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OSBALDO ARZATE; DAVID JONATAN PEREZ;
GERSON PEREZ; NOE ESCALANTE; RAFAEL
NUNN and MAURICIO TORRES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

OSBALDO ARZATE; DAVID JONATAN
PEREZ; GERSON PEREZ; NOE
ESCALANTE; RAFAEL NUNN and
MAURICIO TORRES each individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

PILOT AIR FREIGHT, LLC,
LLC, an unknown business entity, doing
business as PILOT LAST MILE HOME;
and DOES 1 to 100,

Defendants.

Case No. 24CV076109

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. ENTERING INTO ILLEGAL CONTRACT OR AGREEMENT;
2. FAILURE TO PROVIDE MEAL PERIODS;
3. FAILURE TO PROVIDE REST PERIODS;
4. FAILURE TO PAY MINIMUM WAGES;
5. FAILURE TO PAY OVERTIME / DOUBLE TIME WAGES;
6. FAILURE TO PAY ALL WAGES OWED EACH PAY PERIOD;
7. FAILURE TO PAY ALL WAGES DUE UPON SEPARATION;
8. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
9. VIOLATION OF UNFAIR COMPETITION ACT;
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (PAGA).

DEMAND FOR JURY TRIAL

1.

1 Plaintiffs OSBALDO ARZATE; DAVID JONATAN PEREZ; GERSON PEREZ; NOE
2 ESCALANTE; RAFAEL NUNN and MAURICIO TORRES (“Plaintiffs”), by and through their
3 undersigned attorneys, for this Class Action Complaint against Defendants PILOT AIR FREIGHT,
4 LLC, an unknown business entity, doing business as PILOT LAST MILE HOME; and DOES 1
5 through 100 (hereinafter “Defendants”), respectfully allege the following:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs and putative class members (“the Class” as defined below) are current or
8 former employees and/or workers of labor contractors (including those classified as an “independent
9 contractor delivery driver” and/or a “independent contractor delivery helper”) that performed work for
10 Defendants in the State of California. Plaintiffs and the Class transport, deliver and install household
11 goods including furnitures and/or appliances purchased by individual consumers from Defendants’
12 retail clients (“Customer goods”).

13 2. Plaintiffs allege that Defendants violated California Labor Code §2810 and other
14 California laws, primarily by entering into inadequately-funded contracts with the labor contractors to
15 engage the Class to transport, deliver and install the Customer goods.

16 3. Plaintiffs allege that Defendants knew or should have known that the contract or
17 agreement with its labor contractors did not include funds sufficient to allow the contractors to comply
18 with all applicable local, state, and federal laws or regulations governing the labor or services to be
19 provided.

20 4. Plaintiffs further allege that Defendants were the employer of the Plaintiffs and the
21 Class because Defendants misclassified the Class as independent contractors, and exercised control
22 over the manner and method of the performance of their work. Thus, Plaintiffs allege that Defendants
23 did not pay them and the Class the minimum and/or overtime wages, did not provide legally required
24 off-duty meal and rest periods, did not pay the meal and rest period premiums, and did not provide
25 accurate wage statements, and did not pay wages when due or upon termination, and which practices
26 constituted unfair business practices under Business & Professions Code §17200.

1 5. California Labor Code §2810.3 states:

2 (b) A client employer shall share with a labor contractor all civil legal
3 responsibility and civil liability for all workers supplied by that labor
4 contractor for [...] The payment of wages. [...]

5 (c) A client employer shall not shift to the labor contractor any legal duties
6 or liabilities under Division 5 (commencing with Section 6300) with respect
7 to workers supplied by the labor contractor.

8 (d) At least 30 days prior to filing a civil action against a client employer
9 for violations covered by this section, a worker or the worker's
10 representative shall notify the client employer of violations under
11 subdivision (b). [...]"

12 6. Plaintiffs allege that Defendants are liable to the Plaintiffs on an individual, several,
13 and/or shared bases including pursuant to Labor Code §2810.3.

14 7. On May 21, 2024, Plaintiffs sent Defendants a notice of violations under the California
15 Private Attorneys General Act ("PAGA") and notice of claims under California Labor Code §2810.3.
16 On that same date, Plaintiffs filed the PAGA Notice with California's Labor and Workforce
17 Development Agency ("LWDA").

18 8. Defendants entered into contracts or agreements with labor contractors during the
19 Claim Period for labor contractors to provide the labor and services, and the necessary trucks,
20 equipment and workers, namely drivers and drivers' helpers to deliver Customer goods to the homes,
21 businesses and other sites of individual consumers.

22 9. The contracts required the labor contractors to bear the costs of furnishing all
23 equipment and tools necessary or required for the labor and services ("Equipment"), such Equipment
24 was to be used exclusively for transport of Customer Goods, while loaded with Customer Goods. The
25 labor contractors were required to furnish insurance coverages for Public liability and property
26 damage, Commercial General Liability, Excess / Umbrella Liability, and workers' compensation. The
27 labor contractors were also required to pay for all fees, fines, licenses, bonds and all of the workers'
28 wages and taxes, including State and Federal social security and Medicare taxes, and unemployment
 and disability insurance.

10. In exchange, Defendants paid the labor contractors up from \$650 to \$740 per route, which was wholly insufficient to pay all of the foregoing costs and expenses.

11. The Plaintiffs and the Class who performed these last-mile deliveries and installations of Customer goods for Defendants throughout California were hired into one of two roles, either as a driver or delivery helper working as a team (sometimes referred to as “Delivery Team Members”). Each truck had, at a minimum, one driver and helper performing a route per day.

12. Delivery Team Members rode and transported Customer goods in the same truck and performed installations together, and hauled away old goods, and disposed of or recycled any old household that resulted from their work. The deliveries were scheduled along a single “route,” with Delivery Team Members averaging around 16-22 deliveries per route, performing one route per day worked.

13. Delivery Team Members would pick up the Customer goods they were to deliver from the Defendants' clients' warehouses, perform the marked deliveries throughout their route, and then return to the same warehouse to unload and discard aforementioned waste. Additionally, they would receive their schedules, at most, a few days in advance, and had little control over the means or manner in which they performed their duties.

14. Despite Defendants' broad control over the labor contractors, Defendants misclassified the Delivery Team Members engaged by the labor contractors as "independent contractors." Defendants had total control over the time and manner in which the Delivery Team Members performed their work. Defendants would, by use of a cellular app, track Delivery Team Members' locations at all times, hold them to strict timeframes, and monitor their actions until the route was completed. If, at any point, the Delivery Team Members' location indicated that they were behind schedule, a representative of Defendants would call them in an attempt to control and speed up their progress. These Delivery Team Members were forced to work whichever routes and schedules Defendants gave them, and never had a clear notice of when their work would be finished on any day, as the given routes could vary from 10, 12 and up to 16 hours of work, and which prevented Plaintiffs

1 and the Class from taking legally compliant meal and rest breaks.

2 15. In performing their duties, Delivery Team Members were required to drive a specific
3 length truck, and were required to carry and use specific tools, conforming to Defendants'
4 specifications.

5 16. Delivery Team Members additionally had to submit their identification and
6 qualifications to Defendants and go through a screening and clearance procedure including a
7 background check including verification of Social Security Numbers. Once approved, many Delivery
8 Team Members were given "Pilot" badges. If the team member does not provide Pilot with a valid
9 social security number, they are terminated.

10 17. This is a class action for wage and labor violations arising out of, among other things,
11 Defendants' misclassification of Plaintiffs and the Class as independent contractors; failure to pay
12 minimum wages, pay overtime wages, provide meal and rest breaks, provide accurate itemized wage
13 statements, and pay final wages timely upon termination of employment of Plaintiffs and the Class.

14 18. As more fully set forth herein, Defendants entered into contracts or agreements for
15 labor or services with labor contractors, where Defendants knew or should have known that the
16 contracts or agreements did not include funds sufficient to allow the labor contractors to comply with
17 all applicable local, state, and federal laws or regulations governing the labor or services to be
18 provided.

19 19. Further, Defendants intentionally misclassified Delivery Team Members as
20 independent contractors; failed to pay them for all time worked every pay period, specifically
21 including required minimum wages and daily and/or weekly overtime; failed to furnish accurate
22 itemized wage statements; and failed to provide off-duty and lawfully-compliant meal and rest periods
23 of its California drivers and crewmembers in accordance with the California Labor Code §226.7 and
24 Industrial Wage Order No. 9-2001, § 11(a) ("IWC No. 9"); failed to pay its drivers and crewmembers
25 one hour of pay at their regular rate of compensation for each instance that Defendants failed to provide
26 statutorily mandated rest periods and/or off-duty meal periods; and for penalties arising from
27

1 Defendants' issuing to its drivers and crewmembers inaccurate wage statements and failing to pay
2 wages upon the termination of the workers' employment.

3 20. Plaintiffs seek to represent the following Class:

4 *All current or former employees and/or workers of labor contractors (including those*
5 *classified as an "independent contractor delivery driver" and/or a "independent contractor delivery*
6 *helper") that performed work for Defendants in the State of California at any time beginning four*
7 *(4) years prior to the filing of the Complaint through the date notice is mailed to the Class*
8 *(the "Class period").*

9 JURISDICTION AND VENUE

10 21. This Court has jurisdiction over the entire action because the amount in controversy,
11 exclusive of interest and costs, exceeds the jurisdictional minimum of the Court. The acts and
12 omissions complained of in this action took place in the State of California, and at least one Defendants
13 resides in the state of California. Venue is proper because this is a class action, the acts and/or
14 omissions complained of took place, in whole or in part within the venue of this Court, and/or one or
15 more Defendants resides within the venue of this court.

16 PARTIES

17 22. Plaintiffs are informed and believe, and thereon allege, that Defendant PILOT AIR
18 FREIGHT, LLC, (Hereafter "Defendants" or "Pilot") is an unknown business entity, and operates and
19 does business as "PILOT LAST MILE HOME."

20 23. Plaintiffs are currently ignorant of the true names and capacities, whether individual,
21 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1
22 through 100, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will seek
23 leave to amend this complaint to allege the true names and capacities of said fictitiously named
24 defendants when their true names and capacities have been ascertained. Plaintiffs are informed and
25 believe and thereon alleges that each of the fictitiously named defendants is legally responsible in
26 some manner for the events and occurrences alleged herein, and for the damages suffered by the Class.

1 24. Plaintiffs are informed and believes and thereon allege that all defendants, including
2 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible
3 agents, partners and/or joint venturers and/or employees of all other defendants, and that all acts allege
4 herein occurred within the course and scope of said agency, employment, partnership, and joint
5 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge, consent
6 authorization and ratification of their co-defendants; however, each of these allegations are deemed
7 “alternative” theories whenever not doing so would result in a contradiction with other allegations.

8 **FACTS COMMON TO ALL CAUSES OF ACTION**

9 25. Defendants Pilot and Defendants DOES 1 to 100 contracts with retail merchants to
10 deliver, transport and install household goods sold to individual consumers (“Customer goods”), and
11 removal and haul away of old household goods from the homes, businesses and other sites of the
12 individual consumers.

13 26. Defendants employed Plaintiffs and the Class (sometimes referred to as “Delivery
14 Team Members”) to pick up the merchandise at Defendants’ warehouses throughout California,
15 transport, deliver and install the new merchandise at and remove and haul away the old household
16 goods from the homes, businesses and other sites of individual consumers. Delivery Team Members
17 perform their work in two-person teams consisting of a driver and a helper.

18 27. Delivery Team Members perform work that is the Defendants’ usual course of
19 business.

20 28. Delivery Team Members performed deliveries within a specified “route” provided by
21 Defendants. These routes were exclusively local to the warehouse, and were performed entirely within
22 California in 2 axle trucks from 18 to 26 feet. Accordingly, Delivery drivers did not require a
23 commercial driver’s license to perform their work. These routes almost always contained over 15
24 “stops”, which are deliveries, installations and/or haul-aways.

25 29. At all times during the liability period, Defendants employed Delivery Team Members
26 as “independent contractors”. Although Defendants view these delivery teams as “independent
27

1 contractors,” the work performed and conditions of employment were that of an “employee.” The
2 conditions and requirements of employment with Defendants are explained heretoforth.

3 30. Plaintiffs are further informed and believe, and thereon allege, that under California
4 law, including but not limited to Labor Code §2775, Defendants are their joint employers of Delivery
5 Team Members, as explained below.

6 31. Defendants had total control over the times and manner in which the Delivery Team
7 Members performed their work. By use of a cellular app, Defendants would track Delivery Team
8 Members’ locations at all times, hold them to strict timeframes, and monitor their actions until the
9 route was completed. If, at any point, the Delivery Team Members’ location indicated that they were
10 behind schedule, Defendants would call them in an attempt to control and speed up their progress.

11 32. If Plaintiffs were ever unable to finish an assigned route, Defendants would penalize
12 them by either removing stripping them from upcoming routes, or by deducting a sum from their pay.
13 This occurred regardless of the reasons for incompleteness, which as explained further, were frequently
14 due to the unattainable work requirements Defendants set forth.

15 33. Due to the strict timeframes that Defendants held Delivery Team Members to, they
16 were unable to take rest or meal breaks. On several occasions where Delivery Team Members stopped
17 to take a meal break during their 14-to-16-hour workdays, Defendants would discipline and penalize
18 them by stripping their routes for the following day. Additionally, due to the calls that Defendants
19 would make whenever Plaintiffs were “behind schedule”, Plaintiffs were never afforded uninterrupted
20 rest or meal breaks. In fact, the level of control exercised by Defendants was so immense, Delivery
21 Team Members had to carry a water bottle or some other container wherein they could urinate.

22 34. Defendants further displayed their control over the manner of employment by requiring
23 that each truck performing assigned routes have at least two workers, a driver and a helper. These
24 drivers and helpers additionally needed to undertake background checks and clearances by
25 Defendants, prior to being approved to work on these teams. Once these team members were cleared,
26 they were given Pilot badges.

35. Prior to beginning their routes for the day, Delivery Team Members had to check in with a Pilot employee every day using their badge. When performing these routes, the workers were given a specific order to perform the stops, and had strict timeframes for performance—monitored by the aforementioned app. Defendants would admonish Delivery Team Members if they veered off the course for any reason—including for meals—or if they were not meeting the time constraints.

36. Defendants also required Delivery Team Members to carry and use specific tools to perform the installations.

37. Defendants did not provide Plaintiffs with accurate itemized wage statements.

38. Delivery Team Members were paid on a piece-rate compensation basis, which deprived Delivery Team Members of the lawful rate of pay, such as minimum wages and overtime wages.

39. Defendants knew or should have known that the compensation paid to Delivery Team Members under the egregious contract between them and the labor contractors would not be sufficient compensation for the work performed for all the hours worked, to pay for meal and rest break premiums, and to comply with all requirements of the labor code. Defendants were aware of the hours that these routes required Team Members to work, and were aware of the compensation given.

40. At all times during the liability period, Delivery Team Members were assigned to and required to work shifts lasting over three and one-half (3 ½) hours, and were not provided nor allowed to take a ten (10) minute, uninterrupted rest break during each such shift over three and one-half (3 ½) hour work period.

41. At all times during the liability period, Delivery Team Members were assigned to and required to work for periods lasting in excess of five (5) hours and were not provided or allowed to take a thirty (30) minute, uninterrupted, off-duty meal break. Moreover, Delivery Team Members often worked and in excess of ten (10) hours without a second thirty (30) minute meal break.

42. At all times during the liability period, Delivery Team Members worked in excess of eight (8) hours per work day or forty (40) hours per work week. Defendants failed to pay for hours worked in excess of eight (8) hours per day. Defendants failed to pay current and former drivers and

1 crewmembers one-and-one-half times their regular rate of pay for hours worked in excess of eight (8)
2 hours per day or forty (40) hours per workweek. Defendants also failed to pay its employees at a rate
3 no less than twice the regular rate of pay for work in excess of twelve (12) hours in one day or for all
4 hours worked in excess of eight (8) hours on the seventh consecutive day of work in a workweek.

5 43. At all times during the liability period, Defendants failed to pay Delivery Team
6 Members for all hours worked. Thus, Defendants did not pay Plaintiffs and the Class minimum wages
7 in accordance with law and, because the Class worked shifts over eight (8) hours in duration,
8 Defendants does not pay them overtime wages in accordance with law.

9 44. Defendants' conduct, as allege herein, has caused Plaintiffs and the Class damages
10 including, but not limited to, loss of wages and compensation. Defendants is liable to Plaintiffs and
11 the Class for failing to pay minimum wages, failing to pay overtime wages, failing to provide lawfully
12 compliant rest and meal breaks, failing to pay the rest and meal break premiums, failing to pay all
13 wages owed on each pay period, failure to provide timely and accurate wage statements, failure to pay
14 all wages owed every pay period and upon termination, and unfair competition.

15 45. Plaintiffs are members of, and seek to be the representatives for, the Class of similarly
16 situated employees who all have been exposed to, have suffered, and/or were permitted to work under,
17 Defendants' unlawful employment practices as allege herein.

18 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

19 46. Plaintiffs brings this action on behalf of themselves, and on behalf of all others similarly
20 situated, and as a member of the Class defined as follows:

21 *All current or former employees and/or workers of labor contractors (including those*
22 *classified as an "independent contractor delivery driver" and/or a "independent contractor delivery*
23 *helper") that performed work for Defendants in the State of California at any time beginning four*
24 *(4) years prior to the filing of the Complaint through the date notice is mailed to the Class (the*
25 *"Class period").*

26 47. Plaintiffs reserve the right to amend or otherwise alter the sub-class definitions
27
28

1 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to
2 facts learned through discovery, legal arguments advanced by Defendants or otherwise.

3 48. This action has been brought and may be properly maintained as a class action pursuant
4 to the provisions of Code of Civil Procedure § 382 (hereinafter “§ 382”) and other applicable law.

5 49. **Numerosity of the Class:** Pursuant to § 382, members of the Class are so numerous
6 that their individual joinder is impracticable. Plaintiffs estimate, on information and belief, that there
7 are over five-hundred (500) current and former aggrieved workers of Defendants that served as drivers
8 and crewmembers in California during the Class period. The precise number of class members and
9 their addresses are known to Plaintiffs or will be known to Plaintiffs through discovery. the Class may
10 be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

11 50. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant to
12 §382, common questions of law and fact exist as to all members of the Class. These questions
13 predominate over any questions affecting only individual class members. These common legal and
14 factual questions include:

15 a. Whether Defendants knew or should have known that their agreements with labor
16 contractors did not include funds sufficient to allow the contractor to comply with all applicable local,
17 state, and federal laws or regulations governing the labor or services to be provided in violation of
18 Labor Code §2810.

19 b. Whether Defendants Whether Defendants willfully misclassified employees as
20 “independent contractors,” in violation of Labor Code § 226.8(a)(1).

21 c. Whether Plaintiffs and the Class were not paid minimum wage for each hour worked
22 or part thereof during which they were required to perform acts at the direction and for the benefit of
23 Defendants;

24 d. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs and the
25 Class who worked as drivers and crewmembers in California for the total hours worked during the
26 Class period;

1 e. Whether Defendants violated Labor Code § 226.7 and/or § 512 and engaged in a pattern
2 or practice of failing to provide timely, off-duty thirty (30) minute meal periods to Plaintiffs and the
3 Class who worked as drivers and crewmembers in California during the Class period;

4 f. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the
5 Class who worked as drivers and crewmembers in California during the Class period from taking
6 statutory off-duty thirty (30) minute meal periods on a timely basis;

7 g. Whether Defendants engaged in a pattern or practice of failing to properly compensate
8 Plaintiffs and the Class who worked as drivers and crewmembers in California during the Class period
9 for missed, untimely or on-duty meal periods as required by California law;

10 h. Whether Defendants violated California Industrial Welfare Commission ("IWC")
11 Order No. 9, § 11 by failing to provide Plaintiffs and the members of the Class who worked as drivers
12 and crewmembers in California during the Class period with timely off-duty thirty (30) minute meal
13 periods;

14 i. Whether Defendants engaged in unfair practice and violated California Business and
15 Professions Code § 17200 by failing to provide Plaintiffs and the members of the Class who worked
16 as drivers and crewmembers in California during the Class period with their statutory off-duty meal
17 periods on a timely basis;

18 j. Whether Defendants maintained accurate time records of off-duty thirty (30) minute
19 meal breaks taken by Plaintiffs and the Class during the Class period in accordance with § 7 of IWC
20 Wage Order No. 9-2001;

21 k. Whether Defendants violated Labor Code § 226(a) by failing to issue accurate itemized
22 wage statements to Plaintiffs and the Class;

23 l. Whether Defendants failed to compensate, and therefore violated IWC Wage Order
24 No. 9-2001 and Labor Code § 226.7 by failing to provide ten (10) minute, uninterrupted rest periods
25 as contemplated by California law for work periods in excess of three and one-half (3 ½) hours;

26 m. Whether Defendants engaged in a pattern or practice of failing to properly compensate
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1 Plaintiffs and the Class who worked as drivers and crewmembers in California during the Class period
2 for failing to provide ten (10) minute, uninterrupted rest periods as contemplated by California law for
3 work periods in excess of three and one-half (3 ½) hours;

4 n. Whether Defendants engaged in a pattern or practice of failing to pay appropriate
5 amounts of overtime pay to Plaintiffs and the Class for hours worked in excess of eight (8) hours in a
6 day;

7 o. Whether Defendants violated §510 of the Labor Code by failing to pay overtime pay
8 to Plaintiffs and the Class for hours worked in excess of eight (8) hours in a day or forty (40) hours in
9 a week;

10 p. Whether Defendants violated § 3 of Wage Order No. 9-2001 of the IWC by failing to
11 pay overtime to Plaintiffs and the Class for hours worked in excess of eight (8) hours in a day or forty
12 (40) hours in a week;

13 q. Whether Defendants violated Labor Code §§ 218.5, 204, 1197, and 1198 due to failure
14 to compensate Plaintiffs and the Class for those acts Defendants required Plaintiffs and the Class to
15 perform for the benefit of Defendants.

16 r. Whether Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs and
17 the Class for business expenses they incurred.

18 s. The nature and extent of class-wide injury and the measure of damages for the injury.

19 51. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the classes
20 they represent because Plaintiffs, as employee drivers and crewmembers of Defendants, were exposed
21 and subjected to the same unlawful business practices as other drivers and crewmembers that
22 performed work for Defendants during the liability period. Plaintiffs and the members of the classes
23 they represent sustained the same types of damages and losses.

24 52. **Adequacy:** Plaintiffs are adequate representatives of the Class they seek to represent
25 because their interests do not conflict with the interests of the members of the classes Plaintiffs seek
26 to represent. Plaintiffs have retained counsel competent and experienced in complex class action
27

litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of each Class will be fairly and adequately protected by Plaintiffs and their counsel.

53. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and the class members' claims. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class to redress the wrongs done to them on an individual basis.

Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

54. The Class should also be certified because:

a. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for Defendants;

b. The prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and,

c. Defendants have acted or refused to act on grounds generally applicable to the Class, and/or the general public, thereby making appropriate final and injunctive relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

ENTERING INTO ILLEGAL CONTRACT OR AGREEMENT

1 **(Violation of Labor Code § 2810)**

2 **(All Plaintiffs Against all Defendants)**

3 52. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

4 53. California Labor Code § 2810 states:

5 (a) A person or entity shall not enter into a contract or agreement for labor
6 or services with a construction, farm labor, garment, janitorial, security
7 guard, or warehouse contractor, where the person or entity knows or should
8 know that the contract or agreement does not include funds sufficient to
allow the contractor to comply with all applicable local, state, and federal
laws or regulations governing the labor or services to be provided.

9 (g)(1) An employee aggrieved by a violation of subdivision (a) may file an
10 action for damages to recover the greater of all of the employee's actual
11 damages or two hundred fifty dollars (\$250) per employee per violation
12 for an initial violation and one thousand dollars (\$1,000) per employee for
13 each subsequent violation, and, upon prevailing in an action brought
pursuant to this section, may recover costs and reasonable attorney's fees.
An action under this section shall not be maintained unless it is pleaded
and proved that an employee was injured as a result of a violation of a labor
law or regulation in connection with the performance of the contract or
agreement.

14 (2) An employee aggrieved by a violation of subdivision (a) may also bring
15 an action for injunctive relief and, upon prevailing, may recover costs and
reasonable attorney's fees.

16 (h) The phrase "construction, farm labor, garment, janitorial, security
17 guard, or warehouse contractor" includes any person, as defined in this
code, whether or not licensed, who is acting in the capacity of a
construction, farm labor, garment, janitorial, security guard, or warehouse
contractor.

18 (i)(1) The term "knows" includes the knowledge, arising from familiarity
19 with the normal facts and circumstances of the business activity engaged
20 in, that the contract or agreement does not include funds sufficient to allow
the contractor to comply with applicable laws.

21 (2) The phrase "should know" includes the knowledge of any additional
22 facts or information that would make a reasonably prudent person
undertake to inquire whether, taken together, the contract or agreement
contains sufficient funds to allow the contractor to comply with applicable
laws.

23 (3) A failure by a person or entity to request or obtain any information from
24 the contractor that is required by any applicable statute or by the contract
or agreement between them, constitutes knowledge of that information for
purposes of this section.

25 54. Plaintiffs and the Class are aggrieved employees pursuant to Labor Code §2810(g) and
26 seek to recover damages set forth therein.

55. The contracts between Defendants and warehouse contractors require warehouse contractors to pay for their own costs, including but not limited to: wages, gasoline, workers compensation insurance, administrative costs, tools, delivery trucks, vehicle insurance, and all other incidental costs.

56. These contracts require two employees per truck; a driver, and a delivery helper. Both employees perform the installations and deliveries, and also haul away any waste that results from their work.

57. Defendants, on average, paid labor contractors a sum ranging from \$650-740 per day *per truck*.

58. Aggrieved employees performed local deliveries throughout California, and were subject to a myriad of local minimum wage ordinances that were higher than the requirements imposed by state law.

59. Plaintiffs are informed and believe, and thereon allege, that warehouse contractors have had to spend for truck rentals and/or truck purchases, gasoline, vehicle insurance and a myriad of other insurance and workers compensation coverage, and other costs, in order to perform these contracts.

60. In addition to these foreseeable expenses, warehouse contractors were also subject to unforeseeable deductions from their pay from Defendants. If any customer made a “claim” (a complaint for damage to the Customer goods or customers’ home as a result of any delivery or installation) against warehouse contractors, Defendants would make deductions from the warehouse contractors’ payments. Defendants rarely, if ever, provided advanced notice of these claims to warehouse contractors, and warehouse contractors had almost no mechanism for disputing the claims or subsequent deductions: which could exceed sums of \$10,000.00. There is no clear procedure or policy outlining these deductions, or how these deduction amounts were reached. Defendants’ “employees” were not subjected to the same claim or deduction procedures.

61. Defendants operate within the same industry as aggrieved employees and labor contractors, and further employ their own drivers and delivery helpers to perform the same or shorter

1 routes to those given to aggrieved employees. Accordingly, Defendants should be aware of the costs
2 that running such an operation entail. Defendants' use of labor contractors for longer and more
3 strenuous routes, at a minimum, should come with recognition that the wages and other labor costs
4 due to these employees would be higher than the employees that Defendants pay their own drivers and
5 delivery helpers.

6 62. Throughout the state of California, for over a decade, Defendants have entered into
7 numerous contracts that are either identical to, or almost identical to, those between Defendants and
8 labor contractors. Defendants have further litigated and settled numerous allegations similar to those
9 contained herein. Despite this pattern and practice of behavior, Plaintiffs are informed and believe,
10 and thereon allege, that Defendants continue to enter into such contracts knowingly and with a
11 conscious disregard for the rights afforded to employees under California law.

12 63. Defendants violated Labor Code §2810 because they knew or should have known that
13 the contract or agreement with the warehouse contractors did not include funds sufficient to allow the
14 warehouse contractors to comply with all applicable local, state, and federal laws or regulations
15 governing the labor or services to be provided.

16 64. Plaintiffs are entitled to recover the "greater of all his or her actual damages or two
17 hundred and fifty dollars (\$250) per employee per violation for an initial violation and one thousand
18 dollars (\$1,000) per employee for each subsequent violation, and upon prevailing in an action brought
19 pursuant to this section, may recover costs and reasonable attorney's fees." Cal. Labor Code
20 §2810(g)(1).

21 65. No adequate remedy exists at law for the injuries suffered by Plaintiffs and the Class
22 herein, so far as the employment opportunity that Defendants have denied to them cannot be secured
23 absent injunctive relief. If this court does not grant injunctive relief of the type and for the purpose
24 specified below, Plaintiffs and the Class will suffer irreparable injury. Therefore, Plaintiffs and the
25 Class request the following injunctive relief: that Defendants be ordered to amend all existing contracts
26 with Labor Contractors within California to provide sufficient funds to allow the contractor to comply
27

1 with all applicable local, state, and federal laws or regulations governing the labor or services to be
2 provided. Plaintiffs and the Class additionally request that this Court order that all future contracts
3 between Defendants and Labor Contractors similarly meet such requirements.

4 66. As a result of Defendants actions, Plaintiffs and the Class were injured as set forth fully
5 in the preceding paragraphs of this Complaint and are hereby incorporated as if fully set forth herein.

6 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **(Violation of Labor Code §§ 512 and 226.7; IWC Wage Order No. 9-2001, § 11)**

10 **(All Plaintiffs Against All Defendants)**

11 67. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

12 68. California Labor Code §226.7 provides, “(a) No employer shall require any employee
13 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
14 Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance
15 with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee
16 one additional hour of pay at the employee s regular rate of compensation for each work day that the
17 meal or rest period is not provided.”

18 69. IWC Order No. 9-2001 §(10) provides, in pertinent part: “(A) No employer shall
19 employ any person for a work period of more than five (5) hours without a meal period of not less
20 than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s
21 work the meal period may be waived by mutual consent of the employer and the employee. (B) An
22 employer may not employ an employee for a work period of more than ten (10) hours per day without
23 providing the employee with a second meal period of not less than 30 minutes, except that if the total
24 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
25 the employer and the employee only if the first meal period was not waived (C) Unless the employee
26 is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ”on duty”
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1 meal period and counted as time worked. An on-duty” meal period shall be permitted only when the
2 nature of the work prevents an employee from being relieved of all duty and when by written
3 agreement between the parties an on-the-job paid meal period is agreed to. The written agreement
4 shall state that the employee may, in writing, revoke the agreement at any time. (D) If an employer
5 fails to provide an employee a meal period in accordance with the applicable provisions of this order,
6 the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
7 compensation for each workday that the meal period is not provided.”

8 70. Section 512(a) of the California Labor Code provides, in pertinent part: “[a]n employer
9 may not employ an employee for a work period of more than five hours per day without providing the
10 employee with a meal period of not less than 30 minutes, except that if the total work period per day
11 of the employee is no more than six hours, the meal period may be waived by mutual consent of both
12 the employer and employee. An employer may not employ an employee for a work period of more
13 than 10 hours per day without providing the employee with a second meal period of not less than 30
14 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may
15 be waived by mutual consent of the employer and the employee only if the first meal period was not
16 waived.” As alleged herein, Defendants failed to authorize and permit uninterrupted meal breaks
17 during the Class period. Plaintiffs and the Class were routinely required to work without an
18 uninterrupted meal break at the direction of Defendants and/or with Defendants’ knowledge and
19 acquiescence.

20 71. By its actions in requiring Plaintiffs and the Class to work through meal periods and/or
21 its failure to relieve drivers and crewmembers of their duties for their off-duty meal periods,
22 Defendants has violated California Labor Code § 226.7 and § 11 of IWC Wage Order No. 9-2001, and
23 is liable to Plaintiffs and the Class.

24 72. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
25 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code § 226.7(b)
26 and § 11 of IWC Wage Order No. 9-2001, in the amount of one additional hour of pay at the
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1 employee's regular rate of compensation for each work period during each day in which Defendants
2 failed to provide its drivers and crewmembers with timely statutory off-duty meal periods.

3 73. Plaintiffs further seek attorney's fees and costs pursuant to Labor Code §218.5.

4 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

7 **(Violation of Labor Code §§ 226.7, 512, and 1194; IWC Wage Order No. 9-2001, § 12)**

8 **(All Plaintiffs Against All Defendants)**

9 74. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

10 75. IWC Order No.9-2001(11) provides, in pertinent part: "(A) Every employer shall
11 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time shall be based on the total hours worked
13 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
14 a rest period need not be authorized for employees whose total daily work time is less than three and
15 one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there
16 shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in
17 accordance with the applicable provisions of this order, the employer shall pay the employee one (1)
18 hour of pay at the employee's regular rate of compensation for each workday that the rest period is
19 not provided."

20 76. IWC Order No. 9-2001(12)(B) further provides: "[i]f an employer fails to provide an
21 employee with a rest period in accordance with the applicable provisions of this order, the employer
22 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
23 workday that the rest period is not provided."

24 77. As alleged herein, Defendants failed to authorize and permit rest breaks during the
25 Class period. Plaintiffs and the Class were routinely required to work through rest periods at the
26 direction of Defendants and/or with Defendants' knowledge and acquiescence.

78. By its actions in requiring its employees during the Class period to work through rest periods, Defendants violated §12 of IWC Wage Order No. 9-2001 and California Labor Code §226.7, and is liable to Plaintiffs and the Class.

79. Defendants' unlawful conduct allege herein occurred in the course of employment of Plaintiffs and all others similarly situated and such conduct has continued through the filing of this complaint.

80. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the Class have been deprived of timely rest periods and are entitled to recovery under Labor Code §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide employees with timely and/or paid rest periods.

81. Plaintiffs further seek attorney's fees and costs pursuant to Labor Code §218.5.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 510, 1194, 1194.2, and 1197; Wage Order No. 9-2001, § 4)

(All Plaintiffs Against All Defendants)

82. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

83. Labor Code §1197 provides: “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

84. Labor Code §1194, subdivision (a) provides: “[n]otwithstanding any agreement to work for a lesser wage, an 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.”

85. Labor Code §1194.2 provides in pertinent part: “[i]n any action under Section [. . .] 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

86. Pursuant to IWC Wage Order No. 9-2001, at all times material hereto, “[h]ours worked” includes “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.”

87. Pursuant to §4 of IWC Wage Order No. 9-2001, Plaintiffs and the Class were entitled to receive not less than the minimum wage for all hours worked.

88. At all times relevant during the liability period, under the provisions of Wage Order No. 9-2001, Plaintiffs and each Class member should have received not less than the minimum wage in a sum according to proof for the time worked, but were not so compensated.

89. For all hours that Plaintiffs and the Class worked, they are entitled to not less than the California minimum wage and, pursuant to Labor Code § 1194.2(a) liquidated damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to Labor Code §1194, Plaintiffs and the Class are also entitled to their attorneys' fees, costs, and interest according to proof.

90. At all times relevant during the liability period, Defendants willfully failed and refused, and continues to willfully fail and refuse, to pay Plaintiffs and the Class the amounts owed.

91. Defendants' unlawful conduct allege herein occurred in the course of employment of Plaintiffs and all other similarly situated drivers and crewmembers, and Defendants has done so continuously throughout the filing of this complaint.

92. Plaintiffs and the Class seek and are entitled to back pay, pre-judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs, and, for Plaintiffs and the Class of members no longer employed, waiting time penalties pursuant to Labor Code §§1194, 1194.2, 203.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME WAGES
(Violations of Labor Code §§ 510 and 1194; Wage Order No. 9-2001, § 3)
(All Plaintiffs Against All Defendants)

93. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

94. Section 510 of the Labor Code provides, in pertinent part: “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

95. Section 3(a)(1) of Wage Order No. 9-2001 also mandates that employers pay one and one-half times the employees’ regular rate of pay for employees who work more than eight (8) hours in a day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess of twelve (12) hours in one day.

96. At all times relevant hereto, Plaintiffs and the Class were non-exempt for purposes of the overtime and double pay requirements set forth in the Labor Code and Wage Order No. 9-2001. In addition, during the Class period, Plaintiffs and other members of the Class consistently worked three to seven (7) days per week for nine (9) hours or more.

97. Plaintiffs seek to recover unpaid overtime and double-time compensation in an amount to be determined at trial.

98. Plaintiffs further seek attorney’s fees and costs pursuant to Labor Code §1194.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES OWED EVERY PAY PERIOD
(Violation of Labor Code §§ 204, 210)
(All Plaintiffs Against All Defendants)

1 Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

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

4 100. California Labor Code § 210 provides, “(a) In addition to, and entirely independent and
5 apart from, any other penalty provided in this article, every person who fails to pay the wages of each
6 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
7 shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
8 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
9 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
10 amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory
11 penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance
12 of a citation or pursuant to Section 98.3.”

13 101. At all times relevant during the liability period, Defendants failed to pay Plaintiffs and
14 the Class the full amount of all owed wages, including the meal and rest period premium wages, when
15 due as required by California Labor Code § 204.

16 102. Defendants failed to pay Plaintiffs and the Class all wages earned each pay period.
17 Plaintiffs is informed, believes, and thereon alleges, that at all times relevant during the liability period,
18 Defendants maintained a policy or practice of not paying Plaintiffs and the Class: (i) minimum wages
19 for all hours worked; (ii) overtime wages for all overtime hours worked; and (iii) premium wages for
20 all missed meal and rest periods.

21 103. As a result of Defendants’ unlawful conduct, Plaintiffs and members of each Class have
22 suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay
23 period. The precise amount of unpaid wages is not presently known to Plaintiffs and the Class, but can
24 be determined directly from Defendants’ records or indirectly based on information from Defendants’
25 records.

26 104. Plaintiffs further seek statutory penalties pursuant to Labor Code §210, and attorney’s
27

1 fees pursuant to Labor Code §218.5.

2 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

5 **(Violation of Labor Code § 203)**

6 **(All Plaintiffs Against All Defendants)**

7 105. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

8 106. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due
9 and owing to former drivers and crewmembers at or around the time employment is terminated.
10 Section 203 of the California Labor Code provides that if an employer willfully fails to pay
11 compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the
12 employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

13 107. At all times relevant during the liability period, Plaintiffs and the other members of the
14 Class were employees of Defendants covered by Labor Code § 203.

15 108. Plaintiffs and the Class were not paid for their work performed in excess of eight (8)
16 hours per day, nor were they paid for their work time including, but not limited to: driving Defendants'
17 trucks to their assigned destinations, performing pre and post route duties, crewmembers keeping
18 drivers awake while drivers were driving, crewmembers cleaning tanks and using vacuums, and
19 drivers and crewmembers attending mandatory safety meetings.

20 109. Defendants willfully failed to pay Plaintiffs and other members of the Class who are
21 no longer employed by Defendants for their uncompensated hours, uncompensated overtime, and
22 missed, untimely or on-duty meal and rest periods upon their termination or separation from
23 employment with Defendants as required by California Labor Code §§ 201 and 202. As a result,
24 Defendants are liable to Plaintiffs and other members of the Class who are no longer employed by
25 Defendants for waiting time penalties amounting to thirty days wages for Plaintiffs and each such
26 Class member pursuant to California Labor Code § 203.

1 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

2 **EIGHTH CAUSE OF ACTION**

3 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**

4 **(Violation of Labor Code §§ 226 and 226.3)**

5 **(All Plaintiffs Against All Defendants)**

6 110. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

7 111. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or at
8 the time of each payment of wages, furnish each of his or her employees, either as a detachable part
9 of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by
10 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
11 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
12 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
13 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
14 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
15 employee and his or her social security number, [. . .], (8) the name and address of the legal entity that
16 is the employer, and (9) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee...”

18 112. Labor Code § 226(e) provides that an employee is entitled to recover \$100 for the initial
19 pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period, as well as
20 an award of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly
21 and intentionally failed to provide accurate itemized statements to the employee causing the employee
22 to suffer injury.

23 113. Plaintiffs is informed, believes and thereon alleges that at all times relevant, Defendants
24 knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to
25 furnish Plaintiffs and each Class member with timely and accurate itemized statements showing the
26 gross wages earned by each of them, as required by Labor Code §226(a), in that the payments owed
27

1 to Plaintiffs and the members of the Class for unpaid minimum wages, unpaid overtime, and missed
2 meal and rest periods, were not included in gross wages earned by Plaintiffs and the Class.

3 114. Defendants' failure to provide Plaintiffs and the Class with accurate itemized wage
4 statements during the Class period has caused Plaintiffs and the Class to incur economic damages in
5 that they were not aware that they were owed and not paid compensation for missed rest periods and
6 on-duty meal periods, for hours worked without pay, and for overtime worked without pay. In addition,
7 Defendants provided inaccurate information regarding hours worked, which masked its underpayment
8 of wages to Plaintiffs and the Class.

9 115. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs
10 and the Class in violation of Labor Code § 226(a), Plaintiffs and the members of the Class are each
11 entitled to recover penalties pursuant to § 226(e) of the Labor Code.

12 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

13 **NINTH CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT**

15 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**

16 **(All Plaintiffs Against All Defendants)**

17 116. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

18 117. Section 17200 of the California Business and Professions Code (the "UCL") prohibits
19 any unlawful, unfair, or fraudulent business practices.

20 118. Through its action allege herein, Defendants has engaged in unfair competition within
21 the meaning of the UCL. Defendants' conduct, as allege herein, constitutes unlawful, unfair, and/or
22 fraudulent business practices under the UCL.

23 119. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating
24 the statutes allege herein. Defendants' unfair conduct under the UCL includes, but is not limited to,
25 failure to pay the Class wages and compensation they earned through labor provided, and failing to
26 otherwise compensate the Class as allege herein. Defendants' fraudulent conduct includes, but is not
27

1 limited to, issuing wage statements containing false and/or misleading information about the time the
2 the Class worked and the amount of wages or compensation due.

3 120. Additionally, there were numerous instances where Defendants poached Delivery
4 Team Members and employed them directly, due to their knowledge that Delivery Team Members
5 were not adequately compensated through this intentional misclassification scheme.

6 121. Plaintiffs have standing to assert this claim because she has suffered injury in fact and
7 has lost money as a result of Defendants' conduct.

8 122. Plaintiffs and the Class seek restitutionary disgorgement from Defendants, and an
9 injunction prohibiting it from engaging in the unlawful, unfair, and/or fraudulent conduct allege
10 herein.

11 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

12 **TENTH CAUSE OF ACTION**

13 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

14 **(Violation of Labor Code §§ 2698 et seq.)**

15 **(All Plaintiffs Against All Defendants)**

16 123. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

17 124. On May 21, 2024, Plaintiff's provided Defendants with notice of the alleged violations
18 under California's Private Attorneys General Act ("PAGA"), a copy of which is attached as Exhibit
19 A. These violations, outlined more fully in the preceding paragraphs of this complaint, included claims
20 of: 1) Intentional Misclassification of Employees (Lab. Code §§226.8(a)(1); 2775(b)(1); 2) Entering
21 Into Illegal Contract or Agreement (Labor Code §2810); 3) Failure To Pay Minimum Wages
22 (§§1182.12, 1197, 1194.2); 4) Failure To Pay Overtime / Double Time Wages (Labor Code §§510,
23 1194); 5) Failure To Provide Meal Periods (Labor Code §§226.7, 512); 6) Failure To Provide Rest
24 Periods (Labor Code §226.7); 7) Failure To Pay All Wages Each Pay Period (Labor Code §204, §210);
25 8) Failure To Pay All Wages Due Upon Separation (Labor Code §203); and 9) Failure To Provide
26 Accurate Itemized Wage Statements (Labor Code §226). Defendants provided no notice of remedy in
27

1 response to Plaintiff's notice.

2 125. On May 21, 2024, Plaintiffs filed this notice with the California Labor and Workforce
3 Development Agency ("LWDA"). The LWDA did not take action to investigate or intervene, and has
4 not responded to the Notice of PAGA violations. Therefore, by operation of law, Plaintiffs are deemed
5 Representatives of the LWDA and the State of California to commence an enforcement action to
6 recover civil penalties and restitution of wages to the maximum extent permitted by California Labor
7 Code §§ 2699.3 and 558(a)(1)-(3).

8 126. Plaintiffs have satisfied all notice and exhaust provisions, and the filing of this First
9 Amended Complaint is done as a matter of right pursuant to Labor Code §2699.3(a)(2)(C).

10 127. Plaintiffs and other aggrieved employees may seek recovery of civil penalties pursuant
11 to Labor Code §§2699.3 and 558(a) which allow for recovery of civil penalties under the PAGA for
12 each violation where Plaintiffs and other aggrieved employees were not paid all wages due for hours
13 worked at the requisite minimum wage and/or overtime wages, were not provided a compliant meal
14 or rest period penalty.

15 128. Plaintiffs, by and through the claims outlined herein, are aggrieved employees with
16 standing to bring an action under the Private Attorney General Act ("PAGA"). Plaintiffs, as
17 representative of the people of the State of California, will seek any and all penalties otherwise capable
18 of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement
19 (DLSE). This includes each of the following, as set forth in Labor Code Section 2699.5, which
20 provides that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections
21 201 through 203, 204, 226, 226.7, 226.8, 510, 512, 558, 1194, 1197, 1199, 2802, and 2810.

22 129. Plaintiffs are informed and believe that Defendants and/or DOES have violated and
23 continue to violate provisions of the California Labor Code and applicable Wage Orders related to
24 misclassification, meal and rest periods, paystubs, overtime compensation, insufficient labor contracts,
25 wages for all work performed, and all wages due during employment and at termination.

26 130. Plaintiffs, as personal representatives of the general public, will and do seek to recover
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1 any and all penalties for each and every violation shown to exist or to have occurred during the oneyear
2 period of filing this action, in an amount according to proof, as to those penalties that are otherwise
3 only available to public agency enforcement actions. Funds recovered will be distributed in accordance
4 with PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
5 and the Labor and Workforce Development Agency (LWDA).

6 131. Defendants willfully failed to provide Plaintiffs and other aggrieved employees with
7 accurate itemized wage statements as alleged above, then Labor Code §§2699.3 and 226.3 allow for
8 recovery of civil penalties under the PAGA for each violation and aggrieved employee that was not
9 provided a wage statement or an accurate statement setting forth all hours worked and applicable rates
10 of pay.

11 132. Defendants willfully misclassified Plaintiffs and other aggrieved employees as
12 independent contractors, in violation of Cal. Labor Code §226.8(a)(1). Labor Code §§2699.3 and
13 226.3 allows for recovery of civil penalties under the PAGA for each violation and aggrieved
14 employee willfully misclassified by Defendants.

15 133. Defendants, by entering into contracts that provided insufficient consideration for
16 subcontracting entities to comply with California wage and hour minimum requirements, as alleged
17 herein, are liable under Labor Code §§ 2699.3 and 2699.5 for recovery of civil penalties under the
18 PAGA for each violation and aggrieved employee harmed by Defendants' violation of the contracting
19 law.

20 134. Civil penalties to be assessed will be in compliance with Labor Code §§2699(i),
21 2699.3(c) and 558(a) for each violation and for each aggrieved employee, in an amount according to
22 proof and approved by the Court, and/or as set by statute.

23 135. In addition to recovery of civil penalties and distribution to the LWDA as required by
24 law, Plaintiffs will seek recovery of reasonable costs and attorney's fees, in an amount according to
25 proof.

26 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.
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PRAYER

WHEREFORE, Plaintiffs, on their and the class members' behalf, pray for judgment against Defendants as follows:

1. An order that this action may proceed and be maintained as a class action;
2. For all unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member;
3. For all unpaid overtime wages due to Plaintiffs and each Class Member;
4. For one hour of wages due to Plaintiffs and each Class Member for each missed meal period;
5. For one hour of wages due to Plaintiffs and each Class Member for each missed rest period;
6. For waiting time penalties under Labor Code §203;
7. For statutory penalties under Labor Code §210;
8. For statutory penalties under Labor Code §226(e);
9. An order requiring Defendants to comply with Labor Code § 226(a) with respect to all currently employed members of the Class;
10. For damages or penalties under Labor Code §2810;
11. For restitutionary disgorgement pursuant to the UCL;
12. An order enjoining Defendants from further unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*;
13. An order requiring Defendants to amend all existing contracts to provide adequate funds for Labor Contractors to fully comport with all local, state, and federal laws and regulations;
14. An order requiring that all future contracts Defendants enter into with Labor Contractors to provide adequate funds for Labor Contractors to fully comport with all local, state, and federal laws and regulations;
15. For recovery of civil penalties as a Representative Action on behalf of the State of

1 California, the LWDA, and all aggrieved employees pursuant to PAGA;

2 16. For prejudgment and post-judgment interest in the full amount permitted by law;

3 17. Reasonable attorneys' fees in accordance with the law including but not limited to
4 Labor Code §§218.5, 226, 1194, 2810(g)(1), and PAGA;

5 18. Accounting of Defendants' records for the liability period;

6 19. General, special, and consequential damages, to the extent allowed by law;

7 20. Costs of suit; and

8 21. Such other relief as the Court may deem just and proper.

9 **DEMAND FOR JURY TRIAL**

10 PLAINTIFFS herein demand trial by jury on all of the foregoing matters.

11 DATED: July 26, 2024

LAW OFFICE OF
ALLAN A. VILLANUEVA

13
14 

Allan A. Villanueva
Parham Golestanian
Attorney for PLAINTIFFS

EXHIBIT A

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SAN RAMON, CALIFORNIA 94583

MEMBER OF THE BARS
CALIFORNIA TEXAS HAWAII

VIA CERTIFIED MAIL

May 20, 2024

California Labor & Workforce Development
Agency Attn. PAGA Administrator
455 Golden Gate Avenue, 9th
Floor San Francisco, CA 94102
(VIA ONLINE FILING)

Gordon Branov
Chief Executive Officer
Pilot Air Freight, LLC
2 Braxton Way, Suite 400
Glen Mills, PA 19342

Peter Jabbour
Pilot Air Freight, LLC
180 Park Avenue
Florham Park, NJ 07932

Re: Osbaldo Arzate; David Jonatan Perez; Gerson Perez; Noe Escalante; Rafael Nunn; Mauricio Torres; Jose Mauricio Morales; Hector Efrain Morales Hernandez; Lino Alberto Hernandez Davila; Jose Medrano Pastora; Fernando Jeremias Cruz Flores; and Amilkar Danilo Larios Gonzales

Vs.

PILOT AIR FREIGHT, LLC, dba PILOT LAST MILE HOME

Complaint under California Labor Code §2698 et seq. (Private Attorneys General Act of 2004)

To Whom It May Concern:

This office represents Messrs. Osbaldo Arzate; David Jonatan Perez; Gerson Perez; Noe Escalante; Rafael Nunn; Mauricio Torres; Jose Mauricio Morales; Hector Efrain Morales Hernandez; Lino Alberto Hernandez Davila; Jose Medrano Pastora; Fernando Jeremias Cruz Flores; and Amilkar Danilo Larios Gonzales (Named Employees”), former employees of PILOT AIR FREIGHT, LLC dba PILOT LAST MILE HOME (hereinafter “PILOT”).

They are aggrieved employees and are making claims under Cal. Labor Code §2698 et seq. on their behalf and other current or former aggrieved employees (collectively “Aggrieved Employees”) of PILOT.

The Aggrieved Employees were employed by PILOT through an arrangement wherein PILOT would enter into a contract or agreement with labor contractors who would provide the workers to PILOT as more fully discussed below. The agreement was denominated “BROKER / CARRIER AGREEMENT.” PILOT knew or should have known that this agreement did not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

The Claims by the Aggrieved Employees against PILOT include:

1. Intentional Misclassification of Employees (Lab. Code §§226.8(a)(1); 2775(b)(1);
2. Entering Into Illegal Contract or Agreement (Labor Code §2810);
3. Failure To Pay Minimum Wages (§§1182.12, 1197, 1194.2);
4. Failure To Pay Overtime / Double Time Wages (Labor Code §§510, 1194);
5. Failure To Provide Meal Periods (Labor Code §§226.7, 512);
6. Failure To Provide Rest Periods (Labor Code §226.7);
7. Failure To Pay All Wages Each Pay Period (Labor Code §204, §210)
8. Failure To Pay All Wages Due Upon Separation (Labor Code §203)
9. Failure To Provide Accurate Itemized Wage Statements (Labor Code §226)

PILOT IS THE EMPLOYER OF THE AGGRIEVED EMPLOYEES

Aggrieved Employees transport, deliver and install household goods including furnitures and/or appliances purchased by individual consumers from PILOT’s retail clients (“Customer goods”).

PILOT enter into contracts or agreements with labor contractors for the labor contractors to provide employees to PILOT to perform last-mile deliveries and installation of Customer goods for PILOT throughout California. These employees were hired into one of two roles, either as a driver or delivery helper working as a team (together, “Delivery Team Members”). These Delivery Team Members are the Aggrieved Employees, and will be used interchangeably.

PILOT violated California Labor Code §2810 and other California laws, primarily by entering into inadequately-funded contracts with the labor contractors to engage the Aggrieved Employees to transport, deliver and install the Customer goods.

PILOT knew or should have known that the contract or agreement with its labor contractors did not include funds sufficient to allow the contractors to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

Aggrieved Employees further allege that PILOT is/was the employer of the Aggrieved Employees because PILOT exercised control over the manner and method of the performance of their work while misclassifying the Aggrieved Employees as independent contractors. Thus, Aggrieved Employees allege that PILOT did not pay them the legal minimum and/or overtime wages, did not provide legally required off-duty meal and rest periods, did not pay the meal and rest period premiums, and did not provide accurate wage statements, and did not pay wages when due or upon termination, and which practices constituted unfair business practices under Business & Professions Code §17200.

PILOT entered into contracts or agreements with labor contractors for labor contractors to provide the labor and services, and the necessary trucks, equipment and workers, namely drivers and drivers' helpers to deliver Customer goods to the homes, businesses and other sites of individual consumers.

The contracts required the labor contractors to bear the costs of furnishing all equipment and tools necessary or required for the labor and services ("Equipment"), such Equipment was to be used exclusively for transport of Customer Goods, while loaded with Customer Goods. The labor contractors were required to furnish insurance coverages for Public liability and property damage, Commercial General Liability, Excess / Umbrella Liability, and workers' compensation.

The labor contractors were also required to pay for all fees, fines, licenses, bonds and all of the workers' wages and taxes, including State and Federal social security and Medicare taxes, and unemployment and disability insurance.

In exchange, PILOT paid the labor contractors from \$650 up to \$740 per route, which was wholly insufficient to pay all of the foregoing costs and expenses.

PILOT had total control over the times and manner in which the Delivery Team Members performed their work. By use of a cellular app, PILOT would track Delivery Team Members' locations at all times, hold them to strict timeframes, and monitor their actions until the route was completed. If, at any point, the Delivery Team Members' location indicated that they were behind schedule, PILOT would call them in an attempt to control and speed up their progress.

Due to the strict timeframes that PILOT held Delivery Team Members to, they were unable to take rest or meal breaks. On several occasions where Delivery Team Members stopped to take a meal break during their 14-to-16-hour workdays, PILOT would discipline and penalize them by stripping their routes for the following day. Additionally, due to the calls that PILOT would make whenever Plaintiffs were "behind schedule", Plaintiffs were never afforded uninterrupted rest or meal breaks. In fact, the level of control exercised by PILOT was so immense, Delivery Team Members had to carry a water bottle or some other container wherein they could urinate.

PILOT further displayed their control over the manner of employment by requiring that each truck performing assigned routes have at least two workers, a driver and a helper. These drivers and helpers additionally needed to undertake background checks and clearances by PILOT, prior to being approved to work on these teams. Once these team members were cleared, they were given Pilot badges.

In performing their duties, Delivery Team Members were required to drive a specific length truck, and were required to carry and use specific tools, conforming to PILOT' specifications.

Delivery Team Members additionally had to submit their identification and qualifications to PILOT and go through a screening and clearance procedure including a background check including verification of Social Security Numbers. Once approved, many Delivery Team Members were given "Pilot" badges. If the team member does not provide Pilot with a valid social security number, they are terminated.

**PILOT WILLFULLY AND INTENTIONALLY MISCLASSIFIED WORKERS AS
INDEPENDENT CONTRACTORS
(Labor Code §226.8)**

PILOT also hired their own workers whom they classified as “employees” performing the same work and delivered similar routes as that of Delivery Team Members. Despite these clear similarities, PILOT willfully and intentionally misclassified Delivery Team Members as independent contractors in violation of Cal. Lab. Code §226.8(a)(1). PILOT has made this deliberate misclassification a pervasive pattern and practice throughout their operations within California, exposing them to significant penalties. Section 226.8(c) of the Labor Code provides a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

PILOT employed the Delivery Team Members. PILOT exercised control over the wages, hours, or working conditions, and suffered and permitted Delivery Team Members to work. PILOT at all times subjected Delivery Team Members to PILOT’s control. IWC Wage Order 9 §2, *Martinez v. Combs* 49 Cal.4th 35 (2010).

Moreover, they are presumed to be employees unless PILOT can meet their burden of establishing that ALL of the following have been satisfied:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity’s business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. Labor Code §2775; *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903;

PILOT cannot possibly meet its burden. PILOT controlled and directed the performance of Delivery Team Members. The Delivery Team Members performed the work that IS the usual course of PILOT’s business. Finally, neither the labor contractors nor the Delivery Team Members engaged in their own trade, occupation or business of appliance delivery and installation. PILOT required the labor contractors to establish and register corporations or limited liability companies so it would appear as if the labor contractors were in the business of delivery and installation of Customer goods. This arrangement was merely a ploy created by PILOT in an effort to thwart labor laws.

Even under the business-to-business exemption from *Dynamex*, Team Members would be considered employees of PILOT. Delivery Team Members and labor contractors are not free from PILOT’s control and direction, provide services directly to PILOT’s customers, have no power to negotiate their own rates, and cannot set their own hours and location of work. Cal. Labor Code §2776.

Because Delivery Team Members were employed by PILOT, PILOT shares all civil legal

responsibility and liability for the payment of their wages, and PILOT cannot shift to the labor contractor any legal duties or liabilities created by PILOT's own acts. Cal. Labor Code §2810.3 et seq.

**PILOT FAILED TO PROVIDE EMPLOYEES LEGALLY-COMPLIANT MEAL AND
REST PERIODS
BREAKS (Labor Code §§226.7, 510)**

Labor Code §226.7 provides, in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code §512 provides, in pertinent part:

(a) An employer shall 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. An employer shall 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.(1) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

California law obligates employers to “provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1036.

Due to the strict timeframes that PILOT held Delivery Team Members to, they failed to provide the Aggrieved Employees legally-compliant meal breaks. On several occasions where Delivery

Team Members stopped to take a meal break during their 12 to 16-hour workdays, PILOT would discipline and penalize them by stripping their routes for the following day. Delivery Team Members were not provided or allowed to take a thirty (30) minute, uninterrupted, off-duty meal breaks. Moreover, Delivery Team Members often worked in excess of ten (10) hours without a second thirty (30) minute meal break. Cal. Labor Code § 226.7, 512(a); IWC Order No. 9 §(11)(A).

PILOT similarly failed to provide Aggrieved Employees legally-compliant rest breaks. PILOT failed to “relieve their employees of all duties and relinquish any control over how employees spend their break time.” *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 260 (citing *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038–1039).

Rather than being permitted to take their meal or rest breaks, Delivery Team Members were routinely required to work through meal and rest periods at the direction of PILOT and/or with PILOT’s knowledge and acquiescence, in violation of California Labor Code § 226.7(a). If Delivery Team Members ever chose to pull over for a break, a representative from PILOT would call them asking why they were behind schedule, and pressured them to resume driving. These actions were all furthered by the constant GPS tracking of Team Members that PILOT undertook. The requirement for Delivery Team Members to stay on schedule was so intense that they had to carry and use water bottles wherein they could urinate.

**PILOT FAILED TO KEEP ACCURATE PAYROLL RECORDS OF HOURS WORKED
DAILY AND WAGES PAID TO AGGRIEVED EMPLOYEES
(Labor Code §226, 1174)**

Section 1174 of the Labor Code provides:

Every person employing labor in this state shall:

(b) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(c) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 226 of the Labor Codes states,

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages

earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is a farm labor contractor, as defined in subdivision b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

Section 6 of IWC Wage Order 9 states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

PILOT kept no records whatsoever of the hours worked daily of the Aggrieved Employees, when the Aggrieved Employees begin and end each work period, when the meal periods are provide, or wages paid to the Aggrieved Employees.

Because of PILOT's failure to comply with the statutory requirements to maintain accurate records, the Aggrieved Employee can merely testify and will testify as to the number of hours they worked, even though imprecise. They will testify that they were "suffered or permitted to work whether or not they were required to do so" from 12 to 16 hours per day. "In such a situation, imprecise evidence by the employee can provide a sufficient basis for damages." *Hernandez v. Mendoza* (1988) 199 Cal. App. 3d 721, 727.

The burden will then shift to PILOT to “come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee’s evidence.” *Id.* PILOT will not be able to satisfy its burden.

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. Labor Code §226.3

AGGRIEVED EMPLOYEES ARE OWED MINIMUM / OVERTIME WAGES (Labor Code §§, 510, 1182.12, 1194, 1194.2, 1197)

As aforementioned, PILOT entered into a contract with labor contractors in order to fulfill their last-mile deliveries. These contracts required labor contractors to pay for all costs, including but not limited to wages, FICA contributions for Social Security and Medicare, contributions for unemployment and disability insurance, gasoline, workers compensation insurance, general liability insurance, administrative costs, tools, trucks, truck insurance, cargo insurance, fees, fines, licenses, and bonds, and claims for damages. These contracts required two employees, a driver and a delivery helper, per truck supplied by labor contractors. In return, PILOT paid labor contractors a varying sum ranging from \$650-\$740 per truck per day.

Delivery Team Members were, at all times of their employment, deprived of the lawful rate of pay including minimum and overtime wages.

Labor Code §1197 provides, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code §1182.12 and Wage Order 9 §4 set forth the minimum wage to be paid to the Aggrieved Employees.

Pursuant to Labor Code §510:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Section 3(A)(1) of Wage Order No. 9 also mandates that employers pay one and one-half times the employees’ regular rate of pay for employees who work more than eight (8) hours in a day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess of twelve (12) hours in one day.

Section 4 of Wage Order No. 9 mandates that employers shall pay employees wages of at least \$14.00 per hour for 2021, \$15.00 per hour in 2022, \$15.50 per hour in 2023, and \$16.00 per hour in 2024. Additionally, Aggrieved Employees frequently work in counties throughout the state that mandate higher minimum wages than those of the Wage orders, entitling aggrieved employees to these wages on these shifts.

For example, within the County of San Francisco, in which numerous Delivery Teams worked daily, the Minimum wage was \$16.07 per hour from July 1, 2020, \$16.32 per hour from July 1, 2021, and \$16.99 per hour from July 1, 2022, and \$18.07 per hour from July 1, 2023.

At all times during the liability period, Delivery Team Members were suffered and permitted to work in excess of eight (8) hours per workday or forty (40) hours per work week. Delivery Team Members routinely worked in excess of eight hours per day, yet PILOT failed to pay for hours worked in excess of eight (8) hours per day, and failed to pay one-and-one-half times their regular rate of pay for hours worked in excess of eight (8) hours per day or forty (40) hours per workweek.

PILOT also failed to pay its employees at a rate no less than twice the regular rate of pay for work in excess of twelve (12) hours in one day or for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a workweek.

At all times relevant hereto, Aggrieved Employees were non-exempt for purposes of the overtime and double pay requirements set forth in the Labor Code and Wage Order No. 9. They did not drive “commercial motor vehicles” as defined U.S. Transportation C.F.R. §390.5, as their vehicles had a gross weight rating of less than 26,000 lbs., and they did not drive in interstate commerce.

Yet, Aggrieved Employees were not paid the lawful minimum and overtime rates. For example, in 2023 many of them made deliveries in San Francisco County. They should have been paid the minimum wage of at least \$18.07 per hour, an overtime rate of \$27.11, and a double time rate of \$36.14. They regularly worked 12 to 16 hours per day. Thus, for a 12-hour day, each employee who did not receive a legally-compliant rest and meal break should have been paid at least \$289.14. For a 14-hour and a 16-hour workday, each employee should have been paid \$361.42 and \$433.70, respectively.

However, the Aggrieved Employees were paid less than these amounts. PILOT thus owes them minimum and/or overtime wages, and liquidated damages pursuant to Labor Code §1194.2.

**PILOT ENTERED INTO CONTRACTS OR AGREEMENTS FOR LABOR OR SERVICES WITH WAREHOUSE CONTRACTORS KNOWING THAT THE CONTRACTS OR AGREEMENTS DID NOT INCLUDE SUFFICIENT FUNDS TO ALLOW THE CONTRACOR TO COMPLY WITH LAWS GOVERNING THE LABOR OR SERVICES PROVIDED
(Labor Code §2810)**

A person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with

all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of the employee's actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section shall not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

Labor Code Labor Code §§2810(a); 2810(g)(1).

Based on the foregoing, PILOT knew, or should have known, that the amount they paid the labor contractors could not fathomably “allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.” These include payment for wages, FICA contributions for Social Security and Medicare, contributions for unemployment and disability insurance.

PILOT contracted to pay labor contractors \$650 to \$740 per day per route. The Delivery Team Members (both driver and helper) driving in San Francisco should have been paid a total of \$578.28 for 12 hours, \$722.84 for 14 hours, and \$867.40 for 16 hours. However, you must add to these figures the FICA contributions for Social Security and Medicare of 7.65% of the wages, plus a daily amount of \$1.94 per employee for unemployment insurance contributions and Employment Training Tax. The total employee wage liability would be \$626.40 for a 12-hour workday, \$782.02 for a 14-hour workday, and \$937.64 for a 16-hour workday. Already, these figures exceed the \$650.00 to \$740.00 per day per route PILOT paid the labor contractors.

But it does not end here. The labor contractors still had to bear payment for workers compensation insurance, general liability insurance, truck insurance, cargo insurance, gasoline, administrative costs, tools, trucks, fees, fines, licenses, and bonds, and claims for damages.

Regarding the claims for damages, PILOT would make deductions from the payments to the labor contractors if any of their customers made a claim for damage to their home or Customer goods during installations. PILOT rarely, if ever, gave advanced notice of these claims, and labor contractors frequently had little they could do to dispute the claim or subsequent deductions, which could result in significant sums being removed from their pay, sometimes exceeding \$10,000.00.

In further support that PILOT knew or should have known that their contract or agreement with the labor contractors did not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided, Aggrieved Employees allege based on information and belief that PILOT had previously been sued by non-exempt employees in a class action wherein PILOT was alleged to have owed its employees substantially more than the amounts that were paid under the agreements with the labor contractors.

Any reasonable individual or entity in the same industry would realize that the contracts between PILOT and the labor contractors provided insufficient funds to comport with all of California's regulatory and labor statutes. Instead, PILOT chose a business model that would violate labor law.

**PILOT FAILED TO PAY WAGES OF EACH EMPLOYEE WHEN DUE
(Labor Code §210)**

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3.

Labor Code § 210

At all times relevant during the liability period, PILOT failed to pay Aggrieved Employees the full amount of all owed wages, including for minimum and overtime wages, and for meal and rest period premium wages, when due as required by California Labor Code § 204.

**PILOT FAILED TO PAY ALL WAGES DUE AT THE TIME OF DISCHARGE
(Labor Code §203)**

Finally, the Aggrieved Employees were NOT paid all wages due at the time of discharge from their employment, nor within 30 days of such termination. Thus, the Aggrieved Employees are entitled to waiting time penalties pursuant to Labor Code §203.

In sum, the aggrieved employees seek to bring a civil suit under Cal. Labor Code §2698 et seq. and seek all penalties allowed by law including but not limited to those set forth in Cal. Labor Code §226.3.

Very truly yours,



Allan A. Villanueva