

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

APR 21 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

XTREME XPRESS, INC., a California corporation and DOES 1 through 50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

OSCAR ALMANZA, individually and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanely Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER
(Número del Caso) **20STCV15387**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

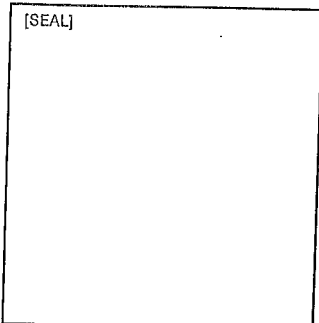
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: **APR 21 2020**
(Fecha)

Sherri R. Carter, Clerk

Clerk, by **STEVEN DREW**, Deputy
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

VIA FAX

1 **JCL LAW FIRM, APC**
2 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: (619) 599-8292
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7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 5850 OBERLIN DRIVE, SUITE 230A
10 SAN DIEGO, CA 92121
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

13 ATTORNEYS FOR PLAINTIFF OSCAR ALMANZA

14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

16 OSCAR ALMANZA, individually and on
17 behalf of all persons similarly situated,

18 Plaintiffs,

19 vs.

20 XTREME XPRESS, INC., a California
21 corporation and DOES 1 through 50, Inclusive,

22 Defendants.

Case No. 20STCV15387

COMPLAINT

CLASS ACTION:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

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County of Los Angeles

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By Steven Drew, Deputy

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- 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 9. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT (“PAGA”) AT LABOR CODE §§ 2698 *et seq.*

JURY TRIAL DEMANDED

Plaintiff OSCAR ALMANZA (hereinafter “PLAINTIFF”), individually and on behalf of all those similarly situated, demanding a jury trial, hereby alleges as follows:

THE PARTIES

A. Defendants

1. Defendant XTREME XPRESS, INC., a California corporation (hereinafter “DEFENDANT”), that all times mentioned herein provided logistics and freight transportation services to its customers which included trucking and delivery services, messenger and courier services, fulfillment services and warehousing throughout California, including in the County of Los Angeles and City of Los Angeles.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the



1 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
2 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
3 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
4 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for the
5 loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or
6 employees.

7 4. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF
8 and CLASS MEMEBERS, as defined below. PLAINTIFF is informed and believes, and thereon
9 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
10 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principles, related entities, co-
11 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of
12 each other. Each Defendant was completely dominated by his, her or its co-defendant, and each was
13 the alter ego of the other.

14 5. At all relevant times herein, PLAINTIFF and the CLASS MEMBERS were employed
15 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
16 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
17 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and
18 the CLASS MEMEBRS all wages earned and due, through methods and schemes which include, but
19 are not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing
20 to properly maintain records, failing to provide accurate itemized statements for each pay period,
21 failing to properly compensate PLAINTIFF and the CLASS MEMEBRS for necessary expenditures,
22 and requiring, permitting or suffering the employee to work off the clock, in violation of the
23 California Labor Code and the applicable Welfare Commission ("IWC") Order.

24 6. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
25 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
26 each acting as agents and/or employees, and/or under the direction and control of each of the other
27 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
28 agency, employment and/or direction and control.

1 7. As a direct and proximate result of the unlawful actions of DEFENDANTS,
2 PLAINTIFF and the CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
3 in amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

4 **B. Plaintiffs and Class Members**

5 8. Plaintiff OSCAR ALMANZA (“PLAINTIFF”) was employed by DEFENDANTS in the
6 State of California, County of Los Angeles, City of Los Angeles, from approximately November
7 2017 through November 2019, as a non-exempt driver, paid on an hourly basis, and entitled to legally
8 required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9 9. PLAINTIFF brings this case as a class action pursuant to California Code of Civil
10 Procedure § 382 on behalf of all current and former non-exempt drivers who worked for
11 DEFENDANTS in California (“CLASS MEMBERS”) at any time within the period beginning four
12 (4) years prior to the filing of this Complaint and ending on the date as determined the Court
13 (“CLASS PERIOD”). To the extent equitable tolling operates to toll claims by PLAINTIFF and the
14 CLASS MEMBERS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.
15 PLAINTIFF reserves the right to amend the class definition before the Court determines whether
16 class certification is appropriate, or thereafter upon leave of Court.

17 10. PLAINTIFF, brings this action on behalf of the CLASS MEMBERS against the
18 DEFENDANTS to recover, among other things, wages and penalties from unpaid wages earned and
19 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
20 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
21 quitting employees, failure to indemnify employees for necessary expenditures and/or losses incurred
22 in discharging their duties, failure to provide accurate itemized wage statements, failure to maintain
23 required records, and interest, attorney’s fees, costs, and expenses. The amount in controversy for the
24 aggregate claim of the CLASS MEMBERS during the CLASS PERIOD is under five million dollars
25 (\$5,000,000.00).

26 **JURISDICTION AND VENUE**

27 11. The Superior Court of the State of California has jurisdiction in this matter because
28 PLAINTIFF is resident of the State of California, and DEFENDANTS were and are doing business in



1 California. Further, no federal question is at issue because the claims are based solely on California
2 law.

3 12. Venue is proper in this judicial district and the County of Los Angeles, California
4 because PLAINTIFF, and the CLASS MEMBERS, performed work for DEFENDANTS in the
5 County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in the
6 County of Los Angeles, and because DEFENDANTS' illegal payroll policies and practices which are
7 the subject of this action were applied, at least in part, to PLAINTIFFS, and other persons similarly
8 situated, in the County of Los Angeles.

9 **THE CONDUCT**

10 **A. Unpaid Overtime**

11 13. Generally, California law provides that non-exempt employees shall not be employed
12 more than eight hours in any workday or more than 40 hours in any workweek unless he or she
13 receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in
14 any workday and over 40 hours in the workweek and double the employee's regular rate of pay for all
15 hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the
16 seventh consecutive day of work in a workweek.

17 14. Notwithstanding, [California Labor Code Section 511](#) and some [Industrial Welfare](#)
18 [Commission \(IWC\) Wage Orders](#) provide for alternative workweek schedules ("AWS"). An
19 alternative workweek schedule means any regularly scheduled workweek requiring an employee to
20 work more than eight hours in a 24-hour period without overtime pay.

21 15. To adopt an AWS, upon the proposal of an employer, the employees of an employer
22 may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees
23 for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected
24 employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an
25 alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot
26 election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly
27 scheduled alternative workweek proposed by an employer for adoption by employees may be a single
28 work schedule that would become the standard schedule for workers in the work unit, or a menu of



1 work schedule options, from which each employee in the unit would be entitled to choose. The results
2 of any election, must be reported by the employer to the Division of Labor Standards within 30 days of
3 the election results before the AWS can take effect. Cal. Lab. Code § 511.

4 16. Based on information and belief, PLAINTIFF alleges that during the CLASS PERIOD,
5 DEFENDANTS implemented an unlawful AWS affecting drivers including PLAINTIFF and the
6 members of the CALIFORNIA CLASS without (1) conducting the required vote of the affecting
7 employees, (2) without obtaining the required approval of at least two-thirds of the affected employees
8 in the SSRS – System Wide Float Pool employees, and (3) without reporting the results of any election
9 to the Division of Labor Standards. Consequently, PLAINTIFF alleges that DEFENDANTS
10 unlawfully adopted an AWS during the CLASS PERIOD and regularly scheduled PLAINTIFF and the
11 other CLASS MEMBERS for work shifts greater than eight (8) hours in a workday, or more than 40
12 hours in a workweek without the payment of overtime compensation at one and one-half times their
13 regular rate of pay, or more than 12 hours in a work shift without payment of overtime compensation
14 at double their regular rate of pay. without compensating PLAINTIFF and the other CLASS
15 MEMBERS at one and one-half times his or her regular rate of pay for all hours worked over eight
16 hours in any workday.

17 17. As a result of DEFENDANTS' aforementioned unlawful policy and practice,
18 PLAINTIFF and the other CLASS MEMBERS, from time-to-time during the CLASS PERIOD,
19 forfeited wages and compensation due and owed for each workday that DEFENDANTS failed to pay
20 the correct overtime rate of pay. DEFENDANTS' policy and practice not pay the CLASS
21 MEMBERS the correct overtime rate for all overtime hours worked in accordance with applicable law
22 is evidenced by DEFENDANTS' business records.

23 **B. Overtime – Regular Rate Violation**

24 18. During the CLASS PERIOD, DEFENDANTS failed and continues to fail to accurately
25 calculate and pay PLAINTIFF and the other CLASS MEMBERS for their overtime hours worked. As
26 a result, PLAINTIFF and the other CLASS MEMBERS forfeited wages due them for working
27 overtime without compensation at the correct overtime rates. DEFENDANTS' uniform policy and
28 practice to not pay the CLASS MEMBERS the correct overtime rate for all overtime worked in

1 accordance with applicable law is evidenced by DEFENDANTS' business records.

2 19. State law provides that employees must be paid overtime at one-and-one-half times their
3 "regular rate of pay." PLAINTIFF and other CLASS MEMBERS were compensated at an hourly rate
4 plus flat-sum incentive pay that was tied to specific elements of an employee's performance.

5 20. The second component of PLAINTIFF'S and other CLASS MEMBERS' compensation
6 was DEFENDANTS' flat-sum non-discretionary incentive program that paid PLAINTIFF and other
7 CLASS MEMBERS flat-sum incentive wages based on their performance for DEFENDANTS. The
8 flat-sum non-discretionary bonus program provided all employees paid on an hourly basis with flat-
9 sum bonus compensation when the employees met the various performance goals set by
10 DEFENDANTS. However, when calculating the regular rate of pay, in those pay periods where
11 PLAINTIFF and other CLASS MEMBERS worked overtime and earned this flat-sum non-
12 discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-discretionary bonus
13 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather
14 than just all non-overtime hours worked. Management and supervisors described the incentive/bonus
15 program to potential and new employees as part of the compensation package. As a matter of law, the
16 incentive compensation received by PLAINTIFF and other CLASS MEMBERS must be included in
17 the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime
18 compensation to PLAINTIFF and other CLASS MEMBERS by DEFENDANTS.

19 21. In violation of the applicable sections of the California Labor Code and the requirements
20 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
21 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
22 other CLASS MEMBERS at the correct rate of pay for all overtime worked. This uniform policy and
23 practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime
24 compensation as required by California law which allowed DEFENDANTS to illegally profit and gain
25 an unfair advantage over competitors who complied with the law.

26 **C. Missed Meal and Rest Period Violation**

27 22. During the CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS, as a result of
28 their rigorous delivery schedules which required from time-to-time the delivery of more than 250

1 packages at more than 160 different locations, PLAINTIFF and other CLASS MEMBERS were, from
2 time-to-time, unable to take off duty meal breaks and were not fully relieved of duty for meal periods.
3 PLAINTIFF and other CLASS MEMBERS were required to perform work as ordered by
4 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break.
5 Further, DEFENDANT failed to provide PLAINTIFF and CLASS MEMBERS with a second off-duty
6 meal period from time to time in which these employees were required by DEFENDANT to work ten
7 (10) hours of work. PLAINTIFF and the other CLASS MEMBERS therefore forfeited meal breaks
8 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
9 practice.

10 23. During the CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS, as a result of
11 their rigorous delivery schedules which required from time-to-time the delivery of more than 250
12 packages at more than 160 different locations, were also required from time-to-time to work in excess
13 of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were
14 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to
15 four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
16 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes
17 for some shifts worked of ten (10) hours or more. PLAINTIFF and other CLASS MEMBERS were
18 also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules,
19 PLAINTIFF and other CLASS MEMBERS were periodically denied their proper rest periods by
20 DEFENDANT and DEFENDANT's managers.

21 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

22 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
23 fail to accurately pay PLAINTIFF and the other CLASS MEMBERS for all hours worked.
24 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other CLASS
25 MEMBERS to perform work while off-the clock during what should have been duty-free and
26 uncompensated meal periods. Notwithstanding, from time to time DEFENDANTS failed to pay
27 PLAINTIFFS and other CLASS MEMBERS necessary wages for performing work at
28 DEFENDANTS' direction, request and benefit, while off-the clock during meal periods.



1 25. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
2 work performed by PLAINTIFF and the other CLASS MEMBERS.

3 26. DEFENDANTS controlled the work schedules, duties, protocols, applications,
4 assignments and employment conditions of PLAINTIFFS and the CLASS MEMBERS.

5 27. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
6 CLASS MEMBERS working; however, DEFENDANTS failed to document, track, or pay
7 PLAINTIFF and the other CLASS MEMBERS all wages earned and owed for all the work they
8 performed, including off-the-clock work.

9 28. PLAINTIFF and the other CLASS MEMBERS were non-exempt employees, subject to
10 the requirements of the California Labor Code.

11 29. DEFENDANTS' policies and practices deprived PLAINTIFF and the other CLASS
12 MEMBERS of all minimum, regular and overtime wages owed for the off-the-clock work activities,
13 including those performed while off the clock during meal periods. Because PLAINTIFF and the
14 other CLASS MEMBERS typically worked over 40 hours in a workweek, and more than eight (8)
15 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

16 30. DEFENDANTS knew or should have known that PLAINTIFF and the other CLASS
17 MEMBERS off-the-clock work was compensable under the law.

18 31. As a result, PLAINTIFF and the other CLASS MEMBERS forfeited wages due them for
19 all hours worked at DEFENDANTS' direction, control and benefit for the time spent attending
20 required meetings and sales trainings. DEFENDANTS' uniform policy and practice to not pay
21 PLAINTIFF and the CLASS MEMBERS wages for all hours worked in accordance with applicable
22 law is evidenced by DEFENDANTS' business records.

23 **E. Unreimbursed Business Expenses**

24 32. During the CLASS PERIOD, DEFENDANTS as a matter of corporate policy, practice
25 and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify
26 PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
27 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
28 behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to

1 indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
2 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
4 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
5 employee, at the time of obeying the directions, believed them to be unlawful."

6 33. In the course of their employment, PLAINTIFFS and the other CLASS MEMBERS as a
7 business expense, were required by DEFENDANTS to use personal cellular phones as a result of and
8 in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
9 indemnified by DEFENDANTS for the cost associated with the use of the personal cellular phones for
10 DEFENDANTS' benefit, without reimbursement from the DEFENDANTS in violation of California
11 Labor Code Section 2802. As a result, in the course of their employment with DEFENDANTS,
12 PLAINTIFFS and the other CLASS MEMBERS incurred unreimbursed business expenses which
13 included, but were not limited to costs related to the use of their personal cellular phones, all on behalf
14 of and for the benefit of DEFENDANTS.

15 **F. Inaccurate Itemized Wage Statements**

16 34. When PLAINTIFF and other CLASS MEMBERS worked overtime in the same pay
17 period they earned incentive wages and/or missed meal and rest breaks, and/or performed off-the-
18 clock work, DEFENDANTS failed to provide PLAINTIFF and the other CLASS MEMBERS with
19 complete and accurate wage statements which failed to show, among other things, the correct amount
20 of gross and net wages earned for the applicable pay period, the correct number of total hours worked,
21 and the correct hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate. Cal. Lab. Code § 226 provides that every employer shall furnish each of
23 his or her employees with an accurate itemized wage statement in writing showing, among other
24 things, the correct amount of gross and net wages earned for the applicable pay period, the correct
25 number of total hours worked, and the correct hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate. Aside, from the violations listed above in
27 this paragraph, DEFENDANT failed to issue to PLAINTIFF and the CLASS MEMBERS an itemized
28 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,

1 from time-to-time during the CLASS PERIOD, DEFENDANT provided PLAINTIFF and the other
2 CLASS MEMBERS with wage statements which violated Cal. Lab. Code § 226.

3 **G. Unfair Competition**

4 35. By reason of the aforementioned uniform conduct applicable to PLAINTIFF and all
5 CLASS MEMBERS during the CLASS PERIOD, DEFENDANT committed acts of unfair
6 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
7 *et seq.* (the “UCL”), by engaging, *inter alia*, in a company-wide policy and procedure which failed to
8 accurately calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and
9 other CLASS MEMBERS in those pay periods where the PLAINTIFF and the CLASS MEMBERS
10 earned a flat sum non-discretionary bonus, failing to provide legally compliant duty-free meal periods,
11 failure to pay all minimum, regular and overtime wages resulting from off-the-clock-work. The
12 proper calculation of these employees’ total number of hours worked and rates of pay is the
13 DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation to
14 meet this burden, DEFENDANT failed to properly calculate and/or pay all required minimum, regular
15 and overtime compensation for work performed by the PLAINTIFF and the CLASS MEMBERS and
16 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

17 36. Specifically, as to PLAINTIFF’s pay, DEFENDANT provided compensation to him in
18 the form of two components. One component of PLAINTIFF’s compensation was a base hourly
19 wage. The second component of PLAINTIFF’s compensation were non-discretionary incentive
20 wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain predefined
21 performance requirements. PLAINTIFF met DEFENDANTS’ predefined eligibility performance
22 requirements in various pay periods throughout his employment with DEFENDANTS and
23 DEFENDANTS paid PLAINTIFF the incentive wages. However, when calculating the regular rate of
24 pay, in those pay periods where PLAINTIFF and other CLASS MEMBERS worked overtime and
25 earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum
26 non-discretionary bonus compensation as part of the employees’ “regular rate of pay” and/or
27 calculated all hours worked rather than just all non-overtime hours worked and thereby underpaid
28 PLAINTIFF and other CLASS MEMBERS for overtime worked throughout their employment with

1 DEFENDANTS. The incentive compensation paid by DEFENDANTS constituted wages within the
2 meaning of the California Labor Code and thereby should have been part of PLAINTIFF's "regular
3 rate of pay." PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
4 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work as
5 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty
6 meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal
7 period from time to time in which he was required by DEFENDANT to work ten (10) hours of work.
8 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
9 accordance with DEFENDANTS strict corporate policy and practice. DEFENDANTS also provided
10 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of overtime
11 pay and payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab.
12 Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation
13 still owed to him. The amount in controversy for PLAINTIFF individually does not exceed the sum or
14 value of \$75,000.

15 CLASS ACTION ALLEGATIONS

16 37. PLAINTIFF brings this case as a class action pursuant to California Code of Civil
17 Procedure § 382 on behalf of the CLASS MEMBERS that worked for DEFENDANTS in California
18 during the CLASS PERIOD and during the "LABOR CODE CLASS PERIOD", meaning at any time
19 within the period beginning three (3) years prior to the filing of this Complaint and ending on the date
20 as determined the Court.

21 38. During the CLASS PERIOD and the LABOR CODE CLASS PERIOD, PLAINTIFF
22 and the other CLASS MEMBERS have uniformly been deprived of wages and penalties from unpaid
23 wages earned and due, including but not limited to unpaid and miscalculated overtime compensation,
24 illegal meal and rest period policies, failure to reimburse for incurred business related expenses, failure
25 to pay all wages due to discharged and quitting employees, failure to provide accurate itemized wage
26 statements, failure to maintain required records, and interest, attorney's fees, costs, and expenses.

27 39. The members of the class are so numerous that joinder of all class members is
28 impractical.

1 40. Common questions of law and fact regarding DEFENDANTS' conduct with respect to
2 unpaid and/or miscalculated overtime wages paid to PLAINTIFF and the CLASS MEMBERS, and
3 failing to provide legally compliant meal and rest periods, failure to make reimbursements for business
4 related expenses, and failure to provide accurate itemized wage statements accurate, exist as to all
5 CLASS MEMBERS and predominate over any questions affecting solely any individual members of
6 the class. Among the questions of law and fact common to the class are:

- 7 a. Whether DEFENDANTS unlawfully implemented an AWS;
- 8 b. Whether DEFENDANTS unlawfully implemented AWS deprived PLAINTIFF
9 and the CLASS MEMBERS overtime wages;
- 10 c. Whether DEFENDANTS failed to pay PLAINTIFF and the other CLASS
11 MEMBERS the correct rate of pay for all overtime hours worked;
- 12 d. Whether DEFENDANTS' flat-sum incentive compensation program is non-
13 discretionary;
- 14 e. Whether DEFENDANTS miscalculated the regular rate of pay in those pay
15 periods where PLAINTIFFS and other CLASS MEMBERS worked overtime and earned a flat-
16 sum bonus;
- 17 f. Whether DEFENDANTS maintained legally compliant meal and rest period
18 policies;
- 19 g. Whether DEFENDANTS required PLAINTIFF and the CLASS MEMBERS to
20 use their personal cell phones in further and in direction execution of their job duties;
- 21 h. Whether DEFENDANTS failed to provide accurate itemized wage statements to
22 PLAINTIFFS and the CLASS MEMBERS;
- 23 i. Whether PLAINTIFF and the CLASS MEMBERS have been required to follow
24 uniform procedures and policies regarding their work for DEFENDANTS;

25 41. PLAINTIFF is a CLASS MEMBER and suffered damages as a result of
26 DEFENDANTS' conduct and actions alleged herein.

27 42. PLAINTIFF'S claims are typical of the claims of the class, and PLAINTIFF has the
28 same interests as the other members of the class.

1 43. PLAINTIFF will fairly and adequately represent and protect the interests of the class.
2 PLAINTIFF has retained able counsel experienced in class action litigation. The interests of
3 PLAINTIFF are coincident with, and not antagonistic to, the interests of the other CLASS
4 MEMBERS.

5 44. The questions of law and fact common to the members of the class predominate over
6 any questions affecting only individual members, including legal and factual issues relating to liability
7 and damages.

8 45. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy because joinder of all class members is impractical. Moreover, since
10 the damages suffered by individual members of the class may be relatively small, the expense and
11 burden of individual litigation makes it practically impossible for the members of the class
12 individually to redress the wrongs done to them. The class is readily definable and prosecution of this
13 action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty
14 in the management of this action as a class action.

15 FIRST CAUSE OF ACTION

16 **UNLAWFUL BUSINESS PRACTICES**

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

18 **(By PLAINTIFF and the CLASS MEMBERS against DEFENDANTS)**

19 46. PLAINTIFFS, and the CLASS MEMBERS, reallege and incorporate by this reference,
20 as though fully set forth herein, the prior paragraphs of this Complaint.

21 47. DEFENDANTS are each a “person” as that term is defined under Cal. Bus. And Prof.
22 Code § 17021.

23 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
24 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
25 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as 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
28 court may make such orders or judgments, including the appointment of a

1 receiver, as may be necessary to prevent the use or employment by any
2 person of any practice which constitutes unfair competition, as defined in
3 this chapter, or as may be necessary to restore to any person in interest any
4 money or property, real or personal, which may have been acquired by
5 means of such unfair competition.”

6 (Cal. Bus. & Prof. Code § 17203).

7 49. From time-to-time during the CLASS PERIOD, by the conduct alleged herein,
8 DEFENDANTS have engaged and continues to engage in a business practice which violates
9 California law, including but not limited to, the applicable Wage Order(s), the California Code of
10 Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.3,
11 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this Court should issue declaratory and
12 other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
13 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully
14 withheld.

15 50. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in
16 that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or
17 substantially injurious to employees, and were without valid justification or utility for which this Court
18 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
19 Professions Code, including restitution of wages wrongfully withheld.

20 51. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
21 in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF and the other CLASS
22 MEMBERS wages due pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
24 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
25 wages wrongfully withheld.

26 52. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
27 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the CLASS
28 MEMBERS to be underpaid during their employment with DEFENDANTS.

1 53. By the conduct alleged herein, DEFENDANTS' practices were also unfair and deceptive
2 in that DEFENDANTS' uniform policies, practices and procedures failed to provide mandatory meal
3 and/or rest breaks to PLAINTIFF and the CLASS MEMBERS.

4 54. Therefore, PLAINTIFFS demand on behalf of himself and on behalf of each CLASS
5 MEMBER, one (1) hour of pay at the regular rate of compensation for each workday in which an off-
6 duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
7 at the regular rate of compensation for each workday in which a second off-duty meal period was not
8 timely provided for each ten (10) hours of work.

9 55. PLAINTIFF further demands on behalf of himself and on behalf of each CLASS
10 MEMBER, one (1) hour of pay at the regular rate of compensation for each workday in which a rest
11 period was not timely provided as required by law.

12 56. By and through the unlawful and unfair business practices described herein,
13 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the other
14 CLASS MEMBERS, including earned wages and unreimbursed business related expenses, and has
15 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
16 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
17 compete against competitors who comply with the law.

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

23 58. PLAINTIFF and the other CLASS MEMBERS are entitled to, and do, seek such relief
24 as may be necessary to restore to them the money and property which DEFENDANTS have acquired,
25 or of which PLAINTIFF and the other CLASS MEMBERS have been deprived, by means of the
26 above described unlawful and unfair business practices, including earned but unpaid wages.

27 59. PLAINTIFF and the other CLASS MEMBERS are further entitled to, and do, seek a
28 declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive

1 relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business
2 practices in the future.

3 60. PLAINTIFF and the other CLASS MEMBERS have no plain, speedy and/or adequate
4 remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further,
5 the practices herein alleged presently continue to occur unabated. As a result of the unlawful and
6 unfair business practices described herein, PLAINTIFF and the CLASS MEMBERS have suffered and
7 will continue to suffer irreparable legal and economic harm unless DEFENDANTS are restrained from
8 continuing to engage in these unlawful and unfair business practices.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME COMPENSATION**

11 **(Cal. Lab. Code §§ 204, 510, 1194, 1198 and IWC Wage Order No. 4-2001, §3)**

12 **(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)**

13 61. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the
14 allegations in the preceding paragraphs.

15 62. Pursuant to California Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3,
16 DEFENDANTS are required to compensate PLAINTIFF and the CLASS MEMBERS for all overtime,
17 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
18 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
19 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours
20 in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
21 work in any workweek.

22 63. PLAINTIFF and CLASS MEMBERS are current and former non-exempt employees
23 entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001.
24 From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate
25 PLAINTIFF and the CLASS MEMBERS for all overtime hours worked as required under the forgoing
26 provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay
27 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor
28 Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, permitting or suffering



1 PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or suffering
2 PLAINTIFF and the CLASS MEMBERS to work through meal and rest breaks; illegally and
3 inaccurately recording time in which PLAINTIFF and the CLASS MEMBERS worked; failing to
4 properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate
5 itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.
6 From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate
7 PLAINTIFF and the CLASS MEMBERS for all overtime hours worked and to pay the amount of
8 overtime wages due as required by the California Labor Code and IWC Wage Order by failing and
9 refusing to include all compensation, including commissions and bonuses earned, due and owing
10 and/or paid, in the regular rate of pay from which overtime wages were calculated and paid. During
11 the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the
12 CLASS MEMBERS for all overtime hours worked and to pay the amount of overtime wages due as
13 required by the California Labor Code and IWC Wage Order by incorrectly calculating the regular rate
14 of pay from which overtime wages were calculated and paid.

15 64. In violations of California Law, DEFENDANTS have knowingly and willfully refused
16 to perform their obligations to compensate PLAINTIFF and the CLASS MEMBERS for all wages
17 earned and all hours worked. As a proximate result, PLAINTIFF and the CLASS MEMBERS have
18 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
19 interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to fully
20 perform their obligations under state law, all to their respective damages in amounts according to
21 proof at time of trial, and within the jurisdiction of this Court.

22 65. DEFENDANTS' conduct described herein violates California Labor Code §§ 510, 1194,
23 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§ 200,
24 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and
25 IWC Wage Orders, PLAINTIFF and the CLASS MEMBERS are entitled to recover the unpaid
26 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses,
27 and costs of suit.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Cal. Lab. Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 4-2001, § 4)**

4 **(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)**

5 66. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in the preceding paragraphs.

7 67. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, §
8 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
9 period is unlawful.

10 68. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed
11 to pay PLAINTIFF and the CLASS MEMBERS minimum wages for all hours worked by, among
12 other things: requiring, permitting, or suffering PLAINTIFF and the CLASS MEMBERS to work off
13 the clock; requiring, permitting or suffering PLAINTIFF and the CLASS MEMBERS to work through
14 meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF and the CLASS
15 MEMBERS worked; failing to properly maintain PLAINTIFF'S and CLASS MEMBERS' records;
16 failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other
17 methods to be discovered.

18 69. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
19 1197, and IWC Wage Order No. 4-2001, § 4. As a proximate result of the aforementioned violations,
20 PLAINTIFF and the CLASS MEMBERS have been damaged in an amount according to proof at trial.
21 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
22 applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFF and the
23 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to the them by
24 DEFENDANTS, plus interest, penalties, attorney's fees, expenses, and costs of suit.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

3 **(Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 4-2001, §11)**

4 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

5 70. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 71. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
8 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to
9 provide legally complaint meal periods to PLAINTIFF and CLASS MEMBERS as required under
10 California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 11.

11 72. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order
12 No. 4-2001, § 11 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided with
13 a legally compliant meal period, in accordance with the applicable wage order, one additional hour of
14 compensation at each employee's regular rate of pay for each workday that a rest period was not
15 provided.

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

28 74. During the LABOR CODE CLASS PERIOD, DEFENDANTS further violated



1 California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate
2 PLAINTIFF and CLASS MEMBERS who were not provided a meal period, in accordance with the
3 applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay
4 for each workday that a meal period was not provided.

5 75. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
6 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
7 and due, interest, penalties, expenses and costs of suit.

8 **FIFTH CAUSE OF ACTION**

9 **Failure to Provide Required Rest Periods**

10 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]**

11 **(By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)**

12 76. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this
13 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

23 78. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by, during the LABOR CODE CLASS PERIOD, failing to compensate PLAINTIFF
25 and CLASS MEMBERS who were not provided a rest period, in accordance with the applicable Wage
26 Order, one additional hour of compensation at each employee's regular rate of pay for each workday
27 that rest period was not provided.

28 79. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS

1 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
2 and due, interest, penalties, expenses and costs of suit.

3 **SIXTH CAUSE OF ACTION**

4 **Failure to Reimburse Employees for Required Expenses**

5 **[Cal. Labor Code § 2802]**

6 **(By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)**

7 80. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this
8 reference, as though fully set forth, the allegations in the preceding paragraphs.

9 81. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
10 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
11 his or her duties, or of his or her obedience to the directions of the employer.

12 82. During the LABOR CODE CLASS PERIOD, DEFENDANTS knowingly and willfully
13 failed to indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses
14 incurred in direct consequence of the discharge of their duties while working under the direction of
15 DEFENDANTS, including but not limited to expenses for cell phone usage, and other employment-
16 related expenses, in violation of California Labor Code § 2802.

17 83. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
18 and the CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
19 reimbursement of all necessary expenditures, plus interest thereon, pursuant to California Labor Code
20 § 2802(b). Additionally, PLAINTIFF and the CLASS MEMBERS are entitled to all available statutory
21 penalties and an award of costs, expenses, and reasonable attorney's fees, including those provided in
22 California Labor Code § 2802(c), as well as other available remedies.

23 **SEVENTH CAUSE OF ACTION**

24 **Failure to Furnish Accurate Itemized Wage Statements**

25 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7]**

26 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

27 84. PLAINTIFF and the other CLASS MEMBERS incorporate herein by specific reference,
28 as though fully set forth, the allegations in the preceding paragraphs.



1 85. During the LABOR CODE CLASS PERIOD from time-to-time, DEFENDANTS
2 routinely failed to provide PLAINTIFF and the CLASS MEMBERS with timely, accurate and
3 itemized wage statements in writing showing each employee's gross wages and earned, total hours
4 worked, all deductions made, net wages earned, the name and address of the legal entity or entities
5 employing PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during
6 each pay period and the corresponding number of hours worked at each hourly rate, in violation of
7 California Labor Code § 226 and IWC Wage Order No. 4-2001, § 7.

8 86. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
9 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
10 accordance with California Labor Code § 226(a).

11 87. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
12 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
13 wages earned and due, plus interest thereon. Additionally, PLAINTIFF and the other CLASS
14 MEMBERS are entitled to all available statutory penalties, including, but not limited to civil penalties
15 pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
16 reasonable attorney's fees, including but not limited to those provided in California Labor Code §
17 226(e), as well as other available remedies.

18 **EIGHTH CAUSE OF ACTION**

19 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

20 **[Cal. Labor Code §§ 201, 202, 203]**

21 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

22 88. PLAINTIFF and the other CLASS MEMBERS incorporate herein by specific reference,
23 as though fully set forth, the allegations in the preceding paragraphs.

24 89. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to
25 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
26 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the
27 time of discharge are due and payable immediately.

28 90. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to

1 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
2 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
3 which case the employee is entitled to his or her wages at the time of quitting.

4 91. California Labor Code § 203 provides that if an employer willfully fails to pay, in
5 accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged
6 or who quits, the employer is liable for waiting time penalties in the form of continued compensation
7 to the employee at the same rate for up to 30 workdays.

8 92. During the LABOR CODE CLASS PERIOD, as alleged herein, DEFENDANTS have
9 willfully failed to pay accrued wages and other compensation, including but not limited to, minimum,
10 regular and overtime wages for all hours worked, to PLAINTIFF and the other CLASS MEMBERS in
11 accordance with California Labor Code §§ 201 and 202. As a result, PLAINTIFF and the CLASS
12 MEMBERS are entitled to all available statutory penalties, including the waiting time penalties
13 provided in California Labor Code § 203, together with interest thereon, as well as other available
14 remedies.

15 93. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
16 and the other CLASS MEMBERS have been deprived of compensation in an amount according to
17 proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of
18 such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
19 §§ 1194 and 2699.

20 **NINTH CAUSE OF ACTION**

21 **Violation of the Private Attorney General Act**

22 **[Cal. Labor Code §§ 2698 *et seq.*]**

23 **(By PLAINTIFF on behalf of the State of California and fellow Aggrieved Employees**
24 **against DEFENDANTS)**

25 94. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
26 herein, the prior paragraphs of this Complaint.

27 95. PAGA is a mechanism by which the State of California itself can enforce state labor
28 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor

1 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
2 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
3 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
4 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
5 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
6 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
7 PAGA claims cannot be subject to arbitration.

8 96. PLAINTIFF brings this Representative Action on behalf of the State of California with
9 respect to himself and all of DEFENDANT's current and former non-exempt employees employed in
10 California ("AGGRIEVED EMPLOYEES") between February 13, 2019 and a future date set by this
11 Court ("PAGA PERIOD").

12 97. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
13 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of
14 Labor Code Section 2699(c).

15 98. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
16 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
17 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

18 99. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
19 Section 2699.3. By certified letter, return receipt requested, dated February 13, 2020, PLAINTIFF
20 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
21 DEENDANTS of the specific provisions of the Labor Code alleged to have been violated, including
22 the facts and theories to support the alleged violations. A true and correct copy of this letter is
23 attached hereto as **Exhibit A**.

24 100. As of the date of this filing, the LWDA has not provided any notice by certified mail of
25 its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
26 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
27 commence and is authorized to pursue this cause of action.

28 101. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly

1 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor
2 Code Section 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d),
3 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2804 in the following amounts:

4 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
5 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay
6 period for the initial violation and two hundred dollars (\$200) for
7 AGGRIEVED EMPLOYEE per pay period for each subsequent violation
8 [penalty per Labor Code Section 2699(f)(2)];

9 b. For violations of Labor Code Section 226(a), a civil penalty in the
10 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
11 EMPLOYEE for any initial violation and one thousand dollars for each
12 subsequent violation [penalty per Labor Code Section 226.3];

13 c. For violations of Labor Code Sections 204, a civil penalty in the
14 amount of one hundred dollars (\$100) for each AGGRIEVED
15 EMPLOYEE for any initial violation and two hundred dollars (\$200) for
16 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
17 Labor Code Section 210];

18 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
19 penalty in the amount of fifty dollars (\$50) for each underpaid
20 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
21 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
22 violation [penalty per Labor Code Section 558];

23 e. For violations of Labor Code Section 2269(a), a civil penalty in the
24 amount of two hundred fifty dollars (\$250) per AGGRIEVED
25 EMPLOYEE per violation in an initial citation and one thousand dollars
26 (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation
27 [penalty per Labor Code Section 226.3];

28 f. For violations of Labor Code Section 1174(d), a civil penalty in the

1 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE
2 [penalty per Labor Code Section 1174.5].

3 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198
4 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per
5 AGGRIEVED EMPLOYEE per pay period for the initial violation and
6 two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay
7 period for each subsequent violation [penalty per Labor Code Section].

8 102. For all provisions of the Labor Code for which civil penalty is not specifically provided,
9 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
10 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
11 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
12 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
13 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly
16 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and
17 each of them, as follows:

- 18 1. For compensatory damages in an amount to be ascertained at trial;
- 19 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
20 disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 21 3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and
22 IWC Wage Order No. 4-2001;
- 23 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 24 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
25 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
26 engaging in the unlawful business practices complained herein;
- 27 6. For waiting time penalties pursuant to California Labor Code § 203;
- 28 7. For statutory and civil penalties according to proof, including but not limited to all

1 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;

2 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
3 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
4 providing for pre-judgment interest;

5 9. For reasonable attorney’s fees and costs pursuant to California Labor Code §§ 1194,
6 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
7 attorneys’ fees and costs;

8 10. For declaratory relief;

9 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
10 Seventh, and Eighth Causes of Action as a class action;

11 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF’S counsel
12 as class counsel; and

13 13. For such further relief that the Court may deem just and proper.

14 14. On the Ninth Cause of Action,

15 a. for reasonable attorney’s fees and costs of suit to the extent permitted by law,
16 including pursuant to Labor Code § 2699, *et seq.*;

17 b. For civil penalties to the extent permitted by law pursuant to the Labor Code
18 under the Private Attorneys General Act; and

19 c. For such other relief as the Court deems just and proper.

20
21 Dated: April 14, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

22
23 By: 
24 Jean-Claude Lapuyade
25 Attorneys for PLAINTIFF
26
27
28



DEMAND FOR JURY TRIAL

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

Dated: April 14, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 

Jean-Claude Lapuyade
Attorneys for PLAINTIFFS



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EXHIBIT A



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February 13, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

XTREME XPRESS, INC.

c/o Celso G. Sapien
1049 E. Grand Avenue
Pomona, CA 91766

Certified Mail No. 7019 2280 0002 0097 8036

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents OSCAR ALMANZA (“Client”) and other aggrieved employees in a class action against XTREME XPRESS, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendant in California. Client was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Client contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contend that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,

1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Client, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendant. Client 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

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

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **JCL LAW FIRM, APC**

2 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)

3 3990 OLD TOWN AVENUE, SUITE C204

4 SAN DIEGO, CA 92110

5 TEL: (619) 599-8292

6 FAX: (619) 599-8291

7 **ZAKAY LAW GROUP, APLC**

8 SHANI O. ZAKAY (STATE BAR #277924)

9 5850 OBERLIN DRIVE, SUITE 230A

10 SAN DIEGO, CA 92121

11 TEL: (619) 255-9047

12 FAX: (858) 404-9203

13 ATTORNEYS FOR PLAINTIFF OSCAR ALMANZA

14 **SUPERIOR COURT OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16 OSCAR ALMANZA, individually and on
17 behalf of all persons similarly situated,

18 Plaintiffs,

19 vs.

20 XTREME XPRESS, INC., a California
21 corporation and DOES 1 through 50, Inclusive,

22 Defendants.

Case No. _____

COMPLAINT

CLASS ACTION:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;



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- 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and
- 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

JURY TRIAL DEMANDED

Plaintiff OSCAR ALMANZA (hereinafter “PLAINTIFF”), individually and on behalf of all those similarly situated, demanding a jury trial, hereby alleges as follows:

THE PARTIES

A. Defendants

1. Defendant XTREME XPRESS, INC., a California corporation (hereinafter “DEFENDANT”), that all times mentioned herein provided logistics and freight transportation services to its customers which included trucking and delivery services, messenger and courier services, fulfillment services and warehousing throughout California, including in the County of Los Angeles and City of Los Angeles.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.



1 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
2 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for the
3 loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or
4 employees.

5 4. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF
6 and CLASS MEMEBERS, as defined below. PLAINTIFF is informed and believes, and thereon
7 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
8 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principles, related entities, co-
9 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of
10 each other. Each Defendant was completely dominated by his, her or its co-defendant, and each was
11 the alter ego of the other.

12 5. At all relevant times herein, PLAINTIFF and the CLASS MEMBERS were employed
13 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
14 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
15 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and
16 the CLASS MEMEBRS all wages earned and due, through methods and schemes which include, but
17 are not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing
18 to properly maintain records, failing to provide accurate itemized statements for each pay period,
19 failing to properly compensate PLAINTIFF and the CLASS MEMEBRS for necessary expenditures,
20 and requiring, permitting or suffering the employee to work off the clock, in violation of the
21 California Labor Code and the applicable Welfare Commission ("IWC") Order.

22 6. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
23 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
24 each acting as agents and/or employees, and/or under the direction and control of each of the other
25 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
26 agency, employment and/or direction and control.

27 7. As a direct and proximate result of the unlawful actions of DEFENDANTS,
28 PLAINTIFF and the CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings

1 in amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

2 **B. Plaintiffs and Class Members**

3 8. Plaintiff OSCAR ALMANZA (“PLAINTIFF”) was employed by DEFENDANTS in the
4 State of California, County of Los Angeles, City of Los Angeles, from approximately November
5 2017 through November 2019, as a non-exempt driver, paid on an hourly basis, and entitled to legally
6 required meal and rest periods and payment of minimum and overtime wages due for all time worked.

7 9. PLAINTIFF brings this case as a class action pursuant to California Code of Civil
8 Procedure § 382 on behalf of all current and former non-exempt drivers who worked for
9 DEFENDANTS in California (“CLASS MEMBERS”) at any time within the period beginning four
10 (4) years prior to the filing of this Complaint and ending on the date as determined the Court
11 (“CLASS PERIOD”). To the extent equitable tolling operates to toll claims by PLAINTIFF and the
12 CLASS MEMBERS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.
13 PLAINTIFF reserves the right to amend the class definition before the Court determines whether
14 class certification is appropriate, or thereafter upon leave of Court.

15 10. PLAINTIFF, brings this action on behalf of the CLASS MEMBERS against the
16 DEFENDANTS to recover, among other things, wages and penalties from unpaid wages earned and
17 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
18 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
19 quitting employees, failure to indemnify employees for necessary expenditures and/or losses incurred
20 in discharging their duties, failure to provide accurate itemized wage statements, failure to maintain
21 required records, and interest, attorney’s fees, costs, and expenses. The amount in controversy for the
22 aggregate claim of the CLASS MEMBERS during the CLASS PERIOD is under five million dollars
23 (\$5,000,000.00).

24 **JURISDICTION AND VENUE**

25 11. The Superior Court of the State of California has jurisdiction in this matter because
26 PLAINTIFF is resident of the State of California, and DEFENDANTS were and are doing business in
27 California. Further, no federal question is at issue because the claims are based solely on California
28 law.



1 12. Venue is proper in this judicial district and the County of Los Angeles, California
2 because PLAINTIFF, and the CLASS MEMBERS, performed work for DEFENDANTS in the
3 County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in the
4 County of Los Angeles, and because DEFENDANTS' illegal payroll policies and practices which are
5 the subject of this action were applied, at least in part, to PLAINTIFFS, and other persons similarly
6 situated, in the County of Los Angeles.

7 **THE CONDUCT**

8 **A. Unpaid Overtime**

9 13. Generally, California law provides that non-exempt employees shall not be employed
10 more than eight hours in any workday or more than 40 hours in any workweek unless he or she
11 receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in
12 any workday and over 40 hours in the workweek and double the employee's regular rate of pay for all
13 hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the
14 seventh consecutive day of work in a workweek.

15 14. Notwithstanding, [California Labor Code Section 511](#) and some [Industrial Welfare](#)
16 [Commission \(IWC\) Wage Orders](#) provide for alternative workweek schedules ("AWS"). An
17 alternative workweek schedule means any regularly scheduled workweek requiring an employee to
18 work more than eight hours in a 24-hour period without overtime pay.

19 15. To adopt an AWS, upon the proposal of an employer, the employees of an employer
20 may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees
21 for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected
22 employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an
23 alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot
24 election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly
25 scheduled alternative workweek proposed by an employer for adoption by employees may be a single
26 work schedule that would become the standard schedule for workers in the work unit, or a menu of
27 work schedule options, from which each employee in the unit would be entitled to choose. The results
28 of any election, must be reported by the employer to the Division of Labor Standards within 30 days of



1 the election results before the AWS can take effect. Cal. Lab. Code § 511.

2 16. Based on information and belief, PLAINTIFF alleges that during the CLASS PERIOD,
3 DEFENDANTS implemented an unlawful AWS affecting drivers including PLAINITFF and the
4 members of the CALIFORNIA CLASS without (1) conducting the required vote of the affecting
5 employees, (2) without obtaining the required approval of at least two-thirds of the affected employees
6 in the SSRS – System Wide Float Pool employees, and (3) without reporting the results of any election
7 to the Division of Labor Standards. Consequently, PLAINTIFF alleges that DEFENDANTS
8 unlawfully adopted an AWS during the CLASS PERIOD and regularly scheduled PLAINITFF and the
9 other CLASS MEMBERS for work shifts greater than eight (8) hours in a workday, or more than 40
10 hours in a workweek without the payment of overtime compensation at one and one-half times their
11 regular rate of pay, or more than 12 hours in a work shift without payment of overtime compensation
12 at double their regular rate of pay. without compensating PLAINITIFF and the other CLASS
13 MEMBERS at one and one-half times his or her regular rate of pay for all hours worked over eight
14 hours in any workday.

15 17. As a result of DEFENDANTS’ aforementioned unlawful policy and practice,
16 PLAINITFF and the other CLASS MEMBERS, from time-to-time during the CLASS PERIOD,
17 forfeited wages and compensation due and owed for each workday that DEFENDANTS failed to pay
18 the correct overtime rate of pay. DEFENDANTS’ policy and practice not pay the CLASS
19 MEMBERS the correct overtime rate for all overtime hours worked in accordance with applicable law
20 is evidenced by DEFENDANTS’ business records.

21 **B. Overtime – Regular Rate Violation**

22 18. During the CLASS PERIOD, DEFENDANTS failed and continues to fail to accurately
23 calculate and pay PLAINTIFF and the other CLASS MEMBERS for their overtime hours worked. As
24 a result, PLAINTIFF and the other CLASS MEMBERS forfeited wages due them for working
25 overtime without compensation at the correct overtime rates. DEFENDANTS’ uniform policy and
26 practice to not pay the CLASS MEMBERS the correct overtime rate for all overtime worked in
27 accordance with applicable law is evidenced by DEFENDANTS’ business records.

28 19. State law provides that employees must be paid overtime at one-and-one-half times their

1 “regular rate of pay.” PLAINTIFF and other CLASS MEMBERS were compensated at an hourly rate
2 plus flat-sum incentive pay that was tied to specific elements of an employee’s performance.

3 20. The second component of PLAINTIFF’S and other CLASS MEMBERS’ compensation
4 was DEFENDANTS’ flat-sum non-discretionary incentive program that paid PLAINTIFF and other
5 CLASS MEMBERS flat-sum incentive wages based on their performance for DEFENDANTS. The
6 flat-sum non-discretionary bonus program provided all employees paid on an hourly basis with flat-
7 sum bonus compensation when the employees met the various performance goals set by
8 DEFENDANTS. However, when calculating the regular rate of pay, in those pay periods where
9 PLAINTIFF and other CLASS MEMBERS worked overtime and earned this flat-sum non-
10 discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-discretionary bonus
11 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked rather
12 than just all non-overtime hours worked. Management and supervisors described the incentive/bonus
13 program to potential and new employees as part of the compensation package. As a matter of law, the
14 incentive compensation received by PLAINTIFF and other CLASS MEMBERS must be included in
15 the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime
16 compensation to PLAINTIFF and other CLASS MEMBERS by DEFENDANTS.

17 21. In violation of the applicable sections of the California Labor Code and the requirements
18 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
19 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
20 other CLASS MEMBERS at the correct rate of pay for all overtime worked. This uniform policy and
21 practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime
22 compensation as required by California law which allowed DEFENDANTS to illegally profit and gain
23 an unfair advantage over competitors who complied with the law.

24 **C. Missed Meal and Rest Period Violation**

25 22. During the CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS, as a result of
26 their rigorous delivery schedules which required from time-to-time the delivery of more than 250
27 packages at more than 160 different locations, PLAINTIFF and other CLASS MEMBERS were, from
28 time-to-time, unable to take off duty meal breaks and were not fully relieved of duty for meal periods.



1 PLAINTIFF and other CLASS MEMBERS were required to perform work as ordered by
2 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break.
3 Further, DEFENDANT failed to provide PLAINTIFF and CLASS MEMBERS with a second off-duty
4 meal period from time to time in which these employees were required by DEFENDANT to work ten
5 (10) hours of work. PLAINTIFF and the other CLASS MEMBERS therefore forfeited meal breaks
6 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
7 practice.

8 23. During the CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS, as a result of
9 their rigorous delivery schedules which required from time-to-time the delivery of more than 250
10 packages at more than 160 different locations, were also required from time-to-time to work in excess
11 of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were
12 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to
13 four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes
15 for some shifts worked of ten (10) hours or more. PLAINTIFF and other CLASS MEMBERS were
16 also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules,
17 PLAINTIFF and other CLASS MEMBERS were periodically denied their proper rest periods by
18 DEFENDANT and DEFENDANT's managers.

19 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

20 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
21 fail to accurately pay PLAINTIFF and the other CLASS MEMBERS for all hours worked.
22 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other CLASS
23 MEMBERS to perform work while off-the clock during what should have been duty-free and
24 uncompensated meal periods. Notwithstanding, from time to time DEFENDANTS failed to pay
25 PLAINTIFFS and other CLASS MEMBERS necessary wages for performing work at
26 DEFENDANTS' direction, request and benefit, while off-the clock during meal periods.

27 25. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
28 work performed by PLAINTIFF and the other CLASS MEMBERS.

1 26. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments and employment conditions of PLAINTIFFS and the CLASS MEMBERS.

3 27. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
4 CLASS MEMBERS working; however, DEFENDANTS failed to document, track, or pay
5 PLAINTIFF and the other CLASS MEMBERS all wages earned and owed for all the work they
6 performed, including off-the-clock work.

7 28. PLAINTIFF and the other CLASS MEMBERS were non-exempt employees, subject to
8 the requirements of the California Labor Code.

9 29. DEFENDANTS' policies and practices deprived PLAINTIFF and the other CLASS
10 MEMBERS of all minimum, regular and overtime wages owed for the off-the-clock work activities,
11 including those performed while off the clock during meal periods. Because PLAINTIFF and the
12 other CLASS MEMBERS typically worked over 40 hours in a workweek, and more than eight (8)
13 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

14 30. DEFENDANTS knew or should have known that PLAINTIFF and the other CLASS
15 MEMBERS off-the-clock work was compensable under the law.

16 31. As a result, PLAINTIFF and the other CLASS MEMBERS forfeited wages due them for
17 all hours worked at DEFENDANTS' direction, control and benefit for the time spent attending
18 required meetings and sales trainings. DEFENDANTS' uniform policy and practice to not pay
19 PLAINTIFF and the CLASS MEMBERS wages for all hours worked in accordance with applicable
20 law is evidenced by DEFENDANTS' business records.

21 **E. Unreimbursed Business Expenses**

22 32. During the CLASS PERIOD, DEFENDANTS as a matter of corporate policy, practice
23 and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify
24 PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
25 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
26 behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
27 indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
28 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
3 employee, at the time of obeying the directions, believed them to be unlawful."

4 33. In the course of their employment, PLAINTIFFS and the other CLASS MEMBERS as a
5 business expense, were required by DEFENDANTS to use personal cellular phones as a result of and
6 in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
7 indemnified by DEFENDANTS for the cost associated with the use of the personal cellular phones for
8 DEFENDANTS' benefit, without reimbursement from the DEFENDANTS in violation of California
9 Labor Code Section 2802. As a result, in the course of their employment with DEFENDANTS,
10 PLAINTIFFS and the other CLASS MEMBERS incurred unreimbursed business expenses which
11 included, but were not limited to costs related to the use of their personal cellular phones, all on behalf
12 of and for the benefit of DEFENDANTS.

13 **F. Inaccurate Itemized Wage Statements**

14 34. When PLAINTIFF and other CLASS MEMBERS worked overtime in the same pay
15 period they earned incentive wages and/or missed meal and rest breaks, and/or performed off-the-
16 clock work, DEFENDANTS failed to provide PLAINTIFF and the other CLASS MEMBERS with
17 complete and accurate wage statements which failed to show, among other things, the correct amount
18 of gross and net wages earned for the applicable pay period, the correct number of total hours worked,
19 and the correct hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate. Cal. Lab. Code § 226 provides that every employer shall furnish each of
21 his or her employees with an accurate itemized wage statement in writing showing, among other
22 things, the correct amount of gross and net wages earned for the applicable pay period, the correct
23 number of total hours worked, and the correct hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate. Aside, from the violations listed above in
25 this paragraph, DEFENDANT failed to issue to PLAINTIFF and the CLASS MEMBERS an itemized
26 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
27 from time-to-time during the CLASS PERIOD, DEFENDANT provided PLAINTIFF and the other
28 CLASS MEMBERS with wage statements which violated Cal. Lab. Code § 226.

1 **G. Unfair Competition**

2 35. By reason of the aforementioned uniform conduct applicable to PLAINTIFF and all
3 CLASS MEMBERS during the CLASS PERIOD, DEFENDANT committed acts of unfair
4 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
5 *et seq.* (the “UCL”), by engaging, *inter alia*, in a company-wide policy and procedure which failed to
6 accurately calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and
7 other CLASS MEMBERS in those pay periods where the PLAINTIFF and the CLASS MEMBERS
8 earned a flat sum non-discretionary bonus, failing to provide legally compliant duty-free meal periods,
9 failure to pay all minimum, regular and overtime wages resulting from off-the-clock-work. The
10 proper calculation of these employees’ total number of hours worked and rates of pay is the
11 DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation to
12 meet this burden, DEFENDANT failed to properly calculate and/or pay all required minimum, regular
13 and overtime compensation for work performed by the PLAINTIFF and the CLASS MEMBERS and
14 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

15 36. Specifically, as to PLAINTIFF’s pay, DEFENDANT provided compensation to him in
16 the form of two components. One component of PLAINTIFF’s compensation was a base hourly
17 wage. The second component of PLAINTIFF’s compensation were non-discretionary incentive
18 wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain predefined
19 performance requirements. PLAINTIFF met DEFENDANTS’ predefined eligibility performance
20 requirements in various pay periods throughout his employment with DEFENDANTS and
21 DEFENDANTS paid PLAINTIFF the incentive wages. However, when calculating the regular rate of
22 pay, in those pay periods where PLAINTIFF and other CLASS MEMBERS worked overtime and
23 earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum
24 non-discretionary bonus compensation as part of the employees’ “regular rate of pay” and/or
25 calculated all hours worked rather than just all non-overtime hours worked and thereby underpaid
26 PLAINTIFF and other CLASS MEMBERS for overtime worked throughout their employment with
27 DEFENDANTS. The incentive compensation paid by DEFENDANTS constituted wages within the
28 meaning of the California Labor Code and thereby should have been part of PLAINTIFF’s “regular

1 rate of pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
2 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work as
3 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty
4 meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal
5 period from time to time in which he was required by DEFENDANT to work ten (10) hours of work.
6 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
7 accordance with DEFENDANTS strict corporate policy and practice. DEFENDANTS also provided
8 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF’s correct rates of overtime
9 pay and payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab.
10 Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation
11 still owed to him. The amount in controversy for PLAINTIFF individually does not exceed the sum or
12 value of \$75,000.

13 **CLASS ACTION ALLEGATIONS**

14 37. PLAINTIFF brings this case as a class action pursuant to California Code of Civil
15 Procedure § 382 on behalf of the CLASS MEMBERS that worked for DEFENDANTS in California
16 during the CLASS PERIOD and during the “LABOR CODE CLASS PERIOD”, meaning at any time
17 within the period beginning three (3) years prior to the filing of this Complaint and ending on the date
18 as determined the Court.

19 38. During the CLASS PERIOD and the LABOR CODE CLASS PERIOD, PLAINTIFF
20 and the other CLASS MEMBERS have uniformly been deprived of wages and penalties from unpaid
21 wages earned and due, including but not limited to unpaid and miscalculated overtime compensation,
22 illegal meal and rest period policies, failure to reimburse for incurred business related expenses, failure
23 to pay all wages due to discharged and quitting employees, failure to provide accurate itemized wage
24 statements, failure to maintain required records, and interest, attorney’s fees, costs, and expenses.

25 39. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 40. Common questions of law and fact regarding DEFENDANTS’ conduct with respect to
28 unpaid and/or miscalculated overtime wages paid to PLAINTIFF and the CLASS MEMBERS, and

1 failing to provide legally compliant meal and rest periods, failure to make reimbursements for business
2 related expenses, and failure to provide accurate itemized wage statements accurate, exist as to all
3 CLASS MEMBERS and predominate over any questions affecting solely any individual members of
4 the class. Among the questions of law and fact common to the class are:

- 5 a. Whether DEFENDANTS unlawfully implemented an AWS;
- 6 b. Whether DEFENDANTS unlawfully implemented AWS deprived PLAINTIFF
7 and the CLASS MEMBERS overtime wages;
- 8 c. Whether DEFENDANTS failed to pay PLAINTIFF and the other CLASS
9 MEMBERS the correct rate of pay for all overtime hours worked;
- 10 d. Whether DEFENDANTS' flat-sum incentive compensation program is non-
11 discretionary;
- 12 e. Whether DEFENDANTS miscalculated the regular rate of pay in those pay
13 periods where PLAINTIFFS and other CLASS MEMBERS worked overtime and earned a flat-
14 sum bonus;
- 15 f. Whether DEFENDANTS maintained legally compliant meal and rest period
16 policies;
- 17 g. Whether DEFENDANTS required PLAINTIFF and the CLASS MEMBERS to
18 use their personal cell phones in further and in direction execution of their job duties;
- 19 h. Whether DEFENDANTS failed to provide accurate itemized wage statements to
20 PLAINTIFFS and the CLASS MEMBERS;
- 21 i. Whether PLAINTIFF and the CLASS MEMBERS have been required to follow
22 uniform procedures and policies regarding their work for DEFENDANTS;

23 41. PLAINTIFF is a CLASS MEMBER and suffered damages as a result of
24 DEFENDANTS' conduct and actions alleged herein.

25 42. PLAINTIFF'S claims are typical of the claims of the class, and PLAINTIFF has the
26 same interests as the other members of the class.

27 43. PLAINTIFF will fairly and adequately represent and protect the interests of the class.
28 PLAINTIFF has retained able counsel experienced in class action litigation. The interests of

1 PLAINTIFF are coincident with, and not antagonistic to, the interests of the other CLASS
2 MEMBERS.

3 44. The questions of law and fact common to the members of the class predominate over
4 any questions affecting only individual members, including legal and factual issues relating to liability
5 and damages.

6 45. A class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy because joinder of all class members is impractical. Moreover, since
8 the damages suffered by individual members of the class may be relatively small, the expense and
9 burden of individual litigation makes it practically impossible for the members of the class
10 individually to redress the wrongs done to them. The class is readily definable and prosecution of this
11 action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty
12 in the management of this action as a class action.

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(By PLAINTIFF and the CLASS MEMBERS against DEFENDANTS)**

17 46. PLAINTIFFS, and the CLASS MEMBERS, reallege and incorporate by this reference,
18 as though fully set forth herein, the prior paragraphs of this Complaint.

19 47. DEFENDANTS are each a “person” as that term is defined under Cal. Bus. And Prof.
20 Code § 17021.

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

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

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

4 (Cal. Bus. & Prof. Code § 17203).

5 49. From time-to-time during the CLASS PERIOD, by the conduct alleged herein,
6 DEFENDANTS have engaged and continues to engage in a business practice which violates
7 California law, including but not limited to, the applicable Wage Order(s), the California Code of
8 Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.3,
9 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this Court should issue declaratory and
10 other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
11 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully
12 withheld.

13 50. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in
14 that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or
15 substantially injurious to employees, and were without valid justification or utility for which this Court
16 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
17 Professions Code, including restitution of wages wrongfully withheld.

18 51. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
19 in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF and the other CLASS
20 MEMBERS wages due pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
21 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
22 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
23 wages wrongfully withheld.

24 52. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
25 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the CLASS
26 MEMBERS to be underpaid during their employment with DEFENDANTS.

27 53. By the conduct alleged herein, DEFENDANTS’ practices were also unfair and deceptive
28 in that DEFENDANTS’ uniform policies, practices and procedures failed to provide mandatory meal

1 and/or rest breaks to PLAINTIFF and the CLASS MEMBERS.

2 54. Therefore, PLAINTIFFS demand on behalf of himself and on behalf of each CLASS
3 MEMBER, one (1) hour of pay at the regular rate of compensation for each workday in which an off-
4 duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
5 at the regular rate of compensation for each workday in which a second off-duty meal period was not
6 timely provided for each ten (10) hours of work.

7 55. PLAINTIFF further demands on behalf of himself and on behalf of each CLASS
8 MEMBER, one (1) hour of pay at the regular rate of compensation for each workday in which a rest
9 period was not timely provided as required by law.

10 56. By and through the unlawful and unfair business practices described herein,
11 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the other
12 CLASS MEMBERS, including earned wages and unreimbursed business related expenses, and has
13 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
14 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
15 compete against competitors who comply with the law.

16 57. All the acts described herein as violations of, among other things, the Industrial Welfare
17 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
18 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous,
19 were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of
20 Cal. Bus. & Prof. Code §§ 17200, *et seq.*

21 58. PLAINTIFF and the other CLASS MEMBERS are entitled to, and do, seek such relief
22 as may be necessary to restore to them the money and property which DEFENDANTS have acquired,
23 or of which PLAINTIFF and the other CLASS MEMBERS have been deprived, by means of the
24 above described unlawful and unfair business practices, including earned but unpaid wages.

25 59. PLAINTIFF and the other CLASS MEMBERS are further entitled to, and do, seek a
26 declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive
27 relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business
28 practices in the future.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(Cal. Lab. Code §§ 204, 510, 1194, 1198 and IWC Wage Order No. 4-2001, §3)

(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)

7 61. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the
8
9
10
11
12 allegations in the preceding paragraphs.

13 62. Pursuant to California Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3,
14 DEFENDANTS are required to compensate PLAINTIFF and the CLASS MEMBERS for all overtime,
15 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
16 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
17 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours
18 in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
19 work in any workweek.

20 63. PLAINTIFF and CLASS MEMBERS are current and former non-exempt employees
21 entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001.
22 From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate
23 PLAINTIFF and the CLASS MEMBERS for all overtime hours worked as required under the forgoing
24 provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay
25 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor
26 Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, permitting or suffering
27 PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or suffering
28 PLAINTIFF and the CLASS MEMBERS to work through meal and rest breaks; illegally and

1 inaccurately recording time in which PLAINTIFF and the CLASS MEMBERS worked; failing to
2 properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate
3 itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.
4 From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate
5 PLAINTIFF and the CLASS MEMBERS for all overtime hours worked and to pay the amount of
6 overtime wages due as required by the California Labor Code and IWC Wage Order by failing and
7 refusing to include all compensation, including commissions and bonuses earned, due and owing
8 and/or paid, in the regular rate of pay from which overtime wages were calculated and paid. During
9 the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the
10 CLASS MEMBERS for all overtime hours worked and to pay the amount of overtime wages due as
11 required by the California Labor Code and IWC Wage Order by incorrectly calculating the regular rate
12 of pay from which overtime wages were calculated and paid.

13 64. In violations of California Law, DEFENDANTS have knowingly and willfully refused
14 to perform their obligations to compensate PLAINTIFF and the CLASS MEMBERS for all wages
15 earned and all hours worked. As a proximate result, PLAINTIFF and the CLASS MEMBERS have
16 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
17 interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to fully
18 perform their obligations under state law, all to their respective damages in amounts according to
19 proof at time of trial, and within the jurisdiction of this Court.

20 65. DEFENDANTS' conduct described herein violates California Labor Code §§ 510, 1194,
21 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§ 200,
22 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and
23 IWC Wage Orders, PLAINTIFF and the CLASS MEMBERS are entitled to recover the unpaid
24 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses,
25 and costs of suit.

26 **THIRD CAUSE OF ACTION**

27 **FAILURE TO PAY MINIMUM WAGES**

28 **(Cal. Lab. Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 4-2001, § 4)**

1 **(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)**

2 66. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
3 allegations in the preceding paragraphs.

4 67. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, §
5 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
6 period is unlawful.

7 68. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed
8 to pay PLAINTIFF and the CLASS MEMBERS minimum wages for all hours worked by, among
9 other things: requiring, permitting, or suffering PLAINTIFF and the CLASS MEMBERS to work off
10 the clock; requiring, permitting or suffering PLAINTIFF and the CLASS MEMBERS to work through
11 meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF and the CLASS
12 MEMBERS worked; failing to properly maintain PLAINTIFF’S and CLASS MEMBERS’ records;
13 failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other
14 methods to be discovered.

15 69. DEFENDANTS’ conduct described herein violates California Labor Code §§ 1194,
16 1197, and IWC Wage Order No. 4-2001, § 4. As a proximate result of the aforementioned violations,
17 PLAINTIFF and the CLASS MEMBERS have been damaged in an amount according to proof at trial.
18 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
19 applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFF and the
20 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to the them by
21 DEFENDANTS, plus interest, penalties, attorney’s fees, expenses, and costs of suit.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

24 **(Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 4-2001, §11)**

25 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

26 70. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this
27 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

28 71. At all times relevant herein, as part of DEFENDANTS’ illegal payroll policies and

1 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to
2 provide legally complaint meal periods to PLAINTIFF and CLASS MEMBERS as required under
3 California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 11.

4 72. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order
5 No. 4-2001, § 11 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided with
6 a legally compliant meal period, in accordance with the applicable wage order, one additional hour of
7 compensation at each employee's regular rate of pay for each workday that a rest period was not
8 provided.

9 73. From time to time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed
10 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CLASS
11 MEMBERS as required by the applicable Wage Order and Labor Code. The nature of the work
12 performed by PLAINTIFF and the CLASS MEMBERS did not prevent these employees from being
13 relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous
14 work schedules, PLAINTIFF and other CLASS MEMBERS were, from time to time, not fully
15 relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to
16 provide PLAINTIFF and the CLASS MEMBERS legally required meal breaks prior to their fifth (5th)
17 hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other
18 members of the CLASS MEMBERS forfeited meal breaks without additional compensation during the
19 LABOR CODE CLASS PERIOD and in accordance with DEFENDANTS' strict corporate policy and
20 practice.

21 74. During the LABOR CODE CLASS PERIOD, DEFENDANTS further violated
22 California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate
23 PLAINTIFF and CLASS MEMBERS who were not provided a meal period, in accordance with the
24 applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay
25 for each workday that a meal period was not provided.

26 75. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
27 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
28 and due, interest, penalties, expenses and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Provide Required Rest Periods**

3 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]**

4 **(By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)**

5 76. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

16 78. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
17 IWC Wage Order by, during the LABOR CODE CLASS PERIOD, failing to compensate PLAINTIFF
18 and CLASS MEMBERS who were not provided a rest period, in accordance with the applicable Wage
19 Order, one additional hour of compensation at each employee's regular rate of pay for each workday
20 that rest period was not provided.

21 79. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
22 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
23 and due, interest, penalties, expenses and costs of suit.

24 **SIXTH CAUSE OF ACTION**

25 **Failure to Reimburse Employees for Required Expenses**

26 **[Cal. Labor Code § 2802]**

27 **(By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)**

28 80. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this

1 reference, as though fully set forth, the allegations in the preceding paragraphs.

2 81. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
3 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
4 his or her duties, or of his or her obedience to the directions of the employer.

5 82. During the LABOR CODE CLASS PERIOD, DEFENDANTS knowingly and willfully
6 failed to indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses
7 incurred in direct consequence of the discharge of their duties while working under the direction of
8 DEFENDANTS, including but not limited to expenses for cell phone usage, and other employment-
9 related expenses, in violation of California Labor Code § 2802.

10 83. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
11 and the CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
12 reimbursement of all necessary expenditures, plus interest thereon, pursuant to California Labor Code
13 § 2802(b). Additionally, PLAINTIFF and the CLASS MEMBERS are entitled to all available statutory
14 penalties and an award of costs, expenses, and reasonable attorney's fees, including those provided in
15 California Labor Code § 2802(c), as well as other available remedies.

16 **SEVENTH CAUSE OF ACTION**

17 **Failure to Furnish Accurate Itemized Wage Statements**

18 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7]**

19 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

20 84. PLAINTIFF and the other CLASS MEMBERS incorporate herein by specific reference,
21 as though fully set forth, the allegations in the preceding paragraphs.

22 85. During the LABOR CODE CLASS PERIOD from time-to-time, DEFENDANTS
23 routinely failed to provide PLAINTIFF and the CLASS MEMBERS with timely, accurate and
24 itemized wage statements in writing showing each employee's gross wages and earned, total hours
25 worked, all deductions made, net wages earned, the name and address of the legal entity or entities
26 employing PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during
27 each pay period and the corresponding number of hours worked at each hourly rate, in violation of
28 California Labor Code § 226 and IWC Wage Order No. 4-2001, § 7.

1 86. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
2 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
3 accordance with California Labor Code § 226(a).

4 87. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
5 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
6 wages earned and due, plus interest thereon. Additionally, PLAINTIFF and the other CLASS
7 MEMBERS are entitled to all available statutory penalties, including, but not limited to civil penalties
8 pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
9 reasonable attorney's fees, including but not limited to those provided in California Labor Code §
10 226(e), as well as other available remedies.

11 **EIGHTH CAUSE OF ACTION**

12 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

13 **[Cal. Labor Code §§ 201, 202, 203]**

14 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

15 88. PLAINTIFF and the other CLASS MEMBERS incorporate herein by specific reference,
16 as though fully set forth, the allegations in the preceding paragraphs.

17 89. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to
18 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
19 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the
20 time of discharge are due and payable immediately.

21 90. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to
22 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
23 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
24 which case the employee is entitled to his or her wages at the time of quitting.

25 91. California Labor Code § 203 provides that if an employer willfully fails to pay, in
26 accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged
27 or who quits, the employer is liable for waiting time penalties in the form of continued compensation
28 to the employee at the same rate for up to 30 workdays.



1 92. During the LABOR CODE CLASS PERIOD, as alleged herein, DEFENDANTS have
2 willfully failed to pay accrued wages and other compensation, including but not limited to, minimum,
3 regular and overtime wages for all hours worked, to PLAINTIFF and the other CLASS MEMBERS in
4 accordance with California Labor Code §§ 201 and 202. As a result, PLAINTIFF and the CLASS
5 MEMBERS are entitled to all available statutory penalties, including the waiting time penalties
6 provided in California Labor Code § 203, together with interest thereon, as well as other available
7 remedies.

8 93. As a proximate result of DEFENDANTS’ unlawful actions and omissions, PLAINTIFF
9 and the other CLASS MEMBERS have been deprived of compensation in an amount according to
10 proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of
11 such amounts, plus interest thereon, and attorneys’ fees and costs, pursuant to California Labor Code
12 §§ 1194 and 2699.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly
15 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and
16 each of them, as follows:

- 17 1. For compensatory damages in an amount to be ascertained at trial;
- 18 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
19 disgorged profits from DEFENDANTS’ unfair and unlawful business practices;
- 20 3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and
21 IWC Wage Order No. 4-2001;
- 22 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 23 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
24 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
25 engaging in the unlawful business practices complained herein;
- 26 6. For waiting time penalties pursuant to California Labor Code § 203;
- 27 7. For statutory and civil penalties according to proof, including but not limited to all
28 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;



1 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
2 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
3 providing for pre-judgment interest;

4 9. For reasonable attorney's fees and costs pursuant to California Labor Code §§ 1194,
5 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
6 attorneys' fees and costs;

7 10. For declaratory relief;

8 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
9 Seventh, and Eighth Causes of Action as a class action;

10 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF'S counsel
11 as class counsel; and

12 13. For such further relief that the Court may deem just and proper.

13
14 Dated: February 13, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

15
16 By: 
17 Jean-Claude Lapuyade
Attorneys for PLAINTIFF

18
19 **DEMAND FOR JURY TRIAL**

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

21
22 Dated: February 13, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

23
24 By: 
25 Jean-Claude Lapuyade
26 Attorneys for PLAINTIFFS



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