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7

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ALAMEDA**

11 KAREN CANO, EDDIE FRANKLIN,) **Case No.: RG03089266**
MARINA JONES, individually, and on)
12 behalf of all others similarly situated,) **CLASS ACTION**
and PAULA PENFIELD, individually,)
13)
Plaintiffs,) **FIRST AMENDED COMPLAINT FOR**
14) **DAMAGES, INJUNCTIVE RELIEF AND**
vs.) **RESTITUTION**
15)
16 UNITED PARCEL SERVICE, INC. and)
DOES 1 through 25, inclusive,)
17)
Defendants.)
18 _____)

19 Representative Plaintiffs allege as follows:
20

21 **PRELIMINARY STATEMENT**

22 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid overtime
23 compensation and interest thereon, rest and meal period penalties, waiting time penalties, injunctive
24 and other equitable relief and reasonable attorneys' fees and costs, under Labor Code §§ 201, 202,
25 203, 218.5, 226, 226.7, 510, 512, 1174, 1194, 1198 and 1199, and CCP § 1021.5 on behalf of
26 Plaintiffs and all other persons who are or have been employed by defendant UNITED PARCEL
27 SERVICE, INC. and DOES 1 through 25, inclusive (collectively "UPS") in any of UPS's packaging,
28 distribution and/or business facilities in the State of California at any time after April 1, 1999 as

1 forty (40) hours of work per week. These Orders were issued for the protection of millions of
2 workers statewide.

3 6. In 1998, the Industrial Welfare Commission issued five Wage Orders that deleted the
4 requirement that employers pay premium (overtime) wages after eight (8) hours of work per day, but
5 left intact Orders governing work in excess of forty (40) hours of work per week. These five Wage
6 Orders became effective January 1, 1998.

7 7. In 1999, the California Legislature enacted the “Eight-Hour-Day Restoration and
8 Workplace Flexibility Act of 1999” (hereinafter the “1999 Restoration Act”). Among other
9 modifications, the 1999 Restoration Act amended Labor Code §510, effective January 1, 2000, to
10 add the requirement that employers pay premium (overtime) wages after eight (8) hours of work per
11 day, reaffirming and restoring the rule in existence prior to January 1, 1998.

12 8. Founded in 1907, Defendant UPS now markets itself as the largest package delivery
13 company in the world and a worldwide leader in supply and shipping chain services. UPS’
14 operations service over 200 countries and territories, as well as every domicile in the United States.

15 9. Plaintiffs are informed and believe and, based thereon, allege that, within the class
16 period, defendant UPS has operated numerous packaging, distribution and business facilities
17 throughout the State of California. In so doing, UPS has employed dozens, if not hundreds, of
18 individuals in recent years alone within the State of California in Specialist positions (as defined in
19 paragraphs 16 and 26, herein), employment positions which have not and currently do not meet the
20 test for exemption from the payment of overtime wages.

21 10. Despite actual knowledge of these facts and legal mandates, UPS has enjoyed an
22 advantage over its competition and a resultant disadvantage to its workers by electing not to pay
23 premium (overtime) and/or “penalty” (a.k.a. “waiting time”) wages to particular Specialists, among
24 other employment positions.

25 11. Plaintiffs are informed and believe and, based thereon, allege that officers of UPS
26 knew of these facts and legal mandates, yet, nonetheless, repeatedly directed, authorized and/or
27 ratified the violation of the laws cited herein.

28 12. Despite UPS’s knowledge of the plaintiff class’ entitlement to premium (overtime)

1 pay for excess hours worked, UPS failed to provide or require the use, maintenance or submission
2 of accurate time records by members of the plaintiff class, in violation of California Labor Code
3 §1174[d]). This action is brought to redress and end this long-time pattern of unlawful conduct.

4
5 **JURISDICTION AND VENUE**

6 13. This Court has jurisdiction over Plaintiffs’ and Plaintiff Classes’ claims for unpaid
7 overtime wages under Labor Code §§ 510 and 1194, for penalties for Defendant’s unlawful denial
8 of meal and rest periods under Labor Code §§ 226.7 and 512, for penalties for violations under Labor
9 Code §§ 2698 and 2699 (the Labor Code Private Attorneys General Act of 2004), for penalties for
10 failure to pay wages of discharged employees under Labor Code § 203 and for penalties for failure
11 to provide itemized statements of hours worked and all applicable hourly rates under Labor Code
12 § 226.

13 14. This Court has jurisdiction over Plaintiffs’ and Plaintiff Classes’ claims for injunctive
14 relief, and restitution of ill-gotten benefits arising from defendant UPS’s unlawful business practices
15 under Business & Professions Code §§ 17203 and 17204.

16 15. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
17 Civil Procedure § 395(a). Defendant UPS maintains facilities and offices in the County of San
18 Alameda, and transacts business, has agents, and is otherwise within this Court’s jurisdiction for
19 purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs
20 and those similarly situated within the State of California and within Alameda County. Defendant
21 UPS operates said facilities and has employed numerous Plaintiff Classes in Alameda County as well
22 as in other counties within the State of California.

23
24 **PLAINTIFFS**

25 16. During a portion of the herein-relevant time period, the Representative Plaintiffs
26 identified herein (Karen Cano, Eddie Franklin and Marina Jones) were and are natural persons, and
27 were, during the relevant time period identified herein, employed by defendant UPS as Specialists,
28 in employment positions which were and continue to be misclassified as salaried and exempt from

1 overtime pay. For purposes of this action, Representative Plaintiffs define and limit “Specialists”
2 as/to the following UPS employment positions: Package Operations Specialist (formerly Operations
3 Management Specialist), Dispatch Specialist, Industrial Engineering Specialist, and Industrial
4 Engineering (I.E.) Management Trainee.

5 17. In said positions, the Representative Plaintiffs were permitted to work and did work,
6 during the class period, in excess of eight hours per day and/or forty hours per week, without being
7 fully compensated for these excess hours of work.

8 18. As used throughout this Complaint, the terms “Plaintiffs” and/or “Plaintiff Classes”
9 refer(s) to each and every named plaintiff herein as well as each and every person eligible for
10 membership in the plaintiff Classes, as further described and defined below.

11 19. The Plaintiff Classes consist, generally, of all members who are/were employed as
12 Specialists by UPS at its’ facilities within the State of California and were classified thereby as
13 overtime-exempt employees, and who: (1) worked (a) in excess of eight (8) hours per workday (but
14 excluding the calendar year 1999) and/or (b) in excess of forty (40) hours per workweek at any time
15 after April 1, 1999 and (2) did not receive premium (overtime) pay for all excess hours worked
16 thereby in any given workday/workweek.

17 20. At all times herein relevant, the Representative Plaintiffs were and now are persons
18 within the classes of persons further described and defined herein.

19 21. The Representative Plaintiffs bring this action on behalf of themselves and as a class
20 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities
21 similarly situated and proximately damaged by the unlawful conduct described herein.

22 22. Plaintiff Paula Penfield is, and at all times relevant hereto was, an individual residing
23 in the County of Alameda, State of California, who was employed by defendant UPS as a Specialist,
24 in an employment position(s) which was, and continues to be, misclassified as salaried and exempt
25 from overtime pay.

26
27 **DEFENDANTS**

28 23. At all times herein relevant, defendants UNITED PARCEL SERVICE, INC. and

1 Does 1 through 25, inclusive (collectively referred to as “UPS”) were corporations, duly licensed and
2 located and doing business in, but not limited to, the County of Alameda, in the State of California.

3 24. Those defendants identified as Does 1 through 25, inclusive, are and were, at all
4 relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the
5 remaining defendants.

6 25. Plaintiffs are unaware of the true names and capacities of those defendants sued
7 herein as Does 1 through 25, inclusive and, therefore, sue these defendants by such fictitious names.
8 Plaintiffs will seek leave of court to amend this Complaint when same are ascertained. Plaintiffs are
9 informed and believe and, on that basis, allege that each of the fictitiously-named defendants is
10 responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein
11 alleged and that Plaintiffs’ damages, as herein alleged, were proximately caused thereby.

12 26. Plaintiffs are informed and believe and, on that basis, allege that, at all relevant times
13 herein mentioned, each of the defendants was the agent and/or employee of each of the remaining
14 defendants and, in doing the acts herein alleged, was acting within the course and scope of such
15 agency and/or employment.

16
17 **CLASS ACTION ALLEGATIONS**

18 27. The Representative Plaintiffs bring this action on behalf of themselves and as a class
19 action on behalf of all persons or entities proximately damaged by Defendants’ conduct, including,
20 but not necessarily limited to the following Plaintiff Classes:

21 A. Package Operations Specialist Class: All persons who are/were employed as
22 Package Operations Specialists and/or Operations Management Specialists
23 by United Parcel Service, Inc. and/or DOES 1 through 25, inclusive, in the
24 State of California, were classified thereby as overtime-exempt employees,
25 and who: (1) worked (a) in excess of eight (8) hours per workday (but
excluding the calendar year 1999) and/or (b) in excess of forty (40) hours per
workweek at any time after April 1, 1999 and (2) did not receive premium
(overtime) pay for all excess hours worked thereby in any given
workday/workweek.

26 B. Dispatch Specialist Class: All persons who are/were employed as Dispatch
27 Specialists by United Parcel Service, Inc. and/or DOES 1 through 25,
28 inclusive, in the State of California, were classified thereby as overtime-
exempt employees, and who: (1) worked (a) in excess of eight (8) hours per
workday (but excluding the calendar year 1999) and/or (b) in excess of forty

- 1 (40) hours per workweek at any time after April 1, 1999 and (2) did not
2 receive premium (overtime) pay for all excess hours worked thereby in any
3 given workday/workweek.
- 4 C. Industrial Engineering Specialist Class: All persons who are/were employed
5 as Industrial Engineering Specialists by United Parcel Service, Inc. and/or
6 DOES 1 through 25, inclusive, in the State of California, were classified
7 thereby as overtime-exempt employees, and who: (1) worked (a) in excess of
8 eight (8) hours per workday (but excluding the calendar year 1999) and/or (b)
9 in excess of forty (40) hours per workweek at any time after April 1, 1999
10 and (2) did not receive premium (overtime) pay for all excess hours worked
11 thereby in any given workday/workweek.
- 12 D. I.E. Management Trainee Class: All persons who are/were employed as
13 Industrial Engineering (I.E.) Management Trainees by United Parcel Service,
14 Inc. and/or DOES 1 through 25, inclusive, in the State of California, were
15 classified thereby as overtime-exempt employees, and who: (1) worked (a)
16 in excess of eight (8) hours per workday (but excluding the calendar year
17 1999) and/or (b) in excess of forty (40) hours per workweek at any time after
18 April 1, 1999 and (2) did not receive premium (overtime) pay for all excess
19 hours worked thereby in any given workday/workweek.
- 20 28. Defendants, their officers and directors are excluded from each of the Plaintiff
21 Classes.
- 22 29. This action has been brought and may properly be maintained as a class action under
23 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
24 and each of the proposed Plaintiff Classes is easily ascertainable.
- 25 a. Commonality: The Representative Plaintiffs and the Plaintiff Classes share
26 a community of interests in that there are numerous common questions and
27 issues of fact and law which predominate over any questions and issues solely
28 affecting individual members, including, but not necessarily limited to:
- i. whether defendant UPS violated Wage Order No. 4-2001, other applicable Wage Orders and Labor Code § 510 by failing to pay overtime compensation to Specialists who worked in excess of 40 hours per week and/or eight (8) hours a day.
 - ii. whether defendant UPS violated Business and Professions Code § 17200 et. seq. by failing to pay overtime compensation to Specialists who worked in excess of forty (40) hours per week and/or eight (8) hours a day.
 - iii. whether defendant UPS violated Labor Code § 512 and/or Section 11 of Wage Order No. 4-2001 and other applicable Wage Orders by failing to consistently provide meal periods to its Specialists.
 - iv. whether defendant UPS violated Labor Code § 226.7 and/or Section 12 of Wage Order No. 4-2001 and other applicable Wage Orders by failing to consistently provide rest periods to its Specialists.

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- v. whether defendant UPS violated Labor Code § 1174 by failing to keep accurate records of its Specialists’ hours of work.
 - vi. whether defendant UPS violated Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time that Specialists’ employment with Defendant terminated.
 - vii. whether defendant UPS violated Labor Code § 226 by failing to provide semimonthly itemized statements to Specialists of total hours worked by each and all applicable hourly rates in effect during the pay period.
 - viii. whether Plaintiffs and the Plaintiff Classes are entitled to “waiting time” penalties/wages pursuant to Labor Code § 203.
 - ix. whether Plaintiffs and members of the Plaintiff Classes are entitled to seek recovery of penalties for the Labor Code and Wage Order violations alleged herein, pursuant to Labor Code §§ 2698 and 2699 and, if so, for what time period.
- b. Typicality: Representative Plaintiffs’ claims are typical of the claims of the Plaintiff Classes. The Representative Plaintiffs and all members of the Plaintiff Classes sustained injuries and damages arising out of and caused by defendant UPS’s common course of conduct in violation of law, as alleged herein.
- c. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Plaintiffs are informed and believe and, on that basis, allege that the total number of members of Plaintiff Classes is in the dozens, if not hundreds, of individuals. Membership in the Plaintiff Classes will be determined upon analysis of employee and payroll, among other, records maintained by UPS.
- d. Superiority of Class Action: Since the damages suffered by individual members of the Plaintiff Classes, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Plaintiff Classes, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other members of the Plaintiff Classes who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of the Plaintiff Classes, in that the Representative Plaintiffs’ claims are typical of those of the members of the Plaintiff Classes and the Representative Plaintiffs have the same interests in the litigation of this case as the members of the Plaintiff Classes. The Representative Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsel, experienced in conducting litigation of

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this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Classes as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

30. As described herein, UPS has, for years, knowingly failed to adequately compensate the Specialists identified above for premium (overtime) wages due, thereby enjoying a significant competitive edge over other corporations within its industry. Further, Defendant has consistently and unlawfully denied meal and rest periods to the Plaintiffs and the Plaintiff Classes. Even upon termination or resignation of the employment of numerous members of the Plaintiff Classes, UPS has declined to pay these wages, in blatant violation of California Labor Code §§201 and/or 202.

31. In misclassifying members of the Plaintiff Classes as exempt employees, UPS has also incorrectly and unlawfully treated said class members as exempt from the meal and rest period requirements established by Sections 11 and 12 of Wage Order 4-2001 and other applicable Wage Orders. Members of the Plaintiff Classes were, and are, unlawfully denied meal and rest periods required by law.

32. Furthermore, despite its knowledge of the Plaintiffs' and the Plaintiff Classes' entitlement to premium (overtime) pay for excess hours worked, UPS violated California Labor Code §1174[d] by failing to provide or require the use, maintenance or submission of time records by members of the plaintiff class. UPS also failed to provide Plaintiffs and members of the Plaintiff Classes with semimonthly itemized statements of the total number of hours worked by each and all applicable hourly rates in effect during the pay period, in violation of California Labor Code § 226. In so doing, UPS has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its' employees' scrutiny for its unlawful conduct by concealing the magnitude (the full number of hours worked) and financial impact of its wrongdoing.

33. California Labor Code sections 201 and 202 require defendant UPS to pay its employees all wages due immediately upon discharge. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to

1 pay the subject employees' wages until the back wages are paid in full or an action is commenced.
2 The penalty cannot exceed 30 days of wages.

3 34. Plaintiffs and all persons similarly situated are entitled to unpaid compensation yet,
4 to date, have not received such compensation.

5 35. More than 30 days have passed since certain Plaintiff Classes have left defendant
6 UPS's employ.

7 36. As a consequence of defendant UPS's willful conduct in not paying compensation
8 for all hours worked, certain Plaintiff Classes are entitled to 30 days wages as penalty under Labor
9 Code section 203, together with interest thereon and attorneys' fees and costs.

10 37. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
11 Plaintiffs have sustained damages, as described above, including loss of earnings for hours of
12 overtime worked on behalf of Defendants, in an amount to be established at trial. As a further direct
13 and proximate result of Defendant's unlawful conduct, Plaintiffs and members of the Plaintiff
14 Classes have sustained damages for missed meal and rest periods under Labor Code §§ 226.7 and
15 512 and are entitled to penalties therefor in an amount to be established at trial. As a further direct
16 and proximate result of Defendants' unlawful conduct, as set forth herein, the majority of the
17 members of the Plaintiff Classes herein are entitled to recover "waiting time" penalties/wages
18 (pursuant to California Labor Code § 203) and penalties for failure to provide semimonthly
19 statements of hours worked and all applicable hourly rates (pursuant to Labor Code § 226) in an
20 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
21 conduct, as set forth herein, plaintiffs are entitled to recover costs and attorneys' fees, pursuant to
22 statute.

23 38. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs
24 and the Plaintiff Classes are also entitled to recover applicable civil penalties pursuant to Labor Code
25 §§ 2698 and 2699 (the Labor Code Private Attorneys General Act of 2004) as follows:

26 a. where civil penalties are specifically provided in the Labor Code for each of
27 the violations alleged herein, Plaintiffs and the Plaintiff Classes seek to recover such
28 penalties, and

1 or separately when wages are paid by personal check or cash, an itemized
2 statement in writing showing . . . (2) total hours worked by the employee
3 (*effective September 12, 1988 through the present*) . . . and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee.” (*effective January 1,*
6 *2000 through the present*).

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- 8 c. Labor Code §510: “Any work in excess of eight hours in one workday
9 and any work in excess of 40 hours in any one workweek and the first eight
10 hours worked on the seventh day or work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the regular rate
12 of pay for an employee” (*effective January 1, 2000 through the present*)
- 13
- 14 d. Labor Code §1194: “Notwithstanding any agreement to work for a lesser
15 wage, any employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to recover in
17 a civil action the unpaid balance of the full amount of this minimum wage or
18 overtime compensation, including interest thereon, reasonable attorney’s fees,
19 and costs of suit.”
- 20
- 21 e. Labor Code §1198: “[t]he maximum hours of work and the standard
22 conditions of labor fixed by the commission shall be the maximum hours of
23 work and the standard conditions of labor for employees. The employment
24 of any employee for longer hours than those fixed by the order or under
25 conditions of labor prohibited by the order is unlawful.” (*effective at all times*
26 *herein relevant*).
- 27
- 28 f. Labor Code §1199: “Every employer or other person acting either
individually or as an officer, agent, or employee of another person is guilty
of a misdemeanor and is punishable by a fine of not less than one hundred
dollars (\$100) or by imprisonment for not less than 30 days, or by both, who
. . . (a) Requires or causes any employee to work for longer hours than those
fixed, or under conditions of labor prohibited by an order of the commission.
. . . [or] (c) Violates or refuses or neglects to comply with any provision of
this chapter or any order or ruling of the commission.” (*effective at all times*
herein relevant).
- g. Wage Order 4-2001: “...employees shall not be employed more than eight
(8) hours in any workday or more than forty (40) hours in any workweek
unless the employee receives one and one-half (1 ½) times such employee’s
regular rate of pay for all hours worked over forty (40) hours in the
workweek.”

44. By refusing to compensate Representative Plaintiffs and members of the Plaintiff
Classes for overtime wages earned, Defendants violated those California Labor Code and IWC Wage
Order provisions, cited herein.

45. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
Representative Plaintiffs and the members of the Plaintiff Classes have sustained damages, including
loss of earnings for hours of overtime worked on behalf of Defendants, in an amount to be

1 established at trial. As a further direct and proximate result of Defendants’ unlawful conduct, as set
2 forth herein, Representative Plaintiffs and the members of the Plaintiff Classes are entitled to recover
3 “waiting time” penalties/wages, in an amount to be established at trial, costs and attorneys’ fees,
4 pursuant to statute.

5
6 **SECOND CAUSE OF ACTION**
7 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
8 **(California Business & Professions Code §§ 17200-17208)**

9 46. Representative Plaintiffs incorporate in this cause of action each and every allegation
10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 47. Representative Plaintiffs further bring this cause of action on behalf of the general
12 public, seeking equitable and statutory relief to stop the misconduct of Defendants, as complained
13 of herein, and to compel disgorgement of all profits obtained by Defendants through the unfair,
14 unlawful and fraudulent business practices described herein.

15 48. The knowing conduct of Defendants, and each of them, as alleged herein, constitutes
16 an unlawful and/or fraudulent business practice, as set forth in California Business & Professions
17 Code §§ 17200-17208. Specifically, Defendants conducted business activities while failing to
18 comply with the legal mandates cited herein.

19 49. Defendants’ knowing failure to adopt policies in accordance with and/or adhere to
20 these laws, all of which are binding upon and burdensome to Defendants’ competitors, engenders
21 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
22 set forth in California Business & Professions Code §§ 17200-17208.

23 50. Defendants have clearly established a policy of accepting a certain amount of
24 collateral damage, as represented by the damages to Representative Plaintiffs and the Plaintiff
25 Classes herein alleged, as incidental to their business operations, rather than accept the alternative
26 costs of full compliance with fair, lawful and honest business practices ordinarily borne by
27 responsible competitors of Defendants and as set forth in legislation and the judicial record.
28

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and § 512)

51. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

52. California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

53. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code § 512 as well as California Labor Code § 226.7.

54. Specifically, California Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

55. By failing to consistently provide meal and rest periods to Representative Plaintiff and to members of the Plaintiff Classes, Defendant violated these California Labor Code and IWC Wage Order provisions.

56. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and members of the Plaintiff Classes have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff s and members of the Plaintiff Classes are entitled to recover various penalties, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the proposed **Plaintiff Classes**, pray for judgment and the following specific relief against **Defendants, and each of them**, jointly and separately, as follows:

1. For an Order certifying the proposed Plaintiff Classes and/or any other appropriate subclasses under Code of Civil Procedure § 382;

2. That defendant UPS is found to have violated the overtime provisions of the Labor Code and the Wage Orders as to the Plaintiffs and the Plaintiff Classes;

3. That defendant UPS is found to have violated Labor Code §§ 226.7 and 512 for willful failure to provide meal periods, including second meal periods, and rest periods;

4. That defendant UPS is found to have violated the record keeping provisions of Labor Code § 1174(d) and Section 7 of the Wage Orders as to Plaintiffs and the Plaintiff Classes;

5. That defendant UPS is found to have violated Labor Code §§ 201, 202 and 203 for willful failure to pay all compensation owed at the time of termination of employment to Representative Plaintiffs and the Plaintiff Classes;

6. That defendant UPS is found to have violated Labor Code § 226 for willful failure to provide semimonthly itemized statements to Plaintiffs and Plaintiff Classes;

7. That defendant UPS is found to have violated Business & Professions Code § 17200 by failing to pay Representative Plaintiffs and members of the Plaintiff Classes overtime compensation and waiting period penalties, by failing to provide itemized statements and by failing to abide by the record keeping provisions of Labor Code § 1174(d);

8. An award to Representative Plaintiffs and members of the Plaintiff Classes of damages for the amount of unpaid overtime compensation, including interest thereon, and penalties in an amount to be proven at trial;

9. An award to the Representative Plaintiffs and members of the Plaintiff Classes of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided.

10. An award to the Representative Plaintiffs and members of the Plaintiff Classes of

1 one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
2 period was not provided.

3 11. An award of penalties to Representative Plaintiffs and all current and former
4 members of the Plaintiff Classes as authorized by Labor Code §§ 2698 and 2699 (the Private
5 Attorneys General Act of 2004).

6 12. That defendant UPS be ordered and enjoined to pay restitution to Representative
7 Plaintiffs and to members of the Plaintiff Classes due to defendant UPS' unlawful activities,
8 pursuant to Business & Professions Code §§ 17200-08;

9 13. That defendant UPS further be enjoined to cease and desist from unlawful
10 activities in violation of Business & Professions Code § 17200;

11 14. For all other Orders, findings and determinations identified and sought in this
12 Complaint;

13 15. For Interest on the amount of any and all economic losses, at the prevailing legal
14 rate;

15 16. For reasonable Attorneys' Fees, pursuant to California Labor Code §§ 218.5 and
16 1194 and/or California Civil Code § 1021.5; and

17
18 17. For Costs of suit and any and all such other relief as the Court deems just and
19 proper.

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21 Dated: February __, 2004

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23 **SCOTT COLE & ASSOCIATES, APC**

24 By: _____

25 Scott Edward Cole, Esq.
26 Clyde H. Charlton, Esq.
27 Attorneys for the Individual and Representative
28 Plaintiff(s) and the Plaintiff Classes