

**SUMMONS  
(CITACION JUDICIAL)**

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

**SEP 16 2019**

Sherri R. Carter, Executive Officer/Clerk of Court

By: Isaac Lovo, Deputy

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

DRIVERDO, LLC., a Limited Liability Company (dba DRAIVER); and  
DOES 1-50, Inclusive,

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

JOSEFINA GARCES, an individual, on behalf of herself and on behalf of all persons  
similarly situated,

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

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.sucorte.ca.gov](http://www.sucorte.ca.gov)), 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

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

Spring Street Courthouse  
312 North Spring Street

CASE NUMBER  
(Número del caso)  
**19STCV32773**

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):  
Shani O. Zakay, Esq., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

DATE: **SEP 16 2019** Clerk, by **ISAC LOVO**, Deputy  
(Fecha) **SEP 16 2019** **SHERRI R. CARTER** (Secretario) **ISAC LOVO** (Adjunto)

(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**

[SEAL]

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date):

1 ZAKAY LAW GROUP, APLC  
2 Shani O. Zakay (State Bar #277924)  
3 3990 Old Town Ave. Suite C204  
4 San Diego, CA 92110  
5 Telephone: (619) 255-9047  
6 Facsimile: (858) 404-9203

7 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP  
8 Norman B. Blumenthal (State Bar #068687)  
9 2255 Calle Clara  
10 La Jolla, CA 92037  
11 Telephone: (858)551-1223  
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13 Attorneys for Plaintiff

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Superior Court of California  
County of Los Angeles

SEP 16 2019

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Isaac Lovo, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF LOS ANGELES

11 JOSEFINA GARCES, an individual, on behalf  
12 of herself and on behalf of all persons similarly  
13 situated,

14 Plaintiff,

15 v.

16 DRIVERDO, LLC., a Limited Liability  
17 Company (dba DRAIVER); and DOES 1-50,  
18 Inclusive,

19 Defendants.

Case No: 19STCV32773

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 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 PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

BY FAX

1 Plaintiff Josefina Garces (“PLAINTIFF”), an individual, on behalf of herself and all other similarly  
2 situated current and former employees, alleges on information and belief, except for her own acts  
3 and knowledge which are based on personal knowledge, the following:

4  
5 **INTRODUCTION**

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

21 **THE PARTIES**

22 2. Defendant DriverDo, LLC (dba Draiver) (“DEFENDANT”) is a corporation and  
23 at all relevant times mentioned herein conducted and continues to conduct substantial and regular  
24 business throughout California.

25 3. Defendant DriverDo, LLC (dba Draiver) was the employer of PLAINTIFF as  
26 evidenced by the contracts signed and by the company the PLAINTIFF performed work for  
27 respectively, and is therefore responsible as employer for the conduct alleged herein and  
28 collectively referred to herein as (“DEFENDANT”).

1           4.     DEFENDANT is privately-held company based in the state of Kansas.  
2 DEFENDANT provide customers with on-demand access to drivers who will pick up and drop  
3 off their vehicles. DEFENDANT’S driving services are performed by independent contractors.

4           5.     PLAINTIFF worked for DEFENDANT as a Driver in California from May 2018  
5 to the present. PLAINTIFF was classified by DEFENDANT as an independent contractor during  
6 her entire employment with DEFENDANT.

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

16          7.     Here, DEFENDANT has willfully misclassified PLAINTIFF and other Drivers as  
17 described in Cal. Labor Code § 226.8. DEFENDANT has further engaged in a “pattern of  
18 practice” of such violations as contemplated by the California Labor Code.

19          8.     Upon hire, the position of a Driver was represented by DEFENDANT to  
20 PLAINTIFF and the other Drivers as an independent contractor position capable of paying an  
21 hourly rate for the time they drove a vehicle for a client. PLAINTIFF and other Drivers were not  
22 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a  
23 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF  
24 and other Drivers were paid the block rate to perform driving services on DEFENDANT’s behalf.  
25 PLAINTIFF and other Drivers were not compensated any other wages besides the block rate and  
26 they were not allowed to record their time until they arrived at the location to pick-up a vehicle  
27 or after they reached the location for drop-off. DEFENDANT did not pay PLAINTIFF and other  
28 CALIFORNIA CLASS Members for the time spent driving between appointments and all the  
other non-driving work tasks. The finite set of tasks required to be performed by the Drivers is

1 as follows: when notified via cell phone, travel to private homes, apartments, airports and offices  
2 to provide driving services for customers that requested DEFENDANT’S services all in  
3 accordance with DEFENDANT’S business practices and policies.

4 9. To perform their job duties, PLAINTIFF and the other Drivers performed work  
5 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise  
6 complete control over the work performed and the manner and means in which the work was  
7 performed. DEFENDANT provided the customers, and DEFENDANT provided the instructions  
8 on how to perform the driving services.

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

- 17 a. PLAINTIFF and other Drivers were not involved in a distinct business, but instead  
18 were provided with instructions as to how to perform their work and the manner  
19 and means in which the work was to be performed by means of DEFENDANT’S  
20 manuals and written instructions;
- 21 b. PLAINTIFF and other Drivers were continuously provided with training and  
22 supervision, including following DEFENDANT’S company documents, and  
23 received training from DEFENDANT as to how and in what way to perform the  
24 driving services;
- 25 c. DEFENDANT set the requirements as to what policies and procedures all of the  
26 Drivers were to follow;
- 27 d. PLAINTIFF and other Drivers had no opportunity for profit or loss because  
28 DEFENDANT only paid these workers a block rate. DEFENDANT controlled  
and assigned the Drivers which tasks were to be performed;

- e. PLAINTIFF and other Drivers performed driving services which are part of DEFENDANT’S principal business and is closely integrated with and essential to the employer’s business of providing driving services to their customers;
- f. PLAINTIFF and other Drivers performed the work themselves and did not hire others to perform their work for them;
- g. PLAINTIFF and other Drivers did not have the authority to make employment-related personnel decisions;
- h. PLAINTIFF and other Drivers performed their work in a particular order and sequence in accordance with DEFENDANT’S company policy; and,
- i. DEFENDANT had the “right” to control every critical aspect of DEFENDANT’S daily driving services operations in that DEFENDANT provided the customer, assigned where the Drivers were to go, and step-by-step instructions to PLAINTIFF and other Drivers as to the entire process of picking up and dropping off vehicles at their assigned locations. PLAINTIFF and other Drivers provided driving services ONLY for DEFENDANT’S customers, which DEFENDANT controlled via the company’s mobile application.

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

12. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all individuals who worked for DEFENDANT in California as Drivers and who were classified as independent contractors (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1           13.     PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice  
4 which failed to lawfully compensate these Drivers. As a matter of company policy, practice and  
5 procedure, DEFENDANT has unlawfully, unfairly and/or deceptively classified every  
6 CALIFORNIA CLASS Member as “independent contractors” in order to unlawfully avoid  
7 compliance with all applicable federal and state laws that require payment for all time worked,  
8 business expenses, and the employer's share of payroll taxes and mandatory insurance. As a result  
9 of the scheme to defraud the federal and state governments and the CALIFORNIA CLASS  
10 Members, PLAINTIFF and the CALIFORNIA CLASS Members were underpaid throughout  
11 their employment with DEFENDANT.

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

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

**THE CONDUCT**

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

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

27           18.     Specifically, as to PLAINTIFF, DEFENDANT fails to provide all the legally  
28 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor



1 Code. DEFENDANT do not have a policy or practice which provides timely off-duty meal and  
2 rest breaks to PLAINTIFF and also fails to compensate PLAINTIFF for her missed meal and rest  
3 breaks. The nature of the work performed by PLAINTIFF does not prevent him from being  
4 relieved of all of her duties for the legally required off-duty meal periods. As a result,  
5 DEFENDANT’S failure to provide PLAINTIFF with the legally required meal periods is  
6 evidenced by DEFENDANT’S business records. As a result of DEFENDANT not accurately  
7 recording all missed meal and rest periods and/or reporting time wages due, the wage statements  
8 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code  
9 Section 226(a). The amount in controversy for PLAINTIFF individually does not exceed the sum  
10 or value of \$75,000.

11 19. DEFENDANT, as a matter of law, have the burden of proving that employees are  
12 properly classified and that DEFENDANT otherwise comply with applicable laws.  
13 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the  
14 CALIFORNIA CLASS Members as independent contractors.

15 20. PLAINTIFF and all the CALIFORNIA CLASS Members are and were uniformly  
16 classified and treated by DEFENDANT as independent contractors at the time of hire and  
17 thereafter, and DEFENDANT failed to take proper steps to determine whether the PLAINTIFF  
18 and the CLASS Members are properly classified under the applicable Industrial Welfare  
19 Commission Wage Order and Cal. Lab. Code §§ 510, et seq. as exempt from applicable labor  
20 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and  
21 CALIFORNIA CLASS Members in compliance with California labor laws, DEFENDANT’S  
22 practices violated and continue to violate California law. In addition, DEFENDANT acted  
23 deceptively by falsely and fraudulently classifying PLAINTIFF and each CALIFORNIA CLASS  
24 Member as independent contractors when DEFENDANT knew or should have known that this  
25 classification was false and not based on known facts. DEFENDANT also acted deceptively by  
26 violating the California labor laws, and as a result of this policy and practice, DEFENDANT also  
27 violated the UCL. In doing so, DEFENDANT cheated the competition by paying the  
28

1 CALIFORNIA CLASS less than the amount competitors paid who complied with the law and  
2 cheated the CALIFORNIA CLASS by not paying them in accordance with California law.

3 21. DEFENDANT as a matter of corporate policy, practice and procedure,  
4 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and  
5 the other CALIFORNIA CLASS Members for required business expenses incurred by  
6 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
7 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
8 are required to indemnify employees for all expenses incurred in the course and scope of their  
9 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
10 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
11 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
12 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
13 to be unlawful."

14 22. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS  
15 Members, as a business expense, were required by DEFENDANT to use personal cellular phones  
16 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not  
17 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal  
18 cellular phones for DEFENDANT'S' benefit. In order to work as a Driver for DEFENDANT,  
19 PLAINTIFF and other CALIFORNIA CLASS Members were required to use DEFENDANT  
20 mobile application and as such it is mandatory to have a cell phone that is compatible with  
21 DEFENDANT'S' mobile application. As a result, in the course of their employment with  
22 DEFENDANT, PLAINTIFF and other Members of the CALIFORNIA CLASS incurred  
23 unreimbursed business expenses which included, but were not limited to, costs related to the use  
24 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Further,  
25 PLAINTIFF and other CALIFORNIA CLASS Members were also not reimbursed or indemnified  
26 by DEFENDANT for the cost associated with using their personal vehicles while performing for  
27 DEFENDANT. As a result, in the course of their employment with DEFENDANT, PLAINTIFF  
28 and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses

1 which included, but were not limited to, costs related to travel, all on behalf of and for the benefit  
2 of DEFENDANT.

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

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

22 25. Specifically as to PLAINTIFF; he worked for DEFENDANT in California as a  
23 Driver and was classified by DEFENDANT as an independent contractor from December of 2016  
24 to September of 2017. Upon hire, the position of a Driver was represented by DEFENDANT to  
25 PLAINTIFF as an independent contractor position capable of paying an hourly rate for time  
26 worked for DEFENDANT. PLAINTIFF as a Driver, was classified by DEFENDANT as an  
27 independent contractor and thus did not receive pay for all time worked, including overtime  
28 worked. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to perform

1 work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving a  
2 meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore  
3 forfeited meal and rest breaks without additional compensation and in accordance with  
4 DEFENDANT’S’ strict corporate policy and practice which did not provide for mandatory meal  
5 and rest breaks. To date, DEFENDANT have not fully paid PLAINTIFF all wages still owed to  
6 him or any penalty wages owed to him under California Labor Code § 203. The amount in  
7 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

### 8 THE CALIFORNIA CLASS

9 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
10 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
11 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
12 individuals who worked for Defendant DriverDo, LLC dba Draiver in California as Drivers and  
13 who were classified as independent contractors (the “CALIFORNIA CLASS”) at any time during  
14 the period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
15 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy  
16 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
17 (\$5,000,000.00).

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

21 28. All CALIFORNIA CLASS Members who performed and continue to perform this  
22 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in that  
23 they are subject to DEFEDNANTS’ uniform policy and systematic practice that required them to  
24 perform work without compensation as required by law.

25 29. DEFENDANT, as a matter of company policy, practice and procedure, and in  
26 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
27 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
28 willfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully and deceptively

1 instituted a practice to ensure that all individuals employed as independent contractors were not  
2 properly classified as non-exempt employees from the requirements of California Labor Code §§  
3 510 *et seq.*

4 30. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated  
5 the rights of the PLAINTIFF and the CALIFORNIA CLASS under California law, without  
6 limitation, in the following manners:

- 7 a. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§  
8 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer,  
9 devised and implemented a scheme whereby PLAINTIFF and the CALIFORNIA  
10 CLASS Members are forced to unlawfully, unfairly and deceptively shoulder the  
11 cost of DEFENDANT'S' wages for all unpaid wages, business related expenses,  
12 and DEFENDANT'S' share of employment taxes, social security taxes,  
13 unemployment insurance and workers' compensation insurance;
- 14 b. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
15 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
16 policies, practices and procedures that uniformly misclassified PLAINTIFF and  
17 the CALIFORNIA CLASS Members as independent contractors;
- 18 c. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
19 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
20 policies, practices and procedures that accurately determined the amount of  
21 working time spent by PLAINTIFF and the other CALIFORNIA CLASS  
22 Members performing non-exempt employee labor;
- 23 d. Committing an act of unfair competition in violation of the California Unfair  
24 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
25 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA  
26 CLASS members.
- 27 e. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
28 17200, *et seq.*, by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS

1 Members with necessary expenses incurred in the discharge of their job duties;  
2 and,  
3 f. Committing an act of unfair competition in violation of the UCL, by violating Cal.  
4 Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF  
5 and the members of the CALIFORNIA CLASS who were improperly classified as  
6 independent contractors, and retaining the unpaid overtime to the benefit of  
7 DEFENDANT.

8 31. As a result of DEFENDANT’S’ uniform policies, practices and procedures, there  
9 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who  
10 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not  
11 limited, to the following:

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

1 h. Whether DEFENDANT’S conduct was willful.

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

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

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

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

25 d. The representative PLAINTIFF will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA CLASS, and has retained counsel who are  
27 competent and experienced in Class Action litigation. There are no material  
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.  
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
3 CALIFORNIA CLASS Members.

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

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

9 i. Inconsistent or varying adjudications with respect to individual members  
10 of the CALIFORNIA CLASS which would establish incompatible  
11 standards of conduct for the parties opposing the CALIFORNIA CLASS;  
12 and/or;

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the  
27 CALIFORNIA CLASS sought does not relate exclusively to restitution  
28 because through this claim PLAINTIFF seeks declaratory relief holding



1 that the DEFENDANS' policies and practices constitute unfair  
2 competition, along with declaratory relief, injunctive relief, and incidental  
3 relief as may be necessary to prevent and remedy the conduct declared to  
4 constitute unfair competition;

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

- 11 i. The interests of the members of the CALIFORNIA CLASS in individually  
12 controlling the prosecution or defense of separate actions;
- 13 ii. The extent and nature of any litigation concerning the controversy already  
14 commenced by or against members of the CALIFORNIA CLASS;
- 15 iii. In the context of wage litigation, because a substantial number of  
16 individual CALIFORNIA CLASS Members will avoid asserting their legal  
17 rights out of fear of retaliation by DEFENDANT, which may adversely  
18 affect an individual's job with DEFENDANT or with a subsequent  
19 employer, the Class Action is the only means to assert their claims through  
20 a representative;
- 21 iv. The desirability or undesirability of concentration of litigation of the claims  
22 in the particular forum;
- 23 v. The difficulties likely to be encountered in the management of a Class  
24 Action; and,
- 25 vi. The basis of DEFENDANT'S' policies and practices uniformly applied to  
26 all the CALIFORNIA CLASS Members.

27 34. The Court should permit this action to be maintained as a Class Action pursuant  
28 to Cal. Code of Civ. Proc. § 382 because:

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- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; the CALIFORNIA CLASS consists of all DEFENDANT’S Drivers in California classified as independent contractors during the CALIFORNIA CLASS PERIOD and subjected to DEFENDANT’S policies, practices and procedures as herein alleged; and,
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

1           35. DEFENDANT maintains records from which the Court can ascertain and identify  
2 by name job title each of DEFENDANT’S employees who have been systematically, intentionally  
3 and uniformly subjected to DEFENDANT’S corporate policies, practices and procedures as  
4 herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job  
5 titles of similarly situated employees when they have been identified.

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7   **THE CALIFORNIA LABOR SUB-CLASS**

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9           36. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
10 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
11 CALIFORNIA CLASS worked for Defendant DriverDo, LLC dba Draiver in California as  
12 Drivers and who were classified as independent contractors (the “CALIFORNIA LABOR SUB-  
13 CLASS”) at any time during the period three (3) years prior to the filing of the complaint and  
14 ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS  
15 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
16 aggregate claims of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
17 (\$5,000,000.00).

18           37. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
19 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
21 willfully, on the basis of job title alone and without regard to the actual overall requirements of  
22 the job, systematically classified PLAINTIFF and the other members of the CALIFORNIA  
23 LABOR SUB-CLASS as independent contractors in order to avoid the payment of all wages, and  
24 in order to avoid the obligations under the applicable California Labor Code provisions. To the  
25 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS  
26 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
27 accordingly.

1           38.    DEFENDANT maintains records from which the Court can ascertain and identify  
2 by name and job title, each of DEFENDANT’ employees who, as CALIFORNIA LABOR SUB-  
3 CLASS Members have been systematically, intentionally and uniformly misclassified as  
4 independent contractors as a matter of DEFENDANT’S corporate policy, practices and  
5 procedures. PLAINTIFF will seek leave to amend the complaint to include these additional job  
6 titles when they have been identified.

7           39.    The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

17           41.    DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
18 under California law by:

- 19           a.    Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and  
20 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA  
21 LABOR SUB-CLASS the correct minimum wages for which DEFENDANT is  
22 liable;
- 23           b.    Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing to  
24 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS  
25 the correct overtime pay for a workday longer than eight (8) hours and/or a  
26 workweek longer than forty (40) hours for which DEFENDANT is liable pursuant  
27 to Cal. Lab. Code § 1194;

- 1 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and  
2 the other members of the CALIFORNIA CLASS with all legally required off-duty,  
3 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 4 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
5 members of the CALIFORNIA LABOR SUB-CLASS who were improperly  
6 classified as independent contractors with an accurate itemized statement in  
7 writing showing the gross wages earned, the net wages earned, all applicable  
8 hourly rates in effect during the pay period, and the corresponding amount of time  
9 worked at each hourly rate by the employee;
- 10 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
11 CALIFORNIA CLASS Members with necessary expenses incurred in the  
12 discharge of their job duties; and,
- 13 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
14 employee is discharged or quits from employment, the employer must pay the  
15 employee all wages due without abatement, by failing to tender full payment  
16 and/or restitution of wages owed or in the manner required by California law to  
17 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
18 their employment.

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

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

1 c. The claims of the representative PLAINTIFF are typical of the claims of each  
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
3 other members of the CALIFORNIA LABORSUB-CLASS, was improperly  
4 classified as an independent contractor and was thus denied minimum wage pay  
5 and meal and rest breaks, among other things, as a result of DEFENDANT’S’  
6 systematic classification practices. PLAINTIFF and all other members of the  
7 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from  
8 DEFENDANT’S’ violations of the laws of California; and,

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

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

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

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

27 ii. Adjudication with respect to individual members of the CALIFORNIA  
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

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interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to determine whether the CALIFORNIA LABOR SUB-CLASS Members were properly classified as independent contractors, and thereby denied these employees the protections afforded to them under the California Labor Code;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
  - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
    - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which

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would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting



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- their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
  - d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
  - e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
  - f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
  - g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
  - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who work or previously worked for DEFENDANT as Drivers in California and classified as independent contractors during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
  - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

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

- 3 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime  
4 compensation to members of the CALIFORNIA LABOR SUB-CLASS in  
5 violation of the California Labor Code and California regulations and the  
6 applicable California Wage Order;
- 7 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to  
8 overtime compensation for overtime worked under the overtime pay requirements  
9 of California law;
- 10 c. Whether DEFENDANT failed to accurately record the applicable overtime rates  
11 for all overtime worked PLAINTIFF and the other members of the CALIFORNIA  
12 LABOR SUB-CLASS;
- 13 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
14 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
15 thirty (30) minute meal breaks and rest periods;
- 16 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
17 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
18 statements;
- 19 f. Whether DEFENDANT has engaged in unfair competition by the above-listed  
20 conduct;
- 21 g. The proper measure of damages and penalties owed to the members of the  
22 CALIFORNIA LABOR SUB-CLASS; and
- 23 h. Whether DEFENDANT's conduct was willful.

24 **JURISDICTION AND VENUE**

25 46. This Court has jurisdiction over this Action pursuant to California Code of Civil  
26 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
27 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of  
28 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

1 47. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
2 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times  
3 maintained offices and facilities in this County and/or conduct substantial business in this County,  
4 and (ii) committed the wrongful conduct herein alleged in this County against members of the  
5 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

6  
7 **FIRST CAUSE OF ACTION**

8 **UNLAWFUL BUSINESS PRACTICES**

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

10 (Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

14 49. DEFENDANT are “persons” as that term is defined under Cal. Bus. And Prof.  
15 Code § 17021.

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

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

25 51. By the conduct alleged herein, DEFENDANT have engaged and continue to  
26 engage in a business practice which violates California law, including but not limited to, the  
27 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
28 including Sections 204, 221, 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and

1 California Code of Regulations § 11090, for which this Court should issue declaratory and other  
2 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and  
3 remedy the conduct held to constitute unfair competition, including restitution of wages  
4 wrongfully withheld, business expenses wrongfully withheld and for the payment of the  
5 employer's share of income taxes, social security taxes, unemployment insurance and workers'  
6 compensation insurance.

7 52. By the conduct alleged herein DEFENDANT have obtained valuable property,  
8 money, and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
9 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment  
10 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.  
11 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and  
12 pecuniary compensation alone would not afford adequate and complete relief.

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

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

25 55. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,  
26 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the  
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
28 DEFENDANT.

1           56.     PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
2 and do, seek such relief as may be necessary to restore to them the money and property which  
3 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
5 business practices, including earned but unpaid wages for all overtime worked.

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

10          58.     By the conduct alleged herein, DEFENDANT'S' practices were also unlawful,  
11 unfair and deceptive in that DEFENDANT'S' uniform policies, practices and procedures failed  
12 to provide all legally required meal and rest breaks to PLAINTIFF and the other members of the  
13 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

14          59.     Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
15 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll  
16 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty  
17 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
18 for each workday in which a second off-duty meal period was not timely provided for each ten  
19 (10) hours of work.

20          60.     PLAINTIFF further demands on behalf of himself and each member of the  
21 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not  
22 timely provided as required by law.

23          61.     By and through the unlawful and unfair business practices described herein,  
24 DEFENDANT have obtained valuable property, money and services from PLAINTIFF and the  
25 other members of the CALIFORNIA CLASS, including earned wages for all time worked and  
26 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
27 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
28 to unfairly compete against competitors who comply with the law.

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

6           63.     PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
7 and do, seek such relief as may be necessary to restore to them the money and property which  
8 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
10 business practices.

11           64.     PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
12 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
13 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
14 engaging in any unlawful and unfair business practices in the future.

15           65.     PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
16 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
17 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
18 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
19 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
20 and economic harm unless DEFENDANT are restrained from continuing to engage in these  
21 unlawful and unfair business practices.

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**SECOND CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES  
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

1           66. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
2 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
3 this Complaint.

4           67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
5 bring a claim for DEFENDANT'S' willful and intentional violations of the California Labor Code  
6 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately  
7 calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

10           69. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
11 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than  
12 the minimum so fixed is unlawful.

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

15           71. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
16 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount  
17 of time they worked. As set forth herein, DEFENDANT'S' uniform policy and practice was to  
18 unlawfully and intentionally deny timely payment of wages due for the overtime worked by  
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

20           72. DEFENDANT'S' uniform pattern of unlawful wage and hour practices manifested,  
21 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
22 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
23 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage  
24 pay.

25           73. In committing these violations of the California Labor Code, DEFENDANT  
26 inaccurately calculated the amount of time worked and consequently underpaid the actual time  
27 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
28 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
benefits in violation of the California Labor Code, the Industrial Welfare Commission  
requirements and other applicable laws and regulations.

1           74. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,  
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
3 full compensation for their time worked for DEFENDANT.

4           75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
5 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than  
6 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

27           79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
28 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by  
the California Labor Code and/or other applicable statutes. To the extent minimum wage



1 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
2 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§  
3 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under  
4 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA  
5 LABOR SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful,  
6 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-  
7 CLASS Members are entitled to seek and recover statutory costs.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**  
10 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

11 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

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

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

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

28 83. DEFENDANT knew or should have known that PLAINTIFF and the other  
members of the CALIFORNIA LABOR SUB-CLASS were misclassified as independent

1 contractors and DEFENDANT systematically elected, either through intentional malfeasance or  
2 gross nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice  
3 and procedure.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**  
23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all  
25 Defendants)

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

1           87.     During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT  
2 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
3 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
4 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-  
5 CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for  
6 the legally required off-duty meal periods. As a result of their rigorous work schedules,  
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully  
8 relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT’S failure  
9 to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally  
10 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT’S  
11 business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR  
12 SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance  
13 with DEFENDANT’S strict corporate policy and practice.

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

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

22  
23                           **FIFTH CAUSE OF ACTION**

24                           **FAILURE TO PROVIDE REQUIRED REST PERIODS**  
25                           **(Cal. Lab. Code §§ 226.7 & 512)**

26                       (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all  
27   Defendants)

28

1           90.     PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
2 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
3 this Complaint.

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

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

19           93.     As a proximate result of the aforementioned violations, PLAINTIFF and  
20 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
21 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.  
22

### **SIXTH CAUSE OF ACTION**

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

#### **(Cal. Lab. Code § 226)**

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

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

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

- 3           a. Gross wages earned;
- 4           b. Total hours worked by the employee, except for any employee whose  
5           compensation is solely based on a salary and who is exempt from payment of  
6           overtime under subdivision (a) of Section 515 or any applicable order of the  
7           Industrial Welfare Commission;
- 8           c. The number of piece rate units earned and any applicable piece rate if the employee  
9           is paid on a piece-rate basis;
- 10          d. All deductions, provided that all deductions made on written orders of the  
11          employee may be aggregated and shown as one item;
- 12          e. Net wages earned;
- 13          f. The inclusive dates of the period for which the employee is paid;
- 14          g. The name of the employee and his or her social security number, except that by  
15          January 1, 2008, only the last four digits of his or her social security number or an  
16          employee identification number other than a social security number may be shown  
17          on the itemized statement;
- 18          h. The name and address of the legal entity that is the employer; and
- 19          i. All applicable hourly rates in effect during the pay period and the corresponding  
20          number of hours worked at each hourly rate by the employee.

21           96. From time to time, DEFENDANT violated Labor Code § 226, in that  
22 DEFENDANT failed and continue to fail to properly and accurately itemize the amount of time  
23 worked by PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS at  
24 the effective rates of pay. DEFENDANT also violated Labor Code Section 226 in that  
25 DEFENDANT failed to properly and accurately itemize the amount of penalties paid to  
26 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members when they missed their  
27 meal and rest breaks.

1           97.     DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code  
2 § 226, causing injury and damages to the PLAINTIFF and the other members of the  
3 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
4 expended calculating the correct rates for the overtime worked and the amount of employment  
5 taxes which were not properly paid to state and federal tax authorities. These damages are difficult  
6 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
7 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period  
8 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a  
9 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the  
10 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and  
11 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

12  
13                                   **SIXTH CAUSE OF ACTION**

14                   **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

15                                   **(Cal. Lab. Code § 2802)**

16                   *(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants,)*

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

20           99.     Cal. Lab. Code § 2802 provides, in relevant part, that:  
21                 An employer shall indemnify his or her employee for all necessary expenditures or  
22                 losses incurred by the employee in direct consequence of the discharge of his or her  
23                 duties, or of his or her obedience to the directions of the employer, even though  
24                 unlawful, unless the f obeying the directions, believed them to be unlawful.

25           100.    At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
26 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB- CLASS  
27 members for required expenses incurred in the discharge of their job duties for DEFENDANT’S  
28 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA  
LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
associated with the use of their personal cellular phones for DEFENDANT’S benefit. In order to  
work as a Driver for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members

1 were required to use DEFENDANT’S mobile application and as such it is mandatory to have a  
2 cell phone that is compatible with DEFENDANT’S mobile application. As a result, in the course  
3 of their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA  
4 LABOR SUB- CLASS incurred unreimbursed business expenses which included, but were not  
5 limited to, the costs related to the use of their personal cellular phones all on behalf of and for the  
6 benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA LABOR SUB- CLASS  
7 Members are also not reimbursed or indemnified by DEFENDANT for the cost associated with  
8 using their personal vehicles while driving for DEFENDANT. As a result, in the course of their  
9 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS  
10 incurred unreimbursed business expenses which included, but were not limited to, costs related  
11 to travel all on behalf of and for the benefit of DEFENDANT. These expenses are necessary to  
12 complete their principal job duties. DEFENDANT is estopped by DEFENDANT’S conduct to  
13 assert any waiver of this expectation. Although these expenses are necessary expenses incurred  
14 by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed  
15 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members  
16 for these expenses as an employer is required to do under the laws and regulations of California.

17 101. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred  
18 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties  
19 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the  
20 statutory rate and costs under Cal. Lab. Code § 2802.

21  
22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES WHEN DUE**

24 **(Cal. Lab. Code §§201, 202, 203)**

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

1           102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
2 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
3 this Complaint.

4           103. Cal. Lab. Code § 200 provides that:

5           As used in this article: (a) "Wages" includes all amounts for labor performed by  
6 employees of every description, whether the amount is fixed or ascertained by the  
7 standard of time, task, piece, Commission basis, or other method of calculation. (b)  
8 "Labor" includes labor, work, or service whether rendered or performed under  
9 contract, subcontract, partnership, station plan, or other agreement if the labor to be  
10 paid for is performed personally by the person demanding payment.

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

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

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

24           106. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-  
25 CLASS Members' employment contract.

26           107. Cal. Lab. Code § 203 provides:

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

          108. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
Members terminated and DEFENDANT have not tendered payment of all wages owed as required  
by law.



1 109. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
2 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,  
3 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time of  
4 termination individuals in the CALIFORNIA LABOR SUB-CLASS who terminated employment  
5 during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as  
6 allowed by law.

7 **NINTH CAUSE OF ACTION**

8 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

9 **[Cal. Lab. Code §§ 2698 et seq.]**

10 **(Alleged by PLAINTIFF against all Defendants)**

11 110. PLAINTIFF realleges and incorporate by this reference, as though fully set forth  
12 herein, the prior paragraphs of this Complaint.

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

22 112. PLAINTIFF, and such persons that may be added from time to time who satisfy  
23 the requirements and exhaust the administrative procedures under the Private Attorney General  
24 Act, bring this Representative Action on behalf of the State of California with respect to herself  
25 and all individuals who are or previously were employed by DEFENDANT as sales persons in  
26 California during the time period of July 3, 2018 until the present (the "AGGRIEVED  
27 EMPLOYEES").

28 113. On July 3, 2019, PLAINTIFF gave written notice by certified mail to the Labor  
and Workforce Development Agency (the "Agency") and the employer of the specific

1 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
2 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
3 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,  
4 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under  
5 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all  
6 AGGRIEVED EMPLOYEES as herein defined.

7 114. The policies, acts and practices heretofore described were and are an unlawful  
8 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED  
9 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other  
10 GGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate  
11 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable  
12 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§  
13 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the  
14 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of  
15 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor  
16 Code Private Attorney General Act of 2004 as the representative of the State of California for the  
17 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES, but  
18 excluding unpaid wages as prescribed by the *Lawson* decision of the California Supreme Court.

19 115. Some or all of the conduct and violations alleged herein occurred during the PAGA  
20 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
21 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that  
22 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30  
23 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.  
24 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor  
25 Code violation committed by an employer—to **pursue penalties for all the Labor Code**  
26 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
  - a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
  - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
  - c. An order requiring DEFENDANT to pay minimum wages, other wages, and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
  - d. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT’S violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
  - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
  - b. Compensatory damages, according to proof at trial, including compensatory damages due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
  - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
  - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and

- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit.

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

4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
  - b. Such other and further relief as the Court deems just and equitable; and
  - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1198.5.

DATED: September 13, 2019

By: 

Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: September 13 2019

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

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**EXHIBIT 1**



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

[shani@zakaylaw.com](mailto:shani@zakaylaw.com)

**July 3, 2019**

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

**DRIVERDO, LLC.**

c/o Mashhur Zarif Haque  
7900 College Blvd., Suite 141  
Overland Park, KS 66211  
***Certified Mail No.***

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents JOSEFINA GARCES (“Client”) and other aggrieved employees in a proposed class action against DRIVERDO, LLC (“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 has worked for Defendant in California since May 2018. Client was classified by Defendants as an independent contractor, however the job duties performed by Plaintiff and other aggrieved employees did not entitle Defendants to claim any exemption from minimum wage and overtime compensation and providing meal periods to Plaintiff or any of the other workers employed in a Driver position who were classified as independent contractors. As a result, Plaintiff and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiff and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. As a consequence of the aforementioned violations, the Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code § 226(a).

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 contends that Defendants' conduct violated Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1198, 2802, 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 Client, and (v) sets forth the illegal practices used by Defendant. Client therefore incorporates 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.

Respectfully,



Shani O. Zakay  
Attorney at Law



1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 3990 Old Town Ave. Suite C204  
San Diego, CA 92110  
3 Telephone: (619) 255-9047  
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4 Website: [www.zakaylaw.com](http://www.zakaylaw.com)

5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**  
Norman B. Blumenthal (State Bar #068687)  
6 2255 Calle Clara  
La Jolla, CA 92037  
7 Telephone: (858)551-1223  
Facsimile: (858) 551-1232  
8 Website: [www.bamlawca.com](http://www.bamlawca.com)

9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES**

12 JOSEFINA GARCES, an individual, on behalf  
13 of herself and on behalf of all persons similarly  
14 situated,

15 Plaintiff,

16 v.

17 DRIVERDO, LLC., a Limited Liability  
Company (dba DRAIVER); and DOES 1-50,  
18 Inclusive,

19 Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO REIMURSE EXMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

**DEMAND FOR A JURY TRIAL**

1  
2 Plaintiff Josefina Garces (“PLAINTIFF”), an individual, on behalf of herself and all other similarly  
3 situated current and former employees, alleges on information and belief, except for her own acts  
4 and knowledge which are based on personal knowledge, the following:

5  
6 **INTRODUCTION**

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

22 **THE PARTIES**

23 2. Defendant DriverDo, LLC (dba Draiver) (“DEFENDANT”) is a corporation and  
24 at all relevant times mentioned herein conducted and continues to conduct substantial and regular  
25 business throughout California.

26 3. Defendant DriverDo, LLC (dba Draiver) was the employer of PLAINTIFF as  
27 evidenced by the contracts signed and by the company the PLAINTIFF performed work for  
28 respectively, and is therefore responsible as employer for the conduct alleged herein and  
collectively referred to herein as (“DEFENDANT”).

1           4.     DEFENDANT is privately-held company based in the state of Kansas.  
2 DEFENDANT provide customers with on-demand access to drivers who will pick up and drop  
3 off their vehicles. DEFENDANT’S driving services are performed by independent contractors.

4           5.     PLAINTIFF worked for DEFENDANT as a Driver in California from May 2018  
5 to the present. PLAINTIFF was classified by DEFENDANT as an independent contractor during  
6 her entire employment with DEFENDANT.

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

16           7.     Here, DEFENDANT has willfully misclassified PLAINTIFF and other Drivers as  
17 described in Cal. Labor Code § 226.8. DEFENDANT has further engaged in a “pattern of  
18 practice” of such violations as contemplated by the California Labor Code.

19           8.     Upon hire, the position of a Driver was represented by DEFENDANT to  
20 PLAINTIFF and the other Drivers as an independent contractor position capable of paying an  
21 hourly rate for the time they drove a vehicle for a client. PLAINTIFF and other Drivers were not  
22 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a  
23 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF  
24 and other Drivers were paid the block rate to perform driving services on DEFENDANT’s behalf.  
25 PLAINTIFF and other Drivers were not compensated any other wages besides the block rate and  
26 they were not allowed to record their time until they arrived at the location to pick-up a vehicle  
27 or after they reached the location for drop-off. DEFENDANT did not pay PLAINTIFF and other  
28 CALIFORNIA CLASS Members for the time spent driving between appointments and all the  
other non-driving work tasks. The finite set of tasks required to be performed by the Drivers is

1 as follows: when notified via cell phone, travel to private homes, apartments, airports and offices  
2 to provide driving services for customers that requested DEFENDANT’S services all in  
3 accordance with DEFENDANT’S business practices and policies.

4 9. To perform their job duties, PLAINTIFF and the other Drivers performed work  
5 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise  
6 complete control over the work performed and the manner and means in which the work was  
7 performed. DEFENDANT provided the customers, and DEFENDANT provided the instructions  
8 on how to perform the driving services.

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

- 17 a. PLAINTIFF and other Drivers were not involved in a distinct business, but instead  
18 were provided with instructions as to how to perform their work and the manner  
19 and means in which the work was to be performed by means of DEFENDANT’S  
20 manuals and written instructions;
- 21 b. PLAINTIFF and other Drivers were continuously provided with training and  
22 supervision, including following DEFENDANT’S company documents, and  
23 received training from DEFENDANT as to how and in what way to perform the  
24 driving services;
- 25 c. DEFENDANT set the requirements as to what policies and procedures all of the  
26 Drivers were to follow;
- 27 d. PLAINTIFF and other Drivers had no opportunity for profit or loss because  
28 DEFENDANT only paid these workers a block rate. DEFENDANT controlled  
and assigned the Drivers which tasks were to be performed;

- e. PLAINTIFF and other Drivers performed driving services which are part of DEFENDANT’S principal business and is closely integrated with and essential to the employer’s business of providing driving services to their customers;
- f. PLAINTIFF and other Drivers performed the work themselves and did not hire others to perform their work for them;
- g. PLAINTIFF and other Drivers did not have the authority to make employment-related personnel decisions;
- h. PLAINTIFF and other Drivers performed their work in a particular order and sequence in accordance with DEFENDANT’S company policy; and,
- i. DEFENDANT had the “right” to control every critical aspect of DEFENDANT’S daily driving services operations in that DEFENDANT provided the customer, assigned where the Drivers were to go, and step-by-step instructions to PLAINTIFF and other Drivers as to the entire process of picking up and dropping off vehicles at their assigned locations. PLAINTIFF and other Drivers provided driving services ONLY for DEFENDANT’S customers, which DEFENDANT controlled via the company’s mobile application.

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

12. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all individuals who worked for DEFENDANT in California as Drivers and who were classified as independent contractors (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1           13.     PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice  
4 which failed to lawfully compensate these Drivers. As a matter of company policy, practice and  
5 procedure, DEFENDANT has unlawfully, unfairly and/or deceptively classified every  
6 CALIFORNIA CLASS Member as “independent contractors” in order to unlawfully avoid  
7 compliance with all applicable federal and state laws that require payment for all time worked,  
8 business expenses, and the employer's share of payroll taxes and mandatory insurance. As a result  
9 of the scheme to defraud the federal and state governments and the CALIFORNIA CLASS  
10 Members, PLAINTIFF and the CALIFORNIA CLASS Members were underpaid throughout  
11 their employment with DEFENDANT.

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

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

**THE CONDUCT**

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

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

27           18.     DEFENDANT, as a matter of law, have the burden of proving that employees are  
28 properly classified and that DEFENDANT<sub>7</sub> otherwise comply with applicable laws.

1 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the  
2 CALIFORNIA CLASS Members as independent contractors.

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

18 20. DEFENDANT as a matter of corporate policy, practice and procedure,  
19 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and  
20 the other CALIFORNIA CLASS Members for required business expenses incurred by  
21 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
22 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
23 are required to indemnify employees for all expenses incurred in the course and scope of their  
24 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
27 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
28 to be unlawful."



1           21.     In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS  
2 Members, as a business expense, were required by DEFENDANT to use personal cellular phones  
3 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not  
4 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal  
5 cellular phones for DEFENDANT’S’ benefit. In order to work as a Driver for DEFENDANT,  
6 PLAINTIFF and other CALIFORNIA CLASS Members were required to use DEFENDANT  
7 mobile application and as such it is mandatory to have a cell phone that is compatible with  
8 DEFENDANT’S’ mobile application. As a result, in the course of their employment with  
9 DEFENDANT, PLAINTIFF and other Members of the CALIFORNIA CLASS incurred  
10 unreimbursed business expenses which included, but were not limited to, costs related to the use  
11 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Further,  
12 PLAINTIFF and other CALIFORNIA CLASS Members were also not reimbursed or indemnified  
13 by DEFENDANT for the cost associated with using their personal vehicles while performing for  
14 DEFENDANT. As a result, in the course of their employment with DEFENDANT, PLAINTIFF  
15 and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses  
16 which included, but were not limited to, costs related to travel, all on behalf of and for the benefit  
17 of DEFENDANT.

18           22.     From time to time, DEFENDANT also failed to provide PLAINTIFF and the other  
19 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed  
20 to show, among other things, the correct amount of time worked, including work performed in  
21 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek. Cal. Lab. Code  
22 § 226 provides that every employer shall furnish each of his or her employees with an accurate  
23 itemized wage statement in writing showing, among other things, gross wages earned and all  
24 applicable hourly rates in effect during the pay period and the corresponding amount of time  
25 worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and the other  
26 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
27 226.

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

10           24. Specifically as to PLAINTIFF; she worked for DEFENDANT in California as a  
11 Driver and was classified by DEFENDANT as an independent contractor from December of 2016  
12 to September of 2017. Upon hire, the position of a Driver was represented by DEFENDANT to  
13 PLAINTIFF as an independent contractor position capable of paying an hourly rate for time  
14 worked for DEFENDANT. PLAINTIFF as a Driver, was classified by DEFENDANT as an  
15 independent contractor and thus did not receive pay for all time worked, including overtime  
16 worked. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to perform  
17 work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving a  
18 meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore  
19 forfeited meal and rest breaks without additional compensation and in accordance with  
20 DEFENDANT'S' strict corporate policy and practice which did not provide for mandatory meal  
21 and rest breaks. To date, DEFENDANT have not fully paid PLAINTIFF all wages still owed to  
22 him or any penalty wages owed to him under California Labor Code § 203. The amount in  
23 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

24                                       **THE CALIFORNIA CLASS**

25           25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
28 individuals who worked for Defendant DriverDo, LLC dba Draiver in California as Drivers and

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

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

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

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

20 29. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated  
21 the rights of the PLAINTIFF and the CALIFORNIA CLASS under California law, without  
22 limitation, in the following manners:

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

- 3 b. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
4 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
5 policies, practices and procedures that uniformly misclassified PLAINTIFF and  
6 the CALIFORNIA CLASS Members as independent contractors;
- 7 c. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
8 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
9 policies, practices and procedures that accurately determined the amount of  
10 working time spent by PLAINTIFF and the other CALIFORNIA CLASS  
11 Members performing non-exempt employee labor;
- 12 d. Committing an act of unfair competition in violation of the California Unfair  
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
14 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA  
15 CLASS members.
- 16 e. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
17 17200, *et seq.*, by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS  
18 Members with necessary expenses incurred in the discharge of their job duties;  
19 and,
- 20 f. Committing an act of unfair competition in violation of the UCL, by violating Cal.  
21 Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF  
22 and the members of the CALIFORNIA CLASS who were improperly classified as  
23 independent contractors, and retaining the unpaid overtime to the benefit of  
24 DEFENDANT.

25 30. As a result of DEFENDANT’S’ uniform policies, practices and procedures, there  
26 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who  
27 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not  
28 limited, to the following:

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- a. Whether PLAINTIFF and other CALIFORNIA CLASS Members were misclassified as independent contractors by DEFENDANT;
- b. Whether the PLAINTIFF and the CALIFORNIA CLASS Members were afforded all the protections of the California Labor Code that apply when properly classified as non-exempt employees;
- c. Whether DEFENDANT’ policies, practices and pattern of conduct described in this Complaint was and is unlawful;
- d. Whether DEFENDANT unlawfully failed to pay their share of state and federal employment taxes as required by state and federal tax laws;
- e. Whether DEFENDANT’S’ policy, practice and procedure of classifying the CALIFORNIA CLASS Members as independent contractors exempt from hourly wages laws for all time worked and failing to pay the CALIFORNIA CLASS Members all amounts due violates applicable provisions of California State Law;
- f. Whether DEFENDANT failed to provide PLAINTIFF and the other Members of the CALIFORNIA CLASS with accurate records of all time worked;
- g. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- h. Whether DEFENDANT’S conduct was willful.

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

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

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

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

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

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

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

- ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
  
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members were properly classified as independent contractors, and thereby denied these employees wages and payments for business expenses and the employer's share of payroll taxes and mandatory insurance as required by law.
  - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANS' policies and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
  
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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- i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA CLASS;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative;
- iv. The desirability or undesirability of concentration of litigation of the claims in the particular forum;
- v. The difficulties likely to be encountered in the management of a Class Action; and,
- vi. The basis of DEFENDANT’S’ policies and practices uniformly applied to all the CALIFORNIA CLASS Members.

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

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



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

20 34. DEFENDANT maintains records from which the Court can ascertain and identify  
21 by name job title each of DEFENDANT’S employees who have been systematically, intentionally  
22 and uniformly subjected to DEFENDANT’S corporate policies, practices and procedures as  
23 herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job  
24 titles of similarly situated employees when they have been identified.

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26 **THE CALIFORNIA LABOR SUB-CLASS**

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1           35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
2 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
3 CALIFORNIA CLASS worked for Defendant DriverDo, LLC dba Draiver in California as  
4 Drivers and who were classified as independent contractors (the “CALIFORNIA LABOR SUB-  
5 CLASS”) at any time during the period three (3) years prior to the filing of the complaint and  
6 ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS  
7 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
8 aggregate claims of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
9 (\$5,000,000.00).

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

20           37. DEFENDANT maintains records from which the Court can ascertain and identify  
21 by name and job title, each of DEFENDANT’ employees who, as CALIFORNIA LABOR SUB-  
22 CLASS Members have been systematically, intentionally and uniformly misclassified as  
23 independent contractors as a matter of DEFENDANT’S corporate policy, practices and  
24 procedures. PLAINTIFF will seek leave to amend the complaint to include these additional job  
25 titles when they have been identified.

26           38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
27 CALIFORNIA LABOR SUB-CLASS Members is impracticable  
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1           39. DEFENDANT, as a matter of corporate policy, practice and procedure,  
2 erroneously classified all Drivers as independent contractors making these employees exempt  
3 from California labor laws. All Drivers, including PLAINTIFF, performed the same finite set of  
4 tasks and were paid by DEFENDANT according to uniform and systematic company procedures,  
5 which, as alleged herein above, failed to correctly pay minimum wage compensation. This  
6 business practice was uniformly applied to each and every member of the CALIFORNIA LABOR  
7 SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide  
8 basis.

9           40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
10 under California law by:

- 11           a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and  
12           thereby failing to pay PLAINTIFF and the members of the CALIFORNIA  
13           LABOR SUB-CLASS the correct minimum wages for which DEFENDANT is  
14           liable;
- 15           b. Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing to  
16           pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS  
17           the correct overtime pay for a workday longer than eight (8) hours and/or a  
18           workweek longer than forty (40) hours for which DEFENDANT is liable pursuant  
19           to Cal. Lab. Code § 1194;
- 20           c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and  
21           the other members of the CALIFORNIA CLASS with all legally required off-duty,  
22           uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 23           d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
24           members of the CALIFORNIA LABOR SUB-CLASS who were improperly  
25           classified as independent contractors with an accurate itemized statement in  
26           writing showing the gross wages earned, the net wages earned, all applicable  
27           hourly rates in effect during the pay period, and the corresponding amount of time  
28           worked at each hourly rate by the employee;

1 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
2 CALIFORNIA CLASS Members with necessary expenses incurred in the  
3 discharge of their job duties; and,

4 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
5 employee is discharged or quits from employment, the employer must pay the  
6 employee all wages due without abatement, by failing to tender full payment  
7 and/or restitution of wages owed or in the manner required by California law to  
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
9 their employment.

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

12 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
13 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
14 is impracticable and the disposition of their claims as a class will benefit the parties  
15 and the Court;

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

20 c. The claims of the representative PLAINTIFF are typical of the claims of each  
21 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
22 other members of the CALIFORNIA LABORSUB-CLASS, was improperly  
23 classified as an independent contractor and was thus denied minimum wage pay  
24 and meal and rest breaks, among other things, as a result of DEFENDANT'S'  
25 systematic classification practices. PLAINTIFF and all other members of the  
26 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from  
27 DEFENDANT'S' violations of the laws of California; and,

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1 d. The representative PLAINTIFF will fairly and adequately represent and protect  
2 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel  
3 who are competent and experienced in Class Action litigation. There are no  
4 material conflicts between the claims of the representative PLAINTIFF and the  
5 members of the CALIFORNIALABOR SUB-CLASS that would make class  
6 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
7 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
8 Members

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

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

15 i. Inconsistent or varying adjudications with respect to individual members  
16 of the CALIFORNIA LABOR SUB-CLASS which would establish  
17 incompatible standards of conduct for the parties opposing the  
18 CALIFORNIA LABOR SUB-CLASS; or

19 ii. Adjudication with respect to individual members of the CALIFORNIA  
20 LABOR SUB-CLASS which would as a practical matter be dispositive of  
21 interests of the other members not party to the adjudication or substantially  
22 impair or impede their ability to protect their interests.

23 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
24 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
25 SUB-CLASS, making appropriate class-wide relief with respect to the  
26 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly  
27 classified and treated the members of the CALIFORNIA LABOR SUB-CLASS as  
28 independent contractors and, thereafter, uniformly failed to take proper steps to

1 determine whether the CALIFORNIA LABOR SUB-CLASS Members were  
2 properly classified as independent contractors, and thereby denied these  
3 employees the protections afforded to them under the California Labor Code;

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

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

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

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

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

27 iii. In the context of wage litigation because a substantial number of individual  
28 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their

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

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

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

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

1 in obtaining adequate compensation for the damages and injuries which  
2 DEFENDANT’S’ actions have inflicted upon the CALIFORNIA LABOR SUB-  
3 CLASS;

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

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

10 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
11 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
12 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who work  
13 or previously worked for DEFENDANT as Drivers in California and classified as  
14 independent contractors during the CALIFORNIA LABOR SUB-CLASS  
15 PERIOD; and

16 i. Class treatment provides manageable judicial treatment calculated to bring an  
17 efficient and rapid conclusion to all litigation of all wage and hour related claims  
18 arising out of the conduct of DEFENDANT.

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

21 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime  
22 compensation to members of the CALIFORNIA LABOR SUB-CLASS in  
23 violation of the California Labor Code and California regulations and the  
24 applicable California Wage Order;

25 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to  
26 overtime compensation for overtime worked under the overtime pay requirements  
27 of California law;

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- c. Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

**JURISDICTION AND VENUE**

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

46. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 (Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

8 48. DEFENDANT are “persons” as that term is defined under Cal. Bus. And Prof.  
9 Code § 17021.

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition  
15 may be enjoined in any court of competent jurisdiction. The court may make such  
16 orders or judgments, including the appointment of a receiver, as may be necessary  
17 to prevent the use or employment by any person of any practice which constitutes  
18 unfair competition, as defined in this chapter, or as may be necessary to restore to  
19 any person in interest any money or property, real or personal, which may have  
20 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §  
21 17203).

22 50. By the conduct alleged herein, DEFENDANT have engaged and continue to  
23 engage in a business practice which violates California law, including but not limited to, the  
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
25 including Sections 204, 210, 221, 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and  
26 California Code of Regulations § 11090, for which this Court should issue declaratory and other  
27 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and  
28 remedy the conduct held to constitute unfair competition, including restitution of wages  
wrongfully withheld, business expenses wrongfully withheld and for the payment of the  
employer’s share of income taxes, social security taxes, unemployment insurance and workers’  
compensation insurance.

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

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

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

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

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

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

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

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

15           59.     PLAINTIFF further demands on behalf of himself and each member of the  
16 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not  
17 timely provided as required by law.

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

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

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

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

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

17

18

**SECOND CAUSE OF ACTION**

19

**FAILURE TO PAY MINIMUM WAGES  
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

20

(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL  
21 Defendants)

22

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

26 66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
27 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code  
28 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately  
calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

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

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

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

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

24           73. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,  
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
26 full compensation for their time worked for DEFENDANT.

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

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

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

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

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

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-  
2 CLASS Members are entitled to seek and recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME COMPENSATION**  
5 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

6 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

7 79. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
8 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
9 this Complaint.

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

17 81. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned  
18 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
19 for all overtime worked by these employees, PLAINTIFF and the other members of the  
20 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
21 injury in amounts which are presently unknown to them and which will be ascertained according  
22 to proof at trial.

23 82. DEFENDANT knew or should have known that PLAINTIFF and the other  
24 members of the CALIFORNIA LABOR SUB-CLASS were misclassified as independent  
25 contractors and DEFENDANT systematically elected, either through intentional malfeasance or  
26 gross nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice  
27 and procedure.

28 83. In performing the acts and practices herein alleged in violation of California labor  
laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for



1 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT  
2 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the  
3 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard  
4 for their legal rights, or the consequences to them, and with the despicable intent of depriving  
5 them of their property and legal rights, and otherwise causing them injury in order to increase  
6 company profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**  
18 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

17  
18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**  
20 **(Cal. Lab. Code §§ 226.7 & 512)**

21 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all  
22 Defendants)

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

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

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

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

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

15  
16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

18 **(Cal. Lab. Code § 226)**

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

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

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

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

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

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

96. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a

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

4  
5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

7 **(Cal. Lab. Code § 2802)**

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

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

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

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

17 99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
18 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB- CLASS  
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT’S  
20 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA  
21 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
22 associated with the use of their personal cellular phones for DEFENDANT’S benefit. In order to  
23 work as a Driver for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members  
24 were required to use DEFENDANT’S mobile application and as such it is mandatory to have a  
25 cell phone that is compatible with DEFENDANT’S mobile application. As a result, in the course  
26 of their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA  
27 LABOR SUB- CLASS incurred unreimbursed business expenses which included, but were not  
28 limited to, the costs related to the use of their personal cellular phones all on behalf of and for the  
benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA LABOR SUB- CLASS  
Members are also not reimbursed or indemnified by DEFENDANT for the cost associated with  
using their personal vehicles while driving for DEFENDANT. As a result, in the course of their

1 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS  
2 incurred unreimbursed business expenses which included, but were not limited to, costs related  
3 to travel all on behalf of and for the benefit of DEFENDANT. These expenses are necessary to  
4 complete their principal job duties. DEFENDANT is estopped by DEFENDANT’S conduct to  
5 assert any waiver of this expectation. Although these expenses are necessary expenses incurred  
6 by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed  
7 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members  
8 for these expenses as an employer is required to do under the laws and regulations of California.

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

13  
14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN DUE**

16 **(Cal. Lab. Code §§201, 202, 203)**

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

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

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

23 As used in this article: (a) "Wages" includes all amounts for labor performed by  
24 employees of every description, whether the amount is fixed or ascertained by the  
25 standard of time, task, piece, Commission basis, or other method of calculation. (b)  
26 "Labor" includes labor, work, or service whether rendered or performed under  
27 contract, subcontract, partnership, station plan, or other agreement if the labor to be  
28 paid for is performed personally by the person demanding payment.

1           103. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an  
2 employee, the wages earned and unpaid at the time of discharge are due and payable  
3 immediately.”

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

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

14           105. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR SUB-  
15 CLASS Members’ employment contract.

16           106. Cal. Lab. Code § 203 provides:

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

22           107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
23 Members terminated and DEFENDANT have not tendered payment of all wages owed as required  
24 by law.

25           108. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
26 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,  
27 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time of  
28 termination individuals in the CALIFORNIA LABOR SUB-CLASS who terminated employment  
during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as  
allowed by law.

**PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and  
2 severally, as follows:

3 1. On behalf of the CALIFORNIA CLASS:

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

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

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



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- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
  - f. The amount of expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit;
  - g. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
  - b. Such other and further relief as the Court deems just and equitable; and
  - c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §2802 and/or § 1198.5.

DATED: \_\_\_\_\_, 2019

**ZAKAY LAW GROUP, APLC**

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

Shani O. Zakay  
Attorney for Plaintiff

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**DEMAND FOR JURY TRIAL**

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

Dated: \_\_\_\_\_, 2019

Respectfully Submitted,

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorneys for Plaintiff