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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

CLINTON SIMRIL and ELIAS GARCILAZO,  
individuals, on behalf of themselves and on  
behalf of all persons similarly situated,

Plaintiff,

v.

NNT EXPRESS, INC., an Illinois Corporation;  
TRYTIME TRANSPORT, LLC., an Ohio  
Limited Liability Company; and DOES 1-50,  
Inclusive,

Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/13/2024 at 10:30:00 AM**

Clerk of the Superior Court  
By Shiela Retez, Deputy Clerk

Case No: 37-2024-00014517-CU-OE-CTL

**FIRST AMENDED COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq.*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1191, & 1997.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO PROVIDE ACCURATE  
2 ITEMIZED STATEMENTS IN  
3 VIOLATION OF CAL. LAB. CODE § 226  
4 7) FAILURE TO REIMBURSE EMPLOYEES  
5 FOR REQUIRED EXPENSES IN  
6 VIOLATION OF CAL. LAB. CODE § 2802;  
7 8) FAILURE TO PROVIDE WAGES WHEN  
8 DUE IN VIOLATION OF CAL. LAB.  
9 CODE §§ 201, 202 AND 203.  
10 9) VIOLATION OF THE PRIVATE  
11 ATTORNEYS GENERAL ACT LABOR  
12 CODE §§ 2698 ET SEQ.

13 **DEMAND FOR A JURY TRIAL**

14 Plaintiffs CLINTON SIMRIL and ELIAS GARCILAZO ("PLAINTIFFS"), individuals, on  
15 behalf of themselves and all other similarly situated current and former employees, allege on  
16 information and belief, except their own acts and knowledge, the following:

17 **INTRODUCTION**

18 1. Defendant NNT EXPRESS, INC. ("Defendant NNT Express") and Defendant  
19 TRYTIME TRANSPORT, LLC ("Defendant Trytime Transport") ("DEFENDANT" or  
20 "DEFENDANTS"), in order to service customers, hire workers to aid DEFENDANT in providing  
21 transportation and delivery services as an interstate freight carrier. The cost, as proscribed by  
22 law, of the personnel hired to work for DEFENDANT, includes not only the pay of these  
23 employees but the cost of the employer's share of tax payments to the federal and state  
24 governments for income taxes, social security taxes, medicare insurance, unemployment  
25 insurance and payments for workers' compensation insurance. To avoid the payment of these  
26 legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to  
27 place the responsibility for the payment of these costs and expenses of DEFENDANT on the  
28 shoulders of PLAINTIFFS and other drivers. As employer, DEFENDANT is legally responsible  
for the payment of all these expenses. This lawsuit is brought on behalf of these Drivers who  
worked for DEFENDANT in California and were classified as independent contractors, in order  
to collect the wages due them as employees of DEFENDANT, the cost of the employer's share of  
payments to the federal and state governments for income taxes, social security taxes, medicare

1 insurance, unemployment insurance and payments for workers' compensation insurance, plus  
2 penalties and interest.

3         2. Defendant NNT Express and Defendant Trytime Transport were the joint  
4 employers of PLAINTIFFS as evidenced by the documents issued to PLAINTIFFS and by the  
5 company PLAINTIFFS performed work for respectively and are therefore jointly responsible as  
6 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

7         3. DEFENDANT at all relevant times mentioned herein conducted and continues to  
8 conduct substantial and regular business in the State of California, including in the county of San  
9 Diego.

10         4. PLAINTIFF Clinton Simril worked for DEFENDANT as a Driver from March of  
11 2023 to May of 2023, and was classified by DEFENDANT as an independent contractor during  
12 his entire employment with DEFENDANT.

13         5. PLAINTIFF Elias Garcilzao worked for DEFENDANT as a Driver from March of  
14 2023 to May of 2023, and was classified by DEFENDANT as an independent contractor during  
15 his entire employment with DEFENDANT.

16         6. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person  
17 or employer to engage in . . . [w]illful misclassification of an individual as an independent  
18 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less  
19 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each  
20 violation, in addition to any other penalties or fines permitted by law.” It is further provided that,  
21 in the event that an employer is found to have engaged in “a pattern or practice of these  
22 violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more  
23 than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties  
24 or fines permitted by law.” Cal. Labor Code § 226.8.

25         7. Here, DEFENDANT has willfully misclassified PLAINTIFFS and other Drivers  
26 as described in Cal. Labor Code § 226.8, and further, that DEFENDANT has engaged in a “pattern  
27 or practice” of such violations as contemplated by the California Labor Code.

28         8. Upon hire, the position of a Driver was represented by DEFENDANT to

1 PLAINTIFFS and the other Drivers as an independent contractor position capable of paying a  
2 piece rate for the time they spent driving. PLAINTIFFS and other Drivers were not compensated  
3 minimum wages for all of their time spent working. PLAINTIFFS and other Drivers were paid  
4 the piece rate to perform transportation services on DEFENDANT's behalf. DEFENDANT did  
5 not pay PLAINTIFFS and other CALIFORNIA CLASS Members for the time spent waiting for  
6 the truck to be stocked and all the other non-driving work tasks. The finite set of tasks required to  
7 be performed by the Drivers is to transport goods from DEFENDANT's facility to a requested  
8 delivery location for customers that requested DEFENDANT's services all in accordance with  
9 DEFENDANT's business practices and policies.

10 9. To perform their job duties, PLAINTIFFS and the other Drivers performed work  
11 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise  
12 complete control over the work performed and the manner and means in which the work was  
13 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions  
14 as to how to perform the driving services.

15 10. California Labor Code § 3357 defines "employee" as "every person in the service  
16 of an employer under any appointment or contract of hire or apprenticeship, express or implied,  
17 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor  
18 Code's presumption that workers are employees, the California Supreme Court has determined  
19 the most significant factor to be considered in distinguishing an independent contractor from an  
20 employee is whether the *employer or principal has control or the right to control the work both*  
21 *as to the work performed and the manner and means in which the work is performed.*  
22 DEFENDANT heavily controlled both the work performed and the manner and means in which  
23 the PLAINTIFFS and the other Drivers performed their work in that:

24 a. PLAINTIFFS and other Drivers were not involved in a distinct business, but  
25 instead were provided with instructions as to how to perform their work and the  
26 manner and means in which the work was to be performed by means of  
27 DEFENDANT's manuals and written instructions;

28 b. PLAINTIFFS and other Drivers were continuously provided with training and

1 supervision, including following DEFENDANT's company documents and  
2 received training from DEFENDANT as to how and in what way to perform the  
3 driving services;

4 c. DEFENDANT set the requirements as to what policies and procedures all of the  
5 Drivers were to follow;

6 d. PLAINTIFFS and other Drivers had no opportunity for profit or loss because  
7 DEFENDANT only paid these workers a block rate. DEFENDANT controlled and  
8 assigned the Drivers which tasks were to be performed;

9 e. PLAINTIFFS and other Drivers performed driving services which are part of  
10 DEFENDANT's principal business and is closely integrated with and essential to  
11 the employer's business of providing transportation and delivery services to their  
12 customers;

13 f. PLAINTIFFS and other Drivers performed the work themselves and did not hire  
14 others to perform their work for them;

15 g. PLAINTIFFS and other Drivers did not have the authority to make  
16 employment-related personnel decisions;

17 h. PLAINTIFFS and other Drivers performed their work in a particular order and  
18 sequence in accordance with DEFENDANT's company policy; and,

19 i. DEFENDANT had the "right" to control every critical aspect of DEFENDANT's  
20 daily driving services operations in that DEFENDANT provided the customer,  
21 assigned where the Drivers were to go, and step-by-step instructions to  
22 PLAINTIFFS and other Drivers as to the entire process of picking up and dropping  
23 off deliveries at their assigned locations.

24 11. As a result, stripped of all the legal fictions and artificial barriers to an honest  
25 classification of the relationship between PLAINTIFFS and all the other Drivers on the one hand,  
26 and DEFENDANT on the other hand, PLAINTIFFS and all the other Drivers are and were  
27 employees of DEFENDANT and not independent contractors of DEFENDANT and should  
28 therefore be properly classified as non-exempt, hourly employees.

1           12. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
2 class, defined as all individuals who worked for Defendant NNT Express and/or Defendant  
3 Trytime Transport in California as Drivers and who were classified as independent contractors  
4 (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the  
5 filing of the original Action and ending on the date as determined by the Court (the  
6 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
7 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

8           13. As a matter of company policy, practice and procedure, DEFENDANT has  
9 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as  
10 "independent contractors" in order to unlawfully avoid compliance with all applicable federal and  
11 state laws that require payment for all time worked, business expenses, and the employer's share  
12 of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal and  
13 state governments and the CALIFORNIA CLASS Members, PLAINTIFFS and the  
14 CALIFORNIA CLASS Members were underpaid throughout their employment with  
15 DEFENDANT. The true names and capacities, whether individual, corporate, associate or  
16 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown  
17 to PLAINTIFFS who therefore sues these Defendants by such fictitious names pursuant to Cal.  
18 Civ. Proc. Code § 474. PLAINTIFFS are informed and believes, and based thereon, alleges that  
19 each of the Defendants designated herein is legally responsible in some manner for the unlawful  
20 acts referred to herein. PLAINTIFFS will seek leave of Court to amend this First Amended  
21 Complaint to reflect the true names and capacities of the Defendants when they have been  
22 ascertained and become known.

23           14. The agents, servants and/or employees of the Defendants and each of them acting  
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
28 Defendants are jointly and severally liable to the PLAINTIFFS and the other members of the

1 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,  
2 servants and/or employees.

### 3 **THE CONDUCT**

#### 4 **A. Misclassification**

5 15. DEFENDANT engaged in a pattern and practice of misclassifying California  
6 workers as independent contractors, hired to perform work and services core to DEFENDANT's  
7 businesses, in violation of California Labor Code Section 226.8. California Labor Code Section  
8 226.8 provides that "[i]t is unlawful for any person or employer to engage in ...[w]illful  
9 misclassification of an individual as an independent contractor." The penalty for willful  
10 misclassification of employees is a "civil penalty of not less than five thousand dollars (\$5,000)  
11 and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other  
12 penalties or fines permitted by law." It is further provided that, in the event that an employer is  
13 found to have engaged in "a pattern or practice of these violations," the penalties increase to "not  
14 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000)  
15 for each violation, in addition to any other penalties or fines permitted by law." Cal. Labor Code §  
16 226.8.

17 16. Similarly, PLAINTIFFS and other members of the CALIFORNIA CLASS were not  
18 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a  
19 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFFS  
20 and other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor  
21 services on DEFENDANT's behalf. PLAINTIFFS and other workers were not compensated any  
22 other wages besides the non-negotiable hourly rate, and they were not allowed to record their time  
23 while they waited for DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFFS  
24 and other CALIFORNIA CLASS members for the time spent waiting for the truck to be stocked  
25 and all the other non-driving work tasks. The finite set of tasks required to be performed by the  
26 workers is, when notified by DEFENDANT, transport goods from DEFENDANT's facility to a  
27 requested delivery location for customers that requested DEFENDANT's services all in  
28 accordance with DEFENDANT's business practices and policies

1           17. As a result, stripped of all the legal fictions and artificial barriers to an honest  
2 classification of the relationship between PLAINTIFFS and all the other members of the  
3 CALIFORNIA CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFFS and  
4 all the other members of the CALIFORNIA CLASS are and were employees of DEFENDANT  
5 and not independent contractors of DEFENDANT and should therefore be properly classified as  
6 non-exempt, hourly employees.

7           18. The finite set of tasks required of PLAINTIFFS and the other CALIFORNIA  
8 CLASS members as defined by DEFENDANT was executed by them through the performance of  
9 non-exempt labor.

10           19. Although PLAINTIFFS and the other CALIFORNIA CLASS members performed  
11 non-exempt labor subject to DEFENDANT's complete control over the manner and means of  
12 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by  
13 which all of these CALIFORNIA CLASS Members were classified as "independent contractors"  
14 exempt from compensation for overtime worked, meal breaks and rest breaks, and reimbursement  
15 for business related expenses. By reason of this uniform misclassification, the CALIFORNIA  
16 CLASS Members were also required to pay DEFENDANT's share of payroll taxes and mandatory  
17 insurance premiums. As a result of this uniform misclassification practice, policy and procedure  
18 applicable to PLAINTIFFS and the other CALIFORNIA CLASS Members who performed this  
19 work for DEFENDANT, DEFENDANT committed acts of unfair competition in violation of the  
20 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by  
21 engaging in a company-wide policy, practice and procedure which failed to properly classify  
22 PLAINTIFFS and the other CALIFORNIA CLASS members as employees and thereby failed to  
23 pay them wages for all time worked, reimbursement of business related expenses, failed to provide  
24 them with meal and rest breaks, and failed to reimburse these employees for the employer's share  
25 of payroll taxes and mandatory insurance.

26           20. DEFENDANT, as a matter of law, has the burden of proving that employees are  
27 properly classified and that DEFENDANT otherwise complies with applicable laws.  
28 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the



CALIFORNIA CLASS Members as independent contractors in violation of the California Labor Code and regulations promulgated thereunder.

**i. Plaintiffs and Other Members of the California Class Were Not Free from the Control and Direction of Defendant**

21. DEFENDANT controlled and directed the work performed by PLAINTIFFS and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. Upon hire, the position was represented by DEFENDANT to PLAINTIFFS and the other workers as an independent contractor position in exchange for an hourly rate of pay for the time they spend providing labor and services to DEFENDANT's third-party customers.

22. To perform their job duties, PLAINTIFFS and the other members of the CALIFORNIA CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise complete control over the work performed and the manner and means in which the work was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions as to how to perform their work.

23. California Labor Code § 3357 defines "employee" as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's presumption that workers are employees, the California Supreme Court has determined the most significant factor to be considered in distinguishing an independent contractor from an employee is whether the *employer or principal has control or the right to control the work both as to the work performed and the manner and means in which the work is performed*. DEFENDANT heavily controlled both the work performed and the manner and means in which the PLAINTIFFS and other workers performed their work in that:

- a. PLAINTIFFS and other Drivers were not involved in a distinct business, but instead were provided with instructions as to how to perform their work and the manner and means in which the work was to be performed by means of

- 1 DEFENDANT's manuals and written instructions;
- 2 b. PLAINTIFFS and other Drivers were continuously provided with training
- 3 and supervision, including following DEFENDANT's company documents
- 4 and received training from DEFENDANT as to how and in what way to
- 5 perform the driving services;
- 6 c. DEFENDANT set the requirements as to what policies and procedures all
- 7 of the Drivers were to follow;
- 8 d. PLAINTIFFS and other Drivers had no opportunity for profit or loss
- 9 because DEFENDANT only paid these workers a block rate. DEFENDANT
- 10 controlled and assigned the Drivers which tasks were to be performed;
- 11 e. PLAINTIFFS and other Drivers performed driving services which are part
- 12 of DEFENDANT's principal business and is closely integrated with and
- 13 essential to the employer's business of providing transportation and delivery
- 14 services to their customers;
- 15 f. PLAINTIFFS and other Drivers performed the work themselves and did not
- 16 hire others to perform their work for them;
- 17 g. PLAINTIFFS and other Drivers did not have the authority to make
- 18 employment-related personnel decisions;
- 19 h. PLAINTIFFS and other Drivers performed their work in a particular order
- 20 and sequence in accordance with DEFENDANT's company policy; and,
- 21 i. DEFENDANT had the "right" to control every critical aspect of
- 22 DEFENDANT's daily driving services operations in that DEFENDANT
- 23 provided the customer, assigned where the Drivers were to go, and step-by-
- 24 step instructions to PLAINTIFFS and other Drivers as to the entire process
- 25 of picking up and dropping off deliveries at their assigned locations.

26 ii. **Plaintiffs and Other Members of the California Class Did Not Perform**

27 **Work Outside the Usual Course of Defendant's Business**

28 24. DEFENDANT willfully misclassified PLAINTIFFS and other members of the

1 CALIFORNIA CLASS who provided DEFENDANT with transportation services for  
2 DEFENDANT's clients. In other words, PLAINTIFFS and other similarly situated California  
3 workers provided DEFENDANT with work and services within the usual course of  
4 DEFENDANT's business.

5 25. DEFENDANT markets itself to the public, PLAINTIFFS and other members of the  
6 CALIFORNIA CLASS as a provider of driving services. As a result, DEFENDANT  
7 unquestionably holds itself out to the public, PLAINTIFFS and other members of the  
8 CALIFORNIA CLASS as a provider of driving services. Therefore, the performance of  
9 DEFENDANT's housekeeping services by PLAINTIFFS and other members of the  
10 CALIFORNIA CLASS is not outside DEFENDANT'S usual course of business.

11 **iii. Plaintiffs and Other Members of the California Class Were Not**  
12 **Engaged in an Independently Established Trade, Occupation, or**  
13 **Business of the Same Nature as the Work Performed for Defendant**

14 26. PLAINTIFFS and the other members of the CALIFORNIA CLASS are not and  
15 were not engaged in a customarily independently established trade, occupation or business as the  
16 same nature of the work performed.

17 **B. Meal Period Violations**

18 27. In California, an employer may not employ an employee for a work period of more  
19 than five hours per day without providing the employee with a duty-free meal period of not less  
20 than thirty minutes, except that if the total work period per day of the employee is no more than  
21 six hours, the meal period may be waived by mutual consent of both the employer and employee.  
22 A second duty-free meal period of not less than thirty minutes is required if an employee works  
23 more than ten hours per day, except that if the total hours worked is no more than 12 hours, the  
24 second duty-free meal period may be waived by mutual consent of the employer and employee  
25 only if the first meal period was not waived. Labor Code Section 512.

26 28. If an employer fails to provide an employee a duty-free meal period in accordance  
27 with an applicable IWC Order, the employer must pay one additional hour of pay at the employee's  
28 regular rate of pay for each workday that the meal period is not provided. IWC Orders and Labor

Code Section 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as independent contractors and their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS members were required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and CALIFORNIA CLASS members with a second duty-free meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. Moreover, PLAINTIFFS and other members of the CALIFORNIA CLASS were not provided with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

**C. Rest Period Violations**

30. The applicable IWC Wage Order requires that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a "major fraction" of four. A rest period is not required for employees whose total daily work time is less than three and one-half hours. The rest period is counted as time worked and therefore, the employer must pay for such periods.

31. If an employer fails to provide an employee a rest period in accordance with an applicable IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if an employer does not provide all of the rest periods required in a workday,

1 the employee is entitled to one additional hour of pay for that workday, not one additional hour of  
2 pay for each rest period that was not provided during that workday.

3 32. From time-to-time during the CLASS PERIOD, as a result of their misclassification  
4 as independent contractors and their rigorous work schedules PLAINTIFFS and other  
5 CALIFORNIA CLASS members were also required to work in excess of four (4) hours without  
6 being provided ten (10) minute rest periods. Further, these employees were denied their first rest  
7 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from  
8 time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
9 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)  
10 minutes for some shifts worked of ten (10) hours or more. PLAINTIFFS and other CALIFORNIA  
11 CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their  
12 misclassification and rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS  
13 members were from time-to-time denied their proper rest periods by DEFENDANT and  
14 DEFENDANT'S managers.

15 **D. Failure to Pay Minimum, Regular and Overtime Wages**

16 33. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately  
17 record and pay PLAINTIFFS and other CALIFORNIA CLASS members for the actual amount of  
18 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,  
19 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS members for all  
20 time worked, meaning the time during which an employee was subject to the control of an  
21 employer, including all the time the employee was permitted or suffered to permit this work.  
22 DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS members to work off the clock  
23 without paying them for all the time they were under DEFENDANT's control. PLAINTIFFS and  
24 other CALIFORNIA CLASS Members also worked more than eight hours in a workday and/or  
25 forty hours in a workweek, but DEFENDANT failed to pay these employees overtime pay as  
26 DEFENDANT only paid a flat rate or a flat hourly rate for all time worked. Consequently,  
27 PLAINTIFFS and other CALIFORNIA CLASS members forfeited minimum wages and overtime  
28 wage compensation by working without their time being correctly recorded and without

1 compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS  
2 and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's  
3 business records. As a result, DEFENDANT failed to compensate PLAINTIFFS and the members  
4 of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours worked in  
5 violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

6 **E. Failure to Reimburse Necessary and Required Business Expenses**

7 34. Under California Labor Code Section 2802, employers are required to indemnify  
8 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code  
9 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary  
10 expenditures or losses incurred by the employee in direct consequence of the discharge of his or  
11 her duties, or of his or her obedience to the directions of the employer, even though unlawful,  
12 unless the employee, at the time of obeying the directions, believed them to be unlawful."

13 35. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of  
14 corporate policy, practice and procedure, intentionally, knowingly and systematically failed to  
15 reimburse and indemnify PLAINTIFFS and the other CLASS MEMBERS for required business  
16 expenses incurred by PLAINTIFFS and other the CLASS MEMBERS in direct consequence of  
17 discharging their duties on behalf of DEFENDANT.

18 36. From time-to-time during the CLASS PERIOD, in the course of their employment  
19 PLAINTIFFS and other CALIFORNIA CLASS members as a business expense, were required by  
20 DEFENDANT to use personal cellular phones, personal computers, and personal home internet,  
21 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not  
22 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal  
23 cellular phones, personal computers, and personal home internet for DEFENDANT's benefit. In  
24 order to work for DEFENDANT, PLAINTIFFS and other CALIFORNIA CLASS Members were  
25 required use their personal cell phones to review, receive and accept job assignments and as such  
26 it is mandatory to have a cell phone. Additionally, PLAINTIFFS and other CALIFORNIA CLASS  
27 Members were required to provide their own personal computer and personal home internet in  
28 order to map out driving routes As a result, in the course of their employment with DEFENDANT,

1 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business  
2 expenses which included, but were not limited to, costs related to the use of their personal cellular  
3 phones, personal computers, and personal home internet on behalf of and for the benefit of  
4 DEFENDANT.

5 **F. Wage Statement Violations**

6 37. California Labor Code Section 226 requires an employer to furnish its employees an  
7 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)  
8 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net  
9 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
10 the employee and only the last four digits of the employee's social security number or an employee  
11 identification number other than a social security number, (8) the name and address of the legal  
12 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and  
13 the corresponding number of hours worked at each hourly rate by the employee.

14 38. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of  
15 DEFENDANT's intentional and willful misclassification of PLAINTIFFS and the members of the  
16 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued  
17 inaccurate itemized wages statements to PLAINTIFFS and the members of the CALIFORNIA  
18 CLASS that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the  
19 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages  
20 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
21 employee and only the last four digits of the employee's social security number or an employee  
22 identification number other than a social security number, (8) the name and address of the legal  
23 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and  
24 the corresponding number of hours worked at each hourly rate by the employee.

25 39. As a result, DEFENDANT issued PLAINTIFFS and the other members of the  
26 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
27 DEFENDANT's violations are knowing and intentional, were not isolated or due to an  
28 unintentional payroll error due to clerical or inadvertent mistake.

1 **G. Unfair Competition**

2 40. By reason of this conduct applicable to PLAINTIFFS and all the CALIFORNIA  
3 CLASS members, DEFENDANT committed acts of unfair competition in violation of the  
4 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by  
5 engaging in a company-wide policy, practice and procedure which failed to correctly classify  
6 PLAINTIFFS and the CALIFORNIA CLASS members as employees. The proper classification of  
7 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard  
8 of the obligation to meet this burden, DEFENDANT failed to pay all required wages for work  
9 performed by PLAINTIFFS and other CALIFORNIA CLASS Members and violated the  
10 California Labor Code and regulations promulgated thereunder as herein alleged.

11 41. PLAINTIFFS as workers for DEFENDANT, was classified by DEFENDANT as an  
12 independent contractor and thus did not receive pay for all time worked, including minimum and  
13 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS were also required to  
14 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without  
15 receiving a meal or rest break as evidenced by daily time reports for PLAINTIFFS. PLAINTIFFS  
16 therefore forfeited meal and rest breaks without additional compensation and in accordance with  
17 DEFENDANT's strict corporate policy and practice which did not provide for mandatory meal  
18 and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFFS all wages still owed to  
19 them or any penalty wages owed to them under California Labor Code § 203. The amount in  
20 controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

21 ///

22 ///

23 **THE CALIFORNIA CLASS**

24 42. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
27 individuals who worked for Defendant NNT Express and/or Defendant Trytime Transport in  
28 California as Drivers and who were classified as independent contractors (the "CALIFORNIA



1 CLASS") at any time during the period beginning four (4) years prior to the filing of the original  
2 First Amended Complaint and ending on the date as determined by the Court (the "CALIFORNIA  
3 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA  
4 CLASS Members is under five million dollars (\$5,000,000.00).

5 43. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
7 accordingly.

8 44. All CALIFORNIA CLASS Members who performed and continue to perform this  
9 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in that  
10 they are subject to DEFENDANT's uniform policy and systematic practice that required them to  
11 perform work without compensation as required by law.

12 45. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in  
13 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC") Wage  
14 Order requirements, and the applicable provisions of California law, intentionally, knowingly and  
15 willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and deceptively  
16 instituted a practice to ensure that all individuals employed as independent contractors were not  
17 properly classified as non-exempt employees from the requirements of California Labor Code §§  
18 510, *et seq.*

19 46. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated  
20 the rights of the PLAINTIFFS and the CALIFORNIA CLASS Members under California law,  
21 without limitation, in the following manners:

- 22 a. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§  
23 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer,  
24 devised and implemented a scheme whereby PLAINTIFFS and the CALIFORNIA  
25 CLASS Members are forced to unlawfully, unfairly and deceptively shoulder the  
26 cost of DEFENDANT's wages for all unpaid wages, business related expenses,  
27 and DEFENDANT's share of employment taxes, social security taxes,  
28 unemployment insurance and workers' compensation insurance;

- b. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly misclassified PLAINTIFFS and the CALIFORNIA CLASS Members as independent contractors;;
- c. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company policy, practice and procedure that accurately determined the amount of working time spent by PLAINTIFFS and the CALIFORNIA CLASS Members performing non-exempt employee labor;
- d. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required meal and rest breaks; and
- e. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

47. As a result of DEFENDANT's uniform policies, practices and procedures, there are numerous questions of law and fact common to all CALIFORNIA CLASS Members who worked for DEFENDANT during the CALIFORNIA CLASS PERIOD. These questions include, but are not limited, to the following:

- a. Whether PLAINTIFFS and other CALIFORNIA CLASS Members were misclassified as independent contractors by DEFENDANT;
- b. Whether the PLAINTIFFS and the CALIFORNIA CLASS Members all afforded all the protections of the California Labor Code that apply when properly classified as non-exempt employees;
- c. Whether DEFENDANT's policies, practices and pattern of conduct described in

1           this First Amended Complaint was and is unlawful;

2           d. Whether DEFENDANT unlawfully failed to pay their share of state and federal  
3           employment taxes as required by state and federal tax laws;

4           e. Whether DEFENDANT's policy, practice and procedure of classifying the  
5           CALIFORNIA CLASS Members as independent contractors exempt from hourly  
6           wages laws for all time worked and failing to pay the CALIFORNIA CLASS  
7           Members all amounts due violates applicable provisions of California State law;

8           f. Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA  
9           CLASS Members with accurate records of all time worked;

10          g. Whether DEFENDANT has engaged in unfair competition by the above-listed  
11          conduct; and

12          h. Whether DEFENDANT's conduct was willful.

13          48. This Class Action meets the statutory prerequisites for the maintenance of a Class  
14          Action as set forth in Cal. Code of Civ. Proc. § 382, in that::

15          a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
16          joinder of all such persons is impracticable and the disposition of their claims as a  
17          class will benefit the parties and the Court;

18          b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
19          raised in this First Amended Complaint are common to the CALIFORNIA CLASS  
20          and will apply uniformly to every CALIFORNIA CLASS Member;

21          c. The claims of the representative PLAINTIFFS are typical of the claims of each  
22          member of the CALIFORNIA CLASS. PLAINTIFFS, like all the CALIFORNIA  
23          CLASS Members, was classified as an independent contractor upon hiring based on  
24          the defined corporate policies and practices and labors under DEFENDANT's  
25          systematic procedure that failed to properly classify the PLAINTIFFS and the  
26          CALIFORNIA CLASS Members. PLAINTIFFS sustained economic injury as a  
27          result of DEFENDANT's employment practices. PLAINTIFFS and the  
28          CALIFORNIA CLASS Members were and are similarly or identically harmed by

1 the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged  
2 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS Members  
3 that they were not entitled to minimum wages, the employer's share of payment of  
4 payroll taxes and mandatory insurance, and reimbursement for business expenses  
5 based on the defined corporate policies and practices, and unfairly failed to pay these  
6 employees who were improperly classified as independent contractors; and

- 7 d. The representative PLAINTIFFS will fairly and adequately represent and protect the  
8 interest of the CALIFORNIA CLASS and has retained counsel who is competent  
9 and experienced in Class Action litigation. There are no material conflicts between  
10 the claims of the representative PLAINTIFFS and the CALIFORNIA CLASS  
11 Members that would make class certification inappropriate. Counsel for the  
12 CALIFORNIA CLASS will vigorously assert the claims of all employees in the  
13 CALIFORNIA CLASS.

14 49. In addition to meeting the statutory prerequisites to a Class Action, this Action is  
15 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 16 a. Without class certification and determination of declaratory, injunctive, statutory  
17 and other legal questions within the class format, prosecution of separate actions  
18 by individual members of the CALIFORNIA CLASS will create the risk of:

- 19 1. Inconsistent or varying adjudications with respect to individual  
20 members of the CALIFORNIA CLASS which would establish  
21 incompatible standards of conduct for the parties opposing the  
22 CALIFORNIA CLASS; and/or,  
23 2. Adjudication with respect to individual members of the  
24 CALIFORNIA CLASS which would as a practical matter be  
25 dispositive of the interests of the other members not party to the  
26 adjudication or substantially impair or impeded their ability to  
27 protect their interests.

- 28 b. The parties opposing the CALIFORNIA CLASS have acted on grounds generally

1 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with  
2 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly  
3 classified and treated the CALIFORNIA CLASS Members as independent  
4 contractors and, thereafter, uniformly failed to take proper steps to determine  
5 whether the CALIFORNIA CLASS Members were properly classified as  
6 independent contractors, and thereby denied these employees' wages and  
7 payments for business expenses and the employer's share of payroll taxes and  
8 mandatory insurance as required by law;

9 c. With respect to the First Cause of Action, the final relief on behalf of the  
10 CALIFORNIA CLASS sought does not relate exclusively to restitution because  
11 through this claim the PLAINTIFFS seek declaratory relief holding that  
12 DEFENDANT's policies and practices constitute unfair competition, along with  
13 incidental equitable relief as may be necessary to remedy the conduct declared to  
14 constitute unfair competition;

15 d. Common questions of law and fact exist as to members of the CALIFORNIA  
16 CLASS with respect to the practices and violations of California and federal law  
17 as listed above, and predominate over any question affecting only individual  
18 members, and a Class Action is superior to other available methods for the fair and  
19 efficient adjudication of the controversy, including consideration of:

- 20 1. The interest of the CALIFORNIA CLASS Members in individually  
21 controlling the prosecution or defense of separate actions;
- 22 2. The extent and nature of any litigation concerning the controversy  
23 already commenced by or against members of the CALIFORNIA  
24 CLASS;
- 25 3. In the context of wage litigation because as a practical matter a  
26 substantial number of individual CALIFORNIA CLASS members  
27 will avoid asserting their legal rights out of fear of retaliation by  
28 DEFENDANT, which may adversely affect an individual's job with

- 1                               DEFENDANT or with a subsequent employer, the Class Action is  
2                               the only means to assert their claims through a representative;  
3                               4. The desirability or undesirability of concentration the litigation of  
4                               the claims in the particular forum;  
5                               5. The difficulties likely to be encountered in the management of a  
6                               Class Action; and,  
7                               6. The basis of DEFENDANT's policies and practices uniformly  
8                               applied to all the CALIFORNIA CLASS Members

9               50.    The Court should permit this Action to be maintained as a Class Action pursuant  
10 to Cal. Code of Civ. Proc. § 382 because:

- 11               a.    The questions of law and fact common to the CALIFORNIA CLASS predominate  
12                       over any question affecting only individual members;  
13               b.    A Class Action is superior to any other available method for the fair and efficient  
14                       adjudication of the claims of the members of the CALIFORNIA CLASS;  
15               c.    The CALIFORNIA CLASS Members are so numerous that it is impractical to bring  
16                       all CALIFORNIA CLASS Members before the Court;  
17               d.    PLAINTIFFS and the CALIFORNIA CLASS Members will not be able to obtain  
18                       effective and economic legal redress unless the action is maintained as a Class  
19                       Action;  
20               e.    There is a community of interest in obtaining appropriate legal and equitable relief  
21                       for the acts of unfair competition, statutory violations and other improprieties, and  
22                       in obtaining adequate compensation for the damages and injuries which  
23                       DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;  
24               f.    There is a community of interest in ensuring that the combined assets and available  
25                       insurance of DEFENDANT are sufficient to adequately compensate the  
26                       CALIFORNIA CLASS Members for any injuries sustained;  
27               g.    DEFENDANT has acted or has refused to act on grounds generally applicable to the  
28                       CALIFORNIA CLASS, thereby making final class-wide relief appropriate with

1 respect to the CLASS as a whole;

2 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
3 business records of DEFENDANT. The CALIFORNIA CLASS consists of all  
4 DEFENDANT's Drivers in California classified as independent contractors during  
5 the CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies,  
6 practices and procedures as herein alleged; and

7 i. Class treatment provides manageable judicial treatment calculated to bring an  
8 efficient and rapid conclusion to all litigation of all wage and hour related claims  
9 arising out of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

10 51. DEFENDANT maintains records from which the Court can ascertain and identify  
11 by job title each of DEFENDANT's employees who as have been systematically, intentionally  
12 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein  
13 alleged. PLAINTIFFS will seek leave to amend the First Amended Complaint to include any  
14 additional job titles of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 52. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
17 Eighth causes of Action on behalf of a California sub-class, defined as all individuals who worked  
18 for Defendant NNT Express and/or Defendant Trytime Transport in California as Drivers and  
19 who were classified as independent contractors (the "CALIFORNIA LABOR SUB-CLASS") at  
20 any time during the period three (3) years prior to the filing of the original Action and ending on  
21 the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")  
22 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of  
23 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

24 53. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
25 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare  
26 Commission ("IWC") Wage Order requirements intentionally, knowingly, and willfully, on the  
27 basis of job title alone and without regard to the actual overall requirements of the job,  
28 systematically classified PLAINTIFFS and the other members of the CALIFORNIA LABOR

1 SUB-CLASS as independent contractors in order to avoid the payment of all wages, and in order  
2 to avoid the obligations under the applicable California Labor Code provisions. To the extent  
3 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against  
4 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
5 accordingly.

6 54. DEFENDANT maintains records from which the Court can ascertain and identify  
7 by name and job title, each of DEFENDANT's employees who have been systematically,  
8 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
9 procedures as herein alleged. PLAINTIFFS will seek leave to amend the First Amended  
10 Complaint to include these additional job titles when they have been identified.

11 55. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
12 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

13 56. DEFENDANT, as a matter of corporate policy, practice and procedure,  
14 erroneously classified all Drivers as independent contractors making these employees exempt  
15 from California labor laws. All Drivers, including PLAINTIFFS, performed the same finite set  
16 of tasks and were paid by DEFENDANT according to uniform and systematic company  
17 procedures, which, as alleged herein above, failed to correctly pay minimum wage compensation.  
18 This business practice was uniformly applied to each and every member of the CALIFORNIA  
19 LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-  
20 wide basis.

21 57. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
22 under California law by:

- 23 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately  
24 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS  
25 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.  
26 Lab. Code §§ 1194 and 1197;
- 27 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS  
28 and the other members of the CALIFORNIA CLASS with all legally required off-



1 duty, uninterrupted thirty (30) minute meal breaks and the legally required rest  
2 breaks;

- 3 c. Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and the  
4 members of the CALIFORNIA LABOR SUB-CLASS who were improperly  
5 classified as independent contractors with an accurate itemized statement in  
6 writing showing the gross wages earned, the net wages earned, all applicable  
7 hourly rates in effect during the pay period and the corresponding amount of time  
8 worked at each hourly rate by the employee;
- 9 d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the  
10 CALIFORNIA CLASS members with necessary expenses incurred in the  
11 discharge of their job duties; and,
- 12 e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an  
13 employee is discharged or quits from employment, the employer must pay the  
14 employee all wages due without abatement, by failing to tender full payment  
15 and/or restitution of wages owed or in the manner required by California law to  
16 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
17 their employment.

18 58. This Class Action meets the statutory prerequisites for the maintenance of a Class  
19 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 20 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
21 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
22 is impracticable and the disposition of their claims as a class will benefit the parties  
23 and the Court;
- 24 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
25 raised in this First Amended Complaint are common to the CALIFORNIA  
26 LABOR SUB-CLASS and will apply uniformly to every member of the  
27 CALIFORNIA LABOR SUB-CLASS;
- 28 c. The claims of the representative PLAINTIFFS are typical of the claims of each

1 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the  
2 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
3 employee paid on an hourly basis who was subjected to the DEFENDANT's  
4 practice and policy which failed to pay the correct amount of wages due to the  
5 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury  
6 as a result of DEFENDANT's employment practices. PLAINTIFFS and the  
7 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
8 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern  
9 of misconduct engaged in by DEFENDANT; and

- 10 d. The representative PLAINTIFFS will fairly and adequately represent and protect  
11 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel  
12 who are competent and experienced in Class Action litigation. There are no  
13 material conflicts between the claims of the representative PLAINTIFFS and the  
14 members of the CALIFORNIA LABOR SUB-CLASS that would make class  
15 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
16 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
17 Members.

18 59. In addition to meeting the statutory prerequisites to a Class Action, this action is  
19 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 20 a. Without class certification and determination of declaratory, injunctive, statutory  
21 and other legal questions within the class format, prosecution of separate actions  
22 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
23 the risk of:

- 24 1. Inconsistent or varying adjudications with respect to individual  
25 members of the CALIFORNIA LABOR SUB-CLASS which  
26 would establish incompatible standards of conduct for the parties  
27 opposing the CALIFORNIA LABOR SUB-CLASS; or  
28 2. Adjudication with respect to individual members of the

CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to determine whether the CALIFORNIA LABOR SUB-CLASS Members were properly classified as independent contractors, and thereby denied these employees the protections afforded to them under the California Labor Code;

c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

- 1 a. Inconsistent or varying adjudications with respect to  
2 individual members of the CALIFORNIA LABOR SUB-  
3 CLASS, which would establish incompatible standards of  
4 conduct for the DEFENDANT; and/or,  
5 b. Adjudications with respect to individual members of the  
6 CALIFORNIA LABOR SUB-CLASS would as a practical  
7 matter be dispositive of the interests of the other members  
8 not parties to the adjudication or substantially impair or  
9 impede their ability to protect their interests;
- 10 3. In the context of wage litigation because a substantial number of  
11 individual CALIFORNIA LABOR SUB-CLASS Members will  
12 avoid asserting their legal rights out of fear of retaliation by  
13 DEFENDANT, which may adversely affect an individual's job  
14 with DEFENDANT or with a subsequent employer, the Class  
15 Action is the only means to assert their claims through a  
16 representative; and,
- 17 4. A class action is superior to other available methods for the fair and  
18 efficient adjudication of this litigation because class treatment will  
19 obviate the need for unduly and unnecessary duplicative litigation  
20 that is likely to result in the absence of certification of this action  
21 pursuant to Cal. Code of Civ. Proc. § 382.

22 60. This Court should permit this action to be maintained as a Class Action pursuant  
23 to Cal. Code of Civ. Proc. § 382 because:

- 24 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-  
25 CLASS predominate over any question affecting only individual CALIFORNIA  
26 LABOR SUB-CLASS Members;
- 27 b. A Class Action is superior to any other available method for the fair and efficient  
28 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-

1 CLASS because in the context of employment litigation a substantial number of  
2 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
3 their rights individually out of fear of retaliation or adverse impact on their  
4 employment;

5 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
6 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS  
7 before the Court;

8 d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
9 not be able to obtain effective and economic legal redress unless the action is  
10 maintained as a Class Action;

11 e. There is a community of interest in obtaining appropriate legal and equitable relief  
12 for the acts of unfair competition, statutory violations and other improprieties, and  
13 in obtaining adequate compensation for the damages and injuries which  
14 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-  
15 CLASS;

16 f. There is a community of interest in ensuring that the combined assets of  
17 DEFENDANT are sufficient to adequately compensate the members of the  
18 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

19 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
20 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
21 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

22 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
23 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
24 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
25 employed by DEFENDANT in California during the CALIFORNIA LABOR  
26 SUB-CLASS PERIOD; and

27 i. Class treatment provides manageable judicial treatment calculated to bring an  
28 efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the  
2 CALIFORNIA LABOR SUB-CLASS.

3 61. Common questions of law and fact exist as to members of the CALIFORNIA  
4 LABOR SUB-CLASS, including, but not limited, to the following:

- 5 a. Whether DEFENDANT unlawfully failed to correctly classify the members of the  
6 CALIFORNIA LABOR SUB-CLASS;
- 7 b. Whether DEFENDANT failed to provide the members of the CALIFORNIA  
8 LABOR SUB-CLASS with meal and rest breaks in violation of the California  
9 Labor Code and California regulations and the applicable California Wage Order;
- 10 c. Whether DEFENDANT failed to provide the PLAINTIFFS and the other members  
11 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
12 statements;
- 13 d. Whether DEFENDANT has engaged in unfair competition by the above-listed  
14 conduct;
- 15 e. The proper measure of damages and penalties owed to the members of the  
16 CALIFORNIA LABOR SUB-CLASS; and
- 17 f. Whether DEFENDANT's conduct was willful.

#### 18 **JURISDICTION AND VENUE**

19 62. This Court has jurisdiction over this Action pursuant to California Code of Civil  
20 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
21 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees  
22 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

23 63. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and  
24 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its  
25 principal offices and facilities in this County and/or conducts substantial business in this County,  
26 and (ii) committed the wrongful conduct herein alleged in this County against members of the  
27 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

#### 28 **FIRST CAUSE OF ACTION**

1 **UNLAWFUL BUSINESS PRACTICES**

2 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

3 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

4 64. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
5 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First  
6 Amended Complaint.

7 65. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
8 Code § 17021.

9 66. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
10 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
11 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition  
12 as follows:

13 Any person who engages, has engaged, or proposes to engage in unfair competition may  
14 be enjoined in any court of competent jurisdiction. The court may make such orders or  
15 judgments, including the appointment of a receiver, as may be necessary to prevent the  
16 use or employment by any person of any practice which constitutes unfair competition, as  
17 defined in this chapter, or as may be necessary to restore to any person in interest any  
18 money or property, real or personal, which may have been acquired by means of such  
19 unfair competition. (Cal. Bus. & Prof. Code § 17203).

20 67. By the conduct alleged herein, DEFENDANT has engaged and continues to  
21 engage in a business practice which violates California law, including but not limited to the  
22 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 221, 226.7,  
23 226.8, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090,  
24 for which this Court should issue declaratory, injunctive, and other equitable relief, pursuant to  
25 Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct held to  
26 constitute unfair competition, including restitution of wages wrongfully withheld, business  
27 expenses wrongfully withheld and for the payment of the employer’s share of income taxes, social  
28 security taxes, unemployment insurance and workers’ compensation insurance.

1           68. By the conduct alleged herein DEFENDANT has obtained valuable property,  
2 money, and services from PLAINTIFFS, and the other members of the CALIFORNIA CLASS,  
3 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment  
4 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.  
5 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and  
6 pecuniary compensation alone would not afford adequate and complete relief.

7           69. All the acts described herein as violations of, among other things, the California  
8 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage  
9 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,  
10 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive, unfair  
11 and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

12           70. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
13 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the  
14 CALIFORNIA CLASS Members that they were not entitled to minimum wages, payment for  
15 payroll taxes or mandatory insurance and other benefits as required by California law, when in  
16 fact these representations were false and likely to deceive and for which this Court should issue  
17 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution  
18 of wages wrongfully withheld.

19           71. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
20 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the  
21 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
22 DEFENDANT.

23           72. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
24 to, and do, seek such relief as may be necessary to restore to them the money and property which  
25 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
27 business practices, including earned but unpaid wages for all time worked.

28           73. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further



1 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair  
2 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
3 engaging in any unlawful and unfair business practices in the future.

4 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
5 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
6 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as  
7 required by Cal. Lab. Code §§ 226.7 and 512.

8 75. Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of each  
9 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll  
10 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty  
11 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
12 for each workday in which a second off-duty meal period was not timely provided for each ten  
13 (10) hours of work.

14 76. PLAINTIFFS further demands on behalf of themselves and on behalf of each  
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
16 not timely provided as required by law.

17 77. By and through the unlawful and unfair business practices described herein,  
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked and  
20 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
21 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
22 to unfairly compete against competitors who comply with the law.

23 78. All the acts described herein as violations of, among other things, the Industrial  
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
25 Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive and  
26 unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business  
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

28 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled

1 to, and do, seek such relief as may be necessary to restore to them the money and property which  
2 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
3 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
4 business practices.

5 80. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
6 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
7 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
8 engaging in any unlawful and unfair business practices in the future.

9 PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy and/or  
10 adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT.  
11 Further, the practices herein alleged presently continue to occur unabated. As a result of the  
12 unlawful and unfair business practices described herein, PLAINTIFFS and the other members of  
13 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and  
14 economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful  
15 and unfair business practices.

## 16 **SECOND CAUSE OF ACTION**

### 17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Cal. Lab. Code §§ 1194 and 1197 AND 1197.1)**

19 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**  
20 **Defendants)**

21 81. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
23 this First Amended Complaint.

24 82. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code  
26 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately  
27 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

28 83. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public

1 policy, an employer must timely pay its employees for all hours worked.

2 84. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
3 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
4 the minimum so fixed is unlawful.

5 85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
6 including minimum wage compensation and interest thereon, together with the costs of suit.

7 86. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and  
8 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
9 amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice  
10 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the  
11 other members of the CALIFORNIA LABOR SUB-CLASS.

12 87. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
13 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
14 of implementing a uniform policy and practice that denied accurate compensation to  
15 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to  
16 minimum wage pay.

17 88. In committing these violations of the California Labor Code, DEFENDANT  
18 inaccurately calculates the correct time worked and consequently underpays the actual time  
19 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.  
20 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
21 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
22 requirements and other applicable laws and regulations.

23 89. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive  
25 the correct minimum wage compensation for their time worked for DEFENDANT.

26 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the  
27 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that  
28 they were entitled to, constituting a failure to pay all earned wages.

1           91. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA  
4 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts  
5 which are presently unknown to them and which will be ascertained according to proof at trial.

6           92. DEFENDANT knew or should have known that PLAINTIFFS and the other  
7 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time  
8 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
9 nonfeasance, to not pay PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members  
10 for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT  
11 perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other members of the  
12 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

13           93. In performing the acts and practices herein alleged in violation of California labor  
14 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
15 all time worked and provide them with the requisite compensation, DEFENDANT acted and  
16 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other  
17 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for  
18 their legal rights, or the consequences to them, and with the despicable intent of depriving them  
19 of their property and legal rights, and otherwise causing them injury in order to increase company  
20 profits at the expense of these employees.

21           94. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
23 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by  
24 the California Labor Code and/or other applicable statutes. To the extent minimum wage  
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
26 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§  
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under  
28 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA

LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

**THIRD CAUSE OF ACTION**

**For Failure to Pay Overtime Wages**

**[Cal. Lab. Code §§ 510, 1194, & 1198]**

**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All  
DEFENDANTS)**

95. PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

96. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 & 1198, even though PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members were regularly required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by DEFENDANT'S business records and witnessed by DEFENDANT'S employees.

97. By virtue of DEFENDANT'S unlawful failure to pay compensation to PLAINTIFFS and the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an economic in amounts which are presently unknown to them and which can be ascertained according to proof at trial.

98. DEFENDANT knew or should have known that PLAINTIFFS and the CALIFORNIA CLASS Members were misclassified as independent contractors and DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of corporate policy, practice and procedure.

99. PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members therefore

1 request recovery of all compensation according to proof, interest, costs, as well as the assessment  
2 of any statutory penalties against DEFENDANT in a sum as provided by the California Labor  
3 Code and/or other statutes. To the extent overtime compensation is determined to be owed to the  
4 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, these  
5 employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
6 penalties are sought herein. Further, PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS  
7 Members are entitled to seek and recover statutory costs.

8 100. In performing the acts and practices herein alleged in violation of California labor  
9 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all  
10 overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted  
11 and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the  
12 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard  
13 for their legal rights, or the consequences to them, and with the despicable intent of depriving them  
14 of their property and legal rights, and otherwise causing them injury in order to increase corporate  
15 profits at the expense of these employees.

#### 16 **FOURTH CAUSE OF ACTION**

#### 17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

18 **(Cal. Lab. Code §§ 226.7 & 512)**

19 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
20 **Defendants)**

21 101. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
23 paragraphs of this First Amended Complaint.

24 102. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT  
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
27 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR  
28 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,  
2 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were often not fully  
3 relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure  
4 to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally  
5 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's  
6 business records. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR  
7 SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance  
8 with DEFENDANT's strict corporate policy and practice.

9 103. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
10 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-  
11 CLASS Members who were not provided a meal period, in accordance with the applicable Wage  
12 Order, one additional hour of compensation at each employee's regular rate of pay for each  
13 workday that a meal period was not provided.

14 104. As a proximate result of the aforementioned violations, PLAINTIFFS and  
15 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
16 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

### 17 **FIFTH CAUSE OF ACTION**

#### 18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

19 **(Cal. Lab. Code §§ 226.7 & 512)**

20 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**

21 **Defendants)**

22 105. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
23 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
24 paragraphs of this First Amended Complaint.

25 106. From time to time, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
26 Members were required to work in excess of four (4) hours without being provided ten (10) minute  
27 rest periods. Further, these employees were denied their first rest periods of at least ten (10)  
28 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period

1 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a  
2 first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)  
3 hours or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were  
4 also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,  
5 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically  
6 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

7 107. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
8 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-  
9 CLASS Members who were not provided a rest period, in accordance with the applicable Wage  
10 Order, one additional hour of compensation at each employee's regular rate of pay for each  
11 workday that rest period was not provided.

12 108. As a proximate result of the aforementioned violations, PLAINTIFFS and  
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
14 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

## 15 **SIXTH CAUSE OF ACTION**

### 16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

18 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
19 **Defendants)**

20 109. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
22 paragraphs of this [First Amended](#) Complaint.

23 110. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
24 "accurate itemized" statement in writing showing:

- 25 a. Gross wages earned,
- 26 b. total hours worked by the employee, except for any employee whose compensation  
27 is solely based on a salary and who is exempt from payment of overtime  
28 under subdivision (a) of Section 515 or any applicable order of the Industrial



Welfare Commission,

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

111. From time to time, DEFENDANT violated Labor Code § 226, in that DEFENDANT failed and continues to fail to properly and accurately itemize the amount of time worked by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS at the effective rates of pay. DEFENDANT also violated Labor Code Section 226 in that DEFENDANT failed to properly and accurately itemize the amount of penalties paid to PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members when they missed their meal and rest breaks.

112. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the true amount of time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate Therefore, PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each

1 violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to proof  
2 at the time of trial (but in no event more than \$4,000.00 for PLAINTIFFS and each respective  
3 member of the CALIFORNIA LABOR SUB-CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

6 **(Cal. Lab. Code §§ 2802)**

7 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
8 **Defendants)**

9 113. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
10 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
11 paragraphs of this First Amended Complaint.

12 114. Cal. Lab. Code § 2802 provides, in relevant part, that:

13 An employer shall indemnify his or her employee for all necessary expenditures  
14 or losses incurred by the employee in direct consequence of the discharge of his  
15 or her duties, or of his or her obedience to the directions of the employer, even  
16 though unlawful, unless the employee, at the time of obeying the directions,  
17 believed them to be unlawful.

18 115. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
19 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
21 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA  
22 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
23 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a result,  
24 in the course of their employment with DEFENDANT, PLAINTIFFS and other members of the  
25 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included,  
26 but were not limited to, the costs related to the use of their personal cellular phones all on behalf  
27 of and for the benefit of DEFENDANT. These expenses are necessary to complete their principal  
28 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this

1 expectation. Although these expenses are necessary expenses incurred by PLAINTIFFS and the  
2 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and  
3 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these  
4 expenses as an employer is required to do under the laws and regulations of California.

5 116. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred  
6 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job  
7 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at  
8 the statutory rate and costs under Cal. Lab. Code § 2802.

9 **EIGHTH CAUSE OF ACTION**  
10 **FAILURE TO PAY WAGES WHEN DUE**

11 **(Cal. Lab. Code § 203)**

12 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
13 **Defendants)**

14 117. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
15 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
16 paragraphs of this First Amended Complaint.

17 118. Cal. Lab. Code § 200 provides that:

18 As used in this article:

19 (d) "Wages" includes all amounts for labor performed by employees of every  
20 description, whether the amount is fixed or ascertained by the standard of time,  
21 task, piece, Commission basis, or other method of calculation.

22 (e) "Labor" includes labor, work, or service whether rendered or performed under  
23 contract, subcontract, partnership, station plan, or other agreement if the to be  
24 paid for is performed personally by the person demanding payment.

25 119. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
26 an employee, the wages earned and unpaid at the time of discharge are due and payable  
27 immediately."

28 120. Cal. Lab. Code § 202 provides, in relevant part, that:

1 If an employee not having a written contract for a definite period quits his or her  
2 employment, his or her wages shall become due and payable not later than 72 hours  
3 thereafter, unless the employee has given 72 hours previous notice of his or her intention  
4 to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
5 Notwithstanding any other provision of law, an employee who quits without providing a  
6 72-hour notice shall be entitled to receive payment by mail if he or she so requests and  
7 designates a mailing address. The date of the mailing shall constitute the date of payment  
8 for purposes of the requirement to provide payment within 72 hours of the notice of  
9 quitting.

10 121. There was no definite term in PLAINTIFFS's or any CALIFORNIA LABOR  
11 SUB-CLASS Members' employment contract.

12 122. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
15 quits, the wages of the employee shall continue as a penalty from the due date thereof at  
16 the same rate until paid or until an action therefor is commenced; but the wages shall not  
17 continue for more than 30 days.

18 123. The employment of PLAINTIFFS and many other CALIFORNIA LABOR SUB-  
19 CLASS Members has terminated, yet as to those individuals whose employment terminated,  
20 DEFENDANT did not timely tender payment of all wages owed as required by law.

21 124. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
22 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,  
23 PLAINTIFFS demand thirty days of pay as penalty for not paying all wages due at time of  
24 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated  
25 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and  
26 statutory costs as allowed.

**NINTH CAUSE OF ACTION**  
**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**  
**(Cal. Lab. Code §§2698 et seq.)**  
**(Alleged by PLAINTIFF against all Defendants)**

125. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

126. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

127. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this individual and Representative Action on behalf of the State of California with respect to himself and all non-exempt employees who worked for DEFENDANT in California during the time period of March 27, 2023 until the present (the "AGGRIEVED EMPLOYEES").

128. On March 27, 2024, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence an individual and representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

129. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357 Violation of Applicable Industrial Welfare Commission Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

#### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all minimum wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

1           2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

2           a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
3           Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
4           action pursuant to Cal. Code of Civ. Proc. § 382;

5           b. Compensatory damages, according to proof at trial, including compensatory  
6           damages for overtime compensation due to PLAINTIFFS and the other members  
7           of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA  
8           LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

9           c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
10          the applicable IWC Wage Order;

11          d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
12          which a violation occurs and one hundred dollars (\$100) per each member of the  
13          CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
14          period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
15          an award of costs for violation of Cal. Lab. Code § 226;

16          e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-  
17          CLASS as a penalty from the due date thereof at the same rate until paid or until an  
18          action therefore is commenced, in accordance with Cal. Lab. Code § 203;

19          f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA  
20          LABOR SUBCLASS incurred in the course of their job duties, plus interest, and  
21          costs of suit.

22          3. On behalf of PLAINTIFF as an individual and the State of California and with respect  
23          to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the  
24          Labor Code Private Attorneys General Act of 2004.

25          4. On all claims:

26          a. An award of interest, including prejudgment interest at the legal rate;

27          b. Such other and further relief as the Court deems just and equitable; and

28          c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,

1 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 1198 and/or  
2 § 1198.5.

3  
4 DATED: June 5, 2024

5 **ZAKAY LAW GROUP, APLC**

6  
7 By: 

8 Shani O. Zakay

9 Attorney for PLAINTIFFS

10  
11  
12  
13  
14 **DEMAND FOR A JURY TRIAL**

15 PLAINTIFFS demands a jury trial on issues triable to a jury.

16  
17 DATED: June 5, 2024

18  
19 **ZAKAY LAW GROUP, APLC**

20 By: 

21 Shani O. Zakay

22 Attorney for PLAINTIFFS  
23  
24  
25  
26  
27  
28



# **EXHIBIT 1**



Client #80301

March 27, 2024

**Via Online Filing to LWDA and Certified Mail to Defendants**

**Labor and Workforce Development Agency**

Online Filing

**NNT EXPRESS, INC.**

c/o Nosir Turaboev

13550 S Route 30, STE LL 106

Plainfield, IL 60544-5689

***Sent Via Certified Mail & Receipt No. 9589 0710 5270 0361 2319 97***

**TRYTIME TRANSPORT LLC**

c/o Mila Krcevinac

815 Superior Ave East, Suite 1618 H213

Cleveland, OH 44114

***Sent Via Certified Mail & Receipt No. 9589 0710 5270 0361 2320 00***

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357 Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiffs CLINTON SIMRIL and ELIAS GARCILAZO ("Plaintiffs"), and other aggrieved employees in a proposed lawsuit against Defendant NNT EXPRESS, INC. ("Defendant NNT Express") and Defendant TRYTIME TRANSPORT, LLC ("Defendant Trytime Transport") (hereinafter, collectively, "Defendants"). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff Clinton Simril worked for Defendants as a Driver in California from March of 2023 to May of 2023. Plaintiff Elias Garcilazo worked for Defendants as a Driver in California from March of 2023 to May of 2023. Plaintiffs were classified by Defendants as independent contractors, however the job duties performed by Plaintiffs and other aggrieved employees did not entitle Defendants to claim any exemption from minimum wage and overtime compensation and providing meal periods to Plaintiffs or any of the other workers who were classified as independent contractors. As a result, Plaintiffs and other aggrieved employees worked time for which they were

unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiffs and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. Additionally, Plaintiffs contend that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiffs began and ended each shift and meal period.

As a consequence of the aforementioned violations, Plaintiffs further contend that Defendants failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

**Plaintiffs seek to represent a group of aggrieved employees defined individuals classified as independent contractors who worked for Defendant NNT Express and/or Defendant Trytime Transport in California during the relevant claim period.**

A true and correct copy of the proposed Complaint by Plaintiffs against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continues their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay  
Attorney for Plaintiffs

Enclosure (1)

EXHIBIT 1

**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
Jackland K. Hom (State Bar #327243)  
Julieann Alvarado (State Bar #334727)  
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**JCL LAW FIRM, APC**

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[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

CLINTON SIMRIL and ELIAS  
GARCILAZO, individuals, on behalf of  
themselves and on behalf of all persons  
similarly situated,

Plaintiff,

v.

NNT EXPRESS, INC., an Illinois Corporation;  
TRYTIME TRANSPORT, LLC., an Ohio  
Limited Liability Company; and DOES 1-50,  
Inclusive,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq.*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1191, & 1997.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO PROVIDE ACCURATE  
2 ITEMIZED STATEMENTS IN  
3 VIOLATION OF CAL. LAB. CODE § 226  
4 7) FAILURE TO REIMBURSE EMPLOYEES  
5 FOR REQUIRED EXPENSES IN  
6 VIOLATION OF CAL. LAB. CODE §  
7 2802;  
8 8) FAILURE TO PROVIDE WAGES WHEN  
9 DUE IN VIOLATION OF CAL. LAB.  
10 CODE §§ 201, 202 AND 203.

11 **DEMAND FOR A JURY TRIAL**

12 Plaintiffs CLINTON SIMRIL and ELIAS GARCILAZO ("PLAINTIFFS"), individuals,  
13 on behalf of themselves and all other similarly situated current and former employees, allege on  
14 information and belief, except their own acts and knowledge, the following:

15 **INTRODUCTION**

16 1. Defendant NNT EXPRESS, INC. ("Defendant NNT Express") and Defendant  
17 TRYTIME TRANSPORT, LLC ("Defendant Trytime Transport") ("DEFENDANT" or  
18 "DEFENDANTS"), in order to service customers, hire workers to aid DEFENDANT in  
19 providing transportation and delivery services as an interstate freight carrier. The cost, as  
20 proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay  
21 of these employees but the cost of the employer's share of tax payments to the federal and state  
22 governments for income taxes, social security taxes, medicare insurance, unemployment  
23 insurance and payments for workers' compensation insurance. To avoid the payment of these  
24 legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to  
25 place the responsibility for the payment of these costs and expenses of DEFENDANT on the  
26 shoulders of PLAINTIFFS and other drivers. As employer, DEFENDANT is legally  
27 responsible for the payment of all these expenses. This lawsuit is brought on behalf of these  
28 Drivers who worked for DEFENDANT in California and were classified as independent  
contractors, in order to collect the wages due them as employees of DEFENDANT, the cost of  
the employer's share of payments to the federal and state governments for income taxes, social  
security taxes, medicare insurance, unemployment insurance and payments for workers'  
compensation insurance, plus penalties and interest.

1           2. Defendant NNT Express and Defendant Trytime Transport were the joint  
2 employers of PLAINTIFFS as evidenced by the documents issued to PLAINTIFFS and by the  
3 company PLAINTIFFS performed work for respectively and are therefore jointly responsible as  
4 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5           3. DEFENDANT at all relevant times mentioned herein conducted and continues to  
6 conduct substantial and regular business in the State of California, including in the county of  
7 San Diego.

8           4. PLAINTIFF Clinton Simril worked for DEFENDANT as a Driver from March of  
9 2023 to May of 2023, and was classified by DEFENDANT as an independent contractor during  
10 his entire employment with DEFENDANT.

11           5. PLAINTIFF Elias Garcilzao worked for DEFENDANT as a Driver from March  
12 of 2023 to May of 2023, and was classified by DEFENDANT as an independent contractor  
13 during his entire employment with DEFENDANT.

14           6. California Labor Code Section 226.8 provides that “[i]t is unlawful for any  
15 person or employer to engage in . . . [w]illful misclassification of an individual as an  
16 independent contractor.” The penalty for willful misclassification of employees is a “civil  
17 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand  
18 dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by  
19 law.” It is further provided that, in the event that an employer is found to have engaged in “a  
20 pattern or practice of these violations,” the penalties increase to “not less than ten thousand  
21 dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation,  
22 in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8.

23           7. Here, DEFENDANT has willfully misclassified PLAINTIFFS and other Drivers  
24 as described in Cal. Labor Code § 226.8, and further, that DEFENDANT has engaged in a  
25 “pattern or practice” of such violations as contemplated by the California Labor Code.

26           8. Upon hire, the position of a Driver was represented by DEFENDANT to  
27 PLAINTIFFS and the other Drivers as an independent contractor position capable of paying a  
28 piece rate for the time they spent driving. PLAINTIFFS and other Drivers were not

1 compensated minimum wages for all of their time spent working. PLAINTIFFS and other  
2 Drivers were paid the piece rate to perform transportation services on DEFENDANT's behalf.  
3 DEFENDANT did not pay PLAINTIFFS and other CALIFORNIA CLASS Members for the  
4 time spent waiting for the truck to be stocked and all the other non-driving work tasks. The  
5 finite set of tasks required to be performed by the Drivers is to transport goods from  
6 DEFENDANT's facility to a requested delivery location for customers that requested  
7 DEFENDANT's services all in accordance with DEFENDANT's business practices and  
8 policies.

9       9. To perform their job duties, PLAINTIFFS and the other Drivers performed work  
10 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise  
11 complete control over the work performed and the manner and means in which the work was  
12 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions  
13 as to how to perform the driving services.

14       10. California Labor Code § 3357 defines "employee" as "every person in the  
15 service of an employer under any appointment or contract of hire or apprenticeship, express or  
16 implied, oral or written, whether lawfully or unlawfully employed." In addition to the California  
17 Labor Code's presumption that workers are employees, the California Supreme Court has  
18 determined the most significant factor to be considered in distinguishing an independent  
19 contractor from an employee is whether the *employer or principal has control or the right to*  
20 *control the work both as to the work performed and the manner and means in which the work is*  
21 *performed*. DEFENDANT heavily controlled both the work performed and the manner and  
22 means in which the PLAINTIFFS and the other Drivers performed their work in that:

- 23       a. PLAINTIFFS and other Drivers were not involved in a distinct business, but  
24       instead were provided with instructions as to how to perform their work and the  
25       manner and means in which the work was to be performed by means of  
26       DEFENDANT's manuals and written instructions;
- 27       b. PLAINTIFFS and other Drivers were continuously provided with training and  
28       supervision, including following DEFENDANT's company documents and



received training from DEFENDANT as to how and in what way to perform the driving services;

- c. DEFENDANT set the requirements as to what policies and procedures all of the Drivers were to follow;
- d. PLAINTIFFS and other Drivers had no opportunity for profit or loss because DEFENDANT only paid these workers a block rate. DEFENDANT controlled and assigned the Drivers which tasks were to be performed;
- e. PLAINTIFFS and other Drivers performed driving services which are part of DEFENDANT's principal business and is closely integrated with and essential to the employer's business of providing transportation and delivery services to their customers;
- f. PLAINTIFFS and other Drivers performed the work themselves and did not hire others to perform their work for them;
- g. PLAINTIFFS and other Drivers did not have the authority to make employment-related personnel decisions;
- h. PLAINTIFFS and other Drivers performed their work in a particular order and sequence in accordance with DEFENDANT's company policy; and,
- i. DEFENDANT had the "right" to control every critical aspect of DEFENDANT's daily driving services operations in that DEFENDANT provided the customer, assigned where the Drivers were to go, and step-by-step instructions to PLAINTIFFS and other Drivers as to the entire process of picking up and dropping off deliveries at their assigned locations.

11. As a result, stripped of all the legal fictions and artificial barriers to an honest classification of the relationship between PLAINTIFFS and all the other Drivers on the one hand, and DEFENDANT on the other hand, PLAINTIFFS and all the other Drivers are and were employees of DEFENDANT and not independent contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly employees.

12. PLAINTIFFS bring this Class Action on behalf of themselves and a California

1 class, defined as all individuals who worked for Defendant NNT Express and/or Defendant  
2 Trytime Transport in California as Drivers and who were classified as independent contractors  
3 (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to  
4 the filing of the original Complaint and ending on the date as determined by the Court (the  
5 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
6 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

7 13. As a matter of company policy, practice and procedure, DEFENDANT has  
8 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as  
9 "independent contractors" in order to unlawfully avoid compliance with all applicable federal  
10 and state laws that require payment for all time worked, business expenses, and the employer's  
11 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal  
12 and state governments and the CALIFORNIA CLASS Members, PLAINTIFFS and the  
13 CALIFORNIA CLASS Members were underpaid throughout their employment with  
14 DEFENDANT. The true names and capacities, whether individual, corporate, associate or  
15 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown  
16 to PLAINTIFFS who therefore sues these Defendants by such fictitious names pursuant to Cal.  
17 Civ. Proc. Code § 474. PLAINTIFFS are informed and believes, and based thereon, alleges that  
18 each of the Defendants designated herein is legally responsible in some manner for the unlawful  
19 acts referred to herein. PLAINTIFFS will seek leave of Court to amend this Complaint to  
20 reflect the true names and capacities of the Defendants when they have been ascertained and  
21 become known.

22 14. The agents, servants and/or employees of the Defendants and each of them acting  
23 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
24 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
25 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
26 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
27 Defendants are jointly and severally liable to the PLAINTIFFS and the other members of the  
28 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,

servants and/or employees.

## **THE CONDUCT**

### **A. Misclassification**

15. DEFENDANT engaged in a pattern and practice of misclassifying California workers as independent contractors, hired to perform work and services core to DEFENDANT's businesses, in violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that "[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual as an independent contractor." The penalty for willful misclassification of employees is a "civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law." It is further provided that, in the event that an employer is found to have engaged in "a pattern or practice of these violations," the penalties increase to "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." Cal. Labor Code § 226.8.

16. Similarly, PLAINTIFFS and other members of the CALIFORNIA CLASS were not compensated overtime wages for any of their time spent working in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFFS and other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on DEFENDANT's behalf. PLAINTIFFS and other workers were not compensated any other wages besides the non-negotiable hourly rate, and they were not allowed to record their time while they waited for DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFFS and other CALIFORNIA CLASS members for the time spent waiting for the truck to be stocked and all the other non-driving work tasks. The finite set of tasks required to be performed by the workers is, when notified by DEFENDANT, transport goods from DEFENDANT's facility to a requested delivery location for customers that requested DEFENDANT's services all in accordance with DEFENDANT's business practices and policies

17. As a result, stripped of all the legal fictions and artificial barriers to an honest

1 classification of the relationship between PLAINTIFFS and all the other members of the  
2 CALIFORNIA CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFFS  
3 and all the other members of the CALIFORNIA CLASS are and were employees of  
4 DEFENDANT and not independent contractors of DEFENDANT and should therefore be  
5 properly classified as non-exempt, hourly employees.

6 18. The finite set of tasks required of PLAINTIFFS and the other CALIFORNIA  
7 CLASS members as defined by DEFENDANT was executed by them through the performance  
8 of non-exempt labor.

9 19. Although PLAINTIFFS and the other CALIFORNIA CLASS members performed  
10 non-exempt labor subject to DEFENDANT's complete control over the manner and means of  
11 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by  
12 which all of these CALIFORNIA CLASS Members were classified as "independent contractors"  
13 exempt from compensation for overtime worked, meal breaks and rest breaks, and  
14 reimbursement for business related expenses. By reason of this uniform misclassification, the  
15 CALIFORNIA CLASS Members were also required to pay DEFENDANT's share of payroll  
16 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,  
17 policy and procedure applicable to PLAINTIFFS and the other CALIFORNIA CLASS Members  
18 who performed this work for DEFENDANT, DEFENDANT committed acts of unfair  
19 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§  
20 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure  
21 which failed to properly classify PLAINTIFFS and the other CALIFORNIA CLASS members as  
22 employees and thereby failed to pay them wages for all time worked, reimbursement of business  
23 related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these  
24 employees for the employer's share of payroll taxes and mandatory insurance.

25 20. DEFENDANT, as a matter of law, has the burden of proving that employees are  
26 properly classified and that DEFENDANT otherwise complies with applicable laws.  
27 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the  
28 CALIFORNIA CLASS Members as independent contractors in violation of the California Labor

1 Code and regulations promulgated thereunder.

2           i.       **Plaintiffs and Other Members of the California Class Were Not Free**  
3                   **from the Control and Direction of Defendant**

4           21.       DEFENDANT controlled and directed the work performed by PLAINTIFFS and  
5 the other similarly situated misclassified California workers by, among other things, scheduling  
6 hours of work, providing job site information, and issuing written policies and procedures for the  
7 performance of work and conduct in the workplace. Upon hire, the position was represented by  
8 DEFENDANT to PLAINTIFFS and the other workers as an independent contractor position in  
9 exchange for an hourly rate of pay for the time they spend providing labor and services to  
10 DEFENDANT's third-party customers.

11           22.       To perform their job duties, PLAINTIFFS and the other members of the  
12 CALIFORNIA CLASS perform work subject to the control of DEFENDANT in that  
13 DEFENDANT had the authority to exercise complete control over the work performed and the  
14 manner and means in which the work was performed. DEFENDANT provided the customers and  
15 DEFENDANT provided the instructions as to how to perform their work.

16           23.       California Labor Code § 3357 defines "employee" as "every person in the service  
17 of an employer under any appointment or contract of hire or apprenticeship, express or implied,  
18 oral or written, whether lawfully or unlawfully employed." Additionally, to the California Labor  
19 Code's presumption that workers are employees, the California Supreme Court has determined  
20 the most significant factor to be considered in distinguishing an independent contractor from an  
21 employee is whether the *employer or principal has control or the right to control the work both*  
22 *as to the work performed and the manner and means in which the work is performed.*  
23 DEFENDANT heavily controlled both the work performed and the manner and means in which  
24 the PLAINTIFFS and other workers performed their work in that:

- 25                   a. PLAINTIFFS and other Drivers were not involved in a distinct business,  
26                   but instead were provided with instructions as to how to perform their  
27                   work and the manner and means in which the work was to be performed  
28                   by means of DEFENDANT's manuals and written instructions;

- 1 b. PLAINTIFFS and other Drivers were continuously provided with training  
2 and supervision, including following DEFENDANT's company  
3 documents and received training from DEFENDANT as to how and in  
4 what way to perform the driving services;
- 5 c. DEFENDANT set the requirements as to what policies and procedures all  
6 of the Drivers were to follow;
- 7 d. PLAINTIFFS and other Drivers had no opportunity for profit or loss  
8 because DEFENDANT only paid these workers a block rate.  
9 DEFENDANT controlled and assigned the Drivers which tasks were to be  
10 performed;
- 11 e. PLAINTIFFS and other Drivers performed driving services which are part  
12 of DEFENDANT's principal business and is closely integrated with and  
13 essential to the employer's business of providing transportation and  
14 delivery services to their customers;
- 15 f. PLAINTIFFS and other Drivers performed the work themselves and did  
16 not hire others to perform their work for them;
- 17 g. PLAINTIFFS and other Drivers did not have the authority to make  
18 employment-related personnel decisions;
- 19 h. PLAINTIFFS and other Drivers performed their work in a particular order  
20 and sequence in accordance with DEFENDANT's company policy; and,
- 21 i. DEFENDANT had the "right" to control every critical aspect of  
22 DEFENDANT's daily driving services operations in that DEFENDANT  
23 provided the customer, assigned where the Drivers were to go, and step-  
24 by-step instructions to PLAINTIFFS and other Drivers as to the entire  
25 process of picking up and dropping off deliveries at their assigned  
26 locations.

27 ii. **Plaintiffs and Other Members of the California Class Did Not**  
28 **Perform Work Outside the Usual Course of Defendant's Business**

1           24.     DEFENDANT willfully misclassified PLAINTIFFS and other members of the  
2 CALIFORNIA CLASS who provided DEFENDANT with transportation services for  
3 DEFENDANT's clients. In other words, PLAINTIFFS and other similarly situated California  
4 workers provided DEFENDANT with work and services within the usual course of  
5 DEFENDANT's business.

6           25.     DEFENDANT markets itself to the public, PLAINTIFFS and other members of  
7 the CALIFORNIA CLASS as a provider of driving services. As a result, DEFENDANT  
8 unquestionably holds itself out to the public, PLAINTIFFS and other members of the  
9 CALIFORNIA CLASS as a provider of driving services. Therefore, the performance of  
10 DEFENDANT's housekeeping services by PLAINTIFFS and other members of the  
11 CALIFORNIA CLASS is not outside DEFENDANT'S usual course of business.

12           iii.     **Plaintiffs and Other Members of the California Class Were Not**  
13                   **Engaged in an Independently Established Trade, Occupation, or**  
14                   **Business of the Same Nature as the Work Performed for Defendant**

15           26.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are not and  
16 were not engaged in a customarily independently established trade, occupation or business as the  
17 same nature of the work performed.

18       **B. Meal Period Violations**

19           27.     In California, an employer may not employ an employee for a work period of more  
20 than five hours per day without providing the employee with a duty-free meal period of not less  
21 than thirty minutes, except that if the total work period per day of the employee is no more than  
22 six hours, the meal period may be waived by mutual consent of both the employer and employee.  
23 A second duty-free meal period of not less than thirty minutes is required if an employee works  
24 more than ten hours per day, except that if the total hours worked is no more than 12 hours, the  
25 second duty-free meal period may be waived by mutual consent of the employer and employee  
26 only if the first meal period was not waived. Labor Code Section 512.

27           28.     If an employer fails to provide an employee a duty-free meal period in accordance  
28 with an applicable IWC Order, the employer must pay one additional hour of pay at the

1 employee's regular rate of pay for each workday that the meal period is not provided. IWC  
2 Orders and Labor Code Section 226.7. This additional hour is not counted as hours worked for  
3 purposes of overtime calculations.

4 29. From time-to-time during the CLASS PERIOD, as a result of their  
5 misclassification as independent contractors and their rigorous work schedules, PLAINTIFFS  
6 and other CALIFORNIA CLASS members were not provided with a thirty (30) minute duty-free  
7 meal period and were not fully relieved of duty for their meal periods. PLAINTIFFS and other  
8 CALIFORNIA CLASS members were required from time-to-time to perform work as ordered by  
9 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.  
10 Further, DEFENDANT from time to time failed to provide PLAINTIFFS and CALIFORNIA  
11 CLASS members with a second duty-free meal period for some workdays in which these  
12 employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and  
13 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional  
14 compensation and in accordance with DEFENDANT's strict corporate policy and practice.  
15 Moreover, PLAINTIFFS and other members of the CALIFORNIA CLASS were not provided  
16 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

17 **C. Rest Period Violations**

18 30. The applicable IWC Wage Order requires that employers must authorize and  
19 permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in  
20 the middle of each work period. The rest period is based on the total hours worked daily and  
21 must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or  
22 major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything  
23 more than two hours to be a "major fraction" of four. A rest period is not required for employees  
24 whose total daily work time is less than three and one-half hours. The rest period is counted as  
25 time worked and therefore, the employer must pay for such periods.

26 31. If an employer fails to provide an employee a rest period in accordance with an  
27 applicable IWC Order, the employer shall pay the employee one additional hour of pay at the  
28 employee's regular rate of pay for each workday that the rest period is not provided. Labor Code



1 Section 226.7. Thus, if an employer does not provide all of the rest periods required in a  
2 workday, the employee is entitled to one additional hour of pay for that workday, not one  
3 additional hour of pay for each rest period that was not provided during that workday.

4 32. From time-to-time during the CLASS PERIOD, as a result of their  
5 misclassification as independent contractors and their rigorous work schedules PLAINTIFFS and  
6 other CALIFORNIA CLASS members were also required to work in excess of four (4) hours  
7 without being provided ten (10) minute rest periods. Further, these employees were denied their  
8 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
9 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts  
10 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least  
11 ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFFS and other  
12 CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As  
13 a result of their misclassification and rigorous work schedules, PLAINTIFFS and other  
14 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by  
15 DEFENDANT and DEFENDANT'S managers.

16 **D. Failure to Pay Minimum, Regular and Overtime Wages**

17 33. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately  
18 record and pay PLAINTIFFS and other CALIFORNIA CLASS members for the actual amount  
19 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,  
20 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS members for  
21 all time worked, meaning the time during which an employee was subject to the control of an  
22 employer, including all the time the employee was permitted or suffered to permit this work.  
23 DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS members to work off the  
24 clock without paying them for all the time they were under DEFENDANT's control.  
25 PLAINTIFFS and other CALIFORNIA CLASS Members also worked more than eight hours in  
26 a workday and/or forty hours in a workweek, but DEFENDANT failed to pay these employees  
27 overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time worked.  
28 Consequently, PLAINTIFFS and other CALIFORNIA CLASS members forfeited minimum

1 wages and overtime wage compensation by working without their time being correctly recorded  
2 and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay  
3 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by  
4 DEFENDANT's business records. As a result, DEFENDANT failed to compensate  
5 PLAINTIFFS and the members of the CALIFORNIA CLASS all minimum, regular and  
6 overtime wages for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and  
7 510.

8 **E. Failure to Reimburse Necessary and Required Business Expenses**

9 34. Under California Labor Code Section 2802, employers are required to indemnify  
10 employees for all expenses incurred in the course and scope of their employment. Cal. Lab.  
11 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
13 of his or her duties, or of his or her obedience to the directions of the employer, even though  
14 unlawful, unless the employee, at the time of obeying the directions, believed them to be  
15 unlawful."

16 35. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of  
17 corporate policy, practice and procedure, intentionally, knowingly and systematically failed to  
18 reimburse and indemnify PLAINTIFFS and the other CLASS MEMBERS for required business  
19 expenses incurred by PLAINTIFFS and other the CLASS MEMBERS in direct consequence of  
20 discharging their duties on behalf of DEFENDANT.

21 36. From time-to-time during the CLASS PERIOD, in the course of their employment  
22 PLAINTIFFS and other CALIFORNIA CLASS members as a business expense, were required  
23 by DEFENDANT to use personal cellular phones, personal computers, and personal home  
24 internet, as a result of and in furtherance of their job duties as employees for DEFENDANT but  
25 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of the  
26 personal cellular phones, personal computers, and personal home internet for DEFENDANT's  
27 benefit. In order to work for DEFENDANT, PLAINTIFFS and other CALIFORNIA CLASS  
28 Members were required use their personal cell phones to review, receive and accept job

1 assignments and as such it is mandatory to have a cell phone. Additionally, PLAINTIFFS and  
2 other CALIFORNIA CLASS Members were required to provide their own personal computer  
3 and personal home internet in order to map out driving routes. As a result, in the course of their  
4 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA  
5 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
6 related to the use of their personal cellular phones, personal computers, and personal home  
7 internet on behalf of and for the benefit of DEFENDANT.

8 **F. Wage Statement Violations**

9 37. California Labor Code Section 226 requires an employer to furnish its employees  
10 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
11 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all  
12 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is  
13 paid, (7) the name of the employee and only the last four digits of the employee's social security  
14 number or an employee identification number other than a social security number, (8) the name  
15 and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect  
16 during the pay period and the corresponding number of hours worked at each hourly rate by the  
17 employee.

18 38. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of  
19 DEFENDANT's intentional and willful misclassification of PLAINTIFFS and the members of  
20 the CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT  
21 issued inaccurate itemized wages statements to PLAINTIFFS and the members of the  
22 CALIFORNIA CLASS that failed to accurately showing (1) gross wages earned, (2) total hours  
23 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all  
24 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is  
25 paid, (7) the name of the employee and only the last four digits of the employee's social security  
26 number or an employee identification number other than a social security number, (8) the name  
27 and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect  
28 during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee.

2 39. As a result, DEFENDANT issued PLAINTIFFS and the other members of the  
3 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
4 DEFENDANT's violations are knowing and intentional, were not isolated or due to an  
5 unintentional payroll error due to clerical or inadvertent mistake.

6 **G. Unfair Competition**

7 40. By reason of this conduct applicable to PLAINTIFFS and all the CALIFORNIA  
8 CLASS members, DEFENDANT committed acts of unfair competition in violation of the  
9 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by  
10 engaging in a company-wide policy, practice and procedure which failed to correctly classify  
11 PLAINTIFFS and the CALIFORNIA CLASS members as employees. The proper classification  
12 of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional  
13 disregard of the obligation to meet this burden, DEFENDANT failed to pay all required wages  
14 for work performed by PLAINTIFFS and other CALIFORNIA CLASS Members and violated  
15 the California Labor Code and regulations promulgated thereunder as herein alleged.

16 41. PLAINTIFFS as workers for DEFENDANT, was classified by DEFENDANT as  
17 an independent contractor and thus did not receive pay for all time worked, including minimum  
18 and overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS were also  
19 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift  
20 without receiving a meal or rest break as evidenced by daily time reports for PLAINTIFFS.  
21 PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in  
22 accordance with DEFENDANT's strict corporate policy and practice which did not provide for  
23 mandatory meal and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFFS all  
24 wages still owed to them or any penalty wages owed to them under California Labor Code § 203.  
25 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of  
26 \$75,000.

27 ///

28 ///

## **THE CALIFORNIA CLASS**

42. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who worked for Defendant NNT Express and/or Defendant Trytime Transport in California as Drivers and who were classified as independent contractors (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of the original Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

43. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

44. All CALIFORNIA CLASS Members who performed and continue to perform this work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in that they are subject to DEFENDANT's uniform policy and systematic practice that required them to perform work without compensation as required by law.

45. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly and willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and deceptively instituted a practice to ensure that all individuals employed as independent contractors were not properly classified as non-exempt employees from the requirements of California Labor Code §§ 510, *et seq.*

46. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated the rights of the PLAINTIFFS and the CALIFORNIA CLASS Members under California law, without limitation, in the following manners:

- a. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§

17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented a scheme whereby PLAINTIFFS and the CALIFORNIA CLASS Members are forced to unlawfully, unfairly and deceptively shoulder the cost of DEFENDANT's wages for all unpaid wages, business related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment insurance and workers' compensation insurance;

- b. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly misclassified PLAINTIFFS and the CALIFORNIA CLASS Members as independent contractors;;
- c. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company policy, practice and procedure that accurately determined the amount of working time spent by PLAINTIFFS and the CALIFORNIA CLASS Members performing non-exempt employee labor;
- d. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required meal and rest breaks; and
- e. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

47. As a result of DEFENDANT's uniform policies, practices and procedures, there are numerous questions of law and fact common to all CALIFORNIA CLASS Members who worked for DEFENDANT during the CALIFORNIA CLASS PERIOD. These questions

1 include, but are not limited, to the following:

- 2 a. Whether PLAINTIFFS and other CALIFORNIA CLASS Members were
- 3 misclassified as independent contractors by DEFENDANT;
- 4 b. Whether the PLAINTIFFS and the CALIFORNIA CLASS Members all afforded
- 5 all the protections of the California Labor Code that apply when properly
- 6 classified as non-exempt employees;
- 7 c. Whether DEFENDANT's policies, practices and pattern of conduct described in
- 8 this Complaint was and is unlawful;
- 9 d. Whether DEFENDANT unlawfully failed to pay their share of state and federal
- 10 employment taxes as required by state and federal tax laws;
- 11 e. Whether DEFENDANT's policy, practice and procedure of classifying the
- 12 CALIFORNIA CLASS Members as independent contractors exempt from hourly
- 13 wages laws for all time worked and failing to pay the CALIFORNIA CLASS
- 14 Members all amounts due violates applicable provisions of California State law;
- 15 f. Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
- 16 CLASS Members with accurate records of all time worked;
- 17 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 18 conduct; and
- 19 h. Whether DEFENDANT's conduct was willful.

20 48. This Class Action meets the statutory prerequisites for the maintenance of a  
21 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that::

- 22 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 23 joinder of all such persons is impracticable and the disposition of their claims as a
- 24 class will benefit the parties and the Court;
- 25 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 26 raised in this Complaint are common to the CALIFORNIA CLASS and will apply
- 27 uniformly to every CALIFORNIA CLASS Member;
- 28 c. The claims of the representative PLAINTIFFS are typical of the claims of each

1 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the CALIFORNIA  
2 CLASS Members, was classified as an independent contractor upon hiring based  
3 on the defined corporate policies and practices and labors under DEFENDANT's  
4 systematic procedure that failed to properly classify the PLAINTIFFS and the  
5 CALIFORNIA CLASS Members. PLAINTIFFS sustained economic injury as a  
6 result of DEFENDANT's employment practices. PLAINTIFFS and the  
7 CALIFORNIA CLASS Members were and are similarly or identically harmed by  
8 the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged  
9 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS  
10 Members that they were not entitled to minimum wages, the employer's share of  
11 payment of payroll taxes and mandatory insurance, and reimbursement for  
12 business expenses based on the defined corporate policies and practices, and  
13 unfairly failed to pay these employees who were improperly classified as  
14 independent contractors; and

- 15 d. The representative PLAINTIFFS will fairly and adequately represent and protect  
16 the interest of the CALIFORNIA CLASS and has retained counsel who is  
17 competent and experienced in Class Action litigation. There are no material  
18 conflicts between the claims of the representative PLAINTIFFS and the  
19 CALIFORNIA CLASS Members that would make class certification  
20 inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the  
21 claims of all employees in the CALIFORNIA CLASS.

22 49. In addition to meeting the statutory prerequisites to a Class Action, this Action is  
23 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 24 a. Without class certification and determination of declaratory, injunctive, statutory  
25 and other legal questions within the class format, prosecution of separate actions  
26 by individual members of the CALIFORNIA CLASS will create the risk of:

- 27 1. Inconsistent or varying adjudications with respect to individual  
28 members of the CALIFORNIA CLASS which would establish



1 incompatible standards of conduct for the parties opposing the  
2 CALIFORNIA CLASS; and/or,

3 2. Adjudication with respect to individual members of the  
4 CALIFORNIA CLASS which would as a practical matter be  
5 dispositive of the interests of the other members not party to the  
6 adjudication or substantially impair or impeded their ability to  
7 protect their interests.

8 b. The parties opposing the CALIFORNIA CLASS have acted on grounds  
9 generally applicable to the CALIFORNIA CLASS making appropriate  
10 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
11 DEFENDANT uniformly classified and treated the CALIFORNIA CLASS  
12 Members as independent contractors and, thereafter, uniformly failed to take  
13 proper steps to determine whether the CALIFORNIA CLASS Members were  
14 properly classified as independent contractors, and thereby denied these  
15 employees' wages and payments for business expenses and the employer's share  
16 of payroll taxes and mandatory insurance as required by law;

17 c. With respect to the First Cause of Action, the final relief on behalf of the  
18 CALIFORNIA CLASS sought does not relate exclusively to restitution because  
19 through this claim the PLAINTIFFS seek declaratory relief holding that  
20 DEFENDANT's policies and practices constitute unfair competition, along with  
21 incidental equitable relief as may be necessary to remedy the conduct declared to  
22 constitute unfair competition;

23 d. Common questions of law and fact exist as to members of the CALIFORNIA  
24 CLASS with respect to the practices and violations of California and federal law  
25 as listed above, and predominate over any question affecting only individual  
26 members, and a Class Action is superior to other available methods for the fair  
27 and efficient adjudication of the controversy, including consideration of:

28 1. The interest of the CALIFORNIA CLASS Members in

- 1 individually controlling the prosecution or defense of separate
- 2 actions;
- 3 2. The extent and nature of any litigation concerning the controversy
- 4 already commenced by or against members of the CALIFORNIA
- 5 CLASS;
- 6 3. In the context of wage litigation because as a practical matter a
- 7 substantial number of individual CALIFORNIA CLASS members
- 8 will avoid asserting their legal rights out of fear of retaliation by
- 9 DEFENDANT, which may adversely affect an individual's job
- 10 with DEFENDANT or with a subsequent employer, the Class
- 11 Action is the only means to assert their claims through a
- 12 representative;
- 13 4. The desirability or undesirability of concentration the litigation of
- 14 the claims in the particular forum;
- 15 5. The difficulties likely to be encountered in the management of a
- 16 Class Action; and,
- 17 6. The basis of DEFENDANT's policies and practices uniformly
- 18 applied to all the CALIFORNIA CLASS Members

19 50. The Court should permit this Action to be maintained as a Class Action pursuant  
20 to Cal. Code of Civ. Proc. § 382 because:

- 21 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
- 22 over any question affecting only individual members;
- 23 b. A Class Action is superior to any other available method for the fair and efficient
- 24 adjudication of the claims of the members of the CALIFORNIA CLASS;
- 25 c. The CALIFORNIA CLASS Members are so numerous that it is impractical to
- 26 bring all CALIFORNIA CLASS Members before the Court;
- 27 d. PLAINTIFFS and the CALIFORNIA CLASS Members will not be able to obtain
- 28 effective and economic legal redress unless the action is maintained as a Class

1 Action;

- 2 e. There is a community of interest in obtaining appropriate legal and equitable relief  
3 for the acts of unfair competition, statutory violations and other improprieties, and  
4 in obtaining adequate compensation for the damages and injuries which  
5 DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- 6 f. There is a community of interest in ensuring that the combined assets and available  
7 insurance of DEFENDANT are sufficient to adequately compensate the  
8 CALIFORNIA CLASS Members for any injuries sustained;
- 9 g. DEFENDANT has acted or has refused to act on grounds generally applicable to  
10 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
11 respect to the CLASS as a whole;
- 12 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
13 business records of DEFENDANT. The CALIFORNIA CLASS consists of all  
14 DEFENDANT's Drivers in California classified as independent contractors during  
15 the CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies,  
16 practices and procedures as herein alleged; and
- 17 i. Class treatment provides manageable judicial treatment calculated to bring an  
18 efficient and rapid conclusion to all litigation of all wage and hour related claims  
19 arising out of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

20 51. DEFENDANT maintains records from which the Court can ascertain and  
21 identify by job title each of DEFENDANT's employees who as have been systematically,  
22 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
23 procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include  
24 any additional job titles of similarly situated employees when they have been identified.

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 52. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
27 Eighth causes of Action on behalf of a California sub-class, defined as all individuals who  
28 worked for Defendant NNT Express and/or Defendant Trytime Transport in California as

1 Drivers and who were classified as independent contractors (the “CALIFORNIA LABOR SUB-  
2 CLASS”) at any time during the period three (3) years prior to the filing of the original  
3 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR  
4 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy  
5 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million  
6 dollars (\$5,000,000.00).

7 53. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
8 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare  
9 Commission (“IWC”) Wage Order requirements intentionally, knowingly, and willfully, on the  
10 basis of job title alone and without regard to the actual overall requirements of the job,  
11 systematically classified PLAINTIFFS and the other members of the CALIFORNIA LABOR  
12 SUB-CLASS as independent contractors in order to avoid the payment of all wages, and in  
13 order to avoid the obligations under the applicable California Labor Code provisions. To the  
14 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS  
15 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
16 accordingly.

17 54. DEFENDANT maintains records from which the Court can ascertain and  
18 identify by name and job title, each of DEFENDANT’s employees who have been  
19 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,  
20 practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the  
21 Complaint to include these additional job titles when they have been identified.

22 55. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

24 56. DEFENDANT, as a matter of corporate policy, practice and procedure,  
25 erroneously classified all Drivers as independent contractors making these employees exempt  
26 from California labor laws. All Drivers, including PLAINTIFFS, performed the same finite set  
27 of tasks and were paid by DEFENDANT according to uniform and systematic company  
28 procedures, which, as alleged herein above, failed to correctly pay minimum wage

1 compensation. This business practice was uniformly applied to each and every member of the  
2 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
3 adjudicated on a class-wide basis.

4 57. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
5 under California law by:

- 6 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately  
7 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS  
8 the correct minimum wage pay for which DEFENDANT is liable pursuant to  
9 Cal. Lab. Code §§ 1194 and 1197;
- 10 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS  
11 and the other members of the CALIFORNIA CLASS with all legally required  
12 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required  
13 rest breaks;
- 14 c. Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and the  
15 members of the CALIFORNIA LABOR SUB-CLASS who were improperly  
16 classified as independent contractors with an accurate itemized statement in  
17 writing showing the gross wages earned, the net wages earned, all applicable  
18 hourly rates in effect during the pay period and the corresponding amount of time  
19 worked at each hourly rate by the employee;
- 20 d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the  
21 CALIFORNIA CLASS members with necessary expenses incurred in the  
22 discharge of their job duties; and,
- 23 e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an  
24 employee is discharged or quits from employment, the employer must pay the  
25 employee all wages due without abatement, by failing to tender full payment  
26 and/or restitution of wages owed or in the manner required by California law to  
27 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
28 their employment.

1           58. This Class Action meets the statutory prerequisites for the maintenance of a  
2 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 3           a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
4           numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
5           is impracticable and the disposition of their claims as a class will benefit the  
6           parties and the Court;
- 7           b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
8           raised in this Complaint are common to the CALIFORNIA LABOR SUB-  
9           CLASS and will apply uniformly to every member of the CALIFORNIA  
10          LABOR SUB-CLASS;
- 11          c. The claims of the representative PLAINTIFFS are typical of the claims of each  
12          member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the  
13          other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
14          employee paid on an hourly basis who was subjected to the DEFENDANT's  
15          practice and policy which failed to pay the correct amount of wages due to the  
16          CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury  
17          as a result of DEFENDANT's employment practices. PLAINTIFFS and the  
18          members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
19          identically harmed by the same unlawful, deceptive, unfair and pervasive pattern  
20          of misconduct engaged in by DEFENDANT; and
- 21          d. The representative PLAINTIFFS will fairly and adequately represent and protect  
22          the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel  
23          who are competent and experienced in Class Action litigation. There are no  
24          material conflicts between the claims of the representative PLAINTIFFS and the  
25          members of the CALIFORNIA LABOR SUB-CLASS that would make class  
26          certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
27          will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
28          Members.

1           59. In addition to meeting the statutory prerequisites to a Class Action, this action is  
2 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

3           a. Without class certification and determination of declaratory, injunctive, statutory  
4 and other legal questions within the class format, prosecution of separate actions  
5 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
6 the risk of:

7                   1. Inconsistent or varying adjudications with respect to individual  
8 members of the CALIFORNIA LABOR SUB-CLASS which  
9 would establish incompatible standards of conduct for the parties  
10 opposing the CALIFORNIA LABOR SUB-CLASS; or

11                   2. Adjudication with respect to individual members of the  
12 CALIFORNIA LABOR SUB-CLASS which would as a practical  
13 matter be dispositive of interests of the other members not party to  
14 the adjudication or substantially impair or impede their ability to  
15 protect their interests.

16           b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
17 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
18 SUB-CLASS, making appropriate class-wide relief with respect to the  
19 CALIFORNIA LABOR SUB-CLASS as a whole in that the DEFENDANT  
20 uniformly classified and treated the members of the CALIFORNIA LABOR  
21 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take  
22 proper steps to determine whether the CALIFORNIA LABOR SUB-CLASS  
23 Members were properly classified as independent contractors, and thereby denied  
24 these employees the protections afforded to them under the California Labor  
25 Code;

26           c. Common questions of law and fact predominate as to the members of the  
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
2 Class Action is superior to other available methods for the fair and efficient  
3 adjudication of the controversy, including consideration of:

- 4 1. The interests of the members of the CALIFORNIA LABOR SUB-  
5 CLASS in individually controlling the prosecution or defense of  
6 separate actions in that the substantial expense of individual  
7 actions will be avoided to recover the relatively small amount of  
8 economic losses sustained by the individual CALIFORNIA  
9 LABOR SUB-CLASS Members when compared to the  
10 substantial expense and burden of individual prosecution of this  
11 litigation;
- 12 2. Class certification will obviate the need for unduly duplicative  
13 litigation that would create the risk of:
  - 14 a. Inconsistent or varying adjudications with respect to  
15 individual members of the CALIFORNIA LABOR SUB-  
16 CLASS, which would establish incompatible standards of  
17 conduct for the DEFENDANT; and/or,
  - 18 b. Adjudications with respect to individual members of the  
19 CALIFORNIA LABOR SUB-CLASS would as a practical  
20 matter be dispositive of the interests of the other members  
21 not parties to the adjudication or substantially impair or  
22 impede their ability to protect their interests;
- 23 3. In the context of wage litigation because a substantial number of  
24 individual CALIFORNIA LABOR SUB-CLASS Members will  
25 avoid asserting their legal rights out of fear of retaliation by  
26 DEFENDANT, which may adversely affect an individual's job  
27 with DEFENDANT or with a subsequent employer, the Class  
28 Action is the only means to assert their claims through a



1 representative; and,

2 4. A class action is superior to other available methods for the fair  
3 and efficient adjudication of this litigation because class treatment  
4 will obviate the need for unduly and unnecessary duplicative  
5 litigation that is likely to result in the absence of certification of  
6 this action pursuant to Cal. Code of Civ. Proc. § 382.

7 60. This Court should permit this action to be maintained as a Class Action pursuant  
8 to Cal. Code of Civ. Proc. § 382 because:

- 9 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-  
10 CLASS predominate over any question affecting only individual CALIFORNIA  
11 LABOR SUB-CLASS Members;
- 12 b. A Class Action is superior to any other available method for the fair and efficient  
13 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-  
14 CLASS because in the context of employment litigation a substantial number of  
15 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
16 their rights individually out of fear of retaliation or adverse impact on their  
17 employment;
- 18 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
19 it is impractical to bring all members of the CALIFORNIA LABOR SUB-  
20 CLASS before the Court;
- 21 d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members,  
22 will not be able to obtain effective and economic legal redress unless the action is  
23 maintained as a Class Action;
- 24 e. There is a community of interest in obtaining appropriate legal and equitable  
25 relief for the acts of unfair competition, statutory violations and other  
26 improprieties, and in obtaining adequate compensation for the damages and  
27 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
28 LABOR SUB-CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of the  
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
10 employed by DEFENDANT in California during the CALIFORNIA LABOR  
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an  
13 efficient and rapid conclusion to all litigation of all wage and hour related claims  
14 arising out of the conduct of DEFENDANT as to the members of the  
15 CALIFORNIA LABOR SUB-CLASS.
- 16 61. Common questions of law and fact exist as to members of the CALIFORNIA  
17 LABOR SUB-CLASS, including, but not limited, to the following:
- 18 a. Whether DEFENDANT unlawfully failed to correctly classify the members of  
19 the CALIFORNIA LABOR SUB-CLASS;
- 20 b. Whether DEFENDANT failed to provide the members of the CALIFORNIA  
21 LABOR SUB-CLASS with meal and rest breaks in violation of the California  
22 Labor Code and California regulations and the applicable California Wage  
23 Order;
- 24 c. Whether DEFENDANT failed to provide the PLAINTIFFS and the other  
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized  
26 wage statements;
- 27 d. Whether DEFENDANT has engaged in unfair competition by the above-listed  
28 conduct;

- 1 e. The proper measure of damages and penalties owed to the members of the  
2 CALIFORNIA LABOR SUB-CLASS; and  
3 f. Whether DEFENDANT's conduct was willful.

4 **JURISDICTION AND VENUE**

5 62. This Court has jurisdiction over this Action pursuant to California Code of Civil  
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
7 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees  
8 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

9 63. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395  
10 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained  
11 its principal offices and facilities in this County and/or conducts substantial business in this  
12 County, and (ii) committed the wrongful conduct herein alleged in this County against members  
13 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

14 **FIRST CAUSE OF ACTION**

15 **UNLAWFUL BUSINESS PRACTICES**

16 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

17 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

18 64. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege  
19 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
20 Complaint.

21 65. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.  
22 Code § 17021.

23 66. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines  
24 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
25 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
26 competition as follows:

27 Any person who engages, has engaged, or proposes to engage in unfair competition may  
28 be enjoined in any court of competent jurisdiction. The court may make such orders or

1 judgments, including the appointment of a receiver, as may be necessary to prevent the  
2 use or employment by any person of any practice which constitutes unfair competition,  
3 as defined in this chapter, or as may be necessary to restore to any person in interest any  
4 money or property, real or personal, which may have been acquired by means of such  
5 unfair competition. (Cal. Bus. & Prof. Code § 17203).

6 67. By the conduct alleged herein, DEFENDANT has engaged and continues to  
7 engage in a business practice which violates California law, including but not limited to the  
8 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 221,  
9 226.7, 226.8, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations  
10 § 11090, for which this Court should issue declaratory, injunctive, and other equitable relief,  
11 pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct  
12 held to constitute unfair competition, including restitution of wages wrongfully withheld,  
13 business expenses wrongfully withheld and for the payment of the employer's share of income  
14 taxes, social security taxes, unemployment insurance and workers' compensation insurance.

15 68. By the conduct alleged herein DEFENDANT has obtained valuable property,  
16 money, and services from PLAINTIFFS, and the other members of the CALIFORNIA CLASS,  
17 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment  
18 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.  
19 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and  
20 pecuniary compensation alone would not afford adequate and complete relief.

21 69. All the acts described herein as violations of, among other things, the California  
22 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage  
23 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,  
24 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive,  
25 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

26 70. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
27 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the  
28 CALIFORNIA CLASS Members that they were not entitled to minimum wages, payment for

1 payroll taxes or mandatory insurance and other benefits as required by California law, when in  
2 fact these representations were false and likely to deceive and for which this Court should issue  
3 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution  
4 of wages wrongfully withheld.

5 71. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and  
7 the other members of the CALIFORNIA CLASS to be underpaid during their employment with  
8 DEFENDANT.

9 72. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
10 to, and do, seek such relief as may be necessary to restore to them the money and property  
11 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
13 unfair business practices, including earned but unpaid wages for all time worked.

14 73. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
15 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair  
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
17 engaging in any unlawful and unfair business practices in the future.

18 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
19 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
20 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as  
21 required by Cal. Lab. Code §§ 226.7 and 512.

22 75. Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of each  
23 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll  
24 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty  
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
26 for each workday in which a second off-duty meal period was not timely provided for each ten  
27 (10) hours of work.

28 76. PLAINTIFFS further demands on behalf of themselves and on behalf of each

1 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
2 was not timely provided as required by law.

3 77. By and through the unlawful and unfair business practices described herein,  
4 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
5 other members of the CALIFORNIA CLASS, including earned wages for all time worked and  
6 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
7 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
8 to unfairly compete against competitors who comply with the law.

9 78. All the acts described herein as violations of, among other things, the Industrial  
10 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
11 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive  
12 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business  
13 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

14 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
15 to, and do, seek such relief as may be necessary to restore to them the money and property  
16 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
17 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
18 unfair business practices.

19 80. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
20 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
21 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
22 engaging in any unlawful and unfair business practices in the future.

23 PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy  
24 and/or adequate remedy at law that will end the unlawful and unfair business practices of  
25 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
26 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the  
27 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
28 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to

engage in these unlawful and unfair business practices.

**SECOND CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES**

**(Cal. Lab. Code §§ 1194 and 1197 AND 1197.1)**

**(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL Defendants)**

81. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

82. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

83. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

84. Cal. Lab. Code § 1197 provides the 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.

85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

86. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

87. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a

1 result of implementing a uniform policy and practice that denied accurate compensation to  
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to  
3 minimum wage pay.

4 88. In committing these violations of the California Labor Code, DEFENDANT  
5 inaccurately calculates the correct time worked and consequently underpays the actual time  
6 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.  
7 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
8 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
9 requirements and other applicable laws and regulations.

10 89. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
11 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not  
12 receive the correct minimum wage compensation for their time worked for DEFENDANT.

13 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the  
14 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that  
15 they were entitled to, constituting a failure to pay all earned wages.

16 91. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
17 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
18 CLASS for the true time they worked, PLAINTIFFS and the other members of the  
19 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
20 injury in amounts which are presently unknown to them and which will be ascertained  
21 according to proof at trial.

22 92. DEFENDANT knew or should have known that PLAINTIFFS and the other  
23 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time  
24 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
25 nonfeasance, to not pay PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
26 Members for their labor as a matter of uniform company policy, practice and procedure, and  
27 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the  
28 other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for



1 their time worked.

2 93. In performing the acts and practices herein alleged in violation of California labor  
3 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
4 all time worked and provide them with the requisite compensation, DEFENDANT acted and  
5 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other  
6 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard  
7 for their legal rights, or the consequences to them, and with the despicable intent of depriving  
8 them of their property and legal rights, and otherwise causing them injury in order to increase  
9 company profits at the expense of these employees.

10 94. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
11 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory  
12 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as  
13 provided by the California Labor Code and/or other applicable statutes. To the extent minimum  
14 wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS  
15 Members who have terminated their employment, DEFENDANT's conduct also violates Labor  
16 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time  
17 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
18 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein  
19 was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA  
20 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

21 **THIRD CAUSE OF ACTION**

22 **For Failure to Pay Overtime Wages**

23 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
25 **DEFENDANTS)**

26 95. PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members reallege and  
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
28 Complaint.

1           96. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed  
2 to pay PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for  
3 the time they worked in excess of the maximum hours permissible by law as required by Cal.  
4 Lab. Code §§ 510 & 1198, even though PLAINTIFFS and the CALIFORNIA LABOR SUB-  
5 CLASS Members were regularly required to work, and did in fact work, overtime that  
6 DEFENDANT never recorded as evidenced by DEFENDANT'S business records and witnessed  
7 by DEFENDANT'S employees.

8           97. By virtue of DEFENDANT'S unlawful failure to pay compensation to  
9 PLAINTIFFS and the CALIFORNIA CLASS Members for all overtime worked by these  
10 employees, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have suffered,  
11 and will continue to suffer, an economic in amounts which are presently unknown to them and  
12 which can be ascertained according to proof at trial.

13           98. DEFENDANT knew or should have known that PLAINTIFFS and the  
14 CALIFORNIA CLASS Members were misclassified as independent contractors and  
15 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay  
16 them for their labor as a matter of corporate policy, practice and procedure.

17           99. PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members therefore  
18 request recovery of all compensation according to proof, interest, costs, as well as the assessment  
19 of any statutory penalties against DEFENDANT in a sum as provided by the California Labor  
20 Code and/or other statutes. To the extent overtime compensation is determined to be owed to the  
21 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, these  
22 employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
23 penalties are sought herein. Further, PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS  
24 Members are entitled to seek and recover statutory costs.

25           100. In performing the acts and practices herein alleged in violation of California labor  
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
27 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT  
28 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter  
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of  
3 depriving them of their property and legal rights, and otherwise causing them injury in order to  
4 increase corporate profits at the expense of these employees.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
9 **Defendants)**

10 101. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
11 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
12 paragraphs of this Complaint.

13 102. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT  
14 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
15 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
16 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR  
17 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their  
18 duties for the legally required off-duty meal periods. As a result of their rigorous work  
19 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were often  
20 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
21 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
22 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
23 by DEFENDANT's business records. As a result, PLAINTIFFS and other members of the  
24 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional  
25 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

26 103. DEFENDANT further violated California Labor Code §§ 226.7 and the  
27 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA  
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the

1 applicable Wage Order, one additional hour of compensation at each employee's regular rate of  
2 pay for each workday that a meal period was not provided.

3 104. As a proximate result of the aforementioned violations, PLAINTIFFS and  
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
5 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
10 **Defendants)**

11 105. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
12 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
13 paragraphs of this Complaint.

14 106. From time to time, PLAINTIFFS and other CALIFORNIA LABOR SUB-  
15 CLASS Members were required to work in excess of four (4) hours without being provided ten  
16 (10) minute rest periods. Further, these employees were denied their first rest periods of at least  
17 ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second  
18 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)  
19 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts  
20 worked of ten (10) hours or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-  
21 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of  
22 their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
23 Members were periodically denied their proper rest periods by DEFENDANT and  
24 DEFENDANT's managers.

25 107. DEFENDANT further violated California Labor Code §§ 226.7 and the  
26 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA  
27 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the  
28 applicable Wage Order, one additional hour of compensation at each employee's regular rate of

1 pay for each workday that rest period was not provided.

2 108. As a proximate result of the aforementioned violations, PLAINTIFFS and  
3 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
4 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code § 226)**

8 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
9 **Defendants)**

10 109. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
11 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
12 paragraphs of this Complaint.

13 110. Cal. Labor Code § 226 provides that an employer must furnish employees with  
14 an “accurate itemized” statement in writing showing:

- 15 a. Gross wages earned,  
16 b. total hours worked by the employee, except for any employee whose  
17 compensation is solely based on a salary and who is exempt from payment  
18 of overtime under subdivision (a) of Section 515 or any applicable order  
19 of the Industrial Welfare Commission,  
20 c. the number of piece-rate units earned and any applicable piece rate if the  
21 employee is paid on a piece-rate basis,  
22 d. all deductions, provided that all deductions made on written orders of the  
23 employee may be aggregated and shown as one item,  
24 e. net wages earned,  
25 f. the inclusive dates of the period for which the employee is paid,  
26 g. the name of the employee and his or her social security number, except that by  
27 January 1, 2008, only the last four digits of his or her social security number of  
28 an employee identification number other than social security number may be

1 shown on the itemized statement,

2 h. the name and address of the legal entity that is the employer, and

3 i. all applicable hourly rates in effect during the pay period and the corresponding  
4 number of hours worked at each hourly rate by the employee.

5 111. From time to time, DEFENDANT violated Labor Code § 226, in that  
6 DEFENDANT failed and continues to fail to properly and accurately itemize the amount of time  
7 worked by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS  
8 at the effective rates of pay. DEFENDANT also violated Labor Code Section 226 in that  
9 DEFENDANT failed to properly and accurately itemize the amount of penalties paid to  
10 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members when they missed their  
11 meal and rest breaks.

12 112. DEFENDANT knowingly and intentionally failed to comply with Labor Code §  
13 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
14 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the  
15 true amount of time worked and the amount of employment taxes which were not properly paid  
16 to state and federal tax authorities. These damages are difficult to estimate Therefore,  
17 PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to  
18 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,  
19 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an  
20 amount according to proof at the time of trial (but in no event more than \$4,000.00 for  
21 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

24 **(Cal. Lab. Code §§ 2802)**

25 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
26 **Defendants)**

27 113. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior

1 paragraphs of this Complaint.

2 114. Cal. Lab. Code § 2802 provides, in relevant part, that:

3 An employer shall indemnify his or her employee for all necessary expenditures  
4 or losses incurred by the employee in direct consequence of the discharge of his  
5 or her duties, or of his or her obedience to the directions of the employer, even  
6 though unlawful, unless the employee, at the time of obeying the directions,  
7 believed them to be unlawful.

8 115. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
9 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
10 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
11 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA  
12 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
13 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a  
14 result, in the course of their employment with DEFENDANT, PLAINTIFFS and other members  
15 of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which  
16 included, but were not limited to, the costs related to the use of their personal cellular phones all  
17 on behalf of and for the benefit of DEFENDANT. These expenses are necessary to complete  
18 their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any  
19 waiver of this expectation. Although these expenses are necessary expenses incurred by  
20 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to  
21 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members  
22 for these expenses as an employer is required to do under the laws and regulations of California.

23 116. PLAINTIFFS therefore demand reimbursement for expenditures or losses  
24 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
25 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with  
26 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

27 **EIGHTH CAUSE OF ACTION**  
28 **FAILURE TO PAY WAGES WHEN DUE**

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

117. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

118. Cal. Lab. Code § 200 provides that:

As used in this article:

(d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

119. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

120. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

121. There was no definite term in PLAINTIFFS's or any CALIFORNIA LABOR



1 SUB-CLASS Members' employment contract.

2 122. Cal. Lab. Code § 203 provides:

3 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
4 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or  
5 who quits, the wages of the employee shall continue as a penalty from the due date  
6 thereof at the same rate until paid or until an action therefor is commenced; but the  
7 wages shall not continue for more than 30 days.

8 123. The employment of PLAINTIFFS and many other CALIFORNIA LABOR  
9 SUB-CLASS Members has terminated, yet as to those individuals whose employment  
10 terminated, DEFENDANT did not timely tender payment of all wages owed as required by law.

11 124. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
12 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,  
13 PLAINTIFFS demand thirty days of pay as penalty for not paying all wages due at time of  
14 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated  
15 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and  
16 statutory costs as allowed.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and  
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

- 21 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
22 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
23 b. An order temporarily, preliminarily and permanently enjoining and restraining  
24 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
25 c. An order requiring DEFENDANT to pay all minimum wages and all sums  
26 unlawfully withheld from compensation due to PLAINTIFFS and the other  
27 members of the CALIFORNIA CLASS; and  
28 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund

1 for restitution of the sums incidental to DEFENDANT's violations due to  
2 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

3 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 4 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
5 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
6 action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. Compensatory damages, according to proof at trial, including compensatory  
8 damages for overtime compensation due to PLAINTIFFS and the other members  
9 of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
10 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
11 statutory rate;
- 12 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
13 the applicable IWC Wage Order;
- 14 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
15 which a violation occurs and one hundred dollars (\$100) per each member of the  
16 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
18 an award of costs for violation of Cal. Lab. Code § 226;
- 19 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-  
20 CLASS as a penalty from the due date thereof at the same rate until paid or until  
21 an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 22 f. The amount of the expenses PLAINTIFFS and each member of the  
23 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,  
24 plus interest, and costs of suit.

25 3. On all claims:

- 26 a. An award of interest, including prejudgment interest at the legal rate;
- 27 b. Such other and further relief as the Court deems just and equitable; and
- 28 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the

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law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 1198  
and/or § 1198.5.

DATED: March 27, 2024

**ZAKAY LAW GROUP, APLC**

By: 

Shani O. Zakay

Attorney for PLAINTIFFS

EXHIBIT 1

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**DEMAND FOR A JURY TRIAL**

PLAINTIFFS demands a jury trial on issues triable to a jury.

DATED: March 27, 2024

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay

Attorney for PLAINTIFFS

EXHIBIT ↑