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1004

May 9, 2024

**CA3050**

## VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency  
Online Filing

Roadrunner Transportation Services, Inc.  
Certified Mail #9589071052700298442848  
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), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who worked for Roadrunner Transportation Services, Inc. in California as a Truck Driver and who were classified as independent contractors during the time period of May 9, 2023 until a date as determined by the Court. Our offices represent Angel Martinez and Pedro Ramblas (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Roadrunner Transportation Services, Inc. (“Defendant”). Plaintiff Martinez was employed by Defendant as a Truck Driver in California from June of 2017 to September of 2023 and was classified as an independent contractor. Plaintiff Ramblas was employed by Defendant as a Truck Driver in California from July of 2015 to August of 2023 and was classified as an independent contractor. However, the job duties of Plaintiffs 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 Plaintiffs and other Aggrieved Employees, among other things. Plaintiffs 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, Plaintiffs and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiffs 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 Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs 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 Plaintiffs 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. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to Plaintiffs, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs 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 11070(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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs 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 Relations Accounting unit with an identification of the Plaintiffs, 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 Plaintiffs 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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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

ANGEL MARTINEZ and PEDRO  
RAMBLAS, individuals, on behalf of  
themselves, and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

ROADRUNNER TRANSPORTATION  
SERVICES, INC., a Corporation; and DOES  
1 through 50, inclusive,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF, CODE §§ 17200;
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;
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;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs Angel Martinez and Pedro Ramblas (“PLAINTIFFS”), individuals, on behalf of  
2 themselves and all other similarly situated current and former employees, allege on information  
3 and belief, except their own acts and knowledge, the following:

## 4 5 **INTRODUCTION**

6 1. Defendant Roadrunner Transportation Services, Inc. (“DEFENDANT”) in order  
7 to service their customers, hires workers to aid DEFENDANT in providing transportation  
8 services. The cost, as proscribed by law, of the personnel hired to work for DEFENDANT,  
9 includes not only the pay and overtime pay of these employees but the cost of the employer's  
10 share of tax payments to the federal and state governments for income taxes, social security  
11 taxes, medicare insurance, unemployment insurance and payments for workers' compensation  
12 insurance ("Business Related Expenses"). To avoid the payment of these legally proscribed  
13 Business Related Expenses to the fullest extent possible, DEFENDANT devised a scheme to  
14 place the responsibility for the payment of these costs and expenses of DEFENDANT on the  
15 shoulders of PLAINTIFF and other Truck Drivers. As employer, DEFENDANT is legally  
16 responsible for the payment of all these Business Related Expenses. This lawsuit is brought on  
17 behalf of the Truck Drivers and other similar job titles for persons who worked for  
18 DEFENDANT in California and were classified as independent contractors, in order to collect  
19 the wages due them as employees of DEFENDANT, the cost of the employer's share of  
20 payments to the federal and state governments for income taxes, social security taxes, medicare  
21 insurance, unemployment insurance and payments for workers' compensation insurance, plus  
22 penalties and interest.

## 23 24 **THE PARTIES**

25 2. DEFENDANT at all relevant times mentioned herein conducted and continues  
26 to conduct substantial and regular business in the State of California.

27 3. DEFENDANT is a freight transportation arrangement company.

1           4.     Plaintiff Martinez was employed by DEFENDANT as a Truck Driver from June  
2 of 2017 to September of 2023 and was classified by DEFENDANT as an independent  
3 contractor during her entire employment with DEFENDANT. Plaintiff Ramblas was employed  
4 by DEFENDANT as a Truck Driver from July of 2015 to August of 2023 and was classified by  
5 DEFENDANT as an independent contractor during her entire employment with DEFENDANT.

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

15          6.     Here, DEFENDANT has willfully misclassified PLAINTIFFS, Truck Drivers and  
16 other similarly situated persons with similar job titles collectively referred herein as Truck  
17 Drivers as described in Cal. Labor Code § 226.8 and Labor Code Section 2750.3, and further,  
18 that DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated  
19 by the California Labor Code.

20          7.     Upon hire, the position of a Truck Driver was represented by DEFENDANT to  
21 PLAINTIFFS and the other Truck Drivers as an independent contractor position capable of  
22 paying a flat rate for time worked for DEFENDANT. PLAINTIFFS and other Truck Drivers  
23 were paid a flat rate to perform services on DEFENDANT’s behalf.

24          8.     To perform their job duties, the PLAINTIFFS and the other Truck Drivers  
25 performed work subject to the control of DEFENDANT in that DEFENDANT had the authority  
26 to exercise complete control over the work performed and the manner and means in which the  
27 work was performed. DEFENDANT provided the customers and DEFENDANT provided the  
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1 instructions as to how to perform their services.

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

11 (a) PLAINTIFFS and other Truck Drivers were not involved in a distinct  
12 business, but instead were provided with instructions as to how to perform their work and the  
13 manner and means in which the work was to be performed by means of DEFENDANT’s  
14 manuals and written instructions;

15 (b) PLAINTIFFS and other Truck Drivers were continuously provided with  
16 training and supervision, including following DEFENDANT’s company documents and  
17 received training from DEFENDANT as to how and in what way to perform services;

18 (c) DEFENDANT set the requirements as to what policies and procedures all  
19 of the Truck Drivers were to follow;

20 (d) PLAINTIFFS and other Truck Drivers had no opportunity for profit or loss  
21 because DEFENDANT only paid these employees a flat rate based on the loads they delivered  
22 for DEFENDANT and DEFENDANT controlled and assigned the weekly schedules  
23 PLAINTIFFS and other Truck Drivers were required to work. DEFENDANT also controlled  
24 which Truck Drivers would receive a particular assignment;

25 (e) PLAINTIFFS and other Truck Drivers performed transportation services  
26 which is part of DEFENDANT's principal business and is closely integrated with and essential  
27 to the employer's business of providing transportation services to their customers;

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

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

5 (h) PLAINTIFFS and other Truck Drivers performed their work in a particular  
6 order and sequence in accordance with DEFENDANT's company policy; and,

7 (i) DEFENDANT had the "right" to control every critical aspect of  
8 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to  
9 PLAINTIFFS and other Truck Drivers as to the entire process of assisting clients.  
10 PLAINTIFFS and other Truck Drivers provided services ONLY for DEFENDANT's  
11 customers, which DEFENDANT controlled via the company's technology.

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

17 11. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
18 class, defined as all individuals who worked for DEFENDANT in California as a Truck Driver  
19 and who were classified as independent contractors (the "CALIFORNIA CLASS") at any time  
20 during the period beginning four (4) years prior to the filing of this Complaint and ending on  
21 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in  
22 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
23 dollars (\$5,000,000.00).

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

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

### 20 THE CONDUCT

21  
22 14. The finite set of tasks required of PLAINTIFFS and the other CALIFORNIA  
23 CLASS Members as defined by DEFENDANT was executed by them through the performance  
24 of non-exempt labor.

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

21 16. DEFENDANT, as a matter of law, has the burden of proving that employees are  
22 properly classified and that DEFENDANT otherwise complies with applicable laws.  
23 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the  
24 CALIFORNIA CLASS Members as independent contractors.

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

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

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

7 20. DEFENDANT intentionally and knowingly fails to reimburse and indemnify  
8 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses  
9 incurred by PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of  
10 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section  
11 2802, employers are required to indemnify employees for all expenses incurred in the course  
12 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall  
13 indemnify his or her employee for all necessary expenditures or losses incurred by the employee  
14 in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
15 directions of the employer, even though unlawful, unless the employee, at the time of obeying  
16 the directions, believed them to be unlawful."

17 21. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS  
18 Members as a business expense, are required by DEFENDANT to use personal cellular phones  
19 and their home offices as a result of and in furtherance of their job duties as employees for  
20 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
21 associated with the use of the personal cellular phones and personal vehicles for  
22 DEFENDANT's benefit. In order to work as a Truck Driver for DEFENDANT, PLAINTIFFS  
23 and other CALIFORNIA CLASS Members are required to communicate with DEFENDANT  
24 and as such it is mandatory to have a cell phone that is compatible to remain in constant contact  
25 with DEFENDANT and DEFENDANT's customers. As a result, in the course of their  
26 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA  
27 CLASS incurred unreimbursed business expenses which include, but are not limited to, costs  
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1 related to the use of their personal cellular phones and personal vehicle expenses all on behalf  
2 of and for the benefit of DEFENDANT.

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

13 23. By reason of this conduct applicable to PLAINTIFFS and all the CALIFORNIA  
14 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the  
15 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, (the "UCL"), by engaging  
16 in a company-wide policy, practice and procedure which failed to correctly classify  
17 PLAINTIFFS and the CALIFORNIA CLASS Members as employees. The proper  
18 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's  
19 intentional disregard of the obligation to meet this burden, DEFENDANT failed to pay all  
20 required overtime compensation for work performed by PLAINTIFFS and other CALIFORNIA  
21 CLASS Members and violated the California Labor Code and regulations promulgated  
22 thereunder as herein alleged. The amount in controversy for PLAINTIFFS individually does  
23 not exceed the sum or value of \$75,000.

#### 24 **THE CALIFORNIA CLASS**

25 24. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200 (the "UCL") as a Class Action,  
27 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
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1 individuals who worked for DEFENDANT in California as a Truck Driver and who were  
2 classified as independent contractors (the "CALIFORNIA CLASS") at any time during the  
3 period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
4 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy  
5 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
6 (\$5,000,000.00).

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

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

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

21 28. During the CALIFORNIA CLASS PERIOD, DEFENDANT violated the rights  
22 of the PLAINTIFFS and the CALIFORNIA CLASS Members under California law, without  
23 limitation, in the following manners:

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

5                   (b)   Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
6                   §§ 17200, the ("UCL"), by unlawfully, unfairly and/or deceptively having  
7                   in place company policies, practices and procedures that uniformly  
8                   misclassified PLAINTIFFS and the CALIFORNIA CLASS Members as  
9                   independent contractors;

10                  (c)   Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
11                  §§ 17200, the ("UCL"), by unlawfully, unfairly and/or deceptively failing  
12                  to have in place a company policy, practice and procedure that accurately  
13                  determined the amount of working time spent by PLAINTIFFS and the  
14                  CALIFORNIA CLASS Members performing non-exempt employee labor;

15                  (d)   Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
16                  §§ 17200, the ("UCL"), by failing to provide PLAINTIFFS and the other  
17                  members of the CALIFORNIA CLASS with all legally required meal and  
18                  rest breaks; and,

19                  (e)   Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
20                  §§ 17200, the ("UCL") by violating Cal. Lab. Code § 2802 by failing to  
21                  reimburse PLAINTIFFS and the CALIFORNIA CLASS members with  
22                  necessary expenses incurred in the discharge of their job duties.

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

27                  (a)   Whether PLAINTIFFS and other CALIFORNIA CLASS Members were  
28

1 misclassified as independent contractors by DEFENDANT;

2 (b) Whether the PLAINTIFFS and the CALIFORNIA CLASS Members all  
3 afforded all the protections of the California Labor Code that apply when  
4 properly classified as non-exempt employees;

5 (c) Whether DEFENDANT's policies, practices and pattern of conduct  
6 described in this Complaint was and is unlawful;

7 (d) Whether DEFENDANT unlawfully failed to pay their share of state and  
8 federal employment taxes as required by state and federal tax laws;

9 (e) Whether DEFENDANT's policy, practice and procedure of classifying the  
10 CALIFORNIA CLASS Members as independent contractors exempt from  
11 hourly wages laws for all time worked and failing to pay the  
12 CALIFORNIA CLASS Members all amounts due violates applicable  
13 provisions of California State law;

14 (f) Whether DEFENDANT unlawfully failed to keep and furnish the  
15 CALIFORNIA CLASS Members with accurate records of all time  
16 worked, including overtime worked;

17 (g) Whether DEFENDANT has engaged in unfair competition by the  
18 above-listed conduct; and,

19 (h) Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

25 (i) Inconsistent or varying adjudications with respect to individual  
26 members of the CALIFORNIA CLASS which would establish incompatible standards of  
27 conduct for the parties opposing the CALIFORNIA CLASS; and/or,  
28

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

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

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

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

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

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

27 (iii) In the context of wage litigation because as a practical matter a  
28

1 substantial number of individual CALIFORNIA CLASS members will avoid asserting their  
2 legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an  
3 individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only  
4 means to assert their claims through a representative;

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

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

9 (vi) The basis of DEFENDANT's policies and practices applied to all  
10 the CALIFORNIA CLASS Members.

11 32. The Court should permit this Action to be maintained as a Class Action pursuant  
12 to Cal. Code of Civ. Proc. § 382 because:

13 (a) The questions of law and fact common to the CALIFORNIA CLASS  
14 predominate over any question affecting only individual members;

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

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

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

21 (e) There is a community of interest in obtaining appropriate legal and  
22 equitable relief for the acts of unfair competition, statutory violations and other improprieties,  
23 and in obtaining adequate compensation for the damages and injuries which DEFENDANT's  
24 actions have inflicted upon the CALIFORNIA CLASS;

25 (f) There is a community of interest in ensuring that the combined assets and  
26 available insurance of DEFENDANT are sufficient to adequately compensate the  
27 CALIFORNIA CLASS Members for any injuries sustained;

28 (g) DEFENDANT has acted or has refused to act on grounds generally

1 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
2 with respect to the CLASS as a whole;

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

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

11 33. DEFENDANT maintains records from which the Court can ascertain and identify  
12 by name and job title, each of DEFENDANT's employees who have been intentionally  
13 subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged.  
14 PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of  
15 similarly situated employees when they have been identified.

16  
17 **THE CALIFORNIA LABOR SUB-CLASS**

18 34. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and  
19 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the  
20 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California  
21 as a Truck Driver and who were classified as Independent Contractors (the "CALIFORNIA  
22 LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the  
23 Complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR  
24 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy  
25 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million  
26 dollars (\$5,000,000.00).

27 35. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
28 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare

1 Commission ("IWC") Wage Order requirements intentionally, knowingly, and wilfully, on the  
2 basis of job title alone and without regard to the actual overall requirements of the job,  
3 systematically classified PLAINTIFFS and the other members of the CALIFORNIA LABOR  
4 SUB-CLASS as independent contractors in order to avoid the payment of overtime wages, and  
5 in order to avoid the obligations under the applicable California Labor Code provisions. To the  
6 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS  
7 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
8 accordingly.

9 36. DEFENDANT maintains records from which the Court can ascertain and identify  
10 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS  
11 Members have been systematically, intentionally and uniformly misclassified as independent  
12 contractors as a matter of DEFENDANT's corporate policy, practices and procedures.  
13 PLAINTIFFS will seek leave to amend the complaint to include these additional job titles when  
14 they have been identified.

15 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
16 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

25 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
26 under California law by:

- 27 (a) Violating Cal. Lab. Code § 510 by misclassifying and thereby failing to  
28 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-

1 CLASS the correct overtime pay for a workday longer than eight (8) hours  
2 and/or a workweek longer than forty (40) hours, for which DEFENDANT  
3 is liable pursuant to Cal. Lab. Code § 1194;

4 (b) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and the  
5 members of the CALIFORNIA LABOR SUB-CLASS who were  
6 improperly classified as independent contractors with an accurate itemized  
7 statement in writing showing the gross wages earned, the net wages  
8 earned, all applicable hourly rates in effect during the pay period and the  
9 corresponding amount of time worked at each hourly rate by the  
10 employee;

11 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and  
12 the CALIFORNIA CLASS members with necessary expenses incurred in  
13 the discharge of their job duties;

14 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
15 PLAINTIFFS and the other members of the CALIFORNIA CLASS with  
16 all legally required off-duty, uninterrupted thirty (30) minute meal breaks  
17 and the legally required rest breaks; and,

18 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that  
19 when an employee is discharged or quits from employment, the employer  
20 must pay the employee all wages due without abatement, by failing to  
21 tender full payment and/or restitution of wages owed or in the manner  
22 required by California law to the members of the CALIFORNIA LABOR  
23 SUB-CLASS who have terminated their employment.

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

26 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are  
27 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS  
28

Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all other members of the CALIFORNIA LABOR SUB-CLASS, were improperly classified as independent contractors and was thus overtime pay and meal and rest breaks, among other things, as a result of DEFENDANT's systematic classification practices. PLAINTIFFS and all other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's violations of the laws of California; and,

(d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR  
2 SUB-CLASS will create the risk of:

- 3 1) Inconsistent or varying adjudications with respect to individual  
4 members of the CALIFORNIA LABOR SUB-CLASS which  
5 would establish incompatible standards of conduct for the parties  
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,  
7 2) Adjudication with respect to individual members of the  
8 CALIFORNIA LABOR SUB-CLASS which would as a practical  
9 matter be dispositive of interests of the other members not party to  
10 the adjudication or substantially impair or impede their ability to  
11 protect their interests.

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

22 (c) Common questions of law and fact predominate as to the members of the  
23 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
24 violations of California law as listed above, and predominate over any  
25 question affecting only individual CALIFORNIA LABOR SUB-CLASS  
26 Members, and a Class Action is superior to other available methods for the  
27 fair and efficient adjudication of the controversy, including consideration  
28

1 of:

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

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

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

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

1 DEFENDANT are sufficient to adequately compensate the members of the  
2 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

3 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
4 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-  
5 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-  
6 CLASS as a whole;

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANT. The  
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
10 CLASS Members who are or previously were employed by DEFENDANT  
11 in California as Truck Drivers and classified as independent contractors  
12 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring  
14 a efficient and rapid conclusion to all litigation of all wage and hour  
15 related claims arising out of the conduct of DEFENDANT.

16  
17 **JURISDICTION AND VENUE**

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

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

1 **FIRST CAUSE OF ACTION**

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

3 **[Cal. Bus. & Prof. Code §§ 17200]**

4 **(By PLAINTIFFS and the CLASS and Against All Defendants)**

5 45. PLAINTIFFS and the CALIFORNIA CLASS Members reallege and incorporate  
6 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 46. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code  
8 § 17021.

9 47. Section 17200 of the California Business & Professions Code defines unfair  
10 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200  
11 applies to violations of labor laws in the employment context. Section 17203 authorizes  
12 injunctive, declaratory and/or other equitable relief with respect to unfair competition as  
13 follows:

14 Any person who engages, has engaged, or proposes to engage in unfair  
15 competition may be enjoined in any court of competent jurisdiction. The court  
16 may take such orders or judgments, including the appointment of a receiver, as  
17 may be necessary to prevent the use or employment by any person of any practice  
which constitutes unfair competition, as defined in this chapter, or as may be  
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.

18 California Business & Professions Code § 17203.

19 48. By the conduct alleged herein, DEFENDANT has engaged and continues to  
20 engage in a business practice which violates California law, including but not limited to the  
21 applicable Industrial Wage Orders, the California Labor Code including Sections 221, 226.7,  
22 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2750.3, & 2802, and California Code of Regulations  
23 § 11090, for which this Court should issue declaratory, injunctive, and other equitable relief,  
24 pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct  
25 held to constitute unfair competition, including restitution of wages wrongfully withheld,  
26 business expenses wrongfully withheld and for the payment of the employer's share of income  
27 taxes, social security taxes, unemployment insurance and workers' compensation insurance.

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

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

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

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

23       53. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
24 to, and do, seek such relief as may be necessary to restore to them the money and property  
25 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
27 unfair business practices, including earned but unpaid wages for all overtime worked.  
28

1           54.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
2 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair  
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
4 engaging in any unlawful and unfair business practices in the future.

5           55.     By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
6 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide  
7 all legally required meal and rest breaks to PLAINTIFFS and the other members of the  
8 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

15           57.     PLAINTIFFS further demand on behalf of themselves and each member of the  
16 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off  
17 duty paid rest period was not timely provided as required by law.

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

24           59.     All the acts described herein as violations of, among other things, the Industrial  
25 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
26 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive  
27 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business  
28

1 practices in violation of Cal. Bus. & Prof. Code §§ 17200.

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

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

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

18  
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

23 **and Against All Defendants)**

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

27 64. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
28

1 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
2 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
3 accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS  
4 Members.

5 65. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
7 the minimum so fixed is unlawful.

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

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

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

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

25 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not  
27 receive the correct minimum wage compensation for their time worked for DEFENDANT.  
28

1           71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT  
2 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS  
3 Members to work without paying them for all the time they were under DEFENDANT's  
4 control. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were  
5 paid less for time worked that they were entitled to, constituting a failure to pay all earned  
6 wages.

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

13           73. DEFENDANT knew or should have known that PLAINTIFFS and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time  
15 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,  
16 to not pay PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members for their  
17 labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this  
18 scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR  
19 SUB-CLASS the correct minimum wages for their time worked.

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

1           75.     PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
3 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
4 by the California Labor Code and/or other applicable statutes. To the extent minimum wage  
5 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
6 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§  
7 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
8 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
9 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein  
10 was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA  
11 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

12  
13                                   **THIRD CAUSE OF ACTION**

14                                   **For Failure To Pay Overtime Wages**

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

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

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

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

27           78.     By virtue of DEFENDANT's unlawful failure to pay compensation to  
28

1 PLAINTIFFS and the CALIFORNIA CLASS Members for all overtime worked by these  
2 employees, PLAINTIFFS and CALIFORNIA CLASS Members have suffered, and will  
3 continue to suffer, an economic in amounts which are presently unknown to them and which  
4 can be ascertained according to proof at trial.

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

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

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

25 ///

26 ///

27 ///

1 **FOURTH CAUSE OF ACTION**

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

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

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

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

8 83. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time  
9 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
10 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
11 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR  
12 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their  
13 duties for the legally required off-duty meal periods. As a result of their rigorous work  
14 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from  
15 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
16 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
17 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
18 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFFS  
19 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in  
20 which these employees were required by DEFENDANT to work ten (10) hours of work. As a  
21 result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore  
22 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's  
23 strict corporate policy and practice.

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

1 each workday that a meal period was not provided.

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

6  
7 **FIFTH CAUSE OF ACTION**

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

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

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
11 **Defendants)**

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

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

26 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
27 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-  
28

1 CLASS Members who were not provided a rest period, in accordance with the applicable Wage  
2 Order, one additional hour of compensation at each employee's regular rate of pay for each  
3 workday that rest period was not provided.

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

8  
9 **SIXTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 226]**

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

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

16 91. Cal. Labor Code § 226 provides that an employer must furnish employees with  
17 an "accurate itemized statement in writing showing:

18 (1) gross wages earned,

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

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

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

27 (5) net wages earned,  
28

1 (6) the inclusive dates of the period for which the employee is paid,  
2 (7) the name of the employee and his or her social security number, except that by  
3 January 1, 2008, only the last four digits of his or her social security number or an  
4 employee identification number other than a social security number may be shown on  
5 the itemized statement,  
6 (8) the name and address of the legal entity that is the employer, and  
7 (9) all applicable hourly rates in effect during the pay period and the corresponding  
8 number of hours worked at each hourly rate by the employee.”

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

20 93. DEFENDANT knowingly and intentionally failed to comply with Labor Code §  
21 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
22 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the  
23 true amount of time worked and the amount of employment taxes which were not properly paid  
24 to state and federal tax authorities. These damages are difficult to estimate. Therefore,  
25 PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to  
26 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,  
27 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an  
28

1 amount according to proof at the time of trial (but in no event more than \$4,000.00 for  
2 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS  
3 herein).

4  
5 **SEVENTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 2802]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
9 **Defendants)**

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

13 95. Cal. Lab. Code § 2802 provides, in relevant part, that:

14 An employer shall indemnify his or her employee for all necessary expenditures  
15 or losses incurred by the employee in direct consequence of the discharge of his  
16 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,  
believed them to be unlawful.

17 96. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
18 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
20 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA  
21 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
22 associated with the use of their personal cellular phones and personal vehicles for  
23 DEFENDANT's benefit. In order to work as a Truck Driver for DEFENDANT, PLAINTIFFS  
24 and other CALIFORNIA CLASS Members were required to use their own personal cell phones  
25 and also provide the fuel for their trucks during their normal workday. As a result, in the course  
26 of their employment with DEFENDANT, PLAINTIFFS and other members of the  
27 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which  
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1 included, but were not limited to, the costs related to the use of their personal cellular phones  
2 and personal vehicles all on behalf of and for the benefit of DEFENDANT. These expenses are  
3 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's  
4 conduct to assert any waiver of this expectation. Although these expenses are necessary  
5 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,  
6 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA  
7 LABOR SUB-CLASS members for these expenses as an employer is required to do under the  
8 laws and regulations of California.

9 97. PLAINTIFFS therefore demand reimbursement for expenditures or losses  
10 incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members in the  
11 discharge of their job duties for DEFENDANT, or their obedience to the directions of  
12 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

### 13 14 **EIGHTH CAUSE OF ACTION**

#### 15 **For Failure to Pay Wages When Due**

16 **[ Cal. Lab. Code §§ 201, 202, 203]**

17 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
18 **Defendants)**

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

22 99. Cal. Lab. Code § 200 provides that:

23 As used in this article:

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

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

27 100. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
28

1 an employee, the wages earned and unpaid at the time of discharge are due and payable  
2 immediately.”

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

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

9 102. There was no definite term in PLAINTIFFS’s or any CALIFORNIA LABOR  
10 SUB-CLASS Members’ employment contract.

11 103. Cal. Lab. Code § 203 provides:

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

15 104. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
16 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,  
17 to these employees who actually worked overtime, as required by law.

18 105. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
19 members of the CALIFORNIA LABOR SUB-CLASS whose employment has ended,  
20 PLAINTIFFS demand up to thirty days of pay as penalty for not paying all wages due at time  
21 of termination for all employees who terminated employment during the CALIFORNIA  
22 LABOR SUB-CLASS PERIOD, and demand an accounting and payment of all wages due, plus  
23 interest and statutory costs as allowed by law.

24 **PRAYER FOR RELIEF**

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

27 1. On behalf of the CALIFORNIA CLASS:

- 1 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
2 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
3 B) An order temporarily, preliminarily and permanently enjoining and restraining  
4 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
5 C) An order requiring DEFENDANT to pay minimum and overtime wages and all  
6 sums unlawfully withheld from compensation due to PLAINTIFFS and the other  
7 members of the CALIFORNIA CLASS; and,  
8 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
9 for restitution of the sums incidental to DEFENDANT's violations due to  
10 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 12 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth  
13 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
14 action pursuant to Cal. Code of Civ. Proc. § 382;  
15 B) Compensatory damages, according to proof at trial, including compensation due  
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
17 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD  
18 plus interest thereon at the statutory rate; and,  
19 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
20 in which a violation occurs and one hundred dollars (\$100) per each member of  
21 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
22 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
23 an award of costs for violation of Cal. Lab. Code § 226;  
24 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
25 the applicable IWC Wage Order;  
26 E) The amount of the expenses PLAINTIFFS and each member of the  
27 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,  
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1 plus interest, and costs of suit;

2 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
3 1197; and,

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

7 3. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the  
11 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or  
12 §2802.

13 Dated: May 8, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP  
14

15 By: /s/ Nicholas De Blouw  
16 Norman B. Blumenthal  
17 Kyle R. Nordrehaug  
18 Nicholas J. De Blouw

19 *Attorneys for Plaintiffs*  
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**DEMAND FOR JURY TRIAL**

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

Dated: May 8, 2024                      BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw  
Norman B. Blumenthal  
Kyle R. Nordrehaug  
Nicholas J. De Blouw  
  
*Attorneys for Plaintiffs*