

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

October 31, 2024

CA3455

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

KAG Food Products, LLC
Certified Mail #9589071052701502087756
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 226.8, 246, 1351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.* 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s) Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Kenan Advantage Group, Inc. and/or KAG Specialty Products Group, LLC and/or KAG West Energy, LLC and/or KAG Energy, LLC and/or KAG Food Products, LLC and/or KAG Leasing, Inc. and/or KAG Logistics, Inc. and/or KAG Merchant Gas Group, LLC in California as Drivers and who were classified as independent contractors during the time period of October 31, 2023 until a date as determined by the Court. Our offices represent Victor Paez (“Plaintiff”), and other Aggrieved Employees in a lawsuit against The Kenan Advantage Group, Inc. and/or KAG Specialty Products Group, LLC and/or KAG West Energy, LLC and/or KAG Energy, LLC and/or KAG Food Products, LLC and/or KAG Leasing, Inc. and/or KAG Logistics, Inc. and/or KAG Merchant Gas Group, LLC (“Defendant”). Plaintiff was employed by Defendant as a driver in California from October of 2018 to June 21, 2024 and has been classified as an independent contractor. However, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees, among other things. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result,

Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contend that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 226.8, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, 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. Plaintiff 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. 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 Plaintiff and all Aggrieved Employees.

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/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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October 31, 2024

CA3455

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

KAG West Energy, LLC
Certified Mail #9589071052701502087800
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 226.8, 246, 1351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.* 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s) Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Kenan Advantage Group, Inc. and/or KAG Specialty Products Group, LLC and/or KAG West Energy, LLC and/or KAG Energy, LLC and/or KAG Food Products, LLC and/or KAG Leasing, Inc. and/or KAG Logistics, Inc. and/or KAG Merchant Gas Group, LLC in California as Drivers and who were classified as independent contractors during the time period of October 31, 2023 until a date as determined by the Court. Our offices represent Victor Paez (“Plaintiff”), and other Aggrieved Employees in a lawsuit against The Kenan Advantage Group, Inc. and/or KAG Specialty Products Group, LLC and/or KAG West Energy, LLC and/or KAG Energy, LLC and/or KAG Food Products, LLC and/or KAG Leasing, Inc. and/or KAG Logistics, Inc. and/or KAG Merchant Gas Group, LLC (“Defendant”). Plaintiff was employed by Defendant as a driver in California from October of 2018 to June 21, 2024 and has been classified as an independent contractor. However, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees, among other things. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result,

Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contend that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 226.8, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, 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. Plaintiff 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Restations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. 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 Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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WRITERS EXT:

1004

October 31, 2024

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The Kenan Advantage Group, Inc.
Certified Mail #9589071052701502087817
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AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 226.8, 246, 1351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2570.3 *et seq.* 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s) Pursuant To California Labor Code Section 2699.5.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

VICTOR PAEZ, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

THE KENAN ADVANTAGE GROUP,
INC., a corporation; KAG SPECIALTY
PRODUCTS GROUP, LLC, a limited
liability company; KAG WEST
ENERGY, LLC, a limited liability
company; KAG ENERGY, LLC, a limited
liability company; KAG FOOD
PRODUCTS, LLC, a limited liability
company; KAG LEASING, INC., a
corporation; KAG LOGISTICS, INC., a
corporation; KAG MERCHANT GAS
GROUP, LLC, a limited liability
company; and DOES 1 through 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, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, 1194 & 1198, *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;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226; and,
7. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Victor Paez (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees, allege on information and belief, except their
3 own acts and knowledge, the following:

4 **INTRODUCTION**

5 1. DEFENDANTS in order to service customers hire workers to aid DEFENDANTS
6 in providing delivery services to their clients. The cost, as proscribed by law, of the personnel
7 hired to work for DEFENDANTS, includes not only the pay of these employees but the cost of
8 the employer's share of tax payments to the federal and state governments for income taxes,
9 social security taxes, medicare insurance, unemployment insurance and payments for workers'
10 compensation insurance. To avoid the payment of these legally proscribed expenses to the
11 fullest extent possible, DEFENDANTS devised a scheme to place the responsibility for the
12 payment of these costs and expenses of DEFENDANTS on the shoulders of PLAINTIFF and
13 other employees. As employer, DEFENDANTS are legally responsible for the payment of all
14 these expenses. This lawsuit is brought on behalf of Drivers who worked for DEFENDANTS
15 in California and were classified as independent contractors, in order to collect the wages due
16 them as employees of DEFENDANTS, the cost of the employer's share of payments to the
17 federal and state governments for income taxes, social security taxes, medicare insurance,
18 unemployment insurance and payments for workers' compensation insurance, plus penalties and
19 interest.

20 **THE PARTIES**

21 2. The Kenan Advantage Group, Inc. is a corporation that at all relevant times
22 mentioned herein conducted and continues to conduct substantial business in California.

23 3. KAG Specialty Products Group, LLC is a limited liability company that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in
25 California.

26 4. KAG West Energy, LLC is a limited liability company that at all relevant times
27 mentioned herein conducted and continues to conduct substantial business in California.

1 5. KAG Energy, LLC is a limited liability company that at all relevant times
2 mentioned herein conducted and continues to conduct substantial business in California.

3 6. KAG Food Products, LLC is a limited liability company that at all relevant times
4 mentioned herein conducted and continues to conduct substantial business in California.

5 7. KAG Leasing, Inc. is a corporation that at all relevant times mentioned herein
6 conducted and continues to conduct substantial business in California.

7 8. KAG Logistics, Inc. is a corporation that at all relevant times mentioned herein
8 conducted and continues to conduct substantial business in California.

9 9. KAG Merchant Gas Group, LLC is a limited liability company that at all relevant
10 times mentioned herein conducted and continues to conduct substantial business in California.

11 10. The Kenan Advantage Group, Inc., KAG Specialty Products Group, LLC, KAG
12 West Energy, LLC, KAG Energy, LLC, KAG Food Products, LLC, KAG Leasing, Inc.,
13 KAG Logistics, Inc., and KAG Merchant Gas Group, LLC are the joint employers of
14 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
15 respectively, and are therefore jointly responsible as employers for the conduct alleged
16 herein, and are therefore collectively referred to herein as ("DEFENDANTS")

17 11. DEFENDANTS at all relevant times mentioned herein conducted and continues
18 to conduct substantial and regular business in the State of California.

19 12. DEFENDANTS are a tank truck transporter and logistics provider, delivering
20 energy commodities, specialty products, merchant gases and food products.

21 13. Plaintiff Paez worked for DEFENDANTS as a driver from October of 2018 to
22 June 21, 2024 and was classified by DEFENDANTS as an independent contractor during his
23 entire employment with DEFENDANTS.

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

6 15. Here, DEFENDANTS have willfully misclassified PLAINTIFF and other Drivers
7 as described in Cal. Labor Code § 226.8 and Section 2750.3 *et seq.*, and further, that
8 DEFENDANTS have engaged in a “pattern or practice” of such violations as contemplated by
9 the California Labor Code. PLAINTIFF is not free from the control and direction of
10 DEFENDANTS in connection with the performance of the work, both under the contract for
11 the performance of the work and in fact. PLAINTIFF performed work that was not outside the
12 usual course of the DEFENDANTS’ business, which is transportation services. Further,
13 PLAINTIFF is not customarily engaged in an independently established trade, occupation, or
14 business of the same nature as that involved in the work performed.

15 16. Upon hire, the position of a Driver was represented by DEFENDANTS to
16 PLAINTIFF and the other Drivers as an independent contractor position capable of paying a
17 percentage of the load per assignment. PLAINTIFF and other Drivers were not compensated
18 overtime wages for any of their time spent working in excess of eight (8) hours in a workday,
19 twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and other
20 Drivers were paid the percentage to perform transportation services on DEFENDANTS’ behalf
21 regardless of how long they worked. PLAINTIFF and other Drivers were not compensated any
22 other wages besides the non-negotiable service fee per delivery and they were not allowed to
23 record their time while they waited for DEFENDANTS to give them work. The finite set of
24 tasks required to be performed by the Drivers is to pick up the products as directed by
25 DEFENDANTS and deliver those products to DEFENDANTS’ customers all in accordance
26 with DEFENDANTS’ business practices and policies.

27 17. To perform their job duties, PLAINTIFF and the other Drivers performed work
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1 subject to the control of DEFENDANTS in that DEFENDANTS had the authority to exercise
2 complete control over the work performed and the manner and means in which the work was
3 performed. DEFENDANTS provided the customers and DEFENDANTS provided the
4 instructions as to how to perform the driving services.

5 18. California Labor Code § 3357 defines “employee” as “every person in the service
6 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
7 oral or written, whether lawfully or unlawfully employed.” In addition to the California Labor
8 Code’s presumption that workers are employees, the California Supreme Court has determined
9 the most significant factor to be considered in distinguishing an independent contractor from
10 an employee is whether the *employer or principal has control or the right to control the work*
11 *both as to the work performed and the manner and means in which the work is performed.*
12 DEFENDANTS heavily controlled both the work performed and the manner and means in
13 which the PLAINTIFF and the other drivers performed their work in that:

14 (a) PLAINTIFF and other Drivers were not involved in a distinct business, but
15 instead were provided with instructions as to how to perform their work and the manner and
16 means in which the work was to be performed by means of DEFENDANTS’ manuals and
17 written instructions;

18 (b) PLAINTIFF and other Drivers were continuously provided with training
19 and supervision, including following DEFENDANTS’ company documents and received
20 training from DEFENDANTS as to how and in what way to perform the transportation services;

21 (c) DEFENDANTS set the requirements as to what policies and procedures
22 all of the Drivers were to follow;

23 (d) PLAINTIFF and other Drivers had no opportunity for profit or loss because
24 DEFENDANTS only paid these workers a flat rate per assignment. DEFENDANTS controlled
25 and assigned the Drivers which tasks were to be performed;

26 (e) PLAINTIFF and other Drivers performed shopping and delivery services
27 which are part of DEFENDANTS’ principal business and is closely integrated with and
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1 essential to the employer's business of providing transportation services to their customers;

2 (f) PLAINTIFF and other Drivers performed the work themselves and did not
3 hire others to perform their work for them;

4 (g) PLAINTIFF and other Drivers did not have the authority to make
5 employment-related personnel decisions;

6 (h) PLAINTIFF and other Drivers performed their work in a particular order
7 and sequence in accordance with DEFENDANTS' company policy; and,

8 (i) DEFENDANTS had the "right" to control every critical aspect of
9 DEFENDANTS' delivery operations in that DEFENDANTS provided the customer, assigned
10 where the Drivers were to go, and step-by-step instructions to PLAINTIFF and other Drivers
11 as to the entire process of picking up and dropping off goods at their assigned locations.
12 PLAINTIFF and other Drivers provided delivery services ONLY for DEFENDANTS'
13 customers, which DEFENDANTS controlled.

14 19. As a result, stripped of all the legal fictions and artificial barriers to an honest
15 classification of the relationship between PLAINTIFF and all the other Drivers on the one hand,
16 and DEFENDANTS on the other hand, PLAINTIFF and all the other Drivers are and were
17 employees of DEFENDANTS and not independent contractors of DEFENDANTS and should
18 therefore be properly classified as non-exempt, hourly employees.

19 20. PLAINTIFF brings this Class Action on behalf of himself and a California class,
20 defined as all individuals who are or previously were employed by The Kenan Advantage
21 Group, Inc. and/or KAG Specialty Products Group, LLC and/or KAG West Energy, LLC
22 and/or KAG Energy, LLC and/or KAG Food Products, LLC and/or KAG Leasing, Inc. and/
23 or KAG Logistics, Inc. and/or KAG Merchant Gas Group, LLC in California as Drivers and
24 who were classified as independent contractors (the "CALIFORNIA CLASS") at any time
25 during the period beginning four (4) years prior to the filing of this Complaint and ending on
26 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
27 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
28 five million

1 dollars (\$5,000,000.00).

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

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

25 THE CONDUCT

26 23. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA
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1 CLASS Members as defined by DEFENDANTS was executed by them through the
2 performance of non-exempt labor.

3 24. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed
4 non-exempt labor subject to DEFENDANTS' complete control over the manner and means of
5 performance, DEFENDANTS instituted a blanket classification policy, practice and procedure
6 by which all of these CALIFORNIA CLASS Members were classified as "independent
7 contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and
8 reimbursement for business related expenses. By reason of this uniform misclassification, the
9 CALIFORNIA CLASS Members were also required to pay DEFENDANTS' share of payroll
10 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
11 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members
12 who performed this work for DEFENDANTS, DEFENDANTS committed acts of unfair
13 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§
14 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
15 which uniformly failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS
16 Members as employees and thereby failed to pay them overtime wages for overtime worked,
17 reimbursement of business related expenses, failed to provide them with meal and rest breaks,
18 and failed to reimburse these employees for the employer's share of payroll taxes and
19 mandatory insurance. The proper classification of these employees is DEFENDANTS' burden.
20 As a result of DEFENDANTS' intentional disregard of the obligation to meet this burden,
21 DEFENDANTS violated the California Labor Code and regulations promulgated thereunder
22 as herein alleged. DEFENDANTS did not have in place a policy, practice or procedure that
23 provided meal and/or rest breaks to PLAINTIFF and CALIFORNIA CLASS Members as
24 evidenced by DEFENDANTS' business records which contain no record of these breaks.

25 25. DEFENDANTS, as a matter of law, has the burden of proving that employees are
26 properly classified and that DEFENDANTS otherwise complies with applicable laws.
27 DEFENDANTS, as a matter of corporate policy, erroneously and unilaterally classified all the
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1 CALIFORNIA CLASS Members as independent contractors.

2 26. PLAINTIFF and all the CALIFORNIA CLASS Members are and were uniformly
3 classified and treated by DEFENDANTS as independent contractors at the time of hire and
4 thereafter, DEFENDANTS failed to take proper steps to determine whether the PLAINTIFF and
5 the CLASS Members are properly classified under the applicable Industrial Welfare
6 Commission Wage Order and Cal. Lab. Code § 510 as exempt from applicable labor laws.
7 Since DEFENDANTS affirmatively and willfully misclassified PLAINTIFF and CALIFORNIA
8 CLASS Members in compliance with California labor laws, DEFENDANTS' practices violated
9 and continue to violate California law. In addition, DEFENDANTS acted deceptively by
10 falsely and fraudulently classifying PLAINTIFF and each CALIFORNIA CLASS Member as
11 independent contractors when DEFENDANTS knew or should have known that this
12 classification was false and not based on known facts. DEFENDANTS also acted deceptively
13 by violating the California labor laws, and as a result of this policy and practice,
14 DEFENDANTS also violated the UCL. In doing so, DEFENDANTS cheated the competition
15 by paying the CALIFORNIA CLASS less than the amount competitors paid who complied with
16 the law and cheated the CALIFORNIA CLASS by not paying them in accordance with
17 California law.

18 27. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
20 and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA
21 CLASS Members were required from time to time to perform work as ordered by
22 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal
23 break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
24 Members with a second off-duty meal period from time to time in which these employees were
25 required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other
26 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
27 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

1 28. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
3 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
4 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
5 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
6 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
7 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
8 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
9 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
10 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
11 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

12 29. DEFENDANTS intentionally and knowingly fails to reimburse and indemnify
13 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
14 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
15 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section
16 2802, employers are required to indemnify employees for all expenses incurred in the course
17 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
18 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
19 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
20 directions of the employer, even though unlawful, unless the employee, at the time of obeying
21 the directions, believed them to be unlawful."

22 30. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
23 Members as a business expense, were required by DEFENDANTS to use personal cellular
24 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but
25 were not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of
26 the personal cellular phones for DEFENDANTS' benefit. In the course of their employment
27 with DEFENDANTS, PLAINTIFF and other CALIFORNIA CLASS Members incurred
28

1 unreimbursed business expenses which included, but were not limited to, costs related to the use
2 of their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
3 Moreover, PLAINTIFF and other CALIFORNIA CLASS Members were also required from
4 time to time to pay for parking costs at certain terminals. As a result, in the course of their
5 employment with DEFENDANTS, PLAINTIFF and other CALIFORNIA CLASS Members
6 incurred unreimbursed business expenses which included, but were not limited to, costs related
7 to travel all on behalf of and for the benefit of DEFENDANTS.

8 31. From time to time, DEFENDANTS also failed to provide PLAINTIFF and the
9 other members of the CALIFORNIA CLASS with complete and accurate wage statements
10 which failed to show, among other things, the correct amount of time worked, including, work
11 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
12 and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226 provides that every
13 employer shall furnish each of his or her employees with an accurate itemized wage statement
14 in writing showing, among other things, gross wages earned and all applicable hourly rates in
15 effect during the pay period and the corresponding amount of time worked at each hourly rate.
16 As a result, DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA
17 CLASS with wage statements which violated Cal. Lab. Code § 226.

18 32. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA
19 CLASS Members, DEFENDANTS 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 correctly classify
22 PLAINTIFF and the CALIFORNIA CLASS Members as employees. The proper classification
23 of these employees is DEFENDANTS' burden. As a result of DEFENDANTS' intentional
24 disregard of the obligation to meet this burden, DEFENDANTS failed to pay all required
25 overtime compensation for work performed by PLAINTIFF and other CALIFORNIA CLASS
26 Members and violated the California Labor Code and regulations promulgated thereunder as
27 herein alleged. The amount in controversy for PLAINTIFF individually does not exceed the
28

1 sum or value of \$75,000.

2
3 **THE CALIFORNIA CLASS**

4 33. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
5 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
6 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
7 individuals who are or previously were employed by The Kenan Advantage Group, Inc. and/or
8 KAG Specialty Products Group, LLC and/or KAG West Energy, LLC and/or KAG Energy,
9 LLC and/or KAG Food Products, LLC and/or KAG Leasing, Inc. and/or KAG Logistics, Inc.
10 and/or KAG Merchant Gas Group, LLC in California as Drivers and who were classified as
11 independent contractors (the "CALIFORNIA CLASS") at any time during the period beginning
12 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
13 Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
14 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

15 34. To the extent equitable tolling operates to toll claims by the CALIFORNIA
16 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
17 accordingly.

18 35. All CALIFORNIA CLASS Members who performed and continue to perform this
19 work for DEFENDANTS during the CALIFORNIA CLASS PERIOD are similarly situated in
20 that they are subject to DEFENDANTS' policy and practice that required them to perform work
21 without compensation as required by law.

22 36. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
23 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
24 Wage Order requirements, and the applicable provisions of California law, intentionally,
25 knowingly and willfully engaged in a practice whereby DEFENDANTS unfairly, unlawfully
26 and deceptively instituted a practice to ensure that all individuals employed as independent
27 contractors were not properly classified as non-exempt employees from the requirements of
28

1 California Labor Code § 510.

2 37. During the CALIFORNIA CLASS PERIOD, DEFENDANTS violated the rights
3 of the PLAINTIFF and the CALIFORNIA CLASS Members under California law, without
4 limitation, in the following manners:

- 5 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANTS, while acting as
7 employer, devised and implemented a scheme whereby PLAINTIFF and
8 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
9 and deceptively shoulder the cost of DEFENDANTS' wages for all unpaid
10 overtime, business related expenses, and DEFENDANTS' share of
11 employment taxes, social security taxes, unemployment insurance and
12 workers' compensation insurance;
- 13 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
14 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
15 having in place company policies, practices and procedures that uniformly
16 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
17 independent contractors;
- 18 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
20 failing to have in place a company policy, practice and procedure that
21 accurately determined the amount of working time spent by PLAINTIFF
22 and the CALIFORNIA CLASS Members performing non-exempt
23 employee labor;
- 24 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
26 other members of the CALIFORNIA CLASS with all legally required
27 meal and rest breaks; and,

- 1 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by
3 failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members
4 with necessary expenses incurred in the discharge of their job duties.

5 38. As a result of DEFENDANTS' policies, practices and procedures, there are
6 numerous questions of law and fact common to all CALIFORNIA CLASS Members who
7 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not
8 limited, to the following:

- 9 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were
10 misclassified as independent contractors by DEFENDANTS;
11 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members are
12 afforded all the protections of the California Labor Code that apply when
13 properly classified as non-exempt employees;
14 (c) Whether DEFENDANTS' policies, practices and pattern of conduct
15 described in this Complaint was and is unlawful;
16 (d) Whether DEFENDANTS unlawfully failed to pay their share of state and
17 federal employment taxes as required by state and federal tax laws;
18 (e) Whether DEFENDANTS' policy, practice and procedure of classifying
19 the CALIFORNIA CLASS Members as independent contractors exempt
20 from hourly wages laws for all time worked and failing to pay the
21 CALIFORNIA CLASS Members all amounts due violates applicable
22 provisions of California State law;
23 (f) Whether DEFENDANTS unlawfully failed to keep and furnish the
24 CALIFORNIA CLASS Members with accurate records of all time
25 worked, including overtime worked;
26 (g) Whether DEFENDANTS have engaged in unfair competition by the
27 above-listed conduct; and,
28

1 (h) Whether DEFENDANTS' conduct was willful.

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

4 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
5 that the joinder of all such persons is impracticable and the disposition of their claims as a class
6 will benefit the parties and the Court;

7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
8 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply to
9 every CALIFORNIA CLASS Member;

10 (c) The claims of the representative PLAINTIFF are typical of the claims of
11 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS
12 Members, was classified as an independent contractor upon hiring based on the defined
13 corporate policies and practices and labors under DEFENDANTS' systematic procedure that
14 failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS Members.
15 PLAINTIFF sustained economic injury as a result of DEFENDANTS' employment practices.
16 PLAINTIFF and the CALIFORNIA CLASS Members were and are similarly or identically
17 harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged
18 in by DEFENDANTS by deceptively telling all the CALIFORNIA CLASS Members that they
19 were not entitled to overtime wages, the employer's share of payment of payroll taxes and
20 mandatory insurance, and reimbursement for business expenses based on the defined corporate
21 policies and practices, and unfairly failed to pay these employees who were improperly
22 classified as independent contractors; and,

23 (d) The representative PLAINTIFF will fairly and adequately represent and
24 protect the interest of the CALIFORNIA CLASS, and have retained counsel who is competent
25 and experienced in Class Action litigation. There are no material conflicts between the claims
26 of the representative PLAINTIFF and the CALIFORNIA CLASS Members that would make
27 class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert
28

1 the claims of all employees in the CALIFORNIA CLASS.

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

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

7 (i) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish incompatible standards of
9 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

10 (ii) Adjudication with respect to individual members of the
11 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
12 other members not party to the adjudication or substantially impair or impede their ability to
13 protect their interests.

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

22 (i) With respect to the First Cause of Action, the final relief on behalf
23 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through
24 this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANTS' policies and
25 practices constitute unfair competition, along with incidental equitable relief as may be
26 necessary to remedy the conduct declared to constitute unfair competition.

27 (c) Common questions of law and fact exist as to members of the
28 CALIFORNIA CLASS with respect to the practices and violations of California and federal law

1 as listed above, and predominate over any question affecting only individual members, and a
2 Class Action is superior to other available methods for the fair and efficient adjudication of the
3 controversy, including consideration of:

4 (i) The interest of the CALIFORNIA CLASS Members in individually
5 controlling the prosecution or defense of separate actions;

6 (ii) The extent and nature of any litigation concerning the controversy
7 already commenced by or against members of the CALIFORNIA CLASS;

8 (iii) In the context of wage litigation because as a practical matter a
9 substantial number of individual CALIFORNIA CLASS members will avoid asserting their
10 legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an
11 individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the
12 only means to assert their claims through a representative;

13 (iv) The desirability or undesirability of concentration of the litigation
14 of the claims in the particular forum;

15 (v) The difficulties likely to be encountered in the management of a
16 Class Action; and,

17 (vi) The basis of DEFENDANTS' policies and practices applied to all
18 the CALIFORNIA CLASS Members.

19 41. 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
22 predominate over any question affecting only individual members;

23 (b) A Class Action is superior to any other available method for the fair and
24 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

25 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
26 to bring all CALIFORNIA CLASS Members before the Court;

27 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able
28 to obtain effective and economic legal redress unless the action is maintained as a Class Action;

1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and other improprieties,
3 and in obtaining adequate compensation for the damages and injuries which DEFENDANTS'
4 actions have inflicted upon the CALIFORNIA CLASS;

5 (f) There is a community of interest in ensuring that the combined assets and
6 available insurance of DEFENDANTS are sufficient to adequately compensate the
7 CALIFORNIA CLASS Members for any injuries sustained;

8 (g) DEFENDANTS have acted or has refused to act on grounds generally
9 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
10 with respect to the CLASS as a whole;

11 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
12 the business records of DEFENDANTS. The CALIFORNIA CLASS consists of all
13 DEFENDANTS' Drivers in California classified as independent contractors during the
14 CALIFORNIA CLASS PERIOD and subjected to DEFENDANTS' policies, practices and
15 procedures as herein alleged; and,

16 (i) Class treatment provides manageable judicial treatment calculated to bring
17 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out
18 of DEFENDANTS' conduct as to the CALIFORNIA CLASS Members.

19 42. DEFENDANTS maintain records from which the Court can ascertain and identify
20 by name and job title, each of DEFENDANTS' employees who have been intentionally
21 subjected to DEFENDANTS' corporate policies, practices and procedures as herein alleged.
22 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
23 similarly situated employees when they have been identified.

24 **THE CALIFORNIA LABOR SUB-CLASS**

25 43. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
26 Causes of Action on behalf of a California sub-class, defined as all members of the
27 CALIFORNIA CLASS who are or previously were employed by DEFENDANTS in California
28 as Drivers and who were classified as independent contractors (the "CALIFORNIA LABOR

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

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

16 45. DEFENDANTS maintain records from which the Court can ascertain and identify
17 by job title each of DEFENDANTS’ employees who as CALIFORNIA LABOR SUB-CLASS
18 Members have been systematically, intentionally and uniformly misclassified as independent
19 contractors as a matter of DEFENDANTS’ corporate policy, practices and procedures.
20 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
21 they have been identified.

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

24 47. DEFENDANTS, 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 PLAINTIFF, performed the same finite set
27 of tasks and were paid by DEFENDANTS according to uniform and systematic company
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1 procedures, which, as alleged herein above, failed to correctly pay minimum and overtime
2 compensation. This business practice was applied to each and every member of the
3 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
4 adjudicated on a class-wide basis.

5 48. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
6 under California law by:

- 7 (a) Violating Cal. Lab. Code § 510 by misclassifying and thereby failing to
8 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
9 CLASS the correct overtime pay for a workday longer than eight (8) hours
10 and/or a workweek longer than forty (40) hours, for which
11 DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- 12 (b) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
13 members of the CALIFORNIA LABOR SUB-CLASS who were
14 improperly classified as independent contractors with an accurate itemized
15 statement in writing showing the gross wages earned, the net wages
16 earned, all applicable hourly rates in effect during the pay period and the
17 corresponding amount of time worked at each hourly rate by the
18 employee;
- 19 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
20 the CALIFORNIA CLASS members with necessary expenses incurred in
21 the discharge of their job duties;
- 22 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
23 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
24 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
25 the legally required rest breaks; and,
- 26 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
27 when an employee is discharged or quits from employment, the employer
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1 must pay the employee all wages due without abatement, by failing to
2 tender full payment and/or restitution of wages owed or in the manner
3 required by California law to the members of the CALIFORNIA LABOR
4 SUB-CLASS who have terminated their employment.

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

- 7 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
8 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
9 Members is impracticable and the disposition of their claims as a class will
10 benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 LABOR SUB-CLASS and will apply to every member of the
14 CALIFORNIA LABOR SUB-CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
17 like all other members of the CALIFORNIA LABOR SUB-CLASS, was
18 improperly classified as an independent contractor and was thus denied
19 overtime pay and meal and rest breaks, among other things, as a result of
20 DEFENDANTS' systematic classification practices. PLAINTIFF and all
21 other members of the CALIFORNIA LABOR SUB-CLASS sustained
22 economic injuries arising from DEFENDANTS' violations of the laws of
23 California; and,
- 24 (d) The representative PLAINTIFF will fairly and adequately represent and
25 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have
26 retained counsel who are competent and experienced in Class Action
27 litigation. There are no material conflicts between the claims of the
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1 representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

7 (a) Without class certification and determination of declaratory, injunctive,
8 statutory and other legal questions within the class format, prosecution of
9 separate actions by individual members of the CALIFORNIA LABOR
10 SUB-CLASS will create the risk of:

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS which
13 would establish incompatible standards of conduct for the parties
14 opposing the CALIFORNIA LABOR SUB-CLASS; or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS which would as a practical
17 matter be dispositive of interests of the other members not party to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests.

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

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

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

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

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANTS; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;

- 1 3) In the context of wage litigation because a substantial number of
2 individual CALIFORNIA LABOR SUB-CLASS Members will
3 avoid asserting their legal rights out of fear of retaliation by
4 DEFENDANTS, which may adversely affect an individual's job
5 with DEFENDANTS or with a subsequent employer, the Class
6 Action is the only means to assert their claims through a
7 representative; and,
- 8 4) A class action is superior to other available methods for the fair and
9 efficient adjudication of this litigation because class treatment will
10 obviate the need for unduly and unnecessary duplicative litigation
11 that is likely to result in the absence of certification of this action
12 pursuant to Cal. Code of Civ. Proc. § 382.

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

- 15 (a) The questions of law and fact common to the CALIFORNIA LABOR
16 SUB-CLASS predominate over any question affecting only individual
17 CALIFORNIA LABOR SUB-CLASS Members;
- 18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CALIFORNIA
20 LABOR SUB-CLASS because in the context of employment litigation a
21 substantial number of individual CALIFORNIA LABOR SUB-CLASS
22 Members will avoid asserting their rights individually out of fear of
23 retaliation or adverse impact on their employment;
- 24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that it is impractical to bring all members of the CALIFORNIA
26 LABOR SUB-CLASS before the Court;
- 27 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
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Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who are or previously were employed by DEFENDANTS in California as Drivers and classified as independent contractors during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

JURISDICTION AND VENUE

52. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

1 Action is brought as a Class Action on behalf of PLAINTIFF and on behalf of similarly situated
2 employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. Section 382.

3 53. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
4 395.5, because PLAINTIFF resides in this County and DEFENDANTS (i) currently maintains
5 and at all relevant times maintained its principal offices and facilities in this County and/or
6 conducts substantial business in this County, and (ii) committed the wrongful conduct herein
7 alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA
8 LABOR SUB-CLASS.

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13 **FIRST CAUSE OF ACTION**

14 **For Unlawful, Unfair and Deceptive Business Practices**

15 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

16 **(By PLAINTIFF and the CLASS and Against All Defendants)**

17 54. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
18 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 55. DEFENDANTS are a "person" as that term is defined under Cal. Bus. & Prof.
20 Code § 17021.

21 56. Section 17200 of the California Business & Professions Code defines unfair
22 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200
23 applies to violations of labor laws in the employment context. Section 17203 authorizes
24 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
25 follows:

26 Any person who engages, has engaged, or proposes to engage in unfair
27 competition may be enjoined in any court of competent jurisdiction. The court
28 may take such orders or judgments, including the appointment of a receiver, as
may be necessary to prevent the use or employment by any person of any practice

1 which constitutes unfair competition, as defined in this chapter, or as may be
2 necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

3 California Business & Professions Code § 17203.

4 57. By the conduct alleged herein, DEFENDANTS have engaged and continues to
5 engage in a business practice which violates California law, including but not limited to the
6 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221,
7 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2750.3, & 2802, and California Code of
8 Regulations § 11090, for which this Court should issue declaratory, injunctive, and other
9 equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and
10 remedy the conduct held to constitute unfair competition, including restitution of wages
11 wrongfully withheld, business expenses wrongfully withheld and for the payment of the
12 employer's share of income taxes, social security taxes, unemployment insurance and workers'
13 compensation insurance.

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

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

25 60. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
26 fraudulent in that DEFENDANTS' policy and practice was to represent to the CALIFORNIA
27 CLASS Members that they were not entitled to overtime wages, payment for payroll taxes or
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1 mandatory insurance and other benefits as required by California law, when in fact these
2 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 61. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
6 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and
7 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
10 and do, seek such relief as may be necessary to restore to them the money and property which
11 DEFENDANTS have acquired, or of which PLAINTIFF 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 overtime worked.

14 63. PLAINTIFF 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 DEFENDANTS from
17 engaging in any unlawful and unfair business practices in the future.

18 64. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
19 unfair and deceptive in that DEFENDANTS' policies, practices and procedures failed to
20 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

22 65. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
23 CALIFORNIA CLASS member, overtime 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.

1 66. PLAINTIFF further demands on behalf of himself and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
3 duty paid rest period was not timely provided as required by law.

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

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

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

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

24 71. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
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1 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
2 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
3 engage in these unlawful and unfair business practices.

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

9 **and Against All Defendants)**

10 72. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
11 CLASS, realleges and incorporates by this reference, as though fully set forth herein, the prior
12 paragraphs of this Complaint.

13 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor
15 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
16 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
17 Members.

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

20 75. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than
22 the minimum so fixed is unlawful.

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

25 77. DEFENDANTS maintained a wage practice of paying PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
27 time they worked. As set forth herein, DEFENDANTS' policy and practice was to unlawfully
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1 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS.

3 78. DEFENDANTS' pattern of unlawful wage and hour practices manifested, without
4 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
5 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

7 79. In committing these violations of the California Labor Code, DEFENDANTS
8 inaccurately calculate the correct time worked and consequently underpays the actual time
9 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
10 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
11 benefits in violation of the California Labor Code, the Industrial Welfare Commission
12 requirements and other applicable laws and regulations.

13 80. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
15 the correct minimum wage compensation for their time worked for DEFENDANTS.

16 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS
17 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
18 Members to work without paying them for all the time they were under DEFENDANTS'
19 control. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
20 paid less for time worked that they were entitled to, constituting a failure to pay all earned
21 wages.

22 82. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS for the true time they worked, PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
26 injury in amounts which are presently unknown to them and which will be ascertained
27 according to proof at trial.

1 83. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
3 worked. DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance,
4 to not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor
5 as a matter of company policy, practice and procedure, and DEFENDANTS perpetrated this
6 scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR
7 SUB-CLASS the correct minimum wages for their time worked.

8 84. 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
10 all time worked and provide them with the requisite compensation, DEFENDANTS acted and
11 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
13 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
15 company profits at the expense of these employees.

16 85. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
18 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
19 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
20 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
21 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
22 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
23 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
24 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
25 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
26 CLASS Members are entitled to seek and recover statutory costs.

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1 CALIFORNIA CLASS Members who have terminated their employment, these employees
2 would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
3 are sought herein. Further, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 Members are entitled to seek and recover statutory costs.

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

13 **FOURTH CAUSE OF ACTION**

14 **For Failure to Provide Required Meal Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

18 92. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
19 realleges and incorporates by this reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 93. During the CALIFORNIA CLASS PERIOD, DEFENDANTS from time to time
22 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
23 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
24 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
25 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
26 duties for the legally required off-duty meal periods. As a result of their rigorous work
27 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
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1 time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
2 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
4 by DEFENDANTS' business records. Further, DEFENDANTS failed to provide PLAINTIFF
5 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
6 which these employees were required by DEFENDANTS to work ten (10) hours of work. As
7 a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
8 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
9 strict corporate policy and practice.

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

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

19
20 **FIFTH CAUSE OF ACTION**

21 **For Failure to Provide Required Rest Periods**

22 **[Cal. Lab. Code §§ 226.7 & 512]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

25 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 realleges and incorporates by this reference, as though fully set forth herein, the prior
27 paragraphs of this Complaint.
28

1 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
2 time to time required to work in excess of four (4) hours without being provided ten (10) minute
3 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
4 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
5 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
6 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
7 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-
8 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
9 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
10 Members were periodically denied their proper rest periods by DEFENDANTS and
11 DEFENDANTS' managers.

12 98. DEFENDANTS further violated California Labor Code §§ 226.7 and the
13 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
14 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
15 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
16 each workday that rest period was not provided.

17 99. As a proximate result of the aforementioned violations, PLAINTIFF and
18 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
19 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
20 suit.

21
22 **SIXTH CAUSE OF ACTION**

23 **For Failure to Provide Accurate Itemized Statements**

24 **[Cal. Lab. Code § 226]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 and Against All Defendants)**

27 100. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 realleges and incorporates by this reference, as though fully set forth herein, the prior

1 paragraphs of this Complaint.

2 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
3 an “accurate itemized statement in writing showing:

4 (1) gross wages earned,

5 (2) total hours worked by the employee, except for any employee whose compensation
6 is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
8 Commission,

9 (3) the number of piecerate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis,

11 (4) all deductions, provided that all deductions made on written orders of the employee
12 may be aggregated and shown as one item,

13 (5) net wages earned,

14 (6) the inclusive dates of the period for which the employee is paid,

15 (7) the name of the employee and his or her social security number, except that by
16 January 1, 2008, only the last four digits of his or her social security number or an
17 employee identification number other than a social security number may be shown on
18 the itemized statement,

19 (8) the name and address of the legal entity that is the employer, and

20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.”

22 102. From time to time, DEFENDANTS also failed to provide PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
24 statements which failed to show, among other things, the correct amount of time worked,
25 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
26 any workweek, and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226
27 provides that every employer shall furnish each of his or her employees with an accurate
28

1 itemized wage statement in writing showing, among other things, gross wages earned and all
2 applicable hourly rates in effect during the pay period and the corresponding amount of time
3 worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
5 Cal. Lab. Code § 226.

6 103. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
7 § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
8 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
9 true amount of time worked and the amount of employment taxes which were not properly paid
10 to state and federal tax authorities. These damages are difficult to estimate. Therefore,
11 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
12 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,
13 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
14 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
15 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

16 17 **SEVENTH CAUSE OF ACTION**

18 **For Failure to Reimburse Employees for Required Expenses**

19 **[Cal. Lab. Code § 2802]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

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

25 105. Cal. Lab. Code § 2802 provides, in relevant part, that:

26 An employer shall indemnify his or her employee for all necessary expenditures
27 or losses incurred by the employee in direct consequence of the discharge of his
28 or her duties, or of his or her obedience to the directions of the employer, even
though unlawful, unless the employee, at the time of obeying the directions,

1 believed them to be unlawful.

2 106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
3 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
5 benefit. Specifically, DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA
6 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost
7 associated with the use of their personal cellular phones and personal vehicles for
8 DEFENDANTS' benefit. In the course of their employment with DEFENDANTS, PLAINTIFF
9 and other CALIFORNIA LABOR SUB-CLASS Members incurred unreimbursed business
10 expenses which included, but were not limited to, costs related to the use of their personal
11 cellular phones all on behalf of and for the benefit of DEFENDANTS. Moreover, PLAINTIFF
12 and other CALIFORNIA LABOR SUB-CLASS Members were also required from time to time
13 to pay for parking costs at certain terminals. As a result, in the course of their employment with
14 DEFENDANTS, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
15 incurred unreimbursed business expenses which included, but were not limited to, costs related
16 to travel all on behalf of and for the benefit of DEFENDANTS. These expenses are necessary
17 to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS'
18 conduct to assert any waiver of this expectation. Although these expenses are necessary
19 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
20 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
21 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
22 laws and regulations of California.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendants, 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 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANTS to pay minimum and overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate; and,
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

- 1 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512
2 and the applicable IWC Wage Order;
- 3 E) The amount of the expenses PLAINTIFF and each member of the
4 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
5 plus interest, and costs of suit;
- 6 F) For liquidated damages pursuant to California Labor Code Sections 1194.2
7 and 1197; and,
- 8 G) The wages of all terminated employees from the CALIFORNIA LABOR
9 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
10 or until an action therefore is commenced, in accordance with Cal. Lab. Code
11 § 203.

12 3. On all claims:

- 13 A) An award of interest, including prejudgment interest at the legal rate;
- 14 B) Such other and further relief as the Court deems just and equitable; and,
- 15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
16 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
17 §2802.

18 Dated: October 30, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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20
21 By: _____
22 Norman B. Blumenthal
23 Nicholas J. De Blouw
24 *Attorneys for Plaintiff*
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DEMAND FOR JURY TRIAL

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

Dated: October 30, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff