

1 James M. Trush, Esq. (#140088)
2 TRUSH LAW OFFICE, APC
3 695 Town Center Drive, Suite 700
4 Costa Mesa, CA 92626-7187
5 Phone: (714) 384-6390; Fax: (714) 384-6391
6 Email: itrush@earthlink.net

7 Todd H. Harrison, Esq. (#230542)
8 Brennan S. Kahn, Esq. (#259548)
9 PERONA, LANGER, BECK, SERBIN,
10 MENDOZA & HARRISON, APC.
11 300 East San Antonio Drive
12 Long Beach, California 90807
13 Phone: (562) 426-6155; Fax: (562) 490-9823
14 Email: toddharrison@plblaw.com

15 Attorneys for Plaintiff, PATRICK LACROSS, ROBERT LIRA and MATTHEW LOFTON on behalf of
16 themselves and all others similarly situated

17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

16 PATRICK LACROSS, ROBERT LIRA,)
17 and MATTHEW LOFTON, on behalf)
18 of themselves and all others similarly)
19 situated,)

20 Plaintiffs,)

21 vs.)

22 KNIGHT TRANSPORTATION, INC.,)
23 an Arizona Corporation; KNIGHT)
24 TRUCK and TRAILER SALES, LLC,)
25 an Arizona Limited Liability Company;)
26 and DOES 1 through 100, inclusive,)

27 Defendants.)
28)

CASE NO. CIVD81402566

CLASS ACTION

COMPLAINT FOR:

1. RECOVERY OF UNPAID WAGES;
2. FAILURE TO PROVIDE MEAL PERIODS;
3. ILLEGAL DEDUCTIONS FROM WAGES;
4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
5. FAILURE TO REIMBURSE BUSINESS EXPENSES;
6. FAILURE TO TIMELY PAY WAGES UPON SEPARATION;
7. CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE 2698, ET. SEQ
8. UNFAIR BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO

MAR 08 2014

BY Michael J. Grillo
MICHAEL J. GRILLO, DEPUTY

TRIAL SETTING CONFERENCE

Hearing Set for:

Date: 8/29/14

Time: 8:30 AM

Dept: 928

1 Plaintiffs PATRICK LACROSS, ROBERT LIRA and MATTHEW LOFTON, on behalf of
2 themselves and all others similarly situated, (hereinafter referred to as "Plaintiffs"), hereby file this
3 Complaint against Defendants KNIGHT TRANSPORTATION, INC., an Arizona corporation,
4 KNIGHT TRUCK and TRAILER SALES, LLC, an Arizona limited liability company, and DOES 1
5 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and
6 on the basis of that information and belief, allege as follows:

7 I.

8 INTRODUCTION

9 1. This is a civil action seeking recovery of unpaid wages and penalties for Defendants'
10 violations of California Labor Code ("Labor Code") §1194, et seq., Labor Code §200, et seq., Labor
11 Code §500, et seq., Labor Code section 2698, et. seq., California Business and Professions Code
12 ("B&PC") §17200, et seq., Wage Order No. 9 issued by the California Industrial Welfare
13 Commission (hereinafter collectively the "Wage Order") and related common law principles.

14 2. At all relevant times alleged herein, Wage Order No. 9-2001 applicable to the
15 transportation industry, applied to Plaintiffs and the members of the Classes herein.

16 3. Plaintiffs' action seeks monetary damages, including full restitution from Defendants
17 as a result of Defendants' unlawful, fraudulent and unfair business practices.

18 4. The acts complained of herein occurred, occur and will occur, at least in part, within
19 the time period from four (4) years preceding the filing of this complaint, up to and through the
20 entry of judgment in this matter (hereinafter, the "relevant time period").

21 RELEVANT JOB TITLES

22 5. The relevant job titles in this action are persons that worked for Defendants' as
23 California-based Owner Operators and were classified by Defendants as independent contractors,
24 during the relevant time period, ("Owner Operators" or the "Classes").

25 SUMMARY OF CLAIMS

26 6. With regard to the Owner Operators, Defendants have incorrectly and illegally
27 classified them as independent contractors, rather than employees, and as a result have:

28 (a) failed to pay overtime pay for all overtime hours worked;

- (b) failed to pay regular and/or minimum wages for all hours worked;
- (c) made illegal deductions from wages;
- (d) failed to provide meal periods;
- (e) failed to provide accurate itemized wage statements;
- (f) failed to reimburse for business expenses;
- (g) failed to timely pay wages upon separation from employment; and
- (h) conducted unfair business practices.

II.

THE PARTIES

PLAINTIFF PATRICK LACROSS

7. Plaintiff PATRICK LACROSS is now and/or at all times mentioned in this Complaint was an individual over the age of eighteen (18) and a resident of the State of California.

8. During the relevant time period, Plaintiff PATRICK LACROSS regularly worked for Defendants as a California-based Owner Operator at Defendants' service center facility in Fontana, California, from approximately July 2011 through October 2011. Plaintiff PATRICK LACROSS was improperly classified as an independent contractor, rather than an employee, during the time period that he worked for Defendants as an Owner Operator.

PLAINTIFF ROBERT LIRA

9. Plaintiff ROBERT LIRA is now and/or at all times mentioned in this Complaint was an individual over the age of eighteen (18) and a resident of the State of California.

10. During the relevant time period, Plaintiff ROBERT LIRA regularly worked for Defendants as a California-based Owner Operator at Defendants' service center facility in Fontana, California, from approximately January 2010 through January 2011. Plaintiff ROBERT LIRA was improperly classified as an independent contractor, rather than an employee, during the time period that he worked for Defendants as an Owner Operator.

PLAINTIFF MATTHEW LOFTON

11. Plaintiff MATTHEW LOFTON is now and/or at all times mentioned in this Complaint was an individual over the age of eighteen (18) and a resident of the State of California.

1 12. During the relevant time period, Plaintiff MATTHEW LOFTON regularly worked for
2 Defendants as a California-based Owner Operator at Defendants' service center facility in Fontana,
3 California, from approximately May 2011 through October 2013. Plaintiff MATTHEW LOFTON
4 was improperly classified as an independent contractor, rather than an employee, during the time
5 period that he worked for Defendants as an Owner Operator.

6 13. The obligations and responsibilities of Defendants' Company Driver position are
7 virtually identical throughout Defendants' operation and employee to employee. Any differences in
8 job activities between the different individuals in these positions were and are legally insignificant
9 to the issues presented by this action.

10 14. Plaintiffs do not pursue any claims in this action against the Defendants for the time period
11 they were classified as employees and worked as a Company Driver.

12 15. Defendants' Owner Operator positions do not involve work that falls within any
13 overtime exemption in Labor Code §515 or the applicable Wage Order.

14 16. During the relevant time period, Plaintiffs and the other aggrieved employees were based out
15 of California, and performed the duties of truck drivers. Defendants misclassified Plaintiffs and the other
16 aggrieved employees as independent contractors and referred to them as Owner Operators. During the
17 relevant time period, Defendants exercised control over the wages, hours and working conditions of
18 Plaintiffs and the other aggrieved employees, such that Plaintiffs and the other aggrieved employees should
19 have been classified as employees of Defendants. During the relevant time period, Defendants had the
20 right to control the manner and means by which Plaintiffs and the other aggrieved employees accomplished
21 the work, such that they should have been classified as employees of Defendants. The services Plaintiffs
22 and the other aggrieved employees performed for Defendants were not in any way distinct from those
23 services Defendants provided to customers. The work Plaintiffs and the other aggrieved employees
24 performed is part of the regular business of Defendants.

25 17. Despite Defendants' characterization to the contrary, at all relevant times, Plaintiffs and the
26 aggrieved employees have been employees of Defendants and, as such, have been entitled to the
27 protections of the California Labor Code and the Wage Order.

28 ///

1 18. At all relevant times, Defendants willfully misclassified Plaintiffs and the other aggrieved
2 employees as independent contractors. At all relevant times, Defendants have engaged in a pattern and/or
3 practice of doing so.

4 19. At all relevant times, Plaintiffs and the other aggrieved employees were willfully
5 misclassified as independent contractors in violation of Labor Code §226.8(a)(1).

6 20. At all relevant times, Plaintiffs and the other aggrieved employees were willfully
7 misclassified as independent contractors and were charged fees, and had deductions from their
8 compensation for various purposes, including but not limited to, for goods, materials, services, government
9 licenses, repairs, equipment maintenance, or fines arising from Plaintiffs and the other aggrieved
10 employees' employment, in violation of Labor Code §226.8(a)(2).

11 21. Plaintiffs PATRICK LACROSS, ROBERT LIRA, and MATTHEW LOFTON seek
12 unpaid wages, penalties and other unpaid compensation from Defendants during the relevant time
13 period because Defendants improperly and illegally classified them as independent contractors,
14 rather than employees and as a result have:

- 15 (a) failed to pay Plaintiffs overtime for all overtime hours worked;
- 16 (b) failed to pay Plaintiffs regular and/or minimum wages for all hours worked;
- 17 (c) made illegal deductions from the wages of Plaintiffs;
- 18 (d) deprived Plaintiffs of the requisite meal periods;
- 19 (e) failed to maintain adequate records for Plaintiffs pursuant to Labor Code
20 §226(a);
- 21 (f) failed to reimburse Plaintiffs for business expenses; and
- 22 (g) failed to timely pay Plaintiffs all wages due upon separation of employment.

23 **DEFENDANT, KNIGHT TRANSPORTATION, INC.**

24 22. Defendant KNIGHT TRANSPORTATION, INC. is now and/or at all times
25 mentioned in this Complaint was an Arizona corporation licensed to do business and actually doing
26 business in the State of California.

27 23. Defendant KNIGHT TRANSPORTATION, INC. is now and/or at all times
28 mentioned in this Complaint was the owner and operator of an industry, business and/or facility in

1 numerous geographic locations within the State of California, including San Bernardino County.
2 Defendant KNIGHT TRANSPORTATION, INC. provides truckload transportation services, which
3 involves moving freight by truck for customers in California and other parts of the country.

4 24. Plaintiffs are informed and believe that Defendant KNIGHT TRANSPORTATION,
5 INC. maintains and operates its service center facility in Fontana, California.

6 **DEFENDANT, KNIGHT TRUCK and TRAILER SALES, LLC**

7 25. Defendant KNIGHT TRUCK and TRAILER SALES, LLC is now and/or at all times
8 mentioned in this Complaint was an Arizona limited liability company licensed to do business and
9 actually doing business in the State of California.

10 26. Defendant KNIGHT TRUCK and TRAILER SALES, LLC is now and/or at all times
11 mentioned in this Complaint was the owner and operator of an industry, business and/or facility in
12 numerous geographic locations within the State of California, including San Bernardino County.
13 Defendant KNIGHT TRUCK and TRAILER SALES, LLC provides truck leasing, sales and related
14 services, which involves customers in California and other parts of the country.

15 27. Plaintiffs are informed and believe that Defendant KNIGHT TRUCK and TRAILER
16 SALES, LLC maintains and operates some or all of its business activities from a service center
17 facility in Fontana, California.

18 **DOES 1 TO 100, INCLUSIVE**

19 28. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint
20 were licensed to do business and/or actually doing business in the State of California.

21 29. Plaintiffs do not know the true names or capacities, whether individual, partner or
22 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such
23 fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

24 30. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
25 capacities as soon as they are ascertained.

26 **ALL DEFENDANTS**

27 31. At all times herein mentioned, Defendants were and are engaged in the business of
28 truckload transportation services, which involves moving freight by truck for customers in various

1 parts of the United States, including the State of California.

2 32. Defendants, and each of them, are now, and/or at all times mentioned in this
3 Complaint were in some manner legally responsible for the events, happenings and circumstances
4 alleged in this Complaint.

5 33. Defendants proximately caused Plaintiffs, all others similarly situated and the general
6 public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages
7 alleged in this Complaint.

8 34. Defendants, and each of them, are now, and/or at all times mentioned in this
9 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
10 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
11 mentioned in this Complaint were acting within the course and scope of that agency, servitude
12 and/or employment.

13 35. Defendants, and each of them, are now, and/or at all times mentioned in this
14 Complaint were members of, and/or engaged in, a joint venture, partnership and common enterprise,
15 and acting within the course and scope of, and in pursuance of said joint venture, partnership and
16 common enterprise.

17 36. Defendants, and each of them, at all times mentioned in this Complaint concurred and
18 contributed to the various acts and omissions of each and every one of the other Defendants in
19 proximately causing the complaints, injuries and/or damages alleged in this Complaint.

20 37. Defendants, and each of them, at all times mentioned in this Complaint approved of,
21 condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this
22 Complaint.

23 38. Defendants, and each of them, at all times mentioned in this Complaint aided and
24 abetted the acts and omissions of each and every one of the other Defendants thereby proximately
25 causing the damages alleged in this Complaint.

26 39. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and
27 each of them, acted pursuant to and in furtherance of a policy and practice of (1) misclassifying Plaintiffs
28 and the other aggrieved employees as independent contractors and (2) violating their rights as employees

1 under the Labor Code and the Wage Order to minimize: wages for all hours worked, overtime wages for
2 overtime hours worked, reimbursement and indemnification for all necessary expenditures or losses
3 incurred in direct consequence of the discharge of their duties or their obedience to the directions of
4 Defendants, reimbursement for all tools and equipment required by Defendants or necessary to the
5 performance of the job, required rest and meal periods, timely final wages, and accurate and complete wage
6 statements.

7 III.

8 JURISDICTION AND VENUE

9 40. The California Superior Court has jurisdiction in this matter due to Defendants'
10 violations of Labor Code §201, et seq., Labor Code §500, et seq., Labor Code section 2698, et. seq.,
11 Labor Code §1194, B&PC §17200, et seq., the Wage Orders and related common law principles.

12 41. The San Bernardino County Superior Court is the proper venue in this matter pursuant
13 to CCP §395(a) and §395.5 as at least some of the transactions which are the subject matter of this
14 Complaint occurred in the County of San Bernardino and/or each Defendants either is found within,
15 maintains offices, transacts business, and/or has an agent or agents within the County of
16 San Bernardino.

17 IV.

18 CLASS ACTION ALLEGATIONS

19 42. Plaintiffs bring this suit as a class action pursuant to CCP §382, on behalf of
20 individuals who are entitled to the monies unlawfully withheld by Defendants.

21 43. The putative Classes that Plaintiffs will seek to certify are currently composed of and
22 defined as follows:

- 23 Class 1: All persons that entered into an Independent Contractor Operating
24 Agreement and Tractor Lease Agreement with Defendants and worked
25 as a California-based Owner Operator and was classified as an
26 independent contractor, during the relevant time period ("Class 1"); and
27 Class 2: All persons that worked for Defendants pursuant to the terms of an
28 independent contractor agreement as a California-based Owner Operator

1 and was classified as an independent contractor, during the relevant time
2 period ("Class 2").

3 Class 3: All persons that worked for Defendants as a California-based Owner
4 Operator and was classified as an independent contractor, during the
5 relevant time period ("Class 3").

6 (hereinafter collectively referred to as the "Classes").

7 44. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
8 necessary to amend the definition of the Classes. In any event, Plaintiffs will formally define and
9 designate a definition of the Classes at such time when Plaintiffs seeks to certify the Classes alleged
10 herein.

11 45. Numerosity (CCP §382): The potential quantity of members of the Classes as defined
12 is so numerous that joinder of all members would be unfeasible and impractical. The disposition of
13 their claims through this Classes action will benefit both the parties and this Court. The quantity of
14 members of the Classes is unknown to Plaintiffs at this time, however, it is estimated that the
15 Classes number greater than 100 individuals. The quantity and identity of such membership is
16 readily ascertainable via inspection of Defendants' records.

17 46. Typicality: The claims of Plaintiffs are typical of the claims of all members of the
18 Classes mentioned herein because all members of the Classes sustained injuries and damages
19 arising out of Defendants' common course of conduct in violation of law and the injuries and
20 damages of all members of the Classes were caused by Defendants' wrongful conduct in violation
21 of law, as alleged herein.

22 47. Adequacy: Plaintiffs are adequate representatives of the Classes herein, will fairly
23 protect the interests of the members of the Classes, have no interests antagonistic to the members of
24 the Classes and will vigorously pursue this suit via attorneys who are competent, skilled and
25 experienced in litigating matters of this type.

26 48. Superiority (CCP §382): The nature of this action and the nature of laws available to
27 Plaintiffs make use of the class action format particularly efficient and appropriate procedure to
28 afford relief to plaintiffs for the wrongs alleged herein, as follows:

- 1 (a) California has a public policy which encourages the use of the class action
2 device;
- 3 (b) By establishing a technique whereby the claims of many individuals can be
4 resolved at the same time, the class suit both eliminates the possibility of
5 repetitious litigation and provides small claimants with a method of obtaining
6 redress for claims which would otherwise be too small to warrant individual
7 litigation;
- 8 (c) This case involves a small number of large corporate Defendants and a large
9 number of individual class members with many relatively small claims and
10 common issues of law and fact;
- 11 (d) If each individual member of each of the Classes was required to file an
12 individual lawsuit, the large corporate Defendants would necessarily gain an
13 unconscionable advantage because Defendants would be able to exploit and
14 overwhelm the limited resources of each individual member of the Classes with
15 Defendants' vastly superior financial and legal resources;
- 16 (e) Requiring each individual member of each of the Classes to pursue an
17 individual remedy would also discourage the assertion of lawful claims by the
18 members of the Classes who would be disinclined to pursue an action against
19 Defendants because of an appreciable and justifiable fear of retaliation and
20 permanent damage to their lives, careers and well-being;
- 21 (f) Proof of a common business practice or factual pattern, of which the members
22 of the Classes experienced, is representative of the Classes herein and will
23 establish the right of each of the members of the Classes to recover on the
24 causes of action alleged herein;
- 25 (g) Absent class treatment, the prosecution of separate actions by the individual
26 members of the Classes, even if possible, would create a substantial risk of
27 inconsistent or varying verdicts or adjudications with respect to the individual
28 members of the Classes against Defendants; and which would establish

1 potentially incompatible standards of conduct for Defendants; and/or legal
2 determinations with respect to individual members of the Classes which would,
3 as a practical matter, be dispositive of the interest of the other members of the
4 Classes who are not parties to the adjudications or which would substantially
5 impair or impede the ability of the members of the Classes to protect their
6 interests;

7 (h) The claims of the individual members of the Classes are not sufficiently large
8 to warrant vigorous individual prosecution considering all of the concomitant
9 costs and expenses attending thereto; and

10 (i) Courts seeking to preserve efficiency and other benefits of class actions
11 routinely fashion methods to manage any individual questions. The Supreme
12 Court of California urges trial courts to be procedurally innovative in managing
13 class actions, which have an obligation to consider the use of innovative
14 procedural tools to certify a manageable class.

15 49. Existence and Predominance of Common Questions of Fact and Law (CCP §382):

16 There are common questions of law and fact as to the members of the Classes which predominate
17 over questions affecting only individual members of the Classes including, without limitation,
18 whether the classes were improperly and/or illegally classified as independent contractors, rather
19 than employees, and as a result:

20 (a) Whether the members of the Classes were expected to and/or mandated to
21 regularly work overtime;

22 (b) Whether Defendants failed to pay overtime compensation to members of the
23 Classes based upon all hours worked in violation of the Labor Code and the
24 Wage Orders;

25 (c) Whether Defendants failed to pay compensation and/or minimum wage to
26 members of the Classes based upon all hours worked, in violation of the Labor
27 Code and the Wage Orders;

28 ///

- 1 (d) Whether the manner in which Defendants paid the Classes was lawful;
- 2 (e) Whether Defendants made illegal deductions from the wages of the members
- 3 of the Classes in violation of the Labor Code and the Wage Orders;
- 4 (f) Whether Defendants failed and continue to fail to provide meal periods to the
- 5 members of the Classes in violation of the Wage Orders;
- 6 (g) Whether Defendants failed to keep adequate records for the members of the
- 7 Classes pursuant to Labor Code 226(a) (and the consequence for such statutory
- 8 violations if Defendants did not);
- 9 (h) Whether Defendants made illegal deductions from the wages of the members
- 10 of the Classes;
- 11 (i) Whether Defendants failed to reimburse members of the Classes for business
- 12 expenses;
- 13 (j) Whether the members of the Classes that are no longer employed by
- 14 Defendants are entitled to penalties pursuant to Labor Code §203;
- 15 (k) The correct statute of limitations for the claims of the members of the Classes;
- 16 (l) Whether Defendants' conduct constitutes unfair competition within the
- 17 meaning of B&PC §17200 and §17203;
- 18 (m) Whether Defendants' conduct constitutes unfair business practices within the
- 19 meaning of B&PC §17200 and §17203;
- 20 (n) Whether the members of the Classes are entitled to compensatory damages,
- 21 and if so, the means of measuring such damages;
- 22 (o) Whether the members of the Classes are entitled to injunctive relief;
- 23 (p) Whether the members of the Classes are entitled to restitution;
- 24 (q) Whether Defendants are liable for punitive damages;
- 25 (r) Whether Defendants are liable for pre-judgment interest; and
- 26 (s) Whether Defendants are liable for attorneys' fees and costs.
- 27 50. Whether each member of the Classes might be required to ultimately justify an
- 28 individual claim does not preclude maintenance of a Classes action. *Collins v. Rocha* (1972) 7

1 Cal.3d 232, 238.

2
3 **FIRST CAUSE OF ACTION**
4 **RECOVERY OF UNPAID WAGES**
5 **(Against All Defendants)**

6 51. Plaintiffs incorporate by reference and reallege each and every one of the allegations
7 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

8 52. Defendants improperly and/or illegally classified the Plaintiffs and the Classes as
9 independent contractors, rather than employees and as a result, pursuant to the Wage Order,
10 Defendants are required to pay the members of the Classes for all hours worked, meaning the time
11 during which an employee is subject to the control of an employer, including all the time the
12 employee is suffered or permitted to work, whether or not required to do so.

13 53. Labor Code §510(a) states: "Any work in excess of eight hours in one workday and
14 any work in excess of 40 hours in any one workweek and the first eight hours worked on the
15 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
16 one-half times the regular rate of pay for an employee." Labor Code §510(a) further states: "Any
17 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
18 regular rate of pay for an employee." Labor Code §510(a) further states: "[A]ny work in excess of
19 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
20 the regular rate of pay of an employee."

21 54. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the
22 hours set by the Industrial Welfare Commission, or under conditions prohibited by the applicable
23 Wage Orders, including but not limited to, failing to keep records of and failing to correctly report
24 hours worked.

25 55. Labor Code §1174 requires that every person employing labor in this state shall keep
26 (1) a record showing the names and addresses of all employees employed and the ages of all
27 minors; (2) at a central location in the state or at the plants or establishments at which employees are
28 employed, payroll records showing the hours worked daily by and the wages paid to, and the
number of piece-rate units earned by and any applicable piece rate paid to, employees employed at

1 the respective plants or establishments; (3) such records in accordance with rules established for this
2 purpose by the commission, but in any case, on file for not less than three years. This statute also
3 prevents an employer from prohibiting an employee from maintaining a personal record of hours
4 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
5 keep the records required by §1174.

6 56. At all relevant times alleged herein, Wage Order No. 9-2001 applicable to the
7 transportation industry, applied to Plaintiffs and the members of the Classes herein.

8 57. At all relevant times alleged herein, Wage Order No. 9-2001 provided for payment of
9 overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
10 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
11 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked
12 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)
13 hours on the seventh (7th) day of work in any one workweek.

14 58. Plaintiffs and the members of the Classes do not satisfy any of the exemptions from
15 the overtime requirements of the Labor Code, or the Wage Order.

16 59. Labor Code §204 establishes the fundamental right of all employees in the State of
17 California to be paid wages in a timely fashion for their work, including overtime.

18 60. Defendants failed to pay Plaintiffs and members of the Classes overtime and/or
19 regular wages and/or minimum wages based upon all hours worked, based on Defendants' uniform
20 policies and procedures.

21 61. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the
22 Labor Commission is unlawful.

23 62. Defendants suffered and permitted the members of the Classes to work and required
24 the members of the Classes to remain under Defendants' control without paying therefore, which
25 resulted in the members of the Classes earning less than the legal minimum wage in the State of
26 California.

27 63. Wage Order No. 9-2001 states: "(A) Every employer shall pay to each employee
28 wages not less than seven dollars and fifty cents (\$7.50) per hour for all hours worked, effective

1 January 1, 2007, and not less than eight dollars (\$8.00) per hour for all hours worked, effective
2 January 1, 2008, except: LEARNERS. Employees during their first 160 hours of employment in
3 occupations, in which they have no previous similar or related experience, may be paid not less than
4 85 percent of the minimum wage rounded to the nearest nickel. (B) Every employer shall pay to
5 each employee, on the established payday for the period involved, not less than the applicable
6 minimum wage for all hours worked in the payroll period, whether the remuneration is measured by
7 time, piece, commission, or otherwise.”

8 64. During the relevant time period, Defendants required the members of the Classes to
9 remain under Defendants’ control without paying therefore, which resulted in the members of the
10 Classes earning less than the legal minimum wage in the State of California for all hours worked.

11 65. The pattern and practice and uniform administration of corporate policy regarding
12 Defendants’ failure to pay the legal minimum wage to the members of the Classes as described
13 herein is unlawful and creates entitlement, pursuant to Labor Code §1194(a), to recovery by the
14 members of the Classes in a civil action, for the unpaid balance of the full amount of the unpaid
15 minimum wages owed.

16 66. Pursuant to Labor Code §1194.2(a) (which provides that in any action under
17 Labor Code §1194, an employee shall be entitled to recover liquidated damages), the members of
18 the Classes seek recovery of liquidated damages in an amount equal to the wages unlawfully unpaid
19 and interest thereon.

20 67. In violation of the Labor Code and the applicable Wage Order, Defendants, as a
21 matter of established company policy and procedure, consistently:

- 22 (a) Administered a uniform company policy and practice regarding the duties and
23 responsibilities of the members of the Classes;
- 24 (b) Had and/or have numerous manuals, letters, correspondence, policy handbooks
25 and the like which taken together constitute, created or comprise, a written
26 contract for employment with each of the members of the Classes;
- 27 (c) Required, were aware of, accepted, and expected that the members of the
28 Classes work in excess of eight (8) hours per workday and/or in excess of forty

(40) hours per workweek without paying straight time or overtime compensation for such excess hours worked;

(d) Failed to pay overtime and/or regular or minimum wages based on all hours worked by members of the Classes.

68. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §1194(a), to recovery by the members of the Classes, in a civil action, for the unpaid balance of the full amount of the straight time compensation and overtime premiums owing, including interest thereon, reasonable attorneys' fees, and costs of suit.

69. Defendants' failure to pay compensation to the members of the Classes was the rule, and therefore a class action is the most efficient means of resolving the unpaid wage claims of the members of the Classes (see, e.g. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,

70. Pursuant to Labor Code §218.6 and §1194(a) and California Civil Code ("CC") §3287(b) and §3289, the members of the Classes seek recovery of pre-judgment interest on all amounts recovered herein.

71. Pursuant to Labor Code §1194, the members of the Classes request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Against All Defendants)

72. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

73. Defendants improperly and/or illegally classified the Plaintiffs and the Classes as independent contractors, rather than employees, and as a result Defendants are required to provide Plaintiffs and the Classes with meal periods as provided by California law.

74. Labor Code §226.7(a) provides that "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare

Commission.”

75. Labor Code §512 provides that “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

76. Labor Code §512 further provides that “An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

77. Labor Code §516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to meal periods for any workers in California consistent with the health and welfare of those workers.

78. Section 11(C) of Wage Order No. 9-2001 provides that “Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.”

79. Section 11(D) of Wage Order No. 9-2001 provides that “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

80. The members of the Classes consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

81. The members of the Classes consistently worked over ten (10) hours per work period, and therefore, were entitled to a second meal period of not less than thirty (30) minutes.

1 82. The members of the Classes did not waive their meal periods, by mutual consent with
2 Defendants or otherwise.

3 83. The members of the Classes did not enter into any written agreement with Defendants
4 agreeing to an on-the-job paid meal period.

5 84. The Defendants implemented a uniform policy and procedure in which Plaintiffs and
6 members of the Classes were not provided required meal periods.

7 85. Defendants failed to comply with the required meal periods established by Labor
8 Code §226.7, Labor Code §512, Labor Code §516 and the applicable Wage Order.

9 86. Pursuant to Section 11 of Wage Order No. 9-2001, and Labor Code §226.7(b) (which
10 requires, in the event that "an employer fails to provide an employee a meal or rest period in
11 accordance with an applicable order of the industrial Welfare Commission, the employer shall the
12 employee one additional hour of pay at the employee's regular rate of compensation for each work
13 day that the meal or rest period is not provided"), the members of the Classes are entitled to
14 damages in an amount equal to one (1) hour of wages per missed meal period, in a sum to be proven
15 at trial.

16 87. Pursuant to Labor Code §1194(a), CC §3287(b) and CC §3289, the members of the
17 Classes seek recovery of pre-judgment interest on all amounts recovered herein.

18 88. Pursuant to Labor Code §1194, the members of the Classes request that the Court
19 award reasonable attorneys' fees and costs incurred by them in this action.

20 **THIRD CAUSE OF ACTION**

21 **ILLEGAL DEDUCTIONS FROM WAGES**

22 **(Against all Defendants)**

23 89. Plaintiffs incorporate by reference and reallege each and every one of the allegations
24 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

25 90. Defendants improperly and/or illegally classified the Plaintiffs and the Classes as
26 independent contractors, rather than employees, and as a result Defendants are required to comply
27 with California law regarding deductions from wages.

28 ///

1 91. Labor Code §204 establishes the fundamental right of all employees in the State of
2 California to be paid wages in a timely fashion for their work.

3 92. Pursuant to the Labor Code and Wage Order No. 9-2001, it is unlawful for an
4 employer to suffer or permit employees to work without paying all wages for work performed for
5 each pay period, including failing to keep records of and correctly reporting hours worked, wages
6 earned, and rates of pay.

7 93. Pursuant to Labor Code §221, (entitled "Collection or receipt of wages previously
8 paid"), "It shall be unlawful for any employer to collect or receive from an employee any part of
9 wages theretofore paid by said employer to said employee."

10 94. Labor Code §223 provides, "Where any statute or contract requires an employer to
11 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
12 purporting to pay the wage designated by statute or contract."

13 95. Pursuant to Civil Code §§1670.5, 3275, 3369, and/or the covenant of good faith and
14 fair dealing, it is illegal for an employer to require a forfeiture or penalty against an employee's
15 wages.

16 96. At all times alleged herein, Defendants failed to pay all compensation due to Plaintiffs
17 and members of the Classes; made unlawful deductions from compensation payable to Plaintiffs
18 and members of the Classes; failed to disclose all aspects of the deductions from compensation
19 payable to Plaintiffs and members of the Classes; and thereby failed to pay these employees all
20 wages due at each applicable pay period or upon termination.

21 97. At all times alleged herein, Defendants made illegal deductions from the wages of
22 Plaintiffs and the members of the Class.

23 98. Plaintiffs and members of the Classes seek recovery of all illegal deductions from
24 wages according to proof, related penalties, interest, attorney fees and costs.

25 99. Plaintiffs are informed and believe and thereon allege that at all times herein
26 mentioned, Defendants were advised by professionals, employees, and advisors knowledgeable
27 about California labor and wage laws, employment contract laws, and human resources practices,
28 and about the requirements of California law to accurately record, report, and pay all wages earned

1 by members of the Classes. Defendants had the financial ability to pay such compensation, but
2 willfully, knowingly, and intentionally failed to do so, in order to decrease labor costs for
3 Defendants.

4 100. Thus, Plaintiffs are informed and believe and thereon allege that the conduct of
5 Defendants described in this cause of action was malicious, oppressive and fraudulent, and intended
6 by Defendants to cause injury to Plaintiffs, and to large numbers of its employees, as well as to its
7 competitors, and Defendants' conduct was despicable, and was engaged in by Defendants with a
8 willful and conscious disregard for the rights of Plaintiffs and members of the Classes, subjected
9 Plaintiffs and members of the Classes to illegal work conditions (long work hours performing work
10 activities without the required compensation) that did not protect their health, safety and welfare,
11 and was cruel and unjust conduct which also constituted deceit and concealment of material facts
12 known to Defendants with the intention to deprive Plaintiffs and the members of the Classes of
13 property and legal rights and causing them injury. Such acts were done with authorization,
14 ratification, and/or advance knowledge of the officers and/or directors of KNIGHT
15 TRANSPORTATION, INC. Such acts justify the awarding of exemplary and punitive damages to
16 the Plaintiffs and each member of the Classes in an amount according to proof.

17 101. Pursuant to Labor Code §218.6 and §1194(a) and CC §3287(b) and §3289, the
18 members of the Classes seek recovery of pre-judgment interest on all amounts recovered herein.

19 102. Pursuant to Labor Code §1194(a), the members of the Classes request that the Court
20 award reasonable attorneys' fees and costs incurred by them in this action.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

23 **(Against All Defendants)**

24 103. Plaintiffs incorporate by reference and reallege each and every one of the allegations
25 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

26 104. Defendants improperly and/or illegally classified the Plaintiffs and the Classes as
27 independent contractors, rather than employees, and as a result Defendants are required to comply
28 with California law regarding itemized wage statements.

1 105. Labor Code §226(a) requires every employer, semimonthly or at the time of each
2 payment of wages, to furnish each of its employees, either as a detachable part of the check, draft,
3 or voucher paying the employee's wages, or separately when wages are paid by personal check or
4 cash, an accurate itemized statement in writing showing, among other things, (1) gross wages
5 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
6 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
7 earned and (6) all applicable hourly rates in effect during each respective pay period and the
8 corresponding number of hours worked at each hourly rate by each respective individual.

9 106. As a pattern and practice, in violation of Labor Code §226, including but not limited
10 to Labor Code §226(a), Defendants did not maintain accurate records pertaining to the members of
11 the Classes, including, but not limited to, when they began and ended each work period, meal
12 period, rest period, the total daily hours worked, the number of piece-rate units earned and the
13 applicable piece rate, and the total hours worked per pay period and applicable rates of pay.

14 107. Plaintiffs and the members of the Classes were harmed by Defendants' failure to
15 provide the required information. Defendants' failure to comply with Labor Code §226(a) hindered
16 Plaintiffs and the Classes from determining the amount of wages, overtime, and other compensation
17 actually owed to them, and damaged the members of the Classes in the amount of the unpaid wages,
18 compensation, and overtime wages that were not reported by Defendants, as required.

19 108. Pursuant to Labor Code §226(e), the members of the Classes are entitled to penalties
20 as follows:

21 (a) Fifty dollars (\$50.00) per employee for the initial pay period in which a
22 violation occurs; and

23 (b) One hundred dollars (\$100.00) per employee for each violation in a subsequent
24 pay period.

25 109. Pursuant to Labor Code §226(g), the members of the Classes are entitled to an award
26 of costs and reasonable attorneys' fees.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION

FAILURE TO FULLY COMPENSATE FOR BUSINESS EXPENSES

(Against All Defendants)

110. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

111. Defendants improperly and/or illegally classified the Plaintiffs and the Classes as independent contractors, rather than employees, and as a result Defendants are required to comply with California law regarding reimbursement of business expenses.

112. Pursuant to Labor Code §2802, Defendants are required to reimburse Plaintiffs and the members of the Classes, for expenses incurred by them in the performance of their job

113. Pursuant to Labor Code §2800, an employer shall indemnify his employee for losses caused by the employer's want of ordinary care.

114. Pursuant to Wage Order No. 9-2001, when the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer.

115. During the relevant time period, Plaintiffs and members of the Classes have been required to personally incur and pay for these expenses, including but not limited to, all costs and expenses of owning and/or leasing, repairing, maintaining and fueling the trucks and vehicles they drove, in the discharge of their employment duties, all without reimbursement from the Defendants. Defendants did not reimburse Plaintiffs or members of the Classes for the business expenses incurred as a condition of and in the discharge of their employment duties.

116. As a proximate result of the aforementioned violations, Plaintiffs and the members of the Classes have been damaged in an amount according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction of this Court.

117. Pursuant to Labor Code §2802, Plaintiffs and the members of the Classes are entitled to recover from Defendants the full amount of the expenses they incurred in the course of their job duties, plus interest, reasonable attorneys' fees, and costs of suit.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(LABOR CODE §201, §202, §203)

(Against All Defendants)

118. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

119. Defendants improperly and/or illegally classified the Plaintiffs and the Classes as independent contractors, rather than employees, and as a result Defendants are required to comply with California law regarding payment of wages upon separation of employment.

120. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than thirty (30) days.

121. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to timely pay the earned and unpaid wages of Defendants' former employees, including, but not limited to, straight time, minimum wage, and overtime compensation due and owing to Plaintiffs and members of the Classes.

122. Certain members of the Classes are no longer employed by Defendants, because they were either discharged from or quit Defendants' employ.

123. Defendants willfully failed to pay the members of the Classes a sum certain at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter.

124. Defendants' willful failure to pay wages to the members of the Classes violates Labor Code §203 because Defendants knew wages were due to the members of the Classes, but Defendants failed to pay them.

125. Thus, the members of the Classes are entitled to penalties pursuant to Labor Code §203, in the amount of each Classes members' daily wage multiplied by thirty (30) days.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL

ACT OF 2004, LABOR CODE SECTION 2698, ET. SEQ.

(Against All Defendants)

126. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

127. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this private attorneys general action, Plaintiffs represent themselves, and other aggrieved employees of Defendants that were based out of California, against whom Defendants have allegedly committed labor law violations, including, but not limited to, misclassification of truck drivers as independent contractors, rather than employees. As a result of the allegedly unlawful conduct described herein, Plaintiffs now seek to recover civil penalties, including the value of unpaid wages, attorneys' fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

128. At all relevant times, Plaintiffs and the aggrieved employees have been entitled to the benefits and protections of the California Labor Code and the applicable Wage Order.

129. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

130. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied centrally devised policies and practices to them and the other aggrieved employees with respect to independent contractor and employee classification; wages, hours, and working conditions; and the right to control the manner and means by which Plaintiffs and the other aggrieved employees accomplished the work.

131. Labor Code §226.8(a)(1) makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Labor Code §226.8(a)(2) makes it unlawful for any person or employer to charge an individual who has been willfully misclassified as an independent contractor a fee, or make any deductions from their compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment when any of those acts would have violated the law if the individual had

1 not been misclassified.

2 132. Labor Code §2802(a) provides that an employer shall indemnify his or her employee for all
3 necessary expenditures or losses incurred by the employee in the direct consequence of the discharge of his
4 or her duties, or of his or her obedience to the directions of the employer. At all relevant times, Plaintiffs
5 and the other aggrieved employees have incurred necessary expenditures in direct consequence of the
6 discharge of their duties and/or their obedience to the directions of Defendants, including but not limited to,
7 all costs and expenses of their truck, fuel, insurance, repairs, and other costs, expenses and charges paid by
8 Plaintiffs and the other aggrieved employees.

9 133. Section 9 of the Wage Order provides that when tools or equipment are required by the
10 employer or are necessary to the performance of the job, such tools and equipment shall be provided and
11 maintained by the employer. At all relevant times, Plaintiffs and the other aggrieved employees paid for
12 the cost of tools or equipment required by Defendants and/or which were necessary to the performance of
13 their job, including but not limited to, all of the costs and expenses of their truck, fuel, insurance, repairs,
14 and all other costs and expenses incurred by Plaintiffs and the other aggrieved employees for tools or
15 equipment required by Defendants and/or necessary to the performance of their job.

16 134. At all relevant times, Plaintiffs and the aggrieved employees have been employees of
17 Defendants entitled to the benefits and protections of California Labor Code § 226.

18 135. Pursuant to California Labor Code § 226(a), Plaintiffs and the other aggrieved employees
19 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized
20 statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly rates in effect
21 during the pay period; and (d) the corresponding number of hours worked at each hourly rate by the
22 employee.

23 136. Defendants failed to provide Plaintiffs with accurate itemized statements in accordance with
24 California Labor Code § 226(a) by providing Plaintiffs with wage statements with inaccurate entries for
25 hours worked, corresponding rates of pay, and total wages earned as a result of the unlawful labor and
26 payroll practices described herein.

27 137. Plaintiffs are informed and believe and thereon allege that, at all relevant times during the
28 applicable limitations period, Defendants maintained a policy or practice of not providing aggrieved

1 employees with accurate itemized wage statements by providing them with wage statements with
2 inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from wages
3 earned as a result of the unlawful labor and payroll practices described herein.

4 138. Plaintiffs are informed and believe and thereon allege that Defendants' failure to provide
5 them and the aggrieved employees with accurate written wage statements is knowing and intentional.

6 139. Plaintiffs are informed and believe and thereon allege that Defendants have the ability to
7 provide them and the aggrieved employees with accurate wage statements but intentionally provide wage
8 statements that they know are not accurate.

9 140. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and
10 the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage statements
11 were violated and they were misled about the amount of wages they had actually earned and were owed. In
12 addition, the absence of accurate information on their wage statements prevented immediate challenges to
13 Defendants' unlawful pay practices, has required discovery and mathematical computations to determine
14 the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
15 records, and/or has led to the submission of inaccurate information about wages and amounts deducted
16 from wages to state and federal government agencies.

17 141. At all relevant times, Plaintiffs and the other aggrieved employees should have been
18 classified as non-exempt employees of Defendants, and were therefore entitled to the full meal and rest
19 period protections of both the Labor Code and the applicable Wage Order.

20 142. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit and
21 authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net rest time
22 for each four (4) hour work period, or major portion thereof, that must be in the middle of each work period
23 insofar as is practicable.

24 143. Labor Code § 226.7 and Section 12 the Wage Order prohibit employers from requiring
25 employees to work during required rest periods and require employers to pay non-exempt employees an
26 additional hour of premium wages on each workday that the employee is not provided with the required
27 rest period.

28 144. At relevant times during the applicable limitations period, Defendants failed to provide

1 Plaintiffs with a net rest period of at least ten (10) minutes for each four (4) hour work period, or major
2 portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit
3 Plaintiffs to take all legally required rest breaks.

4 145. Plaintiffs are informed, believe and thereon allege that, at relevant times during the
5 applicable limitations period, Defendants maintained a policy or practice of not providing the other
6 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work period, or
7 major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit
8 them to take all legally required rest breaks.

9 146. Labor Code § 512 and Section 11 of the Wage Order impose an affirmative obligation on
10 employers to provide non-exempt employees with uninterrupted, duty-free, meal periods of at least thirty
11 (30) minutes for each work period of five (5) or more hours, and to provide them with two uninterrupted,
12 duty-free, meal periods of at least thirty (30) minutes for each work period of more than ten (10) hours.

13 147. Labor Code § 226.7 and Section 11 the Wage Order prohibit employers from requiring
14 employees to work during required meal periods and require employers to pay non-exempt employees an
15 additional hour of premium wages on each workday that the employee is not provided with a required meal
16 period.

17 148. At relevant times during the applicable limitations period, Defendants failed to provide
18 Plaintiffs with an uninterrupted meal period of at least thirty (30) minutes on each day that he worked five
19 (5) or more hours, as required by Labor Code § 512 and the Wage Order, as a result of duties and schedules
20 that do not permit them to take all legally required meal periods. Plaintiffs are informed, believe and
21 thereon allege that, at relevant times during the applicable limitations period, Defendants maintained a
22 policy or practice of not providing the other aggrieved employees with uninterrupted meal periods of at
23 least thirty (30) minutes for each five (5) hour work period, as required by Labor Code § 512 and the Wage
24 Order, as a result of duties and schedules that do not permit them to take all legally required meal periods..

25 149. At relevant times during the applicable limitations period, Defendants failed to provide
26 Plaintiffs with two uninterrupted meal periods of at least thirty (30) minutes on each day that he worked ten
27 (10) or more hours, as required by Labor Code § 512 and the Wage Order, as a result of duties and
28 schedules that do not permit them to take all legally required meal periods. Additionally, Defendants failed

1 to provide Plaintiffs with an uninterrupted meal period of at least thirty (30) minutes within five (5) hours
2 of his first meal period, as a result of duties and schedules that do not permit them to take all legally
3 required meal periods.

4 150. Plaintiffs are informed and believe and thereon allege that, at relevant times during the
5 applicable limitations period, Defendants maintained a policy or practice of not providing the other
6 aggrieved employees with two uninterrupted meal periods of at least thirty (30) minutes on each day that
7 they worked ten (10) or more hours, as required by Labor Code § 512 and the Wage Order, as a result of
8 duties and schedules that do not permit them to take all legally required meal periods. Additionally,
9 Defendants maintained a policy or practice of not providing the other aggrieved employees with an
10 uninterrupted meal period of at least thirty (30) minutes within five (5) hours of their first meal period, as a
11 result of duties and schedules that do not permit them to take all legally required meal periods.

12 151. Labor Code § 201 provides that all earned and unpaid wages of an employee who is
13 discharged are due and payable immediately at the time of discharge.

14 152. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after
15 providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all
16 earned and unpaid wages of an employee who quits without providing at least 72-hours notice before
17 quitting are due and payable within 72 hours.

18 153. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a
19 penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the
20 employee in accordance with Labor Code § 201 or § 202.

21 154. Plaintiffs are informed and believe that Defendants' failures to timely pay Plaintiffs and the
22 aggrieved employees all of their earned and unpaid wages, including unpaid minimum wage and overtime,
23 and unprovided rest and meal period premium wages, have been willful in that, at all relevant times,
24 Defendants have deliberately maintained policies and practices that violate the requirements of the Labor
25 Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those
26 legal requirements.

27 155. Labor Code § 1174 requires that every person employing labor in this state shall keep (1) a
28 record showing the names and addresses of all employees employed and the ages of all minors; (2) at a

1 central location in the state or at the plants or establishments at which employees are employed, payroll
2 records showing the hours worked daily by and the wages paid to, and the number of piece-rate units
3 earned by and any applicable piece rate paid to, employees employed at the respective plants or
4 establishments; (3) such records in accordance with rules established for this purpose by the commission,
5 but in any case, on file for not less than three years. This statute also prevents an employer from prohibiting
6 an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-
7 rate units earned. Defendants have willfully failed to keep the records required by § 1174.

8 156. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
9 himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to
10 the procedures specified in California Labor Code § 2699.3.

11 157. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other aggrieved
12 employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of
13 California Labor Code §§ 200, 201, 202, 203, 226, 226.8, 226.7, 512, 1174, 1198, and 2802, during the
14 applicable limitations period in the following amounts:

- 15 (a) For violations of California Labor Code §§ 200, 201, 202, 203, 226.7, and 2802, one
16 hundred dollars (\$100.00) for each aggrieved employee per pay period for each
17 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation (penalty amounts established by California
19 Labor Code § 2699(f)(2));
- 20 (b) For violations of California Labor Code § 226, two hundred fifty dollars (\$250.00)
21 per employee for initial violation and one thousand dollars (\$1,000.00) per employee
22 for each subsequent violation (penalty amounts established by California Labor Code
23 § 226.3);
- 24 (c) For violations of California Labor Code § 1174, five hundred dollars (\$500) for each
25 of Defendants' violations in addition to any other penalties or fines permitted by law
26 (penalty amounts established by California Labor Code § 1174.5);
- 27 (d) For pattern and practice violations of California Labor Code § 226.8(a), Twenty-Five
28 Thousand Dollars (\$25,000.00) for each of Defendants' violations in addition to any

1 other penalties or fines permitted by law (penalty amounts established by California
2 Labor Code § 226.8(c));

3 (e) For violations of California Labor Code §226.8(a), Fifteen Thousand Dollars
4 (\$15,000.00) for each Defendants' violations in addition to any other penalties or
5 fines permitted by law (penalty amounts established by California Labor Code
6 §226.8(c)); and

7 (f) For violations of California Labor Code §§ 510, 512, 551, 552, Wage Order 9-2001
8 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each
9 initial violation for pay period for which the employee was underpaid in addition to
10 an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for
11 each underpaid employee for each pay period for which the employee was underpaid
12 in addition to an amount sufficient to recover unpaid wages (penalty amounts
13 established by California Labor Code § 558).

14 158. Plaintiffs have complied with the procedures for bringing suit specified in California Labor
15 Code § 2699.3. By letter dated October 9, 2013, Plaintiffs, on behalf of themselves and the other aggrieved
16 employees, gave written notice by certified mail to the Labor and Workforce Development Agency
17 ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations. Plaintiffs anticipate that the
19 LWDA will soon provide Plaintiffs with written notice that it does not intend to investigate the violations
20 of the California Labor Code alleged herein. Thus far, the LWDA has not advised Plaintiffs it intends to
21 take action on Plaintiffs' notice.

22 159. Pursuant to California Labor Code § 2699(g), Plaintiffs, on behalf of themselves and the
23 other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

24 **EIGHTH CAUSE OF ACTION**

25 **UNFAIR BUSINESS PRACTICES**

26 **(Against All Defendants)**

27 160. Plaintiffs incorporate by reference and reallege each and every one of the allegations
28 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

1 161. During the relevant time period, Defendants have engaged in unlawful, deceptive and
2 unfair business practices prohibited by B&PC §17200, including those set forth in the preceding and
3 foregoing paragraphs of the complaint, thereby depriving Plaintiffs, the members of the Classes, and
4 members of the general public of the minimum working standards and conditions due to them under
5 the California labor laws and Wage Order No. 9-2001 as specifically described herein.

6 162. Defendants have engaged in unfair business practices in California by practicing,
7 employing and utilizing the employment practices outlined in the preceding and foregoing
8 paragraphs, specifically, by requiring employees to perform the labor and services complained of
9 herein without the proper compensation.

10 163. Defendants' use of such practices constitutes an unfair business practice, unfair
11 competition and provides an unfair advantage over Defendants' competitors.

12 164. Plaintiffs allege that if Defendants are not enjoined from the conduct set forth above,
13 they will continue to: (a) fail to pay overtime and regular or minimum wages to Class members
14 based on all hours worked; (b) fail to pay compensation to Plaintiffs and the members of the Classes
15 without illegal deductions from their pay; (c) fail to accurately report all hours worked and rates of
16 pay as required by Labor Code §226(b); and (d) will continue to avoid paying the appropriate taxes,
17 insurance, and unemployment withholdings.

18 165. Plaintiffs request that the Court issue a preliminary and permanent injunction
19 prohibiting the Defendants from engaging in the foregoing conduct.

20 166. Plaintiffs also request that the Court order the Defendants to pay restitution to the
21 Class members in the form of illegally retained earned overtime, regular, and minimum wages, and
22 to disgorge all illegally obtained monies from failing to pay taxes, state disability insurance
23 premiums, and unemployment taxes, obtained by way of its violations of Business and Professions
24 Code §1700, et. seq. and §17200 et. seq.

25 167. Plaintiffs, on behalf of the general public, seek full restitution from Defendants, as
26 necessary and according to proof, to restore any and all monies withheld, acquired and/or converted
27 by Defendants by means of the unfair practices complained of herein.

28 ///

1 168. Plaintiffs, on behalf of the general public, seek the appointment of a receiver, as
2 necessary, to establish the total monetary relief sought from Defendants.

3
4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs pray:

- 6 a. That the Court issue an Order certifying the Classes herein, appointing the named
7 Plaintiffs as representatives of all others similarly situated, and appointing the law firms
8 representing the named Plaintiffs as counsel for the members of the Classes;

9 As to the First Cause of Action for Unpaid Wages:

- 10 b. For compensatory damages in an amount according to proof representing the amount of
11 unpaid compensation, including overtime compensation, unpaid regular wages, unpaid
12 minimum wages;
13 c. For damages, as set forth in Labor Code §1194(a) and the applicable Wage Order
14 regarding wages due and owing, according to proof;
15 d. For liquidated damages on the straight-time portion of uncompensated hours of work (not
16 including the overtime portion thereof), as authorized by Labor Code §1194.2(a);
17 e. For pre-judgment interest as allowed by Labor Code §218.6 and §1194(a) and
18 CC §3287(b) and §3289;
19 f. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194(a)
20 and Code of Civil Procedure §1021.5;

21 As to the Second Cause of Action for Failure to Provide Meal Periods:

- 22 g. For one (1) hour of pay at the employee's regular rate of compensation for each workday
23 that a meal period was not provided;
24 h. For interest as authorized by Labor Code §218.6 and §1194(a) and CC §3287(b) and
25 §3289;
26 i. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194(a)
27 and Code of Civil Procedure §1021.5;

28 ///

1 As to the Third Cause of Action for Illegal Deductions From Wages:

- 2 j. For compensatory damages and restitution of all money due to Plaintiffs and the members
3 of the Classes;
4 k. For punitive and exemplary damages;
5 l. For prejudgment interest as allowed by Labor Code §218.6 and §1194(a) and CC
6 §3287(b) and §3289 and Code of Civil Procedure §1021.5;
7 m. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194(a);

8 As to the Fourth Cause of Action for Failure to Provide Accurate Itemized Wage Statements:

- 9 n. For penalties as authorized by Labor Code §226(e);
10 o. For injunctive relief and an award of costs and reasonable attorneys' fees pursuant to
11 Labor Code §226(g) and Code of Civil Procedure §1021.5;

12 As to the Fifth Cause of Action for Failure to Fully Compensate For Business Expenses:

- 13 p. For compensatory damages and restitution of all money due to Plaintiffs and the members
14 of the Classes,
15 q. For interest, attorneys fees and costs pursuant to Labor Code §2802;

16 As to the Sixth Cause of Action for Failure To Timely Pay Wages Upon Separation:

- 17 r. For penalties as authorized by Labor Code §203;
18 s. For prejudgment interest as allowed by Labor Code §218.6 and §1194(a) and CC
19 §3287(b) and §3289 and Code of Civil Procedure §1021.5;

20 As to the Seventh Cause of Action for Civil Penalties under Labor Code Private Attorneys General

21 Act of 2004, Labor Code Section 2698, et. seq.

- 22 t. Civil penalties;
23 u. Other penalties and fines permitted by law;
24 v. Costs of suit;
25 w. Reasonable attorneys' fees; and
26 x. Such other relief as the Court deems just and proper.

27 As to the Eighth Cause of Action for Unfair Business Practices:

- 28 y. For an accounting, under administration of Plaintiffs and/or the receiver and subject to

1 Court review, to determine the amount to be returned by Defendants, and the amounts to
2 be refunded to members of the Classes who are owed monies by Defendants;

3 z. For an Order requiring Defendants to identify each of the members of the Classes by
4 name, home address, and home telephone number;

5 aa. For an Order requiring Defendants to make full restitution and payment pursuant to Labor
6 Code §200, et seq., §500, et seq. and §1194;

7 bb. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from
8 engaging in the acts complained of herein;

9 cc. For the creation of an administrative process wherein each injured member of the Classes
10 may submit a claim in order to receive his/her money;

11 dd. For all other appropriate declaratory and equitable relief;

12 ee. For interest to the extent permitted by law;

13 ff. For an award of attorneys' fees and costs incurred in the investigation, filing and
14 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code
15 §1194 and any other applicable provision of law;

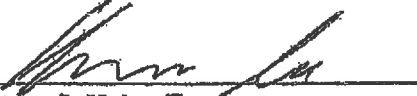
16 As to All Causes of Action:

17 gg. For such other and further relief as this Court may deem just and proper; and

18 hh. For reasonable attorneys' fees and costs incurred.

19
20
21 Dated: February 28, 2014

TRUSH LAW OFFICE, APC
PERONA, LANGER, BECK, SERBIN,
MENDOZA & HARRISON, APC.

22
23
24 BY: 

Brennan S. Kahn, Esq.

James M. Trush, Esq.

Attorneys for Plaintiffs, PATRICK LACROSS,
ROBERT LIRA, MATTHEW LOFTON, on behalf of
27 themselves and all others similarly situated
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands trial of his claims by jury to the extent authorized by law.

Dated: February 28, 2014

TRUSH LAW OFFICE, APC
PERONA, LANGER, BECK, SERBIN,
MENDOZA & HARRISON, APC.

BY:  

Brennan S. Kahn, Esq.

James M. Trush, Esq.

Attorneys for Plaintiffs, PATRICK LACROSS,
ROBERT LIRA, MATTHEW LOFTON, on behalf of
themselves and all others similarly situated