defendants ended, he was compensated approximately
17 \$475-\$525 per day. Plaintiff Hidalgo's primary job duties included, without limitation,
18 operating a 24-foot box truck, loading inventory, driving to delivery locations, completing
19 deliveries, and assembling furniture.

20 6. UPDIKE DISTRIBUTION LOGISTICS, LLC was and is, upon information
21 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
22 employer whose employees are engaged throughout this county and the State of California.

23 7. Plaintiffs are unaware of the true names or capacities of the Defendants sued
24 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
25 amend the complaint and serve such fictitiously named Defendants once their names and
26 capacities become known.

27 8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
28 were the partners, agents, owners, or managers of UPDIKE DISTRIBUTION LOGISTICS,

1 LLC at all relevant times.

2 9. Plaintiffs are informed and believe, and thereon allege, that each and all of the
3 acts and omissions alleged herein was performed by, or is attributable to, UPDIKE
4 DISTRIBUTION LOGISTICS, LLC and/or DOES 1 through 10 (collectively, “Defendants”
5 or “UPDIKE”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
6 working in concert with, each of the other co-Defendants and was acting within the course and
7 scope of such agency, employment, joint venture, or concerted activity with legal authority to
8 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
9 represent, the official policy of Defendants.

10 10. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

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

17 **GENERAL ALLEGATIONS**

18 12. Defendants provide logistics services such as public and shared warehousing,
19 contract and dedicated warehousing, e-commerce fulfillment, and transportation, with at least
20 five (5) warehouse locations across California.

21 13. Upon information and belief, Defendants maintain a single, centralized Human
22 Resources (“HR”) department at their company headquarters in Phoenix, Arizona, which is
23 responsible for communicating and implementing Defendants’ company-wide policies to
24 employees misclassified as independent contractors throughout California.

25 14. Defendants contract with drivers, such as Plaintiffs and class members, to
26 provide delivery services to Defendants’ customers. As delivery drivers, Plaintiffs made
27 deliveries of inventory for Defendants’ clients, including, but not limited to: delivering
28 inventory such as store displays and fixtures for retailers like Sephora, Hollister, and

1 Abercrombie to other warehouses; completing residential deliveries of furniture for Wayfair;
2 and performing residential deliveries of large home appliances for Whirlpool.

3 15. Although Plaintiffs and class members were uniformly classified by Defendants
4 as “independent contractors,” Defendants exercised extensive control over the manner, means,
5 and conditions under which Plaintiffs and class members performed their work, and have
6 engaged in a scheme to create the façade that they do not employ delivery drivers to evade
7 California’s wage-and-hour protections for employees.

8 16. For example, Defendants’ supervisors texted Plaintiffs and class members their
9 start-times for reporting to the warehouse(s) to load merchandise, as well as the specific
10 delivery route that Plaintiffs and class members were to follow for completing deliveries.
11 Thus, Plaintiffs and class members were required to report to Defendants’ warehouse(s) at the
12 time designated by Defendants’ supervisors. Plaintiffs and class members did not have the
13 ability to choose their own work start-times, set their delivery schedule, or select the
14 geographic area of their routes. Moreover, Plaintiffs and class members had no meaningful
15 ability to negotiate or alter their assigned routes, which frequently required them to drive long
16 distances across Southern California.

17 17. Additionally, Defendants required Plaintiffs and class members to download,
18 use, and comply with a delivery-monitoring mobile application called Dispatch Track.
19 Dispatch Track indicated Plaintiffs’ and class members’ routes, delivery windows, customer
20 information, and the complete list of items to be delivered. Dispatch Track also included GPS
21 tracking, which allowed Updike to monitor Plaintiffs’ and class members’ movements and
22 progress throughout the day. Plaintiffs could be reprimanded for failing to perform deliveries
23 strictly within Defendants’ designated delivery windows. Defendants also required Plaintiffs
24 and class members to take photographs of the completed delivery, obtain the customer’s
25 signature, and click “Finish” in the application, before they were permitted to drive to the next
26 location.

27 18. As a further example, Defendants also required Plaintiffs and class members to
28 attend mandatory in-person meetings at their warehouse(s) to discuss delivery procedures,

1 required mobile applications for work, and client-specific protocols. These meetings were
2 conducted and led by Defendants' managers and supervisors. Defendants also required the
3 use of specific tools, such as boot covers, shoulder straps for moving large items, and four-
4 wheel dollies for transporting oversized products. Defendants also directed Plaintiffs and
5 class members to wear only black-colored clothing and not to wear any logos of other
6 companies on their clothing while working for Defendants.

7 19. Thus, Plaintiffs and class members were not free from the control and direction
8 of Defendants in connection with the performance of their work. Moreover, Plaintiffs and
9 class members performed work that was not outside the usual course of Defendants' business,
10 which is transportation services. Also, Defendants paid Plaintiffs and class members non-
11 negotiable day rates. Plaintiffs were paid a higher flat rate per day if they completed more
12 than six (6) deliveries on their route and, if Plaintiffs completed fewer than six (6) deliveries,
13 they were paid a lower flat rate per day. The day rate did not vary based on the number of
14 hours worked and was determined solely by the number of deliveries assigned by Defendants.
15 Plaintiffs had no ability to negotiate their rate of pay. Further, Defendants required Plaintiffs
16 and class members to pay for business expenses including fuel, insurance, costs of their
17 mobile devices and mobile data usage, equipment, and vehicle maintenance; these expenses
18 totaled hundreds of dollars each week.

19 20. Therefore, Defendants exercised substantial control over Plaintiffs' and class
20 members' wages, hours, and working conditions. Defendants' uniform misclassification of
21 Plaintiffs and other delivery drivers as independent contractors is intentional, unjustified, and
22 unlawful. Because Plaintiffs and class members rely (often exclusively) on the income they
23 earn from Defendants to support themselves and their families, the economic reality is that
24 Plaintiffs and class members are Defendants' employees. As a result of this misclassification,
25 Defendants have violated numerous wage-and-hour provisions, including, but not limited to,
26 failing to pay overtime wages for all overtime hours worked, failing to pay at least minimum
27 wages for all hours worked, failing to provide meal and rest periods, and failing to provide
28 reimbursement for necessary business-related expenses, among others.

1 21. Pursuant to California Labor Code section 3357, Plaintiffs and class members
2 are entitled to a presumption that they are in fact employees of Defendants. Moreover, the
3 existence of any document purporting to create an independent contractor relationship is not
4 determinative.

5 22. Defendants continue to employ delivery drivers at various locations throughout
6 California and continue to misclassify these employees as independent contractors.

7 23. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
9 and advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 24. Plaintiffs are informed and believe, and thereon allege, that Defendants
12 knowingly and willfully misclassified Plaintiffs and class members as independent contractors
13 and on that basis committed the violations against them as set forth herein.

14 25. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
15 members were not paid for all hours worked because all hours worked were not recorded.

16 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to receive certain wages
18 for overtime compensation and that they were not receiving certain wages for overtime
19 compensation.

20 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and class members were entitled to receive at least
22 minimum wages for compensation and that they were not receiving at least minimum wages
23 for work that was required to be done off-the-clock. In violation of the California Labor
24 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-
25 the-clock.

26 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and class members were entitled to meal periods in
28 accordance with the California Labor Code and applicable IWC Wage Order or payment of

one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period and that Plaintiffs and class members were not authorized and permitted to take compliant rest periods or provided with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and class members were not provided complete and accurate wage statements.

31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible time periods.

1 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to timely payment of
3 wages during their employment. In violation of the California Labor Code, Plaintiffs and
4 class members did not receive payment of all wages, including, but not limited to, overtime
5 wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within
6 permissible time periods.

7 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiffs and class members were entitled to receive sick leave
9 benefits and itemized wage statements or separate written statements showing the amount of
10 paid sick leave available, or paid time off provided in lieu of sick leave. In violation of the
11 California Labor Code, Defendants failed to provide Plaintiffs and class members with sick
12 leave benefits and written itemized wage statements or separate written statements showing
13 this information.

14 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and class members were entitled to receive full
16 reimbursement for all business-related expenses and costs they incurred during the course and
17 scope of their employment and that they did not receive full reimbursement of applicable
18 business-related expenses and costs incurred.

19 36. Plaintiffs are informed and believe, and thereon allege, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiffs and class members with written notice of the material terms of their employment
22 with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

23 37. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiffs and class members for all hours worked, and that Defendants had the financial
26 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
27 and falsely represented to Plaintiffs and class members that they were properly denied wages,
28 all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

38. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

39. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as “any person who was employed by the alleged violator and personally suffered each of the violations alleged.”

40. Plaintiff Cruz and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’ current or former employees and each of the alleged violations were committed against them.

41. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiff Cruz, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties.

7 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
8 through Plaintiff Cruz, may pursue a civil action arising under PAGA for violations of any
9 provision other than those listed in Section 2699.5 after the following requirements have been
10 met:

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated (other than those listed in Section 2699.5), including the
15 facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice sent by the aggrieved
21 employee or representative. The employer shall give written notice
22 within that period of time by certified mail to the aggrieved employee or
23 representative and by online filing with the LWDA if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the aggrieved employee may
27 commence a civil action pursuant to Section 2699.

28 43. On or about February 26, 2026, Plaintiff Cruz provided written notice by online

1 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
2 California Labor Code alleged to have been violated, including facts and theories to support
3 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
4 Cruz's written notice was accompanied with the applicable filing fee of seventy-five dollars
5 (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Cruz's written notice
6 and assigned Plaintiff Cruz PAGA Case Number LWDA-CM-1160426-26. A true and correct
7 copy of Plaintiff Cruz's written notice to the LWDA and Defendants dated February 26, 2026,
8 is attached hereto as "Exhibit 1".

9 44. As of the filing date of this amended complaint, over 65 days have passed since
10 Plaintiff Cruz sent the notice described above to the LWDA, and the LWDA has not
11 responded that it intends to investigate Plaintiff Cruz's claims and Defendants have not cured
12 the violations.

13 45. Thus, Plaintiff Cruz has satisfied the administrative prerequisites under
14 California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against
15 Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7,
16 226.8(a), 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2775(b), 2802,
17 and 2810.5.

18 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
19 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the Industrial Welfare
21 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
22 dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee was underpaid" Labor
25 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
26 to any other civil or criminal penalty provided by law."

27 47. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff Cruz's and other aggrieved

employees' rights by violating various sections of the California Labor Code as set forth above.

48. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

49. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff Cruz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2775(b), 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

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

52. Plaintiffs' proposed class consists of and is defined as follows:

All persons who worked for Defendants as delivery drivers and who were misclassified as independent contractors in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

53. Plaintiffs' proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as delivery drivers and who were misclassified as independent contractors in California within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

54. Members of the Class and Subclass are referred to herein as "class members."

55. Plaintiffs reserve the right to redefine the Class and Subclass and to add

1 additional subclasses as appropriate based on further investigation, discovery, and specific
2 theories of liability.

3 56. There are common questions of law and fact as to class members that
4 predominate over questions affecting only individual members, including, but not limited to:

- 5 (a) Whether Defendants knowingly and willfully misclassified Plaintiffs
6 and class members as independent contractors rather than employees;
- 7 (b) Whether Defendants required Plaintiffs and class members to work over
8 eight (8) hours per day, over twelve (12) hours per day, or over forty
9 (40) hours per week and failed to pay all legally required overtime
10 compensation to Plaintiffs and class members;
- 11 (c) Whether Defendants failed to pay Plaintiffs and class members at least
12 minimum wages for all hours worked;
- 13 (d) Whether Defendants failed to provide Plaintiffs and class members meal
14 periods;
- 15 (e) Whether Defendants failed to authorize and permit Plaintiffs and class
16 members to take rest periods;
- 17 (f) Whether Defendants provided Plaintiffs and class members with
18 complete and accurate wage statements as required by California Labor
19 Code section 226(a);
- 20 (g) Whether Defendants maintained accurate payroll records as required by
21 California Labor Code section 1174(d);
- 22 (h) Whether Defendants failed to pay earned overtime wages, minimum
23 wages, meal and rest period premiums, and/or sick leave pay due to
24 Plaintiffs and class members upon their discharge;
- 25 (i) Whether Defendants failed timely to pay overtime wages, minimum
26 wages, meal and rest period premiums, and/or sick leave pay due to
27 Plaintiffs and class members during their employment;
- 28 (j) Whether Defendants provided Plaintiffs and class members with sick

1 leave benefits and written notice of paid sick leave, or paid time off, as
2 required by California Labor Code section 246;

- 3 (k) Whether Defendants failed to reimburse Plaintiffs and class members
4 for necessary and required business-related expenditures and/or losses
5 incurred by them in the scope of their employment;
- 6 (l) Whether Defendants failed to provide written notice of information
7 material to Plaintiffs' and class members' employment with Defendants;
- 8 (m) Whether Defendants engaged in unlawful and unfair business practices
9 in violation of California Business & Professions Code sections 17200,
10 *et seq.*; and
- 11 (n) The appropriate amount of damages, restitution, or monetary penalties
12 resulting from Defendants' violations of California law.

13 57. There is a well-defined community of interest in the litigation and the class
14 members are readily ascertainable:

- 15 (a) Numerosity: The class members are so numerous that joinder of all
16 members would be unfeasible and impractical. The membership of the
17 entire class is unknown to Plaintiffs at this time; however, the class is
18 estimated to be greater than one hundred (100) individuals and the
19 identity of such membership is readily ascertainable by inspection of
20 Defendants' employment records.
- 21 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
22 protect the interests of each class member with whom they have a well-
23 defined community of interest, and Plaintiffs' claims (or defenses, if
24 any) are typical of all class members as demonstrated herein.
- 25 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
26 protect the interests of each class member with whom they have a well-
27 defined community of interest and typicality of claims, as demonstrated
28 herein. Plaintiffs acknowledge that they have an obligation to make

known to the Court any relationship, conflicts or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are 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, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

58. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

59. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
2 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
3 shall be the . . . standard conditions of labor for employees. The employment of any employee
4 . . . under conditions of labor prohibited by the order is unlawful.”

5 60. California Labor Code section 1198 and the applicable IWC Wage Order
6 provide that it is unlawful to employ persons without compensating them at a rate of pay
7 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
8 number of hours worked by the person on a daily or weekly basis.

9 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
10 were required to pay Plaintiffs and class members working more than eight (8) hours in a day
11 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
12 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
13 workweek.

14 62. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
16 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including nondiscretionary bonuses and incentive pay.

19 63. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
22 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
23 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
24 in a day on the seventh (7th) day of work.

25 64. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
27 class members were not paid overtime premiums for all of the hours they worked in excess of
28 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)

1 hours in a week, because all hours worked were not recorded.

2 65. As set forth above, Defendants' misclassification of Plaintiffs and class
3 members as independent contractors and "exempt" status from overtime and other related
4 wage-and-hour protections, including meal and rest periods, is, and was, willful, intentional,
5 unjustified, and unlawful. Plaintiffs and class members typically worked forty (40) to sixty
6 (60) hours per week and more than ten (10) hours per day, of which Defendants were fully
7 aware. However, because Defendants misclassified Plaintiffs and class members as "exempt"
8 from overtime, Defendants did not record their hours worked and did not pay any overtime
9 wages for hours worked in excess of eight (8) hours in one day, twelve (12) hours in a day, or
10 forty (40) hours in one week.

11 66. Plaintiffs regularly worked in excess of eight (8) hours in one day, twelve (12)
12 hours in a day, and forty (40) hours in one week, and were never paid overtime wages. For
13 example, as delivery drivers, Plaintiffs spent time loading inventory onto trucks, driving to
14 several delivery locations, completing deliveries for Defendants' clients, communicating with
15 Defendants' managers regarding the status of deliveries, and assembling furniture for
16 Defendants' clients, regularly driving from Defendants' warehouse in Redlands to distant
17 locations such as Santa Barbara, Santa Clarita, and Barstow, often totaling 100-200 miles and
18 working up to 14 hours per day. However, as stated, Defendants paid Plaintiffs and class
19 members non-negotiable day rates, which did not vary based on the number of hours worked
20 and which were determined solely by the number of deliveries assigned by Defendants. As a
21 result of Defendants' willful misclassification of Plaintiffs and class members, Plaintiffs and
22 class members were denied overtime pay.

23 67. Additionally, Plaintiffs and class members were required to review text
24 message communications from Defendants' management after their shifts or on their days off.
25 For example, at the end of each day, Plaintiffs would receive a text message from Defendants'
26 managers with their work schedules, the assigned delivery routes for the following work day,
27 and other work-related announcements, and Plaintiffs were required to spend time off-the-
28 clock reviewing the text messages. As a further example, as stated, Defendants also required

1 Plaintiffs and class members to attend mandatory in-person meetings at their warehouse(s) to
2 discuss delivery procedures, required mobile applications, and client-specific protocols, which
3 could take from 1-3 hours per instance.

4 68. Because Defendants misclassified Plaintiffs and class members as “exempt,”
5 Defendants also failed to provide Plaintiffs and class members with meal periods and instead
6 required that they perform work during unpaid meal periods. Because Plaintiffs and class
7 members typically worked shifts of eight (8) hours a day or more or forty (40) hours a week or
8 more, most, if not all, unpaid time worked during meal periods qualified for overtime
9 premium pay.

10 69. Defendants knew or should have known that as a result of these company-wide
11 practices and/or policies, including their misclassification of independent contractors such as
12 Plaintiffs and class members as “exempt,” Plaintiffs and class members were performing their
13 assigned duties off-the-clock and during meal periods, and were suffered or permitted to
14 perform work for which they were not paid. Because Plaintiffs and class members worked
15 shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-
16 the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and class members
17 were not paid overtime wages for all of the overtime hours they actually worked.

18 70. Defendants’ failure to pay Plaintiffs and class members the balance of overtime
19 compensation as required by California law, violates the provisions of California Labor Code
20 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class
21 members are entitled to recover from Defendants their unpaid overtime compensation, as well
22 as interest, costs, and attorneys’ fees.

23 **SECOND CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 25 **Minimum Wages** 26 **(Against all Defendants)**

27 71. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
28 and every allegation set forth above.

1 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
2 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
3 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
4 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as “the
5 time during which an employee is subject to the control of an employer, and includes all the
6 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
7 Code Regs. Tit. 8, § 11090(2)(H) (defining “Hours Worked”).

8 73. As set forth above, due to Defendants’ policies and/or practices of willful
9 misclassification of Delivery Drivers, Defendants failed to track this time that Plaintiffs and
10 class members spent working off-the-clock, and Plaintiffs and class members received no
11 compensation for this time. As stated, Plaintiffs and class members spent time loading
12 inventory, driving to several distant delivery locations, completing deliveries, communicating
13 with Defendants’ managers, assembling furniture, reviewing text message communications
14 from Defendants’ management after their shifts or on their days off, and attending mandatory
15 in-person meetings on Defendants’ premises. However, as stated, Defendants paid Plaintiffs
16 and class members non-negotiable day rates, which did not vary based on the number of hours
17 worked and which were determined solely by the number of deliveries assigned by
18 Defendants. Plaintiffs and class members were misclassified as independent contractors and
19 thus not paid any hourly wage. Thus, Plaintiffs and class members were not paid even
20 minimum wage for all of the hours they worked as a result of being paid on a fixed-rate basis,
21 and the wages paid to them were not sufficient to compensate them for all hours they worked
22 at a minimum wage rate on a cumulative basis, in violation of California Labor Code sections
23 1182.12, 1194, 1197, and 1197.1.

24 74. Additionally, Defendants have no policies in place for the provision of meal
25 periods and did not authorize and permit Plaintiffs and class members to take uninterrupted,
26 duty-free meal periods. To the extent Defendants deducted time for meal periods which
27 Plaintiffs and class members did not receive, they were not paid for all hours worked. Thus,
28 Defendants failed to pay Plaintiffs and class members for actual hours worked during unpaid

1 meal periods because these hours were not always correctly recorded.

2 75. Defendants did not pay minimum wages for all hours worked by Plaintiffs and
3 class members. To the extent that these off-the-clock hours did not qualify for overtime
4 premium payment, Defendants did not pay at least minimum wages for those hours worked
5 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
6 1198.

7 76. Defendants' failure to pay Plaintiffs and class members minimum wages
8 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
9 California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover
10 from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
11 interest thereon.

12 **THIRD CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 14 **Violations** 15 **(Against all Defendants)**

16 77. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
17 and every allegation set forth above.

18 78. At all relevant times herein set forth, California Labor Code section 512(a)
19 provides that an employer may not require, cause, or permit an employee to work for a period
20 of more than five (5) hours per day without providing the employee with a meal period of not
21 less than thirty (30) minutes, except that if the total work period per day of the employee is
22 not more than six (6) hours, the meal period may be waived by mutual consent of both the
23 employer and the employee. Under California law, first meal periods must start after no more
24 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1041-1042 (2012).

25 79. At all relevant times herein set forth, California Labor Code sections 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),

1 and the applicable IWC Wage Order also require employers to provide a second meal period
2 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
3 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
4 total hours worked is no more than twelve (12) hours, the second meal period may be waived
5 by mutual consent of the employer and the employee only if the first meal period was not
6 waived.

7 81. As stated, during the relevant time period, Defendants systematically (and
8 improperly) classified Plaintiffs and class members as independent contractors and, on that
9 basis, did not provide them with meal periods and did not take any measures to relieve them
10 of their duties to take compliant meal periods. Moreover, on information and belief,
11 Defendants had, and continue to have, a company-wide policy and/or practice of assigning
12 their delivery drivers multiple, time-sensitive deliveries, located across various geographical
13 distances and locations, without building in sufficient time to allow for 30-minute meal
14 periods, which prevented Plaintiffs and class members from taking all uninterrupted 30-
15 minute meal periods, and forced them to work through their meal periods to complete their
16 assigned deliveries. Moreover, Defendants wholly failed to schedule meal periods, which
17 further caused Plaintiffs and class members to not be relieved of their duties for compliant
18 meal periods. Further, travel time between Defendants' clients' delivery locations could take
19 longer than anticipated due to traffic conditions, which further impeded Plaintiffs and class
20 members from taking compliant meal periods.

21 82. As a result, Plaintiffs and class members had to work through all or part of their
22 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
23 before taking meal periods. For example, Plaintiffs were sometimes required to completely
24 forgo their meal periods due to Defendants' willful misclassification of delivery drivers as
25 independent contractors, delivery scheduling policies and practices, and failure to schedule
26 meal periods at all.

27 83. Additionally, Defendants did not provide Plaintiffs and class members with
28 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one

1 day. During the relevant time period, Plaintiffs worked shifts in excess of 10 hours in one day
2 and did not take a second meal period during those shifts. Plaintiffs and class members did
3 not sign valid meal period waivers on days that they were entitled to meal periods and were
4 not relieved of all duties.

5 84. At all times herein mentioned, Defendants knew or should have known that,
6 because they had misclassified Plaintiffs and class members as “exempt” and for the reasons
7 stated above, Plaintiffs and class members were prevented from being relieved of all duties
8 and required to perform some of their assigned duties during meal periods. Defendants further
9 knew or should have known that Defendants did not pay Plaintiffs and class members all meal
10 period premiums when meal periods were late, interrupted, shortened, and/or missed.

11 85. Moreover, Defendants engaged in a company-wide practice and/or policy of
12 not paying meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiffs and class members have not received
14 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
15 provide Plaintiffs and class members compliant meal periods in violation of California Labor
16 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

17 86. Defendants’ conduct violates the applicable IWC Wage Order, and California
18 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore
19 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular
20 rate of compensation for each work day that the meal period was not provided.

21 **FOURTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 23 **(Against all Defendants)**

24 87. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
25 and every allegation set forth above.

26 88. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs’ and class
28 members’ employment by Defendants.

1 89. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 90. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal.5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
15 Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from
16 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
17 required rest period was not authorized and permitted.

18 91. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)
20 hour period worked or major fraction thereof.

21 92. Defendants’ company-wide practices, including systemic misclassification,
22 prevented Plaintiffs and class members from being relieved of all duty in order to take
23 compliant rest periods. Additionally, as with meal periods, Defendants’ company-wide
24 scheduling policies and practices of assigning their delivery drivers multiple, time-sensitive
25 deliveries across various geographical distances and locations, prevented Plaintiffs and class
26 members from being able to take rest periods. Defendants also wholly failed to schedule rest
27 periods, which further led to Plaintiffs and class members not being authorized and permitted
28 to take rest periods.

93. As a result of Defendants' practices and policies, Plaintiffs and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiffs sometimes had to forgo their rest periods during their employment, due to Defendants' willful misclassification of delivery drivers as independent contractors, delivery scheduling policies and practices, and failure to schedule rest periods.

94. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiffs and class members have not received premium pay for all missed rest periods.

95. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage
Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)**

96. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

97. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

98. At all relevant times, Defendants have knowingly and intentionally failed to provide Plaintiffs and class members with any wage statements. Defendants did not provide

1 Plaintiffs and class members with itemized wage statements as a result of misclassifying them
2 as independent contractors and denying their status as employees. Because Defendants did
3 not issue any wage statements to Plaintiffs and class members, Defendants have violated, and
4 continue to violate Labor Code section 226(a) in its entirety.

5 99. Specifically, Defendants have knowingly and intentionally failed to provide
6 wage statements to Plaintiffs and Subclass members that list: gross wages earned in violation
7 of section 226(a)(1); total hours worked by employees in violation of section 226(a)(2); the
8 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
9 piece-rate basis in violation of section 226(a)(3); all deductions in violation of section
10 226(a)(4); net wages earned in violation of section 226(a)(5); the inclusive dates of the period
11 for which employees were paid in violation of section 226(a)(6); the name of the employee
12 and only the last four digits of his or her social security number or an employee identification
13 number other than a social security number in violation of section 226(a)(7); the name and
14 address of the legal entity that is the employer in violation of section 226(a)(8); and all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate in violation of section 226(a)(9). In addition, Defendants failed to
17 provide Plaintiffs and Subclass members the option to elect to receive hard copies of their
18 wage statements at any time and/or failed to provide them with the ability to easily access the
19 information and convert the electronic wage statements into hard copies at no expense to
20 them.

21 100. California Labor Code section 1174(d) provides that “[e]very person employing
22 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
23 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
24 plants or establishments at which employees are employed, payroll records showing the hours
25 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
26 applicable piece rate paid to, employees employed at the respective plants or
27 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
28 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass

1 members showing the daily hours they worked and the wages paid thereto as a result of failing
2 to record any hours that they worked and as a result of misclassifying them as independent
3 contractors.

4 101. California Labor Code section 1198 provides that the maximum hours of work
5 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
6 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
7 employment of any employees for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
9 Wage Order, employers are required to keep accurate time records showing when the
10 employee begins and ends each work period and meal period. During the relevant time
11 period, Defendants engaged in company-wide practices and/or policies of failing to record any
12 hours worked or keep records of meal periods as a result of misclassifying Plaintiffs and
13 Subclass members as independent contractors, and thereby failed to keep accurate records of
14 work period and meal period start and end times for Plaintiffs and Subclass members, in
15 violation of section 1198. Also, in light of Defendants’ failure to provide Plaintiffs and
16 Subclass members with second 30-minute meal periods to which they were entitled,
17 Defendants kept no records of meal start and end times for second meal periods.

18 102. Plaintiffs and Subclass members are entitled to recover from Defendants the
19 greater of their actual damages caused by Defendants’ failure to comply with California Labor
20 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
21 employee.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 24 **Termination** 25 **(Against all Defendants)**

26 103. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 104. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
2 timely paid to Plaintiffs and those class members no longer employed by Defendants upon
3 their termination.

4 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
5 that if an employer discharges an employee, the wages earned and unpaid at the time of
6 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
7 her employment, his or her wages shall become due and payable not later than seventy-two
8 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
9 his or her intention to quit, in which case the employee is entitled to his or her wages at the
10 time of quitting.

11 106. Defendants willfully failed to pay Plaintiffs and class members who are no
12 longer employed by Defendants the earned and unpaid wages set forth above, including but
13 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick
14 leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving
15 Defendants' employ.

16 107. Defendants' failure to pay Plaintiffs and class members who are no longer
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within
18 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
19 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
21 thirty (30) day maximum pursuant to California Labor Code section 203.

22 SEVENTH CAUSE OF ACTION

23 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 24 Employment 25 (Against all Defendants)

26 108. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 109. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
2 timely paid to Plaintiffs and class members during their employment.

3 110. At all times relevant herein set forth, Labor Code section 204 provides that all
4 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
7 the month during which the labor was performed. Labor Code section 204 further provides
8 that all wages earned by any person in any employment between the sixteenth (16th) and the
9 last day, inclusive, of any calendar month, other than those wages due upon termination of an
10 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
11 month.

12 111. At all times relevant herein, Labor Code section 204 provides that all wages
13 earned for labor in excess of the normal work period shall be paid no later than the payday for
14 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
15 204 provides that the requirements of this section are deemed satisfied by the payment of
16 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
17 seven (7) calendar days following the close of the payroll period.

18 112. During the relevant time period, Defendants willfully failed to pay Plaintiffs
19 and class members all wages due including, but not limited to, overtime wages, minimum
20 wages, meal and rest period premiums, and/or sick leave pay, within the time periods
21 specified by California Labor Code section 204.

22 113. Defendants' failure to pay Plaintiffs and class members all wages due violates
23 Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from
24 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

25 **EIGHTH CAUSE OF ACTION**

26 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 27 **(Against all Defendants)**

28 114. Plaintiffs incorporate and re-allege as if fully stated herein each and every

1 allegation set forth above.

2 115. At all times herein set forth, California Labor Code section 2802 provides that
3 an employer must reimburse employees for all necessary expenditures and losses incurred by
4 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
5 to prevent employers from passing off their cost of doing business and operating expenses on
6 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144
7 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: “[w]hen
8 tools or equipment are required by the employer or are necessary to the performance of a job,
9 such tools and equipment shall be provided and maintained by the employer, except that an
10 employee whose wages are at least two (2) times the minimum wage provided herein may be
11 required to provide and maintain hand tools and equipment customarily required by the trade
12 or craft.”

13 116. First, during the relevant time period, Defendants, on a company-wide basis,
14 required that Plaintiffs and class members use their own personal mobile devices, including,
15 but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed
16 to reimburse them for the costs of their work-related mobile device expenses. For example, as
17 set forth above, Defendants required Plaintiffs to download various mobile applications, such
18 as “Dispatch Track” for displaying routes, delivery windows, and customer information, as
19 well as allowing Defendants to actively monitor Plaintiffs’ and class members’ movements
20 and progress throughout the day. As another example, Plaintiffs were required to use their
21 personal cellular phones for communicating with Defendants’ managers, regarding work-
22 related matters. Although Defendants required Plaintiffs and class members to utilize their
23 personal mobile devices and/or mobile data to carry out their work-related responsibilities,
24 Defendants failed to reimburse them for these costs.

25 117. Second, during the relevant time period, Defendants had a company-wide
26 policy of requiring Plaintiffs and class members to utilize their own personal delivery vehicles
27 to carry out company business, but failed to reimburse them for all costs of travel, including
28 mileage, fuel, truck maintenance, and insurance premiums. Specifically, Defendants required

1 Plaintiffs and class members to travel to jobsites across Southern California to complete their
2 assigned deliveries, but did not reimburse them for their travel expenses. For example,
3 Defendants regularly required Plaintiffs to drive their personal delivery vehicles from
4 Defendants' warehouse in Redlands to distant locations such as Santa Barbara, Santa Clarita,
5 and Barstow, often totaling 100-200 miles each day. Although Defendants required Plaintiffs
6 and class members to utilize their own delivery vehicles to carry out their work-related
7 responsibilities, Defendants did not reimburse them for their travel expenses.

8 118. Third, during the relevant time period, Defendants required Plaintiffs and class
9 members to purchase supplies and equipment necessary for the performance of their duties,
10 but failed to reimburse them for their out-of-pocket costs. For example, Plaintiffs were
11 required to purchase their own dollies, pallet jacks, and drills for work purposes, because
12 Defendants failed to provide them with the necessary supplies and equipment which were
13 required for them to complete their assigned duties.

14 119. Defendants could have provided Plaintiffs and class members with the actual
15 equipment for use on the job, such as company mobile devices, company vehicles, and
16 supplies and equipment; or, Defendants could have reimbursed employees for the costs of
17 their mobile device usage, mileage, travel expenses, and supply and equipment expenses.
18 Instead, Defendants passed these operating costs onto Plaintiffs and class members. At all
19 relevant times, Plaintiffs did not earn at least two (2) times the minimum wage.

20 120. Defendants' company-wide policy and/or practice of passing not reimbursing
21 employees for expenses necessarily incurred and on their operating costs to Plaintiffs and
22 class members violates California Labor Code section 2802. Defendants have intentionally
23 and willfully failed to reimburse Plaintiffs and class members for necessary business-related
24 expenses and costs.

25 121. Pursuant to California Labor Code section 2802, Plaintiffs and class members
26 are entitled to recover from Defendants their business-related expenses incurred during the
27 course and scope of their employment, plus interest, costs, and attorneys' fees.

28 //

1 **NINTH CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 122. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 123. California Labor Code sections 2698, *et seq.* permit Plaintiff Cruz to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
9 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff Cruz,
10 to recover civil penalties for violations of those Labor Code sections not found in section
11 2699.5, including sections 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516, 1182.12, 1194,
12 1197, 1197.1, 2775(b), 2802, and 2810.5.

13 124. Defendants' conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code 226.8 for Defendants' willful misclassification
16 of Plaintiff Cruz and other aggrieved employees as "independent
17 contractors" rather than employees, as set forth below;
- 18 (b) Violation of Labor Code sections 510, 511, and 1198, and the applicable
19 IWC Wage Order for Defendants' failure to compensate Plaintiff Cruz
20 and other aggrieved employees with all required overtime pay, as
21 alleged herein;
- 22 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
23 1198, and the applicable IWC Wage Order for Defendants' failure to
24 compensate Plaintiff Cruz and other aggrieved employees with at least
25 minimum wages for all hours worked, as alleged herein;
- 26 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
27 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
28 Cruz and other aggrieved employees with meal periods, as alleged

herein;

- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff Cruz and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff Cruz and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (j) Violation of Labor Code section 246 for failure to provide paid sick leave benefits and failure to provide written notice of paid sick leave available, or paid time off, as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff Cruz and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff Cruz's and other aggrieved employees' employment with Defendants, as set forth below.

125. At all relevant times herein, Labor Code section 2775(b) provides the test for determining whether an individual performing work for another is an independent contractor

1 or an employee, a standard commonly referred to as the “ABC Test.” It states, as follows:

2 [A] person providing labor or services for remuneration shall be
3 considered an employee rather than an independent contractor
4 unless the hiring entity demonstrates that all of the following
5 conditions are satisfied.

6 (A) The person is free from the control and direction of the hiring
7 entity in connection with the performance of the work, both under
8 the contract for the performance of the work and in fact.

9 (B) The person performs work that is outside the usual course of
10 the hiring entity’s business.

11 (C) The person is customarily engaged in an independently
12 established trade, occupation, or business of the same nature as
13 that involved in the work.

14 126. Under the ABC Test, the alleged employer, rather than the worker, has the
15 burden of establishing that the worker is an independent contractor and not intended to be
16 included within the relevant wage order’s coverage. “The focus is not on the label attached to
17 a worker’s position, but on how that individual’s job may reasonably be viewed.” *Gonzales v.*
18 *San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1154–1155 (2019). Further, the alleged
19 employer must establish that the worker meets **all three** factors of the ABC Test or falls
20 within an exception to the ABC Test. *Id.* at 1154 (“The ABC test is conjunctive, and the
21 hiring entity’s failure to establish any of the following three factors precludes a finding that
22 the worker is an independent contractor”). Otherwise, Labor Code section 2775’s default
23 presumption applies and the worker must be treated as an employee. *See Dynamex*
24 *Operations W. v. Superior Court*, 4 Cal.5th 903, 955 (2018) (“The ABC test presumptively
25 considers all workers to be employees, and permits workers to be classified as independent
26 contractors only if the hiring business demonstrates that the worker in question satisfies each
27 of three conditions”).

28 127. Here, at all relevant times herein, Defendants treated Plaintiff Cruz and other
aggrieved employees as independent contractors despite the fact that Defendants failed to
meet any of the prongs of the ABC Test, much less all three. First, Defendants retained the
right to control the manner and method of how Plaintiff Cruz and other aggrieved employees
performed their job duties, and Defendants retained all necessary control over Plaintiff Cruz
and other aggrieved employees during their employment. Among other things, as stated,

1 Plaintiff Cruz and other aggrieved employees were required to follow detailed requirements
2 imposed by Defendants governing the performance of their job. Furthermore, Defendants set
3 their compensation.

4 128. Second, the job duties performed by Plaintiff Cruz and other aggrieved
5 employees fell within Defendants' usual course of business. Specifically, as stated, the roles
6 performed by Plaintiff Cruz and other aggrieved employees are clearly comparable to those of
7 Defendants' employees whose services are provided within the usual course of Defendants'
8 business of delivering goods. Thus, the work of Plaintiff Cruz and other aggrieved employees
9 was not merely incidental to Defendants' business, but rather, was an integral and ordinary
10 part of that business.

11 129. Finally, Plaintiff Cruz and other aggrieved employees were not engaged in an
12 independently established trade, occupation, or business of the same nature as the work
13 performed for Defendants. Plaintiff Cruz and other aggrieved employees did not, for
14 example, take any of the usual steps to establish and promote their businesses. Nor did
15 Plaintiff Cruz and other aggrieved employees —through incorporation, licensure,
16 advertisements, or routine offerings to provide services to the public or to a number of
17 potential customers—independently choose the burdens and benefits of self-employment by
18 engaging in an independently established trade, occupation, or business. Most importantly,
19 this last prong of the ABC Test requires that Defendants show Plaintiff Cruz and other
20 aggrieved employees “*actually . . . engaged in an independent business, not merely that [they]*
21 *could be.*” *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1155 (2019)
22 (emphasis in original). For example, Plaintiff Cruz and other aggrieved employees did not
23 actually engage in independently established businesses. “A company that labels as
24 independent contractors a class of workers who are not engaged in an independently
25 established business in order to enable the company to obtain the economic advantages that
26 flow from avoiding the financial obligations that a wage order imposes on employers
27 unquestionably violates the fundamental purposes of the wage order.” *Dynamex Operations*
28 *W. v. Superior Court*, 4 Cal.5th 903, 962 (2018). Here, Defendants violated California law by

1 attempting to do so.

2 130. At all times relevant herein set forth, California Labor Code section 226.8
3 makes it illegal to willfully misclassify an employee as an independent contractor, providing:

4 [i]t is unlawful for any person or employer to engage in any of the
5 following activities: (1) Willful misclassification of an individual
6 as an independent contractor. (2) Charging an individual who has
7 been willfully misclassified as an independent contractor a fee, or
8 making any deductions from compensation, for any purpose,
9 including for goods, materials, space rental, services, government
licenses, repairs, equipment maintenance, or fines arising from the
individual's employment where any of the acts described in this
paragraph would have violated the law if the individual had not
been misclassified.

10 131. California Labor Code section 226.8(b) further provides that “[i]f the Labor and
11 Workforce Development Agency or a court issues a determination that a person or employer
12 has engaged in any of the enumerated violations of subdivision (a), the person or employer
13 shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more
14 than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or
15 fines permitted by law.”

16 132. Moreover, California Labor Code section 226.8(c) provides “[i]f the Labor and
17 Workforce Development Agency or a court issues a determination that a person or employer
18 has engaged in any of the enumerated violations of subdivision (a) and the person or employer
19 has engaged in or is engaging in a pattern or practice of these violations, the person or
20 employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
21 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any
22 other penalties or fines permitted by law.”

23 133. Here, Defendants’ treatment of Plaintiff Cruz and other aggrieved employees
24 cannot meet any part of the ABC Test and Defendants were aware of this. This treatment was
25 Defendants’ pattern and practice of willfully misclassifying Defendants’ employees as
26 independent contractors. Thus, Defendants intentionally and willfully misclassified Plaintiff
27 Cruz and other aggrieved employees as independent contractors, in violation of Labor Code
28 section 226.8(a). Plaintiff Cruz and other aggrieved employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 226.8, 2786, and/or 2699(a), (f), and
2 (k).

3 134. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
4 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
5 days from the commencement of employment with paid sick days, to be accrued at least one
6 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
7 employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent
8 paid leave or paid time off) in each year of the employee's employment. California Labor
9 Code section 246(i) provides that an employer must provide an employee with written notice
10 that sets forth the amount of paid sick leave available, or paid time off that an employer
11 provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a
12 separate written statement provided on the designated pay date with the employee's wages.

13 135. During the relevant time period, on information and belief, Defendants
14 systematically failed to provide Plaintiff Cruz and other aggrieved employees paid sick leave
15 of no less than 40 hours or five (5) days. Specifically, Plaintiff Cruz worked in excess of 30
16 days for Defendants in California and was therefore eligible to receive paid sick leave.
17 However, on information and belief, Defendants failed to provide Plaintiff Cruz and other
18 aggrieved employees with any sick leave benefits, in violation of Labor Code section
19 246(b)(1)-(4).

20 136. Additionally, during the relevant time period, Defendants failed, on a company-
21 wide basis, to provide Plaintiff Cruz and other aggrieved employees with written notice on
22 wage statements and/or other separate written statements that listed the amount of paid sick
23 leave (or equivalent paid leave or paid time off) available to them. Defendants' systematic
24 failure to provide written notice of sick leave benefits to Plaintiff Cruz and other aggrieved
25 employees is in violation of Labor Code section 246(i).

26 137. Plaintiff Cruz and other aggrieved employees are therefore entitled to recover
27 civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

28 138. At all relevant times herein, California's Wage Theft Prevention Act was

1 enacted to ensure that employers provide employees with basic information material to their
2 employment relationship at the time of hiring, and to ensure that employees are given written
3 and timely notice of any changes to basic information material to their employment. Codified
4 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
5 time of hiring, an employer must provide written notice to employees containing basic and
6 material payroll information, including, among other things, the rate(s) of pay and basis
7 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
8 including any rates for overtime, the regular payday designated by the employer, and any
9 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
10 Code § 2810.5(a)(1)(A)-(C).

11 139. At all relevant times, on information and belief, Defendants failed, on a
12 company-wide basis, to provide written notice to Plaintiff Cruz and other aggrieved
13 employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
14 (C). Defendants' failure to provide Plaintiff Cruz and other aggrieved employees with written
15 notice of basic information regarding their employment with Defendants is in violation of
16 California Labor Code section 2810.5. Plaintiff Cruz and other aggrieved employees are
17 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
18 (k).

19 TENTH CAUSE OF ACTION

20 Violation of California Business & Professions Code §§ 17200, *et seq.* –

21 Unlawful Business Practices

22 (Against all Defendants)

23 140. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
24 and every allegation set forth above.

25 141. Defendants are “persons” as defined by California Business & Professions
26 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
27 and/or associations.

28 142. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
2 suffered injury in fact and have lost money as a result of Defendants' unlawful business
3 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
4 meaning of Code of Civil Procedure section 1021.5.

5 143. Defendants' activities, as alleged herein, are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code sections 17200, *et seq.*

8 144. A violation of California Business & Professions Code sections 17200, *et seq.*
9 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
10 policies and practices have violated state law in at least the following respects:

- 11 (a) Willfully misclassifying Plaintiffs and class members as independent
12 contractors rather than employees, in violation of California Labor Code
13 section 226.8, as set forth below;
- 14 (b) Requiring non-exempt, hourly paid employees, including Plaintiffs and
15 class members, to work overtime without paying them proper
16 compensation in violation of California Labor Code sections 510 and
17 1198, and the applicable IWC Wage Order, as alleged herein;
- 18 (c) Failing to pay at least minimum wage to Plaintiffs and class members in
19 violation of California Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
21 herein;
- 22 (d) Failing to provide all meal periods to Plaintiffs and class members in
23 violation of California Labor Code sections 226.7, 512(a), 516, and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (e) Failing to authorize and permit Plaintiffs and class members to take all
26 rest periods in violation of California Labor Code sections 226.7, 516,
27 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 28 (f) Failing to provide Plaintiffs and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation
2 of California Labor Code sections 226(a), 1174(d), and 1198, and the
3 applicable IWC Wage Order, as alleged herein;

4 (g) Failing timely to pay all earned wages to Plaintiffs and class members in
5 violation of California Labor Code section 204, as alleged herein;

6 (h) Failing to provide Plaintiffs and class members sick leave benefits and
7 written notice of paid sick leave available, or paid time off, in violation
8 of California Labor Code section 246, as set forth below;

9 (i) Failing to reimburse Plaintiffs and class members for all business
10 expenses necessarily incurred in violation of California Labor Code
11 section 2802, as alleged herein; and

12 (j) Failing to provide written notice of information material to Plaintiffs'
13 and class members' employment with Defendants in violation of
14 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

15 145. At all relevant times herein, Labor Code section 2775(b) provides the test for
16 determining whether an individual performing work for another is an independent contractor
17 or an employee, a standard commonly referred to as the "ABC Test." It states, as follows:

18 [A] person providing labor or services for remuneration shall be
19 considered an employee rather than an independent contractor
20 unless the hiring entity demonstrates that all of the following
21 conditions are satisfied.

22 (A) The person is free from the control and direction of the hiring
23 entity in connection with the performance of the work, both under
24 the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of
the hiring entity's business.

(C) The person is customarily engaged in an independently
established trade, occupation, or business of the same nature as
that involved in the work.

25 146. Under the ABC Test, the alleged employer, rather than the worker, has the
26 burden of establishing that the worker is an independent contractor and not intended to be
27 included within the relevant wage order's coverage. "The focus is not on the label attached to
28 a worker's position, but on how that individual's job may reasonably be viewed." *Gonzales v.*

1 *San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1154–1155 (2019). Further, the alleged
2 employer must establish that the worker meets **all three** factors of the ABC Test or falls
3 within an exception to the ABC Test. *Id.* at 1154 (“The ABC test is conjunctive, and the
4 hiring entity’s failure to establish any of the following three factors precludes a finding that
5 the worker is an independent contractor . . .”). Otherwise, Labor Code section 2775’s default
6 presumption applies and the worker must be treated as an employee. *See Dynamex*
7 *Operations W. v. Superior Court*, 4 Cal.5th 903, 955 (2018) (“The ABC test presumptively
8 considers all workers to be employees, and permits workers to be classified as independent
9 contractors only if the hiring business demonstrates that the worker in question satisfies each
10 of three conditions . . .”).

11 147. Here, at all relevant times herein, Defendants treated Plaintiffs and class
12 members as independent contractors despite the fact that Defendants failed to meet any of the
13 prongs of the ABC Test, much less all three. First, Defendants retained the right to control the
14 manner and method of how Plaintiffs and class members performed their job duties, and
15 Defendants retained all necessary control over Plaintiffs and class members during their
16 employment. Among other things, Plaintiffs and class members were required to follow
17 detailed requirements imposed by Defendants governing the performance of their job.
18 Furthermore, Defendants set their compensation.

19 148. Second, the job duties performed by Plaintiffs and class members fell within
20 Defendants’ usual course of business. Specifically, the roles performed by Plaintiffs and class
21 members are clearly comparable to those of Defendants’ employees whose services are
22 provided within the usual course of Defendants’ business of delivering goods. Thus, the work
23 of Plaintiffs and class members was not merely incidental to Defendants’ business, but rather,
24 was an integral and ordinary part of that business.

25 149. Finally, Plaintiffs and class members were not engaged in an independently
26 established trade, occupation, or business of the same nature as the work performed for
27 Defendants. Plaintiffs and class members did not, for example, take any of the usual steps to
28 establish and promote their businesses. Nor did Plaintiffs and class members—through

1 incorporation, licensure, advertisements, or routine offerings to provide services to the public
2 or to a number of potential customers—independently choose the burdens and benefits of self-
3 employment by engaging in an independently established trade, occupation, or business. Most
4 importantly, this last prong of the ABC Test requires that Defendants show Plaintiffs and class
5 members “*actually . . . engaged in an independent business, not merely that [they] could be.*”
6 *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1155 (2019) (emphasis in
7 original). For example, Plaintiff Cruz and class members did not actually engage in
8 independently established businesses. “A company that labels as independent contractors a
9 class of workers who are not engaged in an independently established business in order to
10 enable the company to obtain the economic advantages that flow from avoiding the financial
11 obligations that a wage order imposes on employers unquestionably violates the fundamental
12 purposes of the wage order.” *Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903, 962
13 (2018). Here, Defendants violated California law by attempting to do so.

14 150. At all times relevant herein set forth, California Labor Code section 226.8
15 makes it illegal to willfully misclassify an employee as an independent contractor, providing:

16 [i]t is unlawful for any person or employer to engage in any of the
17 following activities: (1) Willful misclassification of an individual
18 as an independent contractor. (2) Charging an individual who has
19 been willfully misclassified as an independent contractor a fee, or
20 making any deductions from compensation, for any purpose,
21 including for goods, materials, space rental, services, government
licenses, repairs, equipment maintenance, or fines arising from the
individual's employment where any of the acts described in this
paragraph would have violated the law if the individual had not
been misclassified.

22 151. California Labor Code section 226.8(b) further provides that “[i]f the Labor and
23 Workforce Development Agency or a court issues a determination that a person or employer
24 has engaged in any of the enumerated violations of subdivision (a), the person or employer
25 shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more
26 than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or
27 fines permitted by law.”

28 152. Moreover, California Labor Code section 226.8(c) provides “[i]f the Labor and

1 Workforce Development Agency or a court issues a determination that a person or employer
2 has engaged in any of the enumerated violations of subdivision (a) and the person or employer
3 has engaged in or is engaging in a pattern or practice of these violations, the person or
4 employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
5 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any
6 other penalties or fines permitted by law.”

7 153. Here, Defendants’ treatment of Plaintiffs and class members cannot meet any
8 part of the ABC Test and Defendants were aware of this. This treatment was Defendants’
9 pattern and practice of willfully misclassifying Defendants’ employees as independent
10 contractors. Thus, Defendants intentionally and willfully misclassified Plaintiffs and class
11 members as independent contractors, in violation of Labor Code section 226.8(a).

12 154. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
13 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
14 days from the commencement of employment with paid sick days, to be accrued at least one
15 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
16 employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent
17 paid leave or paid time off) in each year of the employee’s employment. California Labor
18 Code section 246(i) provides that an employer must provide an employee with written notice
19 that sets forth the amount of paid sick leave available, or paid time off that an employer
20 provides in lieu of sick leave, for use on either the employee’s itemized wage statement or in a
21 separate written statement provided on the designated pay date with the employee’s wages.

22 155. During the relevant time period, on information and belief, Defendants
23 systematically failed to provide Plaintiffs and class members paid sick leave of no less than 40
24 hours or five (5) days. Specifically, Plaintiffs worked in excess of 30 days for Defendants in
25 California and were therefore eligible to receive paid sick leave. However, on information
26 and belief, Defendants failed to provide Plaintiffs and class members with any sick leave
27 benefits, in violation of Labor Code section 246(b)(1)-(4).

28 156. Additionally, during the relevant time period, Defendants failed, on a company-

1 wide basis, to provide Plaintiffs and class members with written notice on wage statements
2 and/or other separate written statements that listed the amount of paid sick leave (or
3 equivalent paid leave or paid time off) available to them. Defendants' systematic failure to
4 provide written notice of sick leave benefits to Plaintiffs and class members is in violation of
5 Labor Code section 246(i).

6 157. At all relevant times herein, California's Wage Theft Prevention Act was
7 enacted to ensure that employers provide employees with basic information material to their
8 employment relationship at the time of hiring, and to ensure that employees are given written
9 and timely notice of any changes to basic information material to their employment. Codified
10 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
11 time of hiring, an employer must provide written notice to employees containing basic and
12 material payroll information, including, among other things, the rate(s) of pay and basis
13 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
14 including any rates for overtime, the regular payday designated by the employer, and any
15 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
16 Code § 2810.5(a)(1)(A)-(C).

17 158. At all relevant times, on information and belief, Defendants failed, on a
18 company-wide basis, to provide written notice to Plaintiffs and class members that lists the
19 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
20 to provide Plaintiffs and class members with written notice of basic information regarding
21 their employment with Defendants is in violation of California Labor Code section 2810.5.

22 159. As a result of the violations of California law herein described, Defendants
23 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members
24 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
25 herein.

26 160. Pursuant to California Business & Professions Code sections 17200, et seq.,
27 Plaintiffs and class members are entitled to restitution of the wages withheld and retained by
28 Defendants during a period that commences four years prior to the filing of the initial

1 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
2 Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of
3 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

4 **ELEVENTH CAUSE OF ACTION**

5 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

6 **Unfair Business Practices**

7 **(Against all Defendants)**

8 161. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
9 and every allegation set forth above.

10 162. Defendants are “persons” as defined by California Business & Professions
11 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
12 and/or associations.

13 163. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
14 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered
15 injury in fact and have lost money as a result of Defendants’ unfair business practices.
16 Plaintiffs seeks to enforce important rights affecting the public interest within the meaning of
17 Code of Civil Procedure section 1021.5.

18 164. Defendants’ activities, namely Defendants’ company-wide practice and/or
19 policy of not paying Plaintiffs and class members all meal and rest period premiums due to
20 them under Labor Code section 226.7, deprived Plaintiffs and class members of the
21 compensation guarantee and enhanced enforcement implemented by section 226.7. The
22 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
23 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
24 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
25 were guaranteed to Plaintiffs and class members as part of their employment with Defendants,
26 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
27 unfair business practice in violation of California Business & Professions Code sections
28 17200, *et seq.* (*Id.*)

165. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

166. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of thirty-five thousand dollars (\$35,000), exclusive of interest and costs. Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

4. That counsel for Plaintiffs be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiffs and class members;

6. For general unpaid wages at overtime wage rates and such general and special

1 damages as may be appropriate;

2 7. For pre-judgment interest on any unpaid overtime compensation commencing
3 from the date such amounts were due, or as otherwise provided by law;

4 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
5 California Labor Code section 1194(a); and

6 9. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Second Cause of Action**

9 10. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
11 Order by willfully failing to pay minimum wages to Plaintiffs and class members;

12 11. For general unpaid wages and such general and special damages as may be
13 appropriate;

14 12. For pre-judgment interest on any unpaid compensation from the date such
15 amounts were due, or as otherwise provided by law;

16 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
17 California Labor Code section 1194(a);

18 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

19 15. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Third Cause of Action**

22 16. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
24 willfully failing to provide all meal periods to Plaintiffs and class members;

25 17. That the Court make an award to the Plaintiffs and class members of one (1)
26 hour of pay at each employee's regular rate of pay for each workday that a meal period was
27 not provided;

28 18. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 19. For premiums pursuant to California Labor Code section 226.7(c);

3 20. For pre-judgment interest on any unpaid meal period premiums from the date
4 such amounts were due, or as otherwise provided by law;

5 21. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 22. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Fourth Cause of Action**

10 23. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
12 failing to authorize and permit Plaintiffs and class members to take all rest periods;

13 24. That the Court make an award to the Plaintiffs and class members of one (1)
14 hour of pay at each employee's regular rate of pay for each workday that a rest period was not
15 authorized and permitted;

16 25. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 26. For premiums pursuant to California Labor Code section 226.7(c);

19 27. For pre-judgment interest on any unpaid rest period premiums from the date
20 such amounts were due, or as otherwise provided by law;

21 28. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 29. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Fifth Cause of Action**

26 30. That the Court declare, adjudge and decree that Defendants violated the
27 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
28 Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate

1 itemized wage statements thereto;

2 31. For all actual, consequential, and incidental losses and damages, according to
3 proof;

4 32. For injunctive relief pursuant to California Labor Code section 226(h);

5 33. For statutory penalties pursuant to California Labor Code section 226(e);

6 34. For attorneys' fees and costs pursuant to California Labor Code section
7 226(e)(1); and

8 35. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Sixth Cause of Action**

11 36. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
13 and/or meal and rest period premiums owed at the time of termination of the employment of
14 Plaintiffs and other terminated class members;

15 37. For all actual, consequential and incidental losses and damages, according to
16 proof;

17 38. For waiting time penalties according to proof pursuant to California Labor
18 Code section 203 for all employees who have left Defendants' employ;

19 39. For pre-judgment interest on any unpaid wages from the date such amounts
20 were due, or as otherwise provided by law;

21 40. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 41. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Seventh Cause of Action**

26 42. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members
28 overtime wages, minimum wages, and/or meal and rest period premiums during their

1 employment;

2 43. For all actual, consequential and incidental losses and damages, according to
3 proof;

4 44. For statutory penalties according to proof pursuant to California Labor Code
5 section 210;

6 45. For pre-judgment interest on any unpaid wages from the date such amounts
7 were due, or as otherwise provided by law;

8 46. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

10 47. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Eighth Cause of Action**

13 48. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
15 related expenses and costs incurred by Plaintiffs and class members.

16 49. For unpaid business-related expenses and such general and special damages as
17 may be appropriate;

18 50. For pre-judgment interest on any unpaid business-related expenses from the
19 date such amounts were due pursuant to California Labor Code section 2802(b), or as
20 otherwise provided by law;

21 51. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 52. For attorneys' fees and costs pursuant to California Labor Code section
24 2802(c), or as otherwise provided by law; and

25 53. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Ninth Cause of Action**

28 54. That the Court declare, adjudge and decree that Defendants violated the

1 following California Labor Code provisions as to Plaintiff Cruz and other aggrieved
2 employees: 226.8 (by intentionally and knowingly misclassifying Plaintiff Cruz and other
3 aggrieved employees as independent contractors); 510 and 1198 (by failing to pay all overtime
4 compensation); 1182.12, 1182.14, 1194, 1197, 1197.1, and 1198 (by failing to pay at least
5 minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all
6 meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods);
7 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
8 accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon
9 termination); 204 (by failing to timely pay all earned wages during employment); 246 (by
10 failing to provide sick leave benefits and written notice of paid sick leave); 2802 (by failing to
11 reimburse business expenses); and 2810.5 (by failing to provide written notice of material
12 terms of employment);

13 55. For civil penalties pursuant to the California Labor Code sections 210, 226.3,
14 226.8, 248.5, 256, 558, 1174.5, 2786, and/or 2699(a), (f), and (k), for violations of California
15 Labor Code sections 201, 202, 204, 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516, 1174(d),
16 1182.12, 1194, 1197, 1197.1, 1198, 2775(b), 2802, and 2810.5;

17 56. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
18 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
19 sections 201, 202, 204, 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516, 1174(d), 1182.12,
20 1194, 1197, 1197.1, 1198, 2775(b), 2802, and 2810.5;

21 57. For attorneys' fees and costs pursuant to California Labor Code sections 1194.5
22 and/or 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of
23 California Labor Code sections 201, 202, 204, 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516,
24 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2775(b), 2802, and 2810.5;

25 58. For pre-judgment and post-judgment interest as provided by law; and

26 59. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

1 **As to the Tenth Cause of Action**

2 60. That the Court declare, adjudge and decree that Defendants' conduct of
3 misclassifying Plaintiffs and class members as independent contractors rather than employees,
4 failing to provide Plaintiffs and class members all overtime wages due to them, failing to
5 provide Plaintiffs and class members all minimum wages due to them, failing to provide
6 Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and
7 class members to take all rest periods, failing to provide Plaintiffs and class members accurate
8 and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and
9 class members, failing to timely pay Plaintiffs and class members all earned wages during
10 employment, failing to provide sick leave benefits and written notice of paid sick leave,
11 failing to reimburse Plaintiffs and class members for business-related expenses, and failing to
12 provide written notice of material terms of employment, constitutes an unlawful business
13 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

14 61. For restitution of unpaid wages to Plaintiffs and all class members and
15 prejudgment interest from the day such amounts were due and payable;

16 62. For the appointment of a receiver to receive, manage, and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully acquired by
18 Defendants as a result of violations of California Business & Professions Code sections
19 17200, *et seq.*;

20 63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5; and

22 64. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Eleventh Cause of Action**

25 65. That the Court declare, adjudge and decree that Defendants' conduct of denying
26 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes
27 an unfair business practice in violation of California Business and Professions Code sections
28 17200, *et seq.*;

1 66. For restitution of the statutory benefits under section 226.7 unfairly withheld
2 from Plaintiffs and class members and prejudgment interest from the day such amounts were
3 due and payable;

4 67. For the appointment of a receiver to receive, manage, and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of violations of California Business & Professions Code sections
7 17200, *et seq.*;

8 68. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure section 1021.5;

10 69. For pre-judgment and post-judgment interest as provided by law; and

11 70. For such other and further relief as the Court may deem equitable and
12 appropriate.
13

14 Dated: June 24, 2026

Respectfully submitted,

Capstone Law APC

17 By: 
18 Robert Drexler
19 Jonathan Lee
20 Robert Myong

Attorneys for Plaintiffs Gerardo Cruz and
Nathaniel Hidalgo

EXHIBIT “1”



1875 Century Park East, Suite 1860
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

February 26, 2026

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/411>)

Subject: *Gerardo Cruz v. Updike Distribution Logistics, LLC*

Dear PAGA Administrator:

This office represents Gerardo Cruz in connection with his claims under the California Labor Code. Mr. Cruz was an employee of UPDIKE DISTRIBUTION LOGISTICS, LLC ("UPDIKE").

The employer may be contacted directly at the address below:

UPDIKE DISTRIBUTION LOGISTICS, LLC
435 SOUTH 59TH AVENUE, STE 100
PHOENIX, AZ 85043

Mr. Cruz intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Cruz seeks relief on behalf of himself, the State of California, and other persons who work or worked for UPDIKE as delivery drivers and who were misclassified as independent contractors in California ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

UPDIKE employed Mr. Cruz from approximately February 2021 to July 2025. Mr. Cruz worked as a Delivery Driver for UPDIKE out of its warehouse in Redlands, California located at (26759 Almond Avenue, Suite 100, Redlands, California 92374). During his employment, Mr. Cruz typically worked seven (7) to ten (10) hours or more per day, and five (5) days per week. By the end of his employment, Mr. Cruz was compensated approximately \$575-\$675 per day. His job duties included, without limitation, operating a 24-foot box truck, loading inventory, driving to delivery locations, completing deliveries, and assembling furniture.

UPDIKE committed each of the following Labor Code violations against Mr. Cruz, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

UPDIKE’s Company-Wide and Uniform Treatment and Practice of Misclassifying Delivery Drivers as Independent Contractors

UPDIKE DISTRIBUTION LOGISTICS, LLC is a Delaware limited liability company and provides logistics services such as public and shared warehousing, contract and dedicated warehousing, e-commerce fulfillment, and transportation, with at least five (5) warehouse locations across California. Upon information and belief, UPDIKE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Phoenix, Arizona, which is responsible for communicating and implementing UPDIKE’s company-wide policies to delivery driver employees misclassified as independent contractors throughout California. UPDIKE continues to employ delivery drivers at various locations throughout California and continues to misclassify these employees as independent contractors.

UPDIKE contracts with drivers, such as Mr. Cruz and other aggrieved employees, to provide delivery services to UPDIKE’s customers. As a delivery driver, Mr. Cruz made deliveries of inventory for UPDIKE’s clients, including, but not limited to: delivering inventory such as store displays and fixtures for retailers like Sephora, Hollister, and Abercrombie to other warehouses; completing residential deliveries of furniture for Wayfair; and performing residential deliveries of large home appliances for Whirlpool. Although Mr. Cruz and other aggrieved employees were uniformly classified by UPDIKE as “independent contractors,” UPDIKE exercised extensive control over the manner, means, and conditions under which Mr. Cruz and other aggrieved employees performed their work, and has engaged in a scheme to create the façade that they do not employ delivery drivers to evade California’s wage-and-hour protections for employees.

For example, UPDIKE’s supervisors texted Mr. Cruz and other aggrieved employees their start-times for reporting to the warehouse(s) to load merchandise, as well as the specific delivery route that Mr. Cruz and other aggrieved employees were to follow for completing deliveries. Mr. Cruz and other aggrieved employees were required to report to UPDIKE’s warehouse(s) at the time designated by UPDIKE’s supervisors. Thus, Mr. Cruz and other aggrieved employees did not have the ability to choose their own work start-times, set their delivery schedule, or select the geographic area of their routes. Moreover, Mr. Cruz and other aggrieved employees had no meaningful ability to negotiate or alter their assigned routes, which frequently required them to drive long distances across Southern California. Additionally, UPDIKE required Mr. Cruz and other aggrieved employees to download, use, and comply with a delivery-monitoring mobile application called “Dispatch Track.” Dispatch Track indicated Mr. Cruz’s and other aggrieved employees’ routes, delivery windows, customer information, and the complete list of items to be delivered. Dispatch Track also included GPS tracking, which allowed UPDIKE to monitor Mr. Cruz’s and other aggrieved employees’ movements and progress throughout the day. Mr. Cruz could be reprimanded for failing to perform deliveries strictly within UPDIKE’s designated delivery windows. UPDIKE also required Mr. Cruz and other aggrieved employees to take photographs of the completed

¹ These facts, theories, and claims are based on Mr. Cruz’s experience and counsel’s review of those records currently available relating to Mr. Cruz’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Cruz reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

delivery, obtain the customer's signature, and click "Finish" in the application, before they were permitted to drive to the next location.

As a further example, UPDIKE also required Mr. Cruz and other aggrieved employees to attend mandatory in-person meetings at its warehouse(s) to discuss delivery procedures, required mobile applications for work, and client-specific protocols. These meetings were conducted and led by UPDIKE's managers and supervisors. UPDIKE also required the use of specific tools, such as boot covers, shoulder straps for moving large items, and four-wheel dollies for transporting oversized products. UPDIKE also directed Mr. Cruz and other aggrieved employees to wear only black-colored clothing and not to wear any logos of other companies on their clothing while working for UPDIKE.

Thus, Mr. Cruz and other aggrieved employees were not free from the control and direction of UPDIKE in connection with the performance of their work. Moreover, Mr. Cruz and other aggrieved employees performed work that was not outside the usual course of UPDIKE's business, which is transportation services. Also, UPDIKE paid Mr. Cruz and other aggrieved employees non-negotiable day rates. Mr. Cruz was paid a higher flat rate per day if he completed more than six (6) deliveries on his route and, if Mr. Cruz completed fewer than six (6) deliveries, he was paid a lower flat rate per day. The day rate did not vary based on the number of hours worked and was determined solely by the number of deliveries assigned by UPDIKE. Mr. Cruz and other aggrieved employees had no ability to negotiate this rate of pay. Further, UPDIKE required Mr. Cruz and other aggrieved employees to pay for business expenses including fuel, insurance, costs of their mobile devices and mobile data usage, equipment, and vehicle maintenance; these expenses totaled hundreds of dollars each week.

Therefore, UPDIKE exercised substantial control over Mr. Cruz's and other aggrieved employees' wages, hours, and working conditions. UPDIKE's uniform misclassification of Mr. Cruz and other delivery drivers as independent contractors is intentional, unjustified, and unlawful. Because Mr. Cruz and other aggrieved employees rely (often exclusively) on the income they earn from UPDIKE to support themselves and their families, the economic reality is that Mr. Cruz and other aggrieved employees are UPDIKE's employees. Pursuant to California Labor Code section 3357, Mr. Cruz and other aggrieved employees are entitled to a presumption that they are in fact employees of UPDIKE. Moreover, the existence of any document purporting to create an independent contractor relationship is not determinative.

As a result of this misclassification, UPDIKE has violated numerous wage-and-hour provisions, including, but not limited to, failing to pay overtime wages for all overtime hours worked, failing to pay at least minimum wages for all hours worked, failing to provide meal and rest periods, and failing to provide reimbursement for necessary business-related expenses, among others.

Violation of California Labor Code §§ 226.8(a) and 2775(b) – Willful Misclassification

At all relevant times herein, Labor Code section 2775(b) provides the test for determining whether an individual performing work for another is an independent contractor or an employee, a standard commonly referred to as the "ABC Test." It states, as follows:

[A] person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied.

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

- (B) The person performs work that is outside the usual course of the hiring entity's business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work.

Under the ABC Test, the alleged employer, rather than the worker, has the burden of establishing that the worker is an independent contractor and not intended to be included within the relevant wage order's coverage. "The focus is not on the label attached to a worker's position, but on how that individual's job may reasonably be viewed." *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1154–1155 (2019). Further, the alleged employer must establish that the worker meets **all three** factors of the ABC Test or falls within an exception to the ABC Test. *Id.* at 1154 ("The ABC test is conjunctive, and the hiring entity's failure to establish any of the following three factors precludes a finding that the worker is an independent contractor . . ."). Otherwise, Labor Code section 2775's default presumption applies and the worker must be treated as an employee. *See Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903, 955 (2018) ("The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions . . .").

Here, at all relevant times herein, UPDIKE treated Mr. Cruz and other aggrieved employees as independent contractors despite the fact that UPDIKE failed to meet any of the prongs of the ABC Test, much less all three.

First, UPDIKE retained the right to control the manner and method of how Mr. Cruz and other aggrieved employees performed their job duties, and UPDIKE retained all necessary control over Mr. Cruz and other aggrieved employees during their employment. Among other things, as stated, Mr. Cruz and other aggrieved employees were required to follow detailed requirements imposed by UPDIKE governing the performance of their job. Furthermore, as stated, UPDIKE set their compensation.

Second, the job duties performed by Mr. Cruz and other aggrieved employees fell within UPDIKE's usual course of business. Specifically, as stated, the roles performed by Mr. Cruz and other aggrieved employees are clearly comparable to those of UPDIKE's employees whose services are provided within the usual course of UPDIKE's business of delivering goods. Thus, the work of Mr. Cruz and other aggrieved employees was not merely incidental to UPDIKE's business, but rather, was an integral and ordinary part of that business.

Third, Mr. Cruz and other aggrieved employees were not engaged in an independently established trade, occupation, or business of the same nature as the work performed for UPDIKE. Mr. Cruz and other aggrieved employees did not, for example, take any of the usual steps to establish and promote their businesses. Nor did Mr. Cruz and other aggrieved employees—through incorporation, licensure, advertisements, or routine offerings to provide services to the public or to a number of potential customers—independently choose the burdens and benefits of self-employment by engaging in an independently established trade, occupation, or business. Most importantly, this last prong of the ABC Test requires that UPDIKE show Mr. Cruz and other aggrieved employees "*actually . . . engaged in an independent business, not merely that [they] could be.*" *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1155 (2019) (emphasis in original). For example, Mr. Cruz did not actually engage in independently established businesses. "A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order." *Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903, 962 (2018). Here, UPDIKE violated California law by attempting to do so.

At all times relevant herein set forth, California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing:

[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

California Labor Code section 226.8(b) further provides that “[i]f the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

Moreover, California Labor Code section 226.8(c) provides “[i]f the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

Here, UPDIKE’s treatment of Mr. Cruz and other aggrieved employees cannot meet any part of the ABC Test and UPDIKE was aware of this. This treatment was UPDIKE’s pattern and practice of willfully misclassifying UPDIKE’s employees as independent contractors. Thus, UPDIKE intentionally and willfully misclassified Mr. Cruz and other aggrieved employees as independent contractors, in violation of Labor Code section 226.8(a). Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 226.8(a) and 2775(b), pursuant to Labor Code sections 226.8, 2786, and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

UPDIKE willfully failed to pay all overtime wages owed to Mr. Cruz and other aggrieved employees. During the relevant time period, Mr. Cruz and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

As set forth above, UPDIKE's misclassification of Mr. Cruz and other aggrieved employees as independent contractors and "exempt" status from overtime and other related wage-and-hour protections, including meal and rest periods, is, and was, willful, intentional, unjustified, and unlawful. Mr. Cruz and other aggrieved employees typically worked forty (40) to sixty (60) hours per week and more than ten (10) hours per day, of which UPDIKE were fully aware. However, because UPDIKE misclassified Mr. Cruz and other aggrieved employees as "exempt" from overtime, UPDIKE did not record their hours worked and did not pay any overtime wages for hours worked in excess of eight (8) hours in one day, twelve (12) hours in a day, or forty (40) hours in one week.

Mr. Cruz regularly worked in excess of eight (8) hours in one day, twelve (12) hours in a day, and forty (40) hours in one week, and were never paid overtime wages. For example, as a delivery driver, Mr. Cruz spent time loading inventory onto trucks, driving to several delivery locations, completing deliveries for UPDIKE's clients, communicating with UPDIKE's managers regarding the status of deliveries, and assembling furniture for UPDIKE's clients, regularly driving from UPDIKE's warehouse in Redlands to distant locations such as Santa Barbara, Santa Clarita, and Barstow, often totaling 100-200 miles and working up to 14 hours per day. However, as stated, UPDIKE paid Mr. Cruz and other aggrieved employees non-negotiable day rates, which did not vary based on the number of hours worked and which were determined solely by the number of deliveries assigned by UPDIKE. As a result of UPDIKE's willful misclassification of Mr. Cruz and other aggrieved employees, Mr. Cruz and other aggrieved employees were denied overtime pay.

Additionally, Mr. Cruz and other aggrieved employees were required to review text message communications from UPDIKE's management after their shifts or on their days off. For example, at the end of each day, Mr. Cruz would receive a text message from UPDIKE's managers with his work schedules, the assigned delivery routes for the following work day, and other work-related announcements, and Mr. Cruz was required to spend time off-the-clock reviewing the text messages. As a further example, as stated, UPDIKE also required Mr. Cruz and other aggrieved employees to attend mandatory in-person meetings at its warehouse(s) to discuss delivery procedures, required mobile applications, and client-specific protocols, which could take from 1-3 hours per instance.

Because UPDIKE misclassified Mr. Cruz and other aggrieved employees as "exempt," UPDIKE also failed to provide Mr. Cruz and other aggrieved employees with meal periods and instead required that they perform work during unpaid meal periods. Because Mr. Cruz and other aggrieved employees typically worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, most, if not all unpaid time worked during meal periods qualified for overtime premium pay.

UPDIKE knew or should have known that as a result of these company-wide practices and/or policies, including its misclassification of independent contractors such as Mr. Cruz and other aggrieved employees as "exempt," Mr. Cruz and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Cruz and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Cruz and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

UPDIKE's failure to pay Mr. Cruz and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 9-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work for the employer, whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11090(2)(H) (defining “Hours Worked”).

As set forth above, due to UPDIKE’s policies and/or practices of willful misclassification of Delivery Drivers, UPDIKE failed to track this time that Mr. Cruz and other aggrieved employees spent working off-the-clock, and Mr. Cruz and other aggrieved employees received no compensation for this time. As stated, Mr. Cruz and other aggrieved employees spent time loading inventory, driving to several distant delivery locations, completing deliveries, communicating with UPDIKE’s managers, assembling furniture, reviewing text message communications from UPDIKE’s management after their shifts or on their days off, and attending mandatory in-person meetings on UPDIKE’s premises. However, as stated, UPDIKE paid Mr. Cruz and other aggrieved employees non-negotiable day rates, which did not vary based on the number of hours worked and which were determined solely by the number of deliveries assigned by UPDIKE. Mr. Cruz and other aggrieved employees were misclassified as independent contractors and thus not paid any hourly wage. Thus, Mr. Cruz and other aggrieved employees were not paid even minimum wage for all of the hours they worked as a result of being paid on a fixed-rate basis, and the wages paid to them were not sufficient to compensate them for all hours they worked at a minimum wage rate on a cumulative basis, in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1.

Additionally, UPDIKE has no policies in place for the provision of meal periods and did not authorize and permit Mr. Cruz and other aggrieved employees to take uninterrupted, duty-free meal periods. To the extent UPDIKE deducted time for meal periods which Mr. Cruz and other aggrieved employees did not receive, they were not paid for all hours worked. Thus, UPDIKE failed to pay Mr. Cruz and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

UPDIKE did not pay minimum wages for all hours worked by Mr. Cruz and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, UPDIKE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, UPDIKE regularly failed to pay at least minimum wages to Mr. Cruz and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the

employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, during the relevant time period, UPDIKE systematically (and improperly) classified Mr. Cruz and other aggrieved employees as independent contractors and, on that basis, did not provide them with meal periods and did not take any measures to relieve them of their duties to take compliant meal periods. Moreover, on information and belief, UPDIKE had, and continues to have, a company-wide policy and/or practice of assigning its delivery drivers multiple, time-sensitive deliveries, located across various geographical distances and locations, without building in sufficient time to allow for 30-minute meal periods, which prevented Mr. Cruz and other aggrieved employees from taking all uninterrupted 30-minute meal periods, and forced them to work through their meal periods to complete their assigned deliveries. Moreover, UPDIKE wholly failed to schedule meal periods, which further caused Mr. Cruz and other aggrieved employees to not be relieved of their duties for compliant meal periods. Further, travel time between UPDIKE's clients' delivery locations could take longer than anticipated due to traffic conditions, which further impeded Mr. Cruz and other aggrieved employees from taking compliant meal periods.

As a result, Mr. Cruz and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Cruz was sometimes required to completely forgo his meal periods due to UPDIKE's willful misclassification of delivery drivers as independent contractors, delivery scheduling policies and practices, and failure to schedule meal periods at all.

Additionally, UPDIKE did not provide Mr. Cruz and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During the relevant time period, Mr. Cruz worked shifts in excess of 10 hours in one day and did not take a second meal period during those shifts. Mr. Cruz and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, UPDIKE knew or should have known that, because it had misclassified Mr. Cruz and other aggrieved employees as "exempt" and for the reasons stated above, Mr. Cruz and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. UPDIKE further knew or should have known that it did not pay Mr. Cruz and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, UPDIKE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cruz and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, UPDIKE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[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" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

During the relevant time period, UPDIKE regularly failed to authorize and permit Mr. Cruz and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof.

UPDIKE's company-wide practices, including systemic misclassification, prevented Mr. Cruz and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, as with meal periods, UPDIKE's company-wide scheduling policies and practices of assigning its delivery drivers multiple, time-sensitive deliveries across various geographical distances and locations, prevented Mr. Cruz and other aggrieved employees from being able to take rest periods. UPDIKE also wholly failed to schedule rest periods, which further led to Mr. Cruz and other aggrieved employees not being authorized and permitted to take rest periods.

As a result of UPDIKE's practices and policies, Mr. Cruz and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Cruz sometimes had to forgo his rest periods during his employment, due to UPDIKE's willful misclassification of delivery drivers as independent contractors, delivery scheduling policies and practices, and failure to schedule rest periods.

UPDIKE also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Cruz and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, UPDIKE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. UPDIKE has not provided Mr. Cruz and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, UPDIKE has knowingly and intentionally failed to provide Mr. Cruz and other aggrieved employees with any wage statements. UPDIKE did not provide Mr. Cruz and other aggrieved employees with itemized wage statements as a result of misclassifying them as independent contractors and denying their status as employees. Because UPDIKE did not issue any wage statements to Mr. Cruz and other aggrieved employees, UPDIKE has violated and continues to violate Labor Code section 226(a) in its entirety.

Specifically, UPDIKE has knowingly and intentionally failed to provide wage statements to Mr. Cruz and other aggrieved employees wage statements that list: gross wages earned in violation of section 226(a)(1); total hours worked in violation of section 226(a)(2); the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis in violation of section 226(a)(3); all deductions in violation of section 226(a)(4); the inclusive dates of the period for which aggrieved employees were paid in violation of section 226(a)(6); the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number in violation of section 226(a)(7); the name and address of the legal entity that is the employer in violation of section 226(a)(8); and all and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9). In addition, UPDIKE failed to provide Mr. Cruz and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), UPDIKE willfully failed to maintain accurate payroll records for Mr. Cruz and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record any hours that they worked and as a result of misclassifying them as independent contractors.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours

than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, UPDIKE engaged in company-wide practices and/or policies of failing to record any hours worked or keep records of meal periods as a result of misclassifying Mr. Cruz and other aggrieved employees as independent contractors, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Cruz and other aggrieved employees, in violation of section 1198. Also, in light of UPDIKE’s failure to provide Mr. Cruz and other aggrieved employees with second 30-minute meal periods to which they were entitled, UPDIKE kept no records of meal start and end times for second meal periods.

Because UPDIKE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Cruz and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Cruz and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Cruz and other aggrieved employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, UPDIKE failed to pay Mr. Cruz and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 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.

During the relevant time period, on information and belief, UPDIKE had a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Cruz voluntarily resigned from his employment with UPDIKE on or about July 31, 2025. However, UPDIKE did not provide him with his final pay until August 7, 2025, or later. Thus, UPDIKE failed to pay Mr. Cruz his final wages within seventy-two (72) hours of his leaving UPDIKE's employ, in violation of California Labor Code section 202.

UPDIKE willfully failed to pay Mr. Cruz and other aggrieved employees who are no longer employed by UPDIKE the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving UPDIKE's employ.

Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 246(b)(4) and 246(i) – Failure To Provide Sick Leave Benefits and Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. California Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages.

During the relevant time period, on information and belief, UPDIKE systematically failed to provide Mr. Cruz and other aggrieved employees paid sick leave of no less than 40 hours or five (5) days. Specifically, Mr. Cruz worked in excess of 30 days for Defendants in California and was therefore eligible to receive paid sick leave. However, on information and belief, Defendants failed to provide Mr. Cruz and other aggrieved employees with any sick leave benefits, in violation of Labor Code section 246(b)(1)-(4).

Additionally, during the relevant time period, UPDIKE failed, on a company-wide basis, to provide Mr. Cruz and other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. UPDIKE's systematic failure to provide written notice of sick leave benefits to Mr. Cruz and other aggrieved employees is in violation of Labor Code section 246(i).

Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with Labor Code section 246, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, UPDIKE, on a company-wide basis, required that Mr. Cruz and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, as set forth above, UPDIKE required Mr. Cruz to download various mobile applications, such as “Dispatch Track” for displaying routes, delivery windows, and customer information, as well as allowing UPDIKE to actively monitor Mr. Cruz’s and other aggrieved employees’ movements and progress throughout the day. As another example, Mr. Cruz was required to use his personal cellular phone for communicating with UPDIKE’s managers regarding work-related matters. Although UPDIKE required Mr. Cruz and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, UPDIKE failed to reimburse them for these costs.

Second, during the relevant time period, UPDIKE had a company-wide policy of requiring Mr. Cruz and other aggrieved employees to utilize their own personal delivery vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage, fuel, truck maintenance, and insurance premiums. Specifically, UPDIKE required Mr. Cruz and other aggrieved employees to travel to jobsites across Southern California to complete their assigned deliveries, but did not reimburse them for their travel expenses. For example, UPDIKE regularly required Mr. Cruz to drive his personal delivery vehicle from UPDIKE’s warehouse in Redlands to distant locations such as Santa Barbara, Santa Clarita, and Barstow, often totaling 100-200 miles each day. Although UPDIKE required Mr. Cruz and other aggrieved employees to utilize their own delivery vehicles to carry out their work-related responsibilities, UPDIKE did not reimburse them for their travel expenses.

Third, during the relevant time period, UPDIKE required Mr. Cruz and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Cruz was required to purchase his own dollies, pallet jacks, and drills for work purposes, because UPDIKE failed to provide him with the necessary supplies and equipment which were required for him to complete his assigned duties.

UPDIKE could have provided Mr. Cruz and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and supplies and equipment; or, UPDIKE could have fully reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, and supply and equipment expenses. Instead, UPDIKE passed these operating costs onto Mr. Cruz and other aggrieved employees. At all relevant times, Mr. Cruz did not earn at least two (2) times the minimum wage.

Thus, UPDIKE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and

interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

UPDIKE failed to provide Mr. Cruz and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). UPDIKE’s failure to provide Mr. Cruz and other aggrieved employees with written notice of basic information regarding their employment with UPDIKE is in violation of Labor Code section 2810.5.

Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” UPDIKE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Cruz’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Cruz seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Cruz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against UPDIKE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2775(b), 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Cruz seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1860
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: UPDIKE DISTRIBUTION LOGISTICS, LLC (via U.S. Certified Mail)

CAPSTONE LAW, APC
1875 Century Park East
Suite #1860
Los Angeles, CA 90067

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UPDIKE DISTRIBUTION LOGISTICS, LLC
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043

PS Form 3800, January 2020 PSN 7530-02-000-9053 See Reverse for Instructions

UPDIKE DISTRIBUTION
LOGISTICS, LLC
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.

UPDIKE DISTRIBUTION LOGISTICS, LLC
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043

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2. Article Number (Transfer from service label)
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3. Service Type
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☐ Return Receipt (electronic)
☐ Restricted Delivery

4. Restricted Delivery
☐ Collect on Delivery Restricted Delivery
☐ Collect on Delivery Restricted Delivery

5. Signature Confirmation[™]
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☐ Registered Mail Restricted[®]
☐ Priority Mail Express[®]

6. Is delivery address different from item 1? ☐ Yes ☐ No
If Yes, enter delivery address below:

7. Received by (Printed Name)
C. Date of Delivery
D. Agent

8. Signature

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**UPDIKE DISTRIBUTION
LOGISTICS, LLC**
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043



9590 9402 9637 5199 8651 01

2. Article Number (Transfer from service label)

9589 0710 5270 0211 5994 37

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Carneal Leon

☐ Agent

☐ Addressee

3. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt