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and on behalf of all employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA BELEN MEZA, as an individual and
on behalf of all employees similarly situated,

Plaintiff,

v.

SUBCONTRACTING CONCEPTS (CT),
LLC, a Delaware Limited Liability Company;
ONTRAC LOGISTICS, INC., a Delaware
Corporation; GW EXPRESS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 24STCV03371

SECOND AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 510, 1194, 1194.2, 1197, 1198 (Failure to Pay Minimum, Regular and Overtime Wages);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203, (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff MARIA BELEN MEZA (hereinafter referred to as “Plaintiff”) on behalf of herself
2 and all others similarly situated, and as representatives of the State of California and the Labor and
3 Workforce Development Agency (“LWDA”), based upon facts that either have evidentiary
4 support or are likely to have evidentiary support after a reasonable opportunity for further
5 investigation and discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
8 represent (“Class” or “Class Members”) for willful misclassification of Plaintiff and Class
9 Members as independent contractors. Class Members consist of delivery drivers currently and/or
10 formerly employed by SUBCONTRACTING CONCEPTS (CT), LLC, ONTRAC LOGISTICS,
11 INC. and GW EXPRESS, INC. in the State of California during the Class Period. The term “Class
12 Period” is defined from August 7, 2021 through the date final judgment is entered. Plaintiff
13 reserves the right to amend this Complaint to reflect a different “Class Period” or “Class” as
14 further discovery is conducted.

15 2. Plaintiff, individually and on behalf of the class she seeks to represent, seeks relief
16 against SUBCONTRACTING CONCEPTS (CT), LLC, ONTRAC LOGISTICS, INC. and GW
17 EXPRESS, INC., a California Corporation (“Defendants”) for willful misclassification of
18 Plaintiff and Class Members as independent contractors; for Defendants’ failure to pay all wages
19 in violation of Labor Code Sections 204, 510 and 1194, 1194.2, 1197, 1198 including minimum,
20 regular and overtime wages; failure to provide meal periods or compensation in lieu thereof
21 pursuant to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare Commission
22 Wage Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide rest
23 periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7 and 512, the
24 applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8,
25 Section 11000 et seq.; failure to provide accurate itemized wage statements upon payment of
26 wages pursuant to Labor Code Sections 226, subdivision (a), 1174, and 1175; failure to reimburse
27 for necessary expenditures pursuant to Labor Code Section 2802; and failure to pay wages of
28 terminated or resigned employees pursuant to Labor Code Sections 201, 202, 203.

1 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
2 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
3 practices.

4 4. At all relevant times herein, Defendants have consistently maintained and enforced
5 against Plaintiff and Class the following unlawful practices and policies:

- 6 (a) willfully refusing to pay Plaintiff and Class a separate pay on hourly basis
7 for time spent for rest and recovery periods and inspections, cleaning/fueling
8 and/or paperwork, and loading/unloading time (i.e. the Non-Driving Tasks),
9 including minimum, regular and overtime pay;
10 (b) willfully refusing to permit Plaintiff and Class from taking meal periods or
11 compensation in lieu thereof;
12 (c) willfully refusing to permit Plaintiff and Class from taking rest and recovery
13 periods or compensation in lieu thereof;
14 (d) willfully refusing to maintain accurate records and to furnish to Plaintiff and
15 Class accurate itemized wage statements upon payment of wages;
16 (e) willfully refusing to compensate certain members of the Class wages due and
17 owing at the time of Class Members' employment with Defendants ended;
18 and;
19 (f) willfully refusing to reimburse Plaintiff and Class for necessary
20 expenditures.

21 5. On information and belief, Defendants were on actual and constructive notice of
22 the improprieties alleged herein and intentionally refused to rectify their unlawful policies.
23 Defendants' violations, as alleged above, during all relevant times herein were willful and
24 deliberate.

25 6. At all relevant times, Defendants were and are legally responsible for all of the
26 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
27 foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendants are
28

1 responsible for each of the unlawful acts or omissions complained of herein under the doctrine
2 of “respondeat superior”.

3 7. Plaintiff further brings this action as a representative of the State of California
4 and the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties
5 pursuant to the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, et seq.,
6 for violations of numerous Labor Code provisions, including, but not limited to, sections 201-
7 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198 and 2802, as well as violations of the
8 applicable Wage Order.

9 **JURISDICTION AND VENUE**

10 8. Venue is proper in this judicial district and in the County of Los Angeles,
11 California because Defendants maintained its location and/or transacted business in this county,
12 the obligations and liability arise in this county, and work was performed by members of the
13 proposed class made the subject of this action in this county.

14 9. The wages, statutory penalties, monetary damages and restitution sought by
15 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
16 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
17 Constitution, article VI, Section 10. The statutes under which this action is brought do not specify
18 any other basis for jurisdiction.

19 10. The California Superior Court has jurisdiction in the matter because the individual
20 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
21 Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for
22 Federal Court and, upon information and belief, Plaintiff and Defendants are residents of,
23 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
24 federal question at issue as the issues herein are based solely on California statutes and law
25 including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, the Code of
26 Civil Procedure, the Rules of Court, and the Business and Professions Code.

27 **THE PARTIES**

28 **A. Plaintiff**

1 11. Plaintiff is a California resident and, from on or about November 2014 to October
2 2022, was misclassified as an independent contractor but was actually employed by Defendants
3 as a delivery driver in California. Each of the Class Members are identifiable, current and/or
4 former similarly situated persons who were employed as delivery drivers in California by
5 Defendants during the Class Period.

6 **B. Defendants**

7 12. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff's
8 employers, Defendants SUBCONTRACTING CONCEPTS (CT), LLC, ONTRAC
9 LOGISTICS, INC. are Delaware Corporation and Limited Liability Companies and GW
10 EXPRESS, INC. is a California Corporation, registered and doing business in the State of
11 California. Plaintiff is informed and believes that Defendant SUBCONTRACTING
12 CONCEPTS (CT), LLC provides administration solutions for legal entities operating in the
13 transportation/logistics industry including Defendants ONTRAC LOGISTICS, INC. and GW
14 EXPRESS, INC., and provided payroll, Human Resources management, benefits calculation,
15 and other employment related services connected with Plaintiff's and Class Members'
16 employment and employment conditions. Plaintiff is informed and believes that Defendant
17 ONTRAC LOGISTICS, INC. provides logistics and delivery services in the State of California
18 and County of Los Angeles directly and through broker legal entities including Defendant GW
19 Express, Inc.. Plaintiff is informed and believes Defendant GW EXPRESS, INC. provides
20 logistics and delivery services in the State of California and County of Los Angeles. Despite its
21 willful misclassification of Plaintiff, Defendants were and are the joint employers of Plaintiff
22 and Class Members during Class Period. Plaintiff also alleges that Defendants are conducting
23 business in good standing in California.

24 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
25 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,
26 inclusive, but on information and belief alleges that these Defendants are legally responsible for
27 the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff
28 and Class by virtue of their unlawful practices, and therefore sues these Defendants by such

1 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of
2 each DOE Defendants when ascertained.

3 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants
6 are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as
7 the employer and/or joint employers of Plaintiff and Class.

8 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
9 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
10 managing agent, and/or principal of the Defendants, and in performing the actions mentioned
11 below was acting, at least in part, within the course and scope of that authority as such agent,
12 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
13 permission and consent of the Defendants. Plaintiff also alleges the acts of each Defendants are
14 legally attributable to the other Defendants.

15 16. Plaintiff is informed and believes, and based thereon alleges, that each of the
16 Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder,
17 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
18 agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in
19 part, within the course and scope of such employment and agency, with the express and implied
20 permission, consent, and knowledge, approval and/or ratification of the other Defendants.

21 **JOINT LIABILITY**

22 17. Under California law, the definition of the terms “to employ” are broadly
23 construed under the applicable IWC Wage Order(s) to have three alternative definitions,
24 including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or
25 permit to work; or (3) to engage, thereby creating a common law employment relationship.
26 See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined
27 “employer” in terms of exercising control was to reach situations in which multiple entities
28 control different aspects of the employment relationship. Supervision of the work, in the

specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in California, applying a less stringent standard to what constitutes sufficient control by a business over its vendor’s employees’ wages and working conditions to render that business liable as a joint employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative joint employer instead exercises enough control over the intermediary entity to indirectly dictate the wages, hours, or working conditions of the employee, that is a sufficient showing of joint employment,” *Id.* at 875 [emphasis added].

18. During Plaintiff’s employment by Defendants, Plaintiff and Class Members were jointly employed by Defendants for purposes of the Wage Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these Defendants (1) exercised control over wages, hours and working conditions of Plaintiff and Class Members; (2) suffered or permitted Plaintiff and Class Members to work for them; and (3) engaged Plaintiff and Class Members to work for them. Defendant SUBCONTRACTING CONCEPTS (CT), LLC provides administration solutions for legal entities operating in the transportation/logistics industry including Defendants ONTRAC LOGISTICS, INC. and GW EXPRESS, INC., and provided payroll, Human Resources management, benefits calculation, and other employment related services connected with Plaintiff’s and Class Members’ employment and employment conditions. Defendant ONTRAC LOGISTICS, INC. provides logistics and delivery services in the State of California and County of Los Angeles directly and through broker legal entities including Defendant GW EXPRESS INC. Plaintiff and Class Members are employees of Defendant ONTRAC LOGISTICS, INC. under California law. Defendant ONTRAC LOGISTICS, INC. controls Class Members’ operations, it coordinates with customers in need of delivery services,

1 negotiates prices, sets delivery windows, delivery zones and provides the workers,
2 warehousing, and other infrastructure to support these deliveries.

3 19. Defendant ONTRAC LOGISTICS, INC. retains control over Plaintiff's and
4 Class Members' assignments, schedules, sets customer service standards, and provides its own
5 electronic logging devices to complete deliveries. Defendant GW EXPRESS INC. is a local
6 broker legal entity which employs Plaintiff and Class Members based on the employment
7 terms and conditions set by Defendant ONTRAC LOGISTICS, INC. Defendant ONTRAC
8 LOGISTICS INC. engages local delivery drivers as independent contractors, or as independent
9 contractors of its local broker legal entities. Whether Plaintiff and Class Members are paid by
10 Defendant SUBCONTRACTING CONCEPTS (CT), LLC , directly by Defendant ONTRAC
11 LOGISTICS INC. or by their local broker entities like Defendant GW EXPRESS, INC., they
12 are employees of Defendant ONTRAC LOGISTICS, INC. The work performed by Plaintiff
13 and Class Members working under local broker entities are an integral part of Defendant
14 ONTRAC LOGISTICS INC.'s business because Defendant ONTRAC LOGISTICS INC. is in
15 the business of package delivery, and Plaintiff and Class Members physically deliver packages
16 to Defendant ONTRAC LOGISTICS INC.'s customers on Defendant ONTRAC LOGISTICS
17 INC.'s behalf.

18 20. Defendant ONTRAC LOGISTICS INC. provides driver applicants to its local
19 broker entities to aid in the hiring drivers, and sets standards that a driver must meet. Plaintiff
20 and Class Members, working under local broker entities, have to perform their delivery work
21 on strict and predictable schedules pursuant to Defendant ONTRAC LOGISTICS INC.'s time
22 sensitive delivery requirements. The drivers' schedules are dictated by the volume of packages
23 that Defendant ONTRAC LOGISTICS INC. requires be delivered each day on their routes.
24 Neither these drivers, nor the intermediary local broker entities like Defendant GW EXPRESS
25 INC. who they work under, have any control over the volume of package pickup and delivery
26 work that Defendant ONTRAC LOGISTICS INC. assigns the drivers.

27 21. Defendant ONTRAC LOGISTICS INC. requires Plaintiff and Class Members to
28 wear a uniform bearing Defendant ONTRAC LOGISTICS INC.'s logos and color scheme and

1 to maintain personal appearance standards established by Defendant ONTRAC LOGISTICS
2 INC. The vehicles driven by Plaintiff and Class Members bear Defendant ONTRAC
3 LOGISTICS INC.'s logo.

4 22. Plaintiff is informed and believes, and thereon alleges that at all times relevant to
5 this Complaint, Defendants were the joint employers of Plaintiff and Class Members upon
6 whose behalf Plaintiff brings these allegations and cause of action, in that Defendants,
7 exercised sufficient control over Plaintiff and Class Members' wages, hours and working
8 conditions, and/or suffered or permitted them to work so as to be considered the joint
9 employers of Plaintiff and Class Members.

10 23. Upon information and belief, Plaintiff alleges that Defendants created a set of
11 policies, practices and/or procedures concerning, inter alia, hourly and overtime pay, time-
12 keeping practices, meal and rest periods, reimbursement of business expenses and other
13 working conditions that were distributed to, and/or applied to Plaintiff and Class Members,
14 and further that Defendants uniformly compensated and controlled the wages of Plaintiff and
15 Class Members in a uniform manner. Defendants collectively represented to Plaintiff and
16 Class Members that each was an "at-will" employee of Defendants, and that Defendants
17 collectively retained the right to terminate Plaintiff's and Class Members' employment with
18 or without cause. Thus, Defendants collectively exercised the right to control the wages, hours
19 and working conditions of Plaintiff and Class Members. As such, Defendants collectively held
20 the right to control virtually every aspect of Plaintiff's and Class Members' employment,
21 including the instrumentality that resulted in the illegal conduct for which Plaintiff seeks relief
22 in this Complaint.

23 24. Plaintiff is informed and believes and hereon alleges that Defendants must be
24 classified as joint employers of Plaintiff, as the aforementioned entities engaged, suffered and
25 permitted Plaintiff to perform services from which they benefited, and furthermore that the
26 aforementioned entities had the right to exercise control over the wages, hours and/or working
27 conditions of Plaintiff at all relevant times herein, so as to be considered the joint employers of
28 Plaintiff.

1 25. By reason of their status as joint employers of Plaintiff and Class Members,
2 Defendants are each liable for violations of the California Labor Code and applicable Wage
3 Orders as to all Class Members.

4 **ADMINISTRATIVE PREREQUISITE**

5 26. On February 8, 2024, prior to filing this complaint, Plaintiff gave written notice
6 by electronically filing the notice with the Labor Workforce Development Agency (“LWDA”)
7 (LWDA Case No. LWDA-1009960-24) and by certified mail to Defendants of the specified
8 provisions alleged to have been violated, including the facts and theories to support the alleged
9 violations as required by Labor Code Section 2699.3. On February 19, 2024, Plaintiff gave
10 written amended notice adding the third defendant by electronically filing the notice with the
11 Labor Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-1009960-24) and
12 by certified mail to Defendants of the specified provisions alleged to have been violated, including
13 the facts and theories to support the alleged violations as required by Labor Code Section 2699.3.

14 27. A true and correct copy of Plaintiff’s letters sent to the LWDA dated February 8,
15 2024, and February 19, 2024 are attached hereto as “**Exhibit A**”. As of the filing of this
16 complaint, LWDA has not responded to the written notices.

17 28. Under Labor Code Section 2699.3 subsection (a), a plaintiff may bring a cause
18 of action under PAGA only after giving notice to the Labor Workforce Development Agency
19 (“LWDA”) and the employer of the Labor Code Sections alleged to have been violated, and
20 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have
21 passed without notice.

22 29. More than sixty-five (65) days have passed without notice from the LWDA.
23 Accordingly, all administrative prerequisites for filing this action have been fulfilled.

24 **GENERAL ALLEGATIONS**

25 30. Plaintiff worked for Defendants as a delivery driver from approximately
26 November 2014 to October 2022, primarily in Los Angeles County. Defendants misclassified
27 Plaintiff and Class Members as independent contractors. During the time period that Plaintiff
28

1 was employed by Defendants, Plaintiff typically worked 6-7 days per week and over 12 hours
2 each workday.

3 31. During the Class Period, Defendants have maintained policies and practices based
4 on or including the willful misclassification of the Plaintiff and Class Members as independent
5 contractors. Under applicable standards of law, Plaintiff and Class Members, during their
6 employment with Defendants, were not independent contractors.

7 32. Defendants claim that their drivers are independent contractors when they are
8 employees that are controlled by Defendants, paid by Defendants, and whose relationship with
9 Defendants can be terminated for cause. Defendants pay its drivers per delivery. Plaintiff and
10 Class Members regularly rendered her services to Defendants, which constituted a form of manual
11 labor, and these services were an integral part of Defendants' business of providing delivery
12 service to its customers.

13 33. Plaintiff and Class Members are classified as independent contractors by
14 Defendants. Under the Labor Code and applicable IWC Wage Order, a worker in California
15 cannot be an independent contractor unless the hirer can prove: (A) that the worker is free from
16 the control and direction of the hirer in connection with the performance of the work, both under
17 the contract for the performance of such work and in fact; and, (B) that the worker performs work
18 that is outside the usual course of the hiring entity's business; and (C) that the worker is
19 customarily engaged in an independently established trade, occupation, or business of the same
20 nature as the work performed for the hiring entity. Defendants cannot meet the above
21 requirements. Therefore, Defendants misclassify Plaintiff and Class Members as independent
22 contractors instead of employees. Defendants retained the right to control the method and manner
23 of how Plaintiff and Class Members performed their job duties and retained all necessary control
24 over Plaintiff and Class Members during their employment. To deliver goods from merchants to
25 addresses in its service areas, Defendants' delivery drivers pick up packages from local
26 warehouses and distribute these packages to homes and businesses within the immediate area.
27 Drivers have to report to Defendants' warehouse at a set time, accept all packages assigned to
28 them, load their personal vans, and deliver such packages for a set amount of compensation for

1 each delivery. Among other things, Plaintiff was required to follow detailed requirements
2 imposed on her by Defendants' deliveries. Further, Defendants set the driver's rates, and direct
3 when and where to make their deliveries. Moreover, Defendants tracked Plaintiff and Class
4 Members' efficiency percentage, and could terminate their employment with Plaintiff and Class
5 Members if they did not meet the efficiency percentage. As a result, under applicable law, Plaintiff
6 was an employee of Defendants. See e.g. *Dynamex Operations West, Inc. v. Superior Court of*
7 *Los Angeles* (2018) 4 Cal. 5th 903.

8 34. The result of Defendants' misclassification scheme is that Plaintiff and Class
9 Members were, and are, routinely denied payment of minimum wages, overtime and meal and
10 rest period premium wages, repayment of business-related expenses, and other payments
11 provided by California law.

12 35. Labor Code Section 1194 provides that notwithstanding any agreement to work
13 for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
14 recover in a civil action the unpaid balance of his or her overtime compensation, including interest
15 thereon, reasonable attorneys' fees, and costs of suit.

16 36. Labor Code § 510 provides that employees in California shall not be employed
17 more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive
18 additional compensation beyond their regular wages in amounts specified by law.

19 37. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
20 be employed more than eight hours in any workday unless they receive additional compensation
21 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
22 that the employment of an employee for longer hours than those fixed by the Industrial Welfare
23 Commission is unlawful.

24 38. Labor Code § 226.2 provides "For employees compensated on a piece rate basis...
25 employees shall be compensated for rest and recovery periods and other nonproductive time
26 separate from any piece-rate compensation." Labor Code § 226.2, subdivision (a)(2) requires the
27 itemized statements required by subdivision (a) of section 226 shall, in addition to the other items
28 specified in that subdivision, state the following: total hours of compensable rest and recovery

1 periods, the rate of compensation, and the gross wages paid for those periods during the pay
2 period. Employees are to be compensated for the rest and recovery periods at a regular hourly
3 rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total
4 compensation for the workweek, exclusive of compensation for rest and recovery periods and any
5 premium compensation for overtime, by the total hours worked during that workweek, exclusive
6 of rest and recovery periods; (ii) the applicable minimum wage. Employers are required to
7 compensate employees paid on a piece-rate basis for all other nonproductive time at an hourly
8 rate of not less than minimum wage.

9 39. Pursuant to Labor Code § 221 it shall be unlawful for any employer to collect or
10 receive from an employee any part of wages theretofore paid by said employer to said employee.

11 40. Labor Code Section 204 requires employers to pay employees all earned wages
12 two times per month on days designated in advance by the employer as regular paydays.
13 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,
14 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
15 month during which the labor was performed, and labor performed between the 16th and the last
16 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
17 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
18 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
19 the wages are paid not more than seven calendar days following the close of the payroll period.
20 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
21 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
22 worked. Defendants systematically failed and refused to pay the employees all wages due, and
23 failed to pay those wages twice a month, in that employees were not paid all wages for all meal
24 periods not provided by Defendants, all wages for all rest periods not authorized and permitted
25 by Defendants, and all wages for all hours worked.

26 41. Further, Business and Professions Code Section 17203 provides that any person
27 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
28 Business and Professions Code Section 17204 provides that any person who has suffered actual

injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

42. During all, or a portion of the Class Period, Plaintiff and each member of the Class was employed by Defendants in the State of California.

43. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed an obligation on the part of Defendants to pay Plaintiff and Class rest and meal period compensation.

44. During the Class Period, Defendants misclassified Plaintiff and Class Members as independent contractors. As a result of that willful misclassification, Defendants failed to pay Plaintiff and Class Members all wages including minimum wage, regular wages and overtime. To deliver goods from merchants to addresses in its service areas, Defendants' drivers pick up packages from local warehouses and distribute these packages to homes and businesses within the immediate area. Drivers have to report to Defendants' warehouse at a set time, accept all packages assigned to them, load their personal vans, and deliver such packages for a set amount of compensation for each delivery. Plaintiff was assigned 180-220 stops each day. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked six to seven days per week and over twelve hours each workday without overtime and double time payment. Defendants compensated Plaintiff on a "per delivery" piece-rate compensation system with no additional and separate pay on an hourly basis for time spent on rest and recovery periods, inspections, cleaning/fueling and/or paperwork, and loading/unloading time (i.e. the Non-Driving Tasks). Defendants required Plaintiff and Class Members to utilize their own vehicles, pay vehicle insurance, regularly fuel the vehicle to perform work for Defendants as well as use their cell phones for work and purchase uniforms without compensation. Plaintiff and Class Members Plaintiff and Class Members were assigned set routes for deliveries and were assigned the number of stops each day. Moreover, Defendants tracked Plaintiff and Class Members' efficiency percentage, and could terminate their employment

1 with Plaintiff and Class Members if they did not meet the efficiency percentage. In fact,
2 Defendants set profit goals for Plaintiff and Class Members. Additionally, Defendants
3 wrongfully deducted thirty dollars from Plaintiff and Class Members' each paycheck as a
4 charge for depositing money to Plaintiff's and Class Members' bank account in blatant
5 violation of California law. Plaintiff never authorized these deductions. Plaintiff and Class
6 Members would deduct the amount of the incurred vehicle, fueling, uniform and cell phone
7 expenses as well as thirty dollar deductions. The remainder constituted Plaintiff and Class
8 Members' "daily wages".

9
10 45. As set forth above, although Plaintiff and Class Members were misclassified, they
11 were, in reality, employees of Defendants. As further set forth above, Plaintiff and Class
12 Members engaged in several Non-Driving Tasks. Plaintiff and Class Members were paid on a
13 per delivery basis, but Defendants did not separately compensate drivers on an hourly basis for
14 their time spent on statutory rest and recovery periods and the Non-Driving Tasks.
15 Accordingly, Plaintiff and Class Members did not receive minimum wage for their on-duty
16 time spent taking statutory rest breaks and recovery time and on the Non-Driving Tasks.

17 46. During the Class Period, Defendants were obligated to provide Plaintiff and Class
18 with a work-free meal period within the first five (5) hours of a shift no later than the start of
19 sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-
20 free meal period no later than the start of the eleventh hour of work in the workday. Here, by
21 virtue of misclassification, Defendants wrongfully failed to provide Plaintiff and Class
22 Members with meal periods. Defendants regularly required Plaintiff and Class Members to
23 work in excess of five consecutive hours a day without providing a 30-minute, continuous and
24 uninterrupted, duty-free meal period for every five hours of work, or without compensating
25 Plaintiff and Class Members for meal periods that were not provided by the end of the fifth
26 hour of work or tenth hour of work. Defendants did not inform Plaintiff and Class Members of
27 their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than
28

1 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate
2 policies or practices providing meal periods for Plaintiff and Class Members, nor did
3 Defendants have adequate policies or practices regarding the timing of meal periods.
4 Defendants did not schedule meal periods. Accordingly, Defendants' policy and practice was
5 to not provide meal periods to Plaintiff and Class Members in compliance with California law.

6 47. As alleged herein by virtue of the misclassification of Defendants' drivers, and by
7 failing to provide its drivers with duty-free timely 30-minute meal breaks on their California
8 routes greater than 5 hours in length, Defendants have violated Labor Code § 226.7 and the
9 relevant IWC Wage Order and are liable to Plaintiff and Class Members.

10 48. Additionally, Defendants were obligated to provide Plaintiff and Class Members
11 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
12 day. Defendants, however, wrongfully failed to authorize and permit Plaintiff and Class Members
13 to take timely and duty-free rest periods. Defendants were obligated to pay Plaintiff and Class
14 Members separately and hourly for her rest break time in California. See also *Bluford v. Safeway*
15 *Stores, Inc.* (2013) 216 Cal.App.4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-
16 rate compensation formula that does not compensate separately for rest periods does not comply
17 with California minimum wage law."); *Shook v. Indian Transport Co.*, 2014 WL 7178199 (E.D.
18 Cal. Dec. 15, 2014) (adopting *Bluford* and noting that, "IRT has not identified any split in the
19 California appellate courts that would indicate that there is any disagreement over whether piece-
20 rate workers must be separately compensated for breaks"); *Cardenas v. McLane Food Services,*
21 *Inc.* (C.D. Cal. 2011) 796 F. Supp. 2d. 1246, 1252 (piece-rate pay system that did not separately
22 pay truck drivers for rest periods and other non-driving tasks violates California law requiring
23 compensation for each hour worked); and *Gonzalez v. Downtown LA Motors, LP* (2013) 215
24 Cal.App.4th 36, 49 (favorably citing and adopting *Cardenas*).

25 49. Defendants, however, wrongfully failed to authorize and permit Plaintiff and
26 Class Members to take rest periods. Defendants regularly required Plaintiff and Class Members
27 to work in excess of four consecutive hours a day without Defendants authorizing and permitting
28 them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work

(or major fraction of four hours), or without compensating Plaintiff and Class Members for rest periods that were not authorized or permitted. Additionally, Defendants failed to separately pay for the Non-Driving Tasks and rest and recovery periods. Accordingly, Defendants' policy and practice was for Plaintiff and Class Members to work through rest periods and to not authorize or permit them to take any rest periods.

50. Furthermore, Defendants failed and/or refused to pay Plaintiff and Class Members one (1) hour's pay at the employees' regular rate of pay as premium compensation for Defendants' failure to provide lawful thirty (30) minute, off-duty meal periods and failure to provide lawful ten (10) minute rest periods within the statutory time frames.

51. Defendants do not maintain an expense reimbursement policy and/or practice stating that Defendants will reimburse Plaintiff and Class Members for a reasonable portion of their monthly fuel and cell phone bill, and other expenses incurred in the discharge of his duties as required by *Cochran v. Schwan's Home Services, Inc.*, 228 Cal. App. 4th 1137 (Cal. Aug. 12, 2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code Section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiff's motion for partial summary judgment on the cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying a class cell phone claim and adopting the logic of *Cochran*). By virtue of willful misclassification, Defendants wrongfully required Plaintiff and Class Members to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. At the direction of Defendants and/or with Defendants' knowledge and acquiescence, Plaintiff and Class Members had to use her personal cell phone for an application to receive the schedule and the routes of deliveries as well as to scan deliveries and to report the delivered packages on daily basis. They were not reimbursed for personal cell phone usage. Plaintiff and Class Members also used their personal vehicles to make deliveries. In order to conduct their daily work, Plaintiff and Class Members incurred costs in fueling their vehicles

1 amounting to significant amount each month. Plaintiff and Class Members were also required to
2 pay for their insurance and maintenance. They were not reimbursed for the fuel, insurance and
3 maintenance of their vehicles. Plaintiff and Class Members were also required to purchase a
4 uniform with “OnTrac” logo on it but were not reimbursed for the uniform purchase and
5 maintenance. Plaintiff and Class Members incurred these substantial expenses as a direct result
6 of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff
7 and Class Members for these employment-related expenses.

8 52. Plaintiff and Class Members primarily performed non-exempt work, often in
9 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
10 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
11 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
12 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
13 statutes.

14 53. Class Members who ended their employment with Defendants during the Class
15 Period but were not paid the above due compensation for all hours worked timely upon the
16 termination of their employment as required by Labor Code Sections 201, 202, and 203 are
17 entitled to penalties as provided by Labor Code Section 203. Defendants failed to pay Plaintiff
18 and Class Members for all hours worked, their time for statutory rest and recovery periods and
19 other Non-Driving Tasks in California prior to or upon termination or separation from
20 employment with Defendant as required by Labor Code § 201 and 202.

21 54. During the Class Period, Defendants failed to furnish Plaintiff and Class Members
22 with accurate, itemized wage statements showing all applicable hourly rates, and all gross and
23 net wages earned (including correct hours worked, time spent for the Non-Driving Tasks, rest
24 and recovery periods, correct wages earned for hours worked, correct overtime hours worked,
25 correct wages for meal periods that were not provided in accordance with California law, correct
26 wages for rest periods that were not authorized and permitted to take in accordance with
27 California law). As a result of these violations of California Labor Code § 226(a), Plaintiff and
28

1 Class Members are owed the amounts provided for in California Labor Code § 226(e), including
2 actual damages.

3 55. Defendants knew or should have known that Plaintiff and Class members were
4 entitled to receive accurate wage statements, which would include time spent for Non-Driving
5 Tasks, rest and recovery periods, meal break premiums, and/or rest break premiums, as required
6 by Labor Code 226.

7 56. Defendants knew or should have known that Plaintiff and Class Members were
8 entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did
9 not receive payment of all wages, including but not limited to, meal and rest break premiums, in
10 violation of the Labor Code.

11 **CLASS ALLEGATIONS**

12 57. Plaintiff brings this action on behalf of herself and all other similarly situated
13 persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed
14 of and defined as follows:

- 15 (a) All persons who are employed or have been employed by Defendants in the
16 State of California, and who, within the four (4) years of the filing of this
17 Complaint to the present, have worked as delivery drivers and were not paid
18 all wages owed, including but not limited to the legally requisite minimum
19 wage, regular time rate, overtime rate and/or double-time rate;
- 20 (b) All persons who are employed or have been employed by Defendants in the
21 State of California, and who, within the four (4) years of the filing of this
22 Complaint to the present, have worked as delivery drivers and have not been
23 provided a meal period for shifts in excess of five (5) hours within the first five
24 (5) hours such shifts, and were not provided one (1) hour's pay for each day
25 during which a lawful meal period was not provided;
- 26 (c) All persons who are employed or have been employed by Defendants in the
27 State of California, and who, within the four (4) years of the filing of this
28

1 Complaint to the present, have worked as delivery drivers and have not been
2 provided a rest period for every four (4) hours, or major fraction thereof,
3 worked per day, and were not provided compensation of one (1) hour's pay for
4 each day on which such rest period(s) was not provided;

5 (d) All persons who are employed or have been employed by Defendants in the
6 State of California, and who, within the four (4) years of the filing of this
7 Complaint to the present, have worked as delivery drivers and have not been
8 reimbursed expenditures in discharge of their duties;

9 (e) All persons who are employed or have been employed by Defendants in the
10 State of California, and who, within the three (3) years of the filing of this
11 Complaint to the present, have worked as delivery drivers and have been
12 terminated or resigned, and have not been paid wages pursuant to Labor Code
13 Section 203 and are owed restitution and waiting time penalties for unpaid
14 wages;

15 (f) All persons who are employed or have been employed by Defendants in the
16 State of California, and who, within the one (1) year of the filing of this
17 Complaint to the present have worked as delivery drivers and were not
18 provided an accurate payroll record or wage statement as required under Labor
19 Code Sections 226 and 1174;

20 (g) All persons who are employed or have been employed by Defendants in the
21 State of California, and who, within the four (4) years of the filing of this
22 Complaint to the present, have worked as delivery drivers and were subjected
23 to unlawful and unfair business practices within the meaning of California's
24 Unfair Competition Law and who suffered injury, including lost money, as a
25 result of Defendants' unlawful and unfair business practices.

26 58. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or
27 necessary to amend the definition of the Class. Plaintiff will formally define and designate a class
28 definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.

1 59. This action has been brought and may be maintained as a class action pursuant to
2 Code of Civil Procedure Section 382 because there is a well-defined common interest of many
3 persons and it is impractical to bring them all before the court.

4 60. The Court should permit this action to be maintained as a class action pursuant to
5 Code of Civil Procedure Section 382 because:

- 6 (a) The questions of law and fact common to Class predominate over any
7 question affecting only individual class members;
- 8 (b) A class action is superior to any other available method for the fair and
9 efficient adjudication of the claims of the Class members;
- 10 (c) Class is so numerous that it is impractical to bring all members of the
11 Class before the Court;
- 12 (d) Plaintiff and Class Members will not be able to obtain effective and
13 economic legal redress unless the action is maintained as a class action;
- 14 (e) There is a community of interest in obtaining appropriate legal and
15 equitable relief for the common law and statutory violations and other
16 improprieties and in obtaining adequate compensation for the damages
17 and injuries which Defendants' actions have inflicted upon Class;
- 18 (f) There is a community of interest in ensuring that the combined assets and
19 available insurance of the Defendants are sufficient to adequately
20 compensate Class Members for the injuries sustained;
- 21 (g) Without class certification, the prosecution of separate actions by
22 individual members of the Class would create a risk of:
 - 23 (1) Inconsistent or varying adjudications with respect to individual
24 members of the Class which would establish an incompatible
25 standard of conduct for Defendants; and/or
 - 26 (2) Adjudications with respect to the individual members which
27 would, as a practical matter, be dispositive of the interests of other
28 members not parties to the adjudications, or would substantially

1 impair or impede their ability to protect their interests, including
2 but not limited to the potential for exhausting the funds available
3 from those parties who are, or may be, responsible Defendants; and
4 (h) Defendants have acted or refused to act on grounds generally applicable
5 to Class, thereby making final injunctive relief appropriate with respect to
6 Class as a whole.

7 61. There is a well-defined community of interest in the litigation and Class is
8 readily ascertainable:

- 9 (a) Numerosity: The members of Class (and each subclass, if any) are so
10 numerous that joinder of all members would be unfeasible and impractical.
11 The membership of the entire Class is unknown to Plaintiff at this time,
12 however, the Class is estimated to be greater than 100 individuals and the
13 identity of such membership is readily ascertainable by inspection of
14 Defendants' records.
- 15 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
16 interests of each Class Member with whom there is a shared, well-defined
17 community of interest, and Plaintiff's claims (or defenses, if any) are typical
18 of all Class Members' claims as demonstrated herein.
- 19 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
20 the interests of each Class Member with whom there is a shared, well-
21 defined community of interest and typicality of claims, as demonstrated
22 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
23 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
24 rules governing class action discovery, certification, and settlement.
25 Plaintiff has incurred, and throughout the duration of this action, will
26 continue to incur costs and attorneys' fees that have been, are, and will be
27 necessarily expended for the prosecution of this action for the substantial
28

benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
2. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
3. The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
4. The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also 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 at the same time as their privacy is protected.

62. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as

published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

Failure to Pay All Wages for All Hours Worked

(Against Defendants, DOES 1 through 50, and each of them)

63. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this First Amended Complaint as though fully set forth herein.

64. Labor Code Section 510, subdivision (a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

65. Labor Code Section 1194, subdivision (a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

66. Further, pursuant to Labor Code Section 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

67. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

68. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

69. Labor Code § 226.2 provides “For employees compensated on a piece rate basis... employees shall be compensated for rest and recovery periods and other nonproductive time

1 separate from any piece-rate compensation.” Labor Code § 226.2, subdivision (a)(2) requires the
2 itemized statements required by subdivision (a) of section 226 shall, in addition to the other items
3 specified in that subdivision, state the following: total hours of compensable rest and recovery
4 periods, the rate of compensation, and the gross wages paid for those periods during the pay
5 period. Employees are to be compensated for the rest and recovery periods at a regular hourly
6 rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total
7 compensation for the workweek, exclusive of compensation for rest and recovery periods and any
8 premium compensation for overtime, by the total hours worked during that workweek, exclusive
9 of rest and recovery periods; (ii) the applicable minimum wage. Employers are required to
10 compensate employees paid on a piece-rate basis for all other nonproductive time at an hourly
11 rate of not less than minimum wage.

12 70. Pursuant to Labor Code § 221 it shall be unlawful for any employer to collect or
13 receive from an employee any part of wages theretofore paid by said employer to said employee.
14 Pursuant to Labor Code § 224, Labor Code §§ 221, 222 and 223 shall in no way make it unlawful
15 for an employer to withhold or divert any portion of an employee’s wages when the employer is
16 required or empowered so to do by state or federal law or when a deduction is expressly authorized
17 in writing by the employee to cover insurance premiums, hospital or medical dues, or other
18 deductions not amounting to a rebate or deduction from the standard wage arrived at by collective
19 bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and
20 welfare or pension plan contributions is expressly authorized by a collective bargaining or wage
21 agreement.

22 71. Labor Code Section 204 requires employers to pay employees all earned wages
23 two times per month on days designated in advance by the employer as regular paydays.
24 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,
25 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
26 month during which the labor was performed, and labor performed between the 16th and the last
27 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
28 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall

1 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
2 the wages are paid not more than seven calendar days following the close of the payroll period.
3 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
4 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
5 worked. Defendants systematically failed and refused to pay the employees all wages due, and
6 failed to pay those wages twice a month, in that employees were not paid all wages for all meal
7 periods not provided by Defendants, all wages for all rest periods not authorized and permitted
8 by Defendants, and all wages for all hours worked.

9 72. Pursuant to the IWC Wage Order(s), Defendants is required to pay Plaintiff and
10 Class Members for all hours worked, meaning the time during which an employee is subject to
11 the control of an employer, including all the time the employee is suffered or permitted to work,
12 whether or not required to do so.

13 73. Defendants' pattern, practice and uniform administration of corporate policy
14 regarding illegal employee compensation as described herein is unlawful and creates an
15 entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiff and the members of the
16 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
17 appropriate rate.

18 74. Pursuant to Labor Code Section 1194.2(a) (which provides that in any action under
19 Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members
20 of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours
21 of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully
22 unpaid and interest thereon.

23 75. That calculation of individual damages for Class Members may at some point be
24 required does not foreclose the possibility of taking common evidence on questions regarding
25 their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*
26 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
27 30 Cal.3d 256).

1 76. In failing to pay Plaintiff and Class Members for time spent on rest and recovery
2 periods and the Non-Driving Tasks separately, Defendant operated in bad faith given current
3 case law and statutes. Accordingly, pursuant to §§ 1194, 1194.2 and 226.2 of the California
4 Labor Code, Plaintiff is entitled to recover, either his unpaid hourly wages due, or minimum
5 wage plus interest and/or liquidated damages in an additional amount equal to the total amount
6 of wages unlawfully withheld for Plaintiff's rest period time.

7 77. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
8 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

9 78. Pursuant to Labor Code Sections 218.5 and/or 1194, Class Members request that
10 the Court award reasonable attorneys' fees and costs incurred by them in this action.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

13 **(Against Defendants, DOES 1 through 50, and each of them)**

14 79. Plaintiff and Class Members re-allege and incorporate by reference all preceding
15 paragraphs of this First Amended Complaint as though fully set forth herein.

16 80. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
17 person for a work period of more than five (5) hours without providing a meal period of not less
18 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
19 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
20 minutes.

21 81. Labor Code Section 226.7 provides that if an employer fails to provide an
22 employee a meal period in accordance with this Section, the employer shall pay the employee one
23 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
24 period is not provided in accordance with this Section.

25 82. By virtue of misclassification, Defendants have intentionally and improperly
26 denied meal periods to Plaintiff and Class Members in violation of Labor Code Sections 226.7
27 and 512, and other regulations and statutes.

83. At all times relevant hereto, Plaintiff and Class have worked more than five (5) hours in a workday.

84. Plaintiff, individually and on behalf of Class Members, requests recovery of meal period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against Defendants in a sum as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods or Compensation in Lieu Thereof

(Against Defendants, DOES 1 through 50, and each of them)

85. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this First Amended Complaint as though fully set forth herein.

86. The IWC Wage Orders and Labor Code Section 226.7 provides that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours or major fraction thereof.

87. Labor Code Section 226.7, subdivision (b) provides that if an employer fails to provide an employee rest period in accordance with this Section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

88. By virtue of misclassification, Defendants failed and/or refused to implement a policy by which Plaintiff and Class Members could receive rest periods and/or work free rest periods. By and through its actions, Defendants intentionally and improperly denied rest periods to Plaintiff and Class Members in violation of Labor Code Sections 226.7 and 512.

89. Additionally, Defendants were obligated to pay Plaintiff and Class Members separately and hourly for her rest break time in California. See also *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872-73 (“Thus, contrary to Safeway’s argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law.”); *Shook v. Indian Transport Co.*, 2014 WL 7178199 (E.D. Cal. Dec. 15, 2014) (adopting *Bluford* and noting that, “IRT has not identified any split in the

California appellate courts that would indicate that there is any disagreement over whether piece-rate workers must be separately compensated for breaks”); *Cardenas v. McLane Food Services, Inc.* (C.D. Cal. 2011) 796 F. Supp. 2d. 1246, 1252 (piece-rate pay system that did not separately pay truck drivers for rest periods and other non-driving tasks violates California law requiring compensation for each hour worked); and *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49 (favorably citing and adopting *Cardenas*).

90. Defendants, however, wrongfully failed to authorize and permit Plaintiff and Class Members to take rest periods. Defendants regularly required Plaintiff and Class Members to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and Class Members for rest periods that were not authorized or permitted. Additionally, Defendants failed to separately pay for the Non-Driving Tasks. Accordingly, Defendants’ policy and practice was for Plaintiff and Class Members to work through rest periods and to not authorize or permit them to take any rest periods.

91. By virtue of the Defendants’ unlawful failure to provide rest periods to Plaintiff and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

92. Plaintiff, individually and on behalf of employees similarly situated, requests recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing this Complaint, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or any other statute.

FOURTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

(Against Defendants, DOES 1 through 50, and each of them)

93. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this First Amended Complaint as though fully set forth herein.

1 94. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central
2 location in California, or at the plant or establishment at which the employee is employed, payroll
3 records showing the hours worked daily by, and the wages paid to, each employee.

4 95. Labor Code Section 226, subdivision (a) requires an employer to provide
5 employees—either as a detachable part of the check, draft, or voucher paying the employee’s
6 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
7 statement in writing showing

8 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
9 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which
10 the employee is paid, (7) the name of the employee and only the last four
11 digits of his or her social security number or an employee identification
12 number other than a social security number, (8) the name and address of the
13 legal entity that is the employer . . . , and (9) all applicable hourly rates in
14 effect during the pay period and corresponding number of hours worked at
15 each hourly rate by the employee

16 96. Moreover, the IWC Wage Orders require that every employer shall keep accurate
17 information with respect to each employee, including time records showing when each employee
18 begins and ends each work period, when each employee takes a meal period, the total daily hours
19 worked by each employee and the total hours worked in each payroll period, and applicable rates
20 of pay.

21 97. Plaintiff is informed and believes that Defendants willfully and intentionally
22 failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and
23 Class. Specifically, Plaintiff believes that Defendants’ records do not accurately reflect when
24 Plaintiff and Class worked during their meal and rest periods and/or took untimely meal periods
25 or worked for hours not paid or when employee is engaged in the Non-Driving tasks, rest and
26 recovery periods.

27 98. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
28 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,

1 the total hours worked by the employee, causing the employee injury, then the employee is
2 entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial
3 violation and one hundred dollars (\$100.00) for each subsequent violation, up to four thousand
4 dollars (\$4,000.00). Plaintiff is informed and believes that Defendants willfully failed to make
5 or keep accurate records for Plaintiff and Class.

6 99. Plaintiff is informed and believes that Defendants' failure to keep accurate payroll
7 records, as described above, violated Labor Code Section 1174, subdivision (d) and Section 226,
8 subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code Section 2699,
9 subdivision (f)(2), Plaintiff and Class are entitled to penalties of \$100.00 and for the initial
10 violation and \$200.00 for each subsequent violation for every pay period during which these
11 records and information were not kept by Defendants.

12 100. Plaintiff is informed and believes that Defendants' failure to keep and maintain
13 accurate records and information, as described above, was willful, and Plaintiff and Class are
14 entitled to statutory penalties pursuant to Labor Code Section 1174.5.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Pay Wages upon Termination of Employment**

17 **(Against Defendants, DOES 1 through 50, and each of them)**

18 101. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
19 of this First Amended Complaint as though fully set forth herein.

20 102. Plaintiff and certain Class Members who ended their employment with Defendants
21 during the Class Period, were entitled to be promptly paid for all hours worked, including lawful
22 minimum, regular time compensation, overtime compensation, double-time compensation, and
23 other premiums, as required by Labor Code Sections 201 through 203. They are also entitled to
24 meal period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

25 103. Defendants failed to pay Plaintiff and Class Members for all hours worked, their
26 time for statutory rest breaks and recovery and other Non-Driving Tasks in California prior to or
27 upon termination or separation from employment with Defendant as required by Labor Code §
28 201 and 202.

1 104. Plaintiff and Class Members seek the payment of penalties pursuant to Labor Code
2 Section 203, according to proof.

3 105. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code
4 Section 1194, and prejudgment interest.

5 **SIXTH CAUSE OF ACTION**

6 **Failure to Reimburse for Necessary Business Expenditures**

7 **(Against Defendants, DOES 1 through 50, and each of them)**

8 106. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs
9 of this First Amended Complaint as if fully alleged herein.

10 107. California Labor Code §2802, states "An employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties."

13 108. By virtue of misclassification throughout the statutory period, Defendants
14 wrongfully required Plaintiff and Class Members to pay expenses that they incurred in direct
15 discharge of their duties for Defendants without reimbursement.

16 109. Defendants knowingly, willingly and intentionally attempted to offset the cost of
17 doing business on the Plaintiff and Class.

18 110. Defendants had a corporate practice and policy of requiring Plaintiff and Class to
19 shoulder the burden of Defendants' cost of doing business by failing to reimburse Plaintiff and
20 Class for necessary expenditures.

21 111. Accordingly, Plaintiff and Class are entitled to an award of "necessary
22 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
23 fees and interest.

24 **SEVENTH CAUSE OF ACTION**

25 **Unfair Business Practices**

26 **(Against Defendants, DOES 1 through 50, and each of them)**

27 112. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
28 of this First Amended Complaint as though fully set forth herein.

1 113. Business and Professions Code Section 17200 et seq. (also referred to herein as
2 the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition
3 in the form of any unlawful, unfair or fraudulent business act or practice.

4 114. Business and Professions Code Section 17204 allows “a person who has suffered
5 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
6 civil action for violation of the Unfair Competition Law (“UCL”).

7 115. Labor Code Section 90.5, subdivision (a) states that it is the public policy of
8 California to vigorously enforce minimum labor standards in order to ensure employees are not
9 required to work under substandard and unlawful conditions, and to protect employers who
10 comply with the law from those who attempt to gain competitive advantage at the expense of their
11 workers by failing to comply with minimum labor standards.

12 116. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
13 years prior to the filing of this lawsuit, Defendants has committed acts of unfair competition as
14 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
15 business practices and acts described in this Complaint including but not limited to violations of
16 Labor Code Sections 201-204, 226, 226.7, 510, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
17 2802, 2699(f)(2) as well as other statutes.

18 117. The violations of these laws and regulations, as well as of the fundamental
19 California public policies protecting workers, serve as unlawful predicate acts and practices for
20 purposes of Business and Professions Code Section 17200 et seq.

21 118. The acts and practices described above constitute unfair, unlawful and fraudulent
22 business practices, and unfair competition, within the meaning of Business and Professions Code
23 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
24 similarly situated employees to labor for many consecutive hours without receiving the meal and
25 rest periods and overtime compensation to which they are entitled by law, while enabling
26 Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

1 119. As a result of Defendants' acts, Plaintiff and Class Members have suffered injury
2 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
3 hours worked.

4 120. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
5 and Class have suffered lost wages in an amount to be proven at trial.

6 121. Business and Professions Code Section 17203 provides that a court may make
7 such orders or judgments as may be necessary to prevent the use or employment by any person
8 of any practice which constitutes unfair competition. Injunctive relief is necessary and
9 appropriate to prevent Defendants from repeating its unlawful, unfair and fraudulent business acts
10 and business practices alleged above.

11 122. Business and Professions Code Section 17203 provides that the Court may restore
12 to any person in interest any money or property that may have been acquired by means of such
13 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and
14 Professions Code Section 17203 for all wages and payments unlawfully withheld from
15 employees, including the fair value of the meal and rest periods taken away from them during the
16 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
17 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
18 obedience to the directions of the employer.

19 123. Business and Professions Code Section 17202 provides, "Notwithstanding Section
20 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
21 forfeiture, or penal law in a case of unfair competition." Plaintiff and Class are entitled to enforce
22 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
23 Section 17202.

24 124. Plaintiff's success in this action will enforce important rights affecting public
25 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
26 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
27 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.
28

1 125. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
2 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
3 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
4 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
5 Code of Civil Procedure Section 1021.5 and otherwise.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***
8 **(Against Defendants, DOES 1 through 50, and each of them)**

9 126. Plaintiff re-alleges and incorporates by reference all preceding paragraphs in this
10 Second Amended Complaint, as if fully alleged herein.

11 127. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
12 General Act of 2004 ("PAGA.") (Labor Code sections 2698 *et seq.*)

13 128. PAGA permits an "aggrieved employee" to recover penalties on behalf of
14 himself/herself and other employees subject to violations of the Labor Code, including violations
15 of sections 201-204, 226, 226.7, 510, 512, 1174, 1194, 1198 and 2802, as well as the applicable
16 Wage Order.

17 129. Plaintiff is informed and believe Defendants at all relevant times employed one or
18 more employees.

19 130. For those code sections that provide for the recovery of civil penalties, Plaintiff
20 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
21 Code that do not specifically provide for civil penalties, Plaintiffs will seek civil penalties of one
22 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
23 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
24 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

25 131. Section 2699, subdivision (a) provides that civil penalties may be "recovered
26 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
27 current or former employees." (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
28 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an

1 award of reasonable attorneys' fees and costs.

2 132. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
3 to civil penalties, attorneys' fees and costs, according to proof.

4
5 **PRAYER FOR RELIEF**

6 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
7 the class claims, prays for relief and judgment against Defendants as follows:

8 **Class Certification**

9 1. That this action be certified as a class action with respect to the First, Second,
10 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;

11 2. That Plaintiff be appointed as the representative of the Class; and

12 3. That counsel for Plaintiff be appointed as Class Counsel.

13 **As to the First Cause of Action**

14 4. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code §§ 204, 510, 1194, 1197, 1198 and applicable IWC Wage Orders by willfully
16 failing to pay all wages due;

17 5. For general unpaid wages and sick leave pay as may be appropriate;

18 6. For pre-judgment interest on any unpaid compensation commencing from the
19 date such amounts were due;

20 7. For liquidated damages;

21 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
22 California Labor Code § 1194(a); and,

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

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

26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
28

11. For unpaid meal period premium wages as may be appropriate;
12. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
13. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and
14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
16. For unpaid rest period premium wages as may be appropriate;
17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and
19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;
21. For penalties and actual damages pursuant to California Labor Code § 226(e);
22. For injunctive relief to ensure compliance with this Section, pursuant to California Labor Code § 226(h);
23. For reasonable attorneys' fees and for costs of suit incurred herein; and

1 24. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Fifth Cause of Action

4 25. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code §§ 201, 202, 203 by willfully failing to pay all compensation owed at the time
6 of termination of the employment;

7 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
8 employees who have left Defendants' employ;

9 27. For pre-judgment interest on any unpaid wages from the date such amounts were
10 due;

11 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.
14

15 As to the Sixth Cause of Action

16 30. That the Court declare, adjudge and decree that Defendants violated Labor Code
17 § 2802 and the IWC Wage Orders;

18 31. For general unpaid wages and reimbursement of business expenses as may be
19 appropriate;

20 32. For pre-judgment interest on any unpaid compensation commencing from the
21 date such amounts were due;

22 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

23 34. For such other and further relief as the Court may deem equitable and
24 appropriate.
25

26 As to the Seventh Cause of Action

27 35. That the Court declare, adjudge and decree that Defendants violated California
28 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked,

1 failing to provide meal periods, failing to maintain accurate records of meal periods, failing
2 to authorize and permit rest periods, and failing to maintain accurate records of all hours
3 worked and meal periods, failing to furnish accurate wage statements, and failing to
4 indemnify necessary business expenses;

5 36. For restitution of unpaid wages to Plaintiff and all Class Members and
6 prejudgment interest from the day such amounts were due and payable;

7 37. For the appointment of a receiver to receive, manage and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code §§ 17200 *et*
10 *seq.*;

11 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure § 1021.5;

13 39. For injunctive relief to ensure compliance with this Section, pursuant to
14 California Business & Professions Code §§ 17200, *et seq.*; and,

15 40. For such other and further relief as the Court may deem equitable and
16 appropriate.
17

18 As to the Eighth Cause of Action

19 41. That the Court declare, adjudge and decree that Defendants violated the
20 California Labor Code by failing to pay wages for all hours worked, failing to provide meal
21 periods, failing to maintain accurate records of meal periods, failing to authorize and permit
22 rest periods, failing to maintain accurate records of all hours worked and meal periods, failing
23 to indemnify necessary business expenses, failing to pay final wages at termination, and failing
24 to furnish accurate wage statements;

25 42. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all
26 other applicable Labor Code provisions;
27
28

1 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Labor Code § 2699;

3 44. For such other and further relief as the Court may deem equitable and
4

5 As to all Causes of Action

6 44. For any additional relief that the Court deems just and proper.
7

8 Dated: June 17, 2024

TUNYAN LAW, APC

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11 _____

12 Lilit Tunyan

13 Attorneys for Plaintiff MARIA BELEN MEZA
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Dated: June 17, 2024

Thurs

Attorneys for Plaintiff MARIA BELEN MEZA

Exhibit “A”



535 N Brand Blvd. Suite 285
Glendale, CA 91203
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

February 8, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Subcontracting Concepts (CT), LLC
One Broad St. Plaza
Glens Falls, NY 12801

VIA CERTIFIED MAIL

Return Receipt Requested

OnTrac Logistics, Inc.
8401 Greensboro Drive, 7th Floor
McLean, VA 22102

VIA CERTIFIED MAIL

Return Receipt Requested

CSC-Lawyers Incorporating Service
Registered Corporate 1505 Agent
Agent for Service of Process for
Subcontracting Concepts (CT), LLC
OnTrac Logistics, Inc.
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833-3505

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: Meza v. Subcontracting Concepts (CT), LLC, et al.

To Whom It May Concern:

Please be advised that The Sentinel Firm, APC has been retained by Maria Belen Meza (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers Subcontracting Concepts (CT), LLC and OnTrac Logistics, Inc. (“Defendants”). Pursuant to the joint prosecution and fee

sharing agreement entered between Tunyan Law, APC and The Sentinel Firm, APC and Plaintiff's written consent to joint prosecution and fee sharing agreement, Tunyan Law, APC and The Sentinel Firm, APC will be jointly prosecuting Plaintiff's action against Defendants. The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as delivery drivers at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendants as a delivery driver from approximately November 2014 to October 2022, primarily in Los Angeles County. Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 6-7 days per week and over 12 hours each workday. Defendants claim that their drivers are independent contractors when they are employees that are controlled by Defendants, paid by Defendants, and whose relationship with Defendants can be terminated for cause. Defendants pay its drivers per delivery. Plaintiff regularly rendered her services to Defendants, which constituted a form of manual labor, and these services were an integral part of Defendants' business of providing delivery service to its customers. Defendants are delivery companies, and Plaintiff was one of their delivery drivers.

Defendants retained the right to control the method and manner of how Plaintiff and the Aggrieved Employees performed their job duties and retained all necessary control over Plaintiff and the Aggrieved Employees during their employment. To deliver goods from merchants to addresses in its service areas, Defendants' drivers pick up packages from local warehouses and distribute these packages to homes and businesses within the immediate area. Drivers have to report to Defendants' warehouse at a set time, accept all packages assigned to them, load their personal vans, and deliver such packages for a set amount of compensation for each delivery. Among other things, Plaintiff was required to follow detailed requirements imposed on her by Defendants' deliveries. Further, Defendants set the driver's rates, and direct when and where to make their deliveries. Moreover, Defendants tracked Plaintiff and the Aggrieved Employees' efficiency percentage, and could terminate their employment with Plaintiff and the Aggrieved

Employees if they did not meet the efficiency percentage. As a result, under applicable law, Plaintiff was an employee of Defendants. See e.g. *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal. 5th 903.

The result of Defendants' misclassification scheme is that Plaintiff and the Aggrieved Employees were, and are, routinely denied payment of minimum wages, overtime and meal and rest period premium wages, repayment of business-related expenses, and other payments provided by California law.

As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum Wage and Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code § 1194, subdivision (a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Labor Code § 226.2 provides "For employees compensated on a piece rate basis... employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Labor Code § 226.2, subdivision (a)(2) requires the itemized statements required by subdivision (a) of section 226 shall, in addition to the other items specified in that subdivision, state the following: total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period. Employees are to be compensated for the rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during that workweek,

exclusive of rest and recovery periods; (ii) the applicable minimum wage. Employers are required to compensate employees paid on a piece-rate basis for all other nonproductive time at an hourly rate of not less than minimum wage.

Pursuant to Labor Code § 221 it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Pursuant to Labor Code § 224, Labor Code §§ 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Throughout the statutory time period, Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors. As a result of that willful misclassification, Defendants failed to pay Plaintiff and the Aggrieved Employees all wages including minimum wage, regular wages and overtime. To deliver goods from merchants to addresses in its service areas, Defendants' drivers pick up packages from local warehouses and distribute these packages to homes and businesses within the immediate area. Drivers have to report to Defendants' warehouse at a set time, accept all packages assigned to them, load their personal vans, and deliver such packages for a set amount of compensation for each delivery. Plaintiff was assigned 180-220 stops each day. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 6-7 days per week and over 12 hours each workday without overtime and double time payment. Defendants compensated Plaintiff on a "per delivery" piece-rate compensation system with no additional and separate pay on an hourly basis for time spent on rest breaks, inspections, cleaning/fueling and/or paperwork, and loading/unloading time (i.e. the Non-Driving Tasks). Defendants required Plaintiff and the Aggrieved Employees to utilize their own vehicles, pay vehicle insurance, regularly fuel the vehicle to perform work for Defendants as well as use their cell phones for work and purchase uniforms without compensation. Plaintiff and the Aggrieved Employees Plaintiff and the Aggrieved Employees were assigned set routes for deliveries and were assigned the number of stops each day. Moreover, Defendants tracked Plaintiff and the Aggrieved Employees' efficiency percentage, and could terminate their employment with Plaintiff and the Aggrieved Employees if they did not meet the efficiency percentage. In fact, Defendants set profit goals for Plaintiff and the Aggrieved Employees. Additionally, Defendants wrongfully deducted \$30 from each paycheck as a charge for depositing money to Plaintiff's and the Aggrieved Employees' bank account in blatant violation of California law. Plaintiff never authorized these deductions. Plaintiff and the Aggrieved Employees would deduct the amount of the incurred vehicle, fueling, uniform and cell phone

expenses as well as \$30 deductions. The remainder constituted Plaintiff and the Aggrieved Employees' "daily wages".

As set forth above, although Plaintiff and the Aggrieved Employees were misclassified, they were, in reality, employees of Defendants. As further set forth above, Plaintiff and the Aggrieved Employees engaged in several Non-Driving Tasks. Plaintiff and the Aggrieved Employees were paid on a per delivery basis, but Defendants did not separately compensate drivers on an hourly basis for their time spent on statutory rest and recovery periods or Non-Driving Tasks. Accordingly, Plaintiff and the Aggrieved Employees did not receive minimum wage for her on-duty time spent taking statutory rest breaks and recovery time and on Non-Driving Tasks.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1194, 1194.2, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

By virtue of misclassification, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of meal periods. Defendants did not schedule meal periods. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

As alleged herein by virtue of the misclassification of Defendants' drivers, and by failing to provide its drivers with duty-free timely 30-minute meal breaks on their California routes greater than 5 hours in length, Defendants have violated Labor Code § 226.7 and the relevant IWC Wage Order and are liable to Plaintiff and the Aggrieved Employees.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Under California law, Defendants were obligated to pay Plaintiff and the Aggrieved Employees separately and hourly for her rest break time in California. See also *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law."); *Shook v. Indian Transport Co.*, 2014 WL 7178199 (E.D. Cal. Dec. 15, 2014) (adopting *Bluford* and noting that, "IRT has not identified any split in the California appellate courts that would indicate that there is any disagreement over whether piece-rate workers must be separately compensated for breaks"); *Cardenas v. McLane Food Services, Inc.* (C.D. Cal. 2011) 796 F. Supp. 2d. 1246, 1252 (piece-rate pay system that did not separately pay truck drivers for rest periods and other non-driving tasks violates California law requiring compensation for each hour worked); and *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49 (favorably citing and adopting *Cardenas*).

Courts have interpreted Section 12 of the applicable Wage Order to mean that employees paid on a piece-rate must receive separate and hourly pay for their time spent on rest breaks. See, e.g. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law. ").

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Additionally, Defendants failed to separately pay for Non-Driving Tasks. Accordingly, Defendants' policy

and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred as a direct consequence of the discharge of their duties or of their obedience to directions of the employer.

By virtue of misclassification throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. At the direction of Defendants and/or with Defendants' knowledge and acquiescence, Plaintiff and the Aggrieved Employees had to use her personal cell phone for an application to receive the schedule and the routes of deliveries as well as to scan deliveries and to report the delivered packages on daily basis. They were not reimbursed for personal cell phone usage. Plaintiff and the Aggrieved Employees also used their personal vehicles to make deliveries. In order to conduct her daily work, Plaintiff incurred costs in fueling her van amounting to significant amount each month. Plaintiff was also required to pay for her vehicle insurance and maintenance. She was not reimbursed for the fuel, insurance and maintenance of her van. Plaintiff was also required to purchase a uniform with "OnTrac" logo on it but was not reimbursed for the uniform purchase and maintenance. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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.

Within the applicable statute of limitations, the employment of Plaintiff and many Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continues to fail to pay to Plaintiff and the Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time, missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate

until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked, their time for statutory rest breaks and recovery and other Non-Driving Tasks in California prior to or upon termination or separation from employment with Defendant as required by Labor Code § 201 and 202.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly list gross wages earned, the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, time spent for Non-Driving Tasks, rest and recovery periods and correct wages earned for all hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, wages for Non-Driving Tasks, recovery and rest periods and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1194.2, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 558, 1174.5, 1197.1, 2802, 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
TUNYAN LAW, APC



535 N Brand Blvd. Suite 285
Glendale, CA 91203
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

February 19, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Subcontracting Concepts (CT), LLC
One Broad St. Plaza
Glens Falls, NY 12801

VIA CERTIFIED MAIL

Return Receipt Requested

OnTrac Logistics, Inc.
8401 Greensboro Drive, 7th Floor
McLean, VA 22102

VIA CERTIFIED MAIL

Return Receipt Requested

CSC-Lawyers Incorporating Service
Registered Corporate 1505 Agent
Agent for Service of Process for
Subcontracting Concepts (CT), LLC
OnTrac Logistics, Inc.
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505

VIA CERTIFIED MAIL

Return Receipt Requested

Wilfrido Vicente
Agent for Service of Process for
GW Express, Inc.
4049 Almond St 202
Riverside, CA 92501

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: Meza v. Subcontracting Concepts (CT), LLC, et al.

To Whom It May Concern:

Please be advised that The Sentinel Firm, APC has been retained by Maria Belen Meza (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers Subcontracting Concepts (CT), LLC, OnTrac Logistics, Inc. and GW Express, Inc. (“Defendants”). Pursuant to the joint prosecution and fee sharing agreement entered between Tunyan Law, APC and The Sentinel Firm, APC and Plaintiff’s written consent to joint prosecution and fee sharing agreement, Tunyan Law, APC and The Sentinel Firm, APC will be jointly prosecuting Plaintiff’s action against Defendants. The purpose of this amended letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as delivery drivers at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendants as a delivery driver from approximately November 2014 to October 2022, primarily in Los Angeles County. Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 6-7 days per week and over 12 hours each workday. Defendants claim that their drivers are independent contractors when they are employees that are controlled by Defendants, paid by Defendants, and whose relationship with Defendants can be terminated for cause. Defendants pay its drivers per delivery. Plaintiff regularly rendered her services to Defendants, which constituted a form of manual labor, and these services were an integral part of Defendants’ business of providing delivery service to its customers. Defendants are delivery companies, and Plaintiff was one of their delivery drivers.

Defendants retained the right to control the method and manner of how Plaintiff and the Aggrieved Employees performed their job duties and retained all necessary control over Plaintiff and the Aggrieved Employees during their employment. To deliver goods from merchants to addresses in its service areas, Defendants’ drivers pick up packages from local warehouses and distribute these packages to homes and businesses within the immediate area. Drivers have to report to Defendants’ warehouse at a set time, accept all packages assigned to them, load their personal vans, and deliver such packages for a set amount of compensation for each delivery.

Among other things, Plaintiff was required to follow detailed requirements imposed on her by Defendants' deliveries. Further, Defendants set the driver's rates, and direct when and where to make their deliveries. Moreover, Defendants tracked Plaintiff and the Aggrieved Employees' efficiency percentage, and could terminate their employment with Plaintiff and the Aggrieved Employees if they did not meet the efficiency percentage. As a result, under applicable law, Plaintiff was an employee of Defendants. See e.g. *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal. 5th 903.

The result of Defendants' misclassification scheme is that Plaintiff and the Aggrieved Employees were, and are, routinely denied payment of minimum wages, overtime and meal and rest period premium wages, repayment of business-related expenses, and other payments provided by California law.

As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum Wage and Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code § 1194, subdivision (a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Labor Code § 226.2 provides "For employees compensated on a piece rate basis... employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Labor Code § 226.2, subdivision (a)(2) requires the itemized statements required by subdivision (a) of section 226 shall, in addition to the other items specified in that subdivision, state the following: total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay

period. Employees are to be compensated for the rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during that workweek, exclusive of rest and recovery periods; (ii) the applicable minimum wage. Employers are required to compensate employees paid on a piece-rate basis for all other nonproductive time at an hourly rate of not less than minimum wage.

Pursuant to Labor Code § 221 it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Pursuant to Labor Code § 224, Labor Code §§ 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Throughout the statutory time period, Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors. As a result of that willful misclassification, Defendants failed to pay Plaintiff and the Aggrieved Employees all wages including minimum wage, regular wages and overtime. To deliver goods from merchants to addresses in its service areas, Defendants' drivers pick up packages from local warehouses and distribute these packages to homes and businesses within the immediate area. Drivers have to report to Defendants' warehouse at a set time, accept all packages assigned to them, load their personal vans, and deliver such packages for a set amount of compensation for each delivery. Plaintiff was assigned 180-220 stops each day. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 6-7 days per week and over 12 hours each workday without overtime and double time payment. Defendants compensated Plaintiff on a "per delivery" piece-rate compensation system with no additional and separate pay on an hourly basis for time spent on rest breaks, inspections, cleaning/fueling and/or paperwork, and loading/unloading time (i.e. the Non-Driving Tasks). Defendants required Plaintiff and the Aggrieved Employees to utilize their own vehicles, pay vehicle insurance, regularly fuel the vehicle to perform work for Defendants as well as use their cell phones for work and purchase uniforms without compensation. Plaintiff and the Aggrieved Employees Plaintiff and the Aggrieved Employees were assigned set routes for deliveries and were assigned the number of stops each day. Moreover, Defendants tracked Plaintiff and the Aggrieved Employees' efficiency percentage, and could terminate their employment with Plaintiff and the Aggrieved Employees if they did not meet the efficiency percentage. In fact, Defendants set profit goals for Plaintiff and the Aggrieved Employees. Additionally, Defendants wrongfully deducted \$30 from each paycheck as a charge for

depositing money to Plaintiff's and the Aggrieved Employees' bank account in blatant violation of California law. Plaintiff never authorized these deductions. Plaintiff and the Aggrieved Employees would deduct the amount of the incurred vehicle, fueling, uniform and cell phone expenses as well as \$30 deductions. The remainder constituted Plaintiff and the Aggrieved Employees' "daily wages".

As set forth above, although Plaintiff and the Aggrieved Employees were misclassified, they were, in reality, employees of Defendants. As further set forth above, Plaintiff and the Aggrieved Employees engaged in several Non-Driving Tasks. Plaintiff and the Aggrieved Employees were paid on a per delivery basis, but Defendants did not separately compensate drivers on an hourly basis for their time spent on statutory rest and recovery periods or Non-Driving Tasks. Accordingly, Plaintiff and the Aggrieved Employees did not receive minimum wage for her on-duty time spent taking statutory rest breaks and recovery time and on Non-Driving Tasks.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1194, 1194.2, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

By virtue of misclassification, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of meal periods. Defendants did not schedule meal periods. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

As alleged herein by virtue of the misclassification of Defendants' drivers, and by failing to provide its drivers with duty-free timely 30-minute meal breaks on their California routes greater

than 5 hours in length, Defendants have violated Labor Code § 226.7 and the relevant IWC Wage Order and are liable to Plaintiff and the Aggrieved Employees.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Under California law, Defendants were obligated to pay Plaintiff and the Aggrieved Employees separately and hourly for her rest break time in California. See also *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law."); *Shook v. Indian Transport Co.*, 2014 WL 7178199 (E.D. Cal. Dec. 15, 2014) (adopting *Bluford* and noting that, "IRT has not identified any split in the California appellate courts that would indicate that there is any disagreement over whether piece-rate workers must be separately compensated for breaks"); *Cardenas v. McLane Food Services, Inc.* (C.D. Cal. 2011) 796 F. Supp. 2d. 1246, 1252 (piece-rate pay system that did not separately pay truck drivers for rest periods and other non-driving tasks violates California law requiring compensation for each hour worked); and *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49 (favorably citing and adopting *Cardenas*).

Courts have interpreted Section 12 of the applicable Wage Order to mean that employees paid on a piece-rate must receive separate and hourly pay for their time spent on rest breaks. See, e.g. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law. ").

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four

hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Additionally, Defendants failed to separately pay for Non-Driving Tasks. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred as a direct consequence of the discharge of their duties or of their obedience to directions of the employer.

By virtue of misclassification throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. At the direction of Defendants and/or with Defendants' knowledge and acquiescence, Plaintiff and the Aggrieved Employees had to use her personal cell phone for an application to receive the schedule and the routes of deliveries as well as to scan deliveries and to report the delivered packages on daily basis. They were not reimbursed for personal cell phone usage. Plaintiff and the Aggrieved Employees also used their personal vehicles to make deliveries. In order to conduct her daily work, Plaintiff incurred costs in fueling her van amounting to significant amount each month. Plaintiff was also required to pay for her vehicle insurance and maintenance. She was not reimbursed for the fuel, insurance and maintenance of her van. Plaintiff was also required to purchase a uniform with "OnTrac" logo on it but was not reimbursed for the uniform purchase and maintenance. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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.

Within the applicable statute of limitations, the employment of Plaintiff and many Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continues to fail to pay to Plaintiff and the Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time, missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked, their time for statutory rest breaks and recovery and other Non-Driving Tasks in California prior to or upon termination or separation from employment with Defendant as required by Labor Code § 201 and 202.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly list gross wages earned, the failure to list the true net wages earned, including wages for meal periods that

were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, time spent for Non-Driving Tasks, rest and recovery periods and correct wages earned for all hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, wages for Non-Driving Tasks, recovery and rest periods and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1194.2, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 558, 1174.5, 1197.1, 2802, 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, February 8, 2024 1:57:19 PM

2/8/2024

LWDA Case No. LWDA-CM-1009960-24
Law Firm : Tunyan Law, APC
Plaintiff Name : Maria Belen Meza
Employer: Subcontracting Concepts (CT), LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: [DIR PAGA Unit](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for your Amended PAGA Claim Notice Submission.
Date: Monday, February 19, 2024 9:20:55 AM

02/19/2024 09:20:35 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

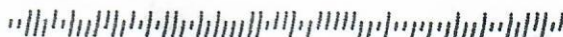
USPS TRACKING#



9590 9402 8114 2349 9462 36

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

**TUNYAN LAW, APC**535 N. Brand Blvd. STE 285
Glendale, CA 91203First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10**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.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SUBCONTRACTING CONCEPTS (CT), LLC
ONE BROAD ST. PLAZA
GLEN FALLS, NY 12801

9590 9402 8114 2349 9462 36

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6461 62

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *William Eddy*☐ Agent☐ Addressee

B. Received by (Printed Name)

William Eddy

C. Date of Delivery

2/29/24

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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

Domestic Return Receipt

USPS TRACKING#



NOV 22 12 20 24 PM 6 L

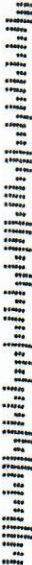
9402 8114 2349 9462 74

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10States
Service

• Sender: Please print your name, address, and ZIP+4® in this box*

TUNYAN LAW, APC
535 N. Brand Blvd. STE 285
Glendale, CA 91203

50

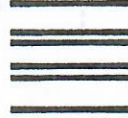


USPS TRACKING#



ALBANY NY 1220 13 FEB 2024 PM 2 L

9590 9402 8114 2349 9463 04

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box*

TUNYAN LAW, APC
535 N. Brand Blvd. STE 285
Glendale, CA 91203

3-195360



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.
Attach this card to the back of the mailpiece, or on the front if space permits.

NETRAC LOGISTICS, INC.
101 GREENSBORO DRIVE,
7TH FLOOR
McLEAN, VA 22102



9590 9402 8114 2349 9462 74

Article Number (Transfer from service label)

589 0710 5270 0112 6460 87

Mail Restricted Delivery

00

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

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
B. Received by (Printed Name) ☐ Addressee
C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Priority Mail Express®
☐ Adult Signature
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Signature Confirmation™
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

Mail Restricted Delivery

00

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

Domestic Return Receipt

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.
Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SUBCONTRACTING CONCEPTS (CT), LLC
ONE BROAD ST PLAZA
GLEN FALLS, NY 12801



9590 9402 8114 2349 9463 04

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6460 70

Mail Restricted Delivery

00

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

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
B. Received by (Printed Name) ☐ Addressee
C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Priority Mail Express®
☐ Adult Signature
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Signature Confirmation™
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

Mail Restricted Delivery

00

Domestic Return Receipt

USPS TRACKING #



9590 9402 8114 2349 9462 81

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•



TUNYAN LAW, APC

535 N. Brand Blvd. STE 285
Glendale, CA 91203

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10



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.
- Attach this card to the back of the mailpiece.

CSC-LAWYERS INCORPORATING SERVICE
AGENT FOR SERVICE OF PROCESS FOR
SUBCONTRACTING CONCEPTS (CT), LLC
OnTRAC LOGISTICS, INC.
2710 GATEWAY OAKS DRIVE, SUITE 150N
SACRAMENTO, CA 95833-3505



9590 9402 8114 2349 9462 81

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6460 63

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name) *MOHAC* Date of Delivery *2/12/21*

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

Domestic Return Receipt

USPS TRACKING #



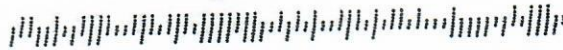
9590 9402 8114 2349 9462 29

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

**TUNYAN LAW, APC**535 N. Brand Blvd. STE 285
Glendale, CA 91203First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

3-156360



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.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ONTRAC LOGISTICS, INC.
8401 GREENSBORO DRIVE,
7th FLOOR
McLEAN, VA 22102



9590 9402 8114 2349 9462 29

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6461 79

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted DeliveryMail Restricted Delivery
(00)

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

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Sacramento, CA 95833

Certified Mail Fee \$4.40
\$3.65
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.63

Total Postage and Fees \$9.63

Sent To

Street and Apt. No., or

City, State, ZIP+4®

PS Form 3800, January 2019

CSC-LAWYERS INCORPORATING SERVICE
AGENT FOR SERVICE OF PROCESS FOR
SUBCONTRACTING CONCEPTS (CT), LLC
ONTRAC LOGISTICS, INC.
2710 GATEWAY OAKS DRIVE, SUITE 150N
SACRAMENTO, CA 95833-3505

0026
18

Postmark
Here

02/20/2024

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

McLean, VA 22102

Certified Mail Fee \$4.40
\$3.65
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.63

Total Postage and Fees \$9.63

Sent To

Street and Apt. No., or P

City, State, ZIP+4®

PS Form 3800, January 2019

ONTRAC LOGISTICS, INC.
8401 GREENSBORO DRIVE,
7th FLOOR
McLEAN, VA 22102

0026
18

Postmark
Here

02/20/2024

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Glens Falls, NY 12801

Certified Mail Fee \$4.40
\$3.65
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.63

Total Postage and Fees \$9.63

Sent To

Street and Apt. No., or

City, State, ZIP+4®

PS Form 3800, January 2019

SUBCONTRACTING CONCEPTS (CT), LLC
ONE BROAD ST. PLAZA
GLEN FALLS, NY 12801

0026
18

Postmark
Here

02/20/2024

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Riverside, CA 92501

Certified Mail Fee \$4.40
\$3.65
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.63

Total Postage and Fees \$9.63

Sent To

Street and Apt. No., or

City, State, ZIP+4®

PS Form 3800, January 2019

WILFRIDO VICENTE
AGENT FOR SERVICE OF PROCESS
GW EXPRESS, INC.
4049 ALMOND ST 202
RIVERSIDE, CA 92501

0026
18

Postmark
Here

02/20/2024



**UNITED STATES
POSTAL SERVICE.**

EDENDALE
1525 N ALVARADO ST
LOS ANGELES, CA 90026-9998
(800)275-8777

02/20/2024

01:06 PM

Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope Riverside, CA 92501 Weight: 0 lb 1.40 oz Estimated Delivery Date Thu 02/22/2024	1		\$1.63
Certified Mail® Tracking #: 9589 0710 5270 0112 6461 93			\$4.40
Return Receipt Tracking #: 9590 9402 8114 2349 9462 05			\$3.65
Total			\$9.68
First-Class Mail® Large Envelope Sacramento, CA 95833 Weight: 0 lb 1.50 oz Estimated Delivery Date Fri 02/23/2024	1		\$1.63
Certified Mail® Tracking #: 9589 0710 5270 0112 6461 86			\$4.40
Return Receipt Tracking #: 9590 9402 8114 2349 9462 12			\$3.65
Total			\$9.68
First-Class Mail® Large Envelope McLean, VA 22102 Weight: 0 lb 1.40 oz Estimated Delivery Date Mon 02/26/2024	1		\$1.63
Certified Mail® Tracking #: 9589 0710 5270 0112 6461 79			\$4.40
Return Receipt Tracking #: 9590 9402 8114 2349 9462 29			\$3.65
Total			\$9.68
First-Class Mail® Large Envelope Glens Falls, NY 12801 Weight: 0 lb 1.40 oz Estimated Delivery Date Mon 02/26/2024	1		\$1.63
Certified Mail® Tracking #: 9589 0710 5270 0112 6461 62			\$4.40
Return Receipt Tracking #: 9590 9402 8114 2349 9462 36			\$3.65
Total			\$9.68
Grand Total:			\$38.72
Credit Card Remit			\$38.72
Card Name: VISA Account #: XXXXXXXXXXXX0153 Approval #: 08932G Transaction #: 089 AID: A0000000031010 Contactless AL: VISA CREDIT CHASE VISA			

Text your tracking number to 28777 (2USPS)
to get the latest status. Standard Message
and Data rates may apply. You may also

USPS Tracking®

[Tracking](#)[FAQs](#) >

Get the free Informed Delivery® feature to receive automated notifications on your packages.

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Tracking Number:

[Remove X](#)**9505514432974073784368**[Copy](#) [Add to Informed Delivery](#)**Latest Update**

Your item was delivered in or at the mailbox at 11:57 am on March 14, 2024 in RIVERSIDE, CA 92501.

Get More Out of USPS Tracking:

[USPS Tracking Plus®](#)**Delivered**

Delivered, In/At Mailbox
RIVERSIDE, CA 92501
March 14, 2024, 11:57 am

Arrived at Post Office
RIVERSIDE, CA 92501
March 14, 2024, 10:28 am

Arrived at USPS Regional Facility
SAN BERNARDINO CA DISTRIBUTION CENTER
March 14, 2024, 2:20 am

Departed USPS Regional Facility
SANTA CLARITA CA DISTRIBUTION CENTER
March 13, 2024, 11:59 pm

Arrived at USPS Regional Origin Facility
SANTA CLARITA CA DISTRIBUTION CENTER
March 13, 2024, 5:43 pm

USPS in possession of item
GLENDALE, CA 91206
March 13, 2024, 11:00 am

[Hide Tracking History](#)[What Do USPS Tracking Statuses Mean?](#)

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)

) ss

3 COUNTY OF LOS ANGELES)

4 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not
a party to the within action; my business address is 535 N. Brand Blvd., Suite 285, Glendale, CA 91203.

5 On the date indicated below, I served the document described as: **SECOND AMENDED**
6 **COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested
parties as follows and as stated on the
attached service list:

Damon M. Ott

DOtt@littler.com

Alvin Arceo

AArceo@littler.com

Anthony G. Ly

aly@littler.com

Diana Al-Awadhi

DAAlAwadhi@littler.com

Madison Edwards

MEdwards@littler.com

Joanna Venegas

JVenegas@littler.com

LITTLER MENDELSON. P.C.

101 Second Street, Suite 1000

San Francisco, CA 9410550

Telephone: 415 (743) 6663

Attorneys for Defendant SUBCONTRACTING CONCEPTS (CT), LLC

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Jannie Steck

jsteck@scopelitis.com

Andrew Ireland

aireland@scopelitis.com

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, PC

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Chris McNatt

Cmcnatt@scopelitis.com

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP

2 North Lake Ave., Suite 560

Pasadena, CA 91101

Attorneys for Defendant ONTRAC LOGISTICS, INC.

22 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept
23 electronic service, I caused the documents to be sent to the persons at the electronic service
addresses listed above via third-party cloud service **CASEANYWHERE**. I did not receive an
24 error message.

25 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on June 17, 2024 at Glendale, California.

26 Lilit Tunyan

27 Name



Signature