

06/23/2017 at 10:13:00 AM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

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6 Attorneys for Representative Plaintiff
7 And the Plaintiff Class

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 CHARLEY BASKETT, individually,
and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 vs.

15 GREEN MESSENGERS, INC., and
DOES 1 through 100, inclusive,
16

17 Defendant.

) Case No. 37-2016-00036463-CU-OE-CTL

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES, INJUNCTIVE RELIEF,**
) **RESTITUTION, AND PENALTIES**
) **PURSUANT TO PRIVATE ATTORNEYS**
) **GENERAL ACT**

) **[Jury Trial Demanded]**

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19 Representative Plaintiff alleges as follows:
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21 **PRELIMINARY STATEMENT**

22 1. This is a class action seeking unpaid regular and overtime wages, including
23 unpaid compensation for interrupted and/or missed meal and/or rest periods, interest thereon,
24 reimbursement of business expenses, liquidated damages and other penalties, injunctive and
25 other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor
26 Code §§ 200-204, inclusive, 226, 226.7, 226.8, 406, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
27 1197, 1198, 2699, and/or 2802, California Business and Professions Code §§ 17200, *et seq.* and
28 California Code of Civil Procedure § 1021.5. Plaintiff Charley Baskett ("Representative

1 Plaintiff' or "Plaintiff") brings this action on behalf of himself and all other persons similarly
2 situated ("Class Members" and/or the "Plaintiff Class") who are or have been employed by
3 defendant Green Messengers, Inc. and/or Does 1 through 100, inclusive (collectively
4 "Defendant") to perform courier services in the State of California within the applicable class
5 period.

6 2. The class period is designated as the time from October 18, 2012, through trial,
7 based upon the allegation that the violations of California's wage and hour laws, as described
8 more fully below, have been ongoing throughout that time.

9 3. During the class period, Defendant has had a consistent policy of (1) willfully
10 failing to pay Plaintiff and Class Members all wages due (including minimum and overtime
11 wages and wages for work performed "off-the-clock"), (2) unlawfully denying Plaintiff and
12 Class Members statutorily-mandated meal and rest periods, (3) willfully failing to provide
13 Plaintiff and Class Members with accurate semimonthly itemized wage statements reflecting the
14 total number of hours each worked, the applicable deductions, and the applicable hourly rates in
15 effect during the pay period, (4) willfully failing to reimburse Plaintiff and Class Members for
16 business expenses related to the operations of Defendant; (5) failing to pay Plaintiff and Class
17 Members at least the minimum wage for all hours worked; and (6) willfully misclassifying
18 Plaintiff and Class Members as independent contractors. In addition, Representative Plaintiff is
19 informed and believes and, on that basis, alleges that Defendant has had a consistent policy of
20 willfully failing to pay compensation (including unpaid overtime) in a prompt and timely manner
21 to those Class Members whose employment with Defendant has terminated.

22 **INTRODUCTION**

23 4. Defendant operates a messenger service within California for which
24 Representative Plaintiff worked as a courier. The Representative Plaintiff is informed and
25 believes and, on that basis, alleges that, within the Class Period, Defendant employed hundreds
26 of individuals in California in recent years to perform courier services, employment positions
27 which did not, and currently do not, meet any known test for exemption from the payment of
28 overtime wages and/or the entitlement to meal or rest periods.

1 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
2 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
3 by electing not to pay all wages due (including overtime and missed meal and rest period
4 compensation) and/or all penalties dues (including "waiting time" penalties) to its California
5 based couriers.

6 6. Representative Plaintiff is informed and believes and, based thereon, alleges that
7 Defendant's officers knew of these facts and legal mandates yet, nonetheless, repeatedly
8 authorized and/or ratified the violation of the laws cited herein.

9 7. Despite Defendant's knowledge of Class Members' entitlement to overtime pay
10 and meal and/or rest periods for all applicable work periods, Defendant failed to provide the
11 same to the Class Members, in violation of California state statutes, the applicable California
12 Industrial Welfare Commission Wage Order, and Title 8 of the California Code of Regulations.
13 This action is brought to redress and end this prolonged pattern of unlawful conduct once and for
14 all.

15 JURISDICTION AND VENUE

16 8. This Court has jurisdiction over the Representative Plaintiff's and Class
17 Members' claims for unpaid wages, expenses and/or penalties under, *inter alia*, the applicable
18 Industrial Welfare Commission Wage Order, Title 8 of the California Code of Regulations,
19 Labor Code §§ 201-204, 226.7, 226.8, 406, 510, 512, 1174, 1174.5, 1194, 1192.4, 1198, 2802,
20 and/or the California Code of Civil Procedure § 1021.5.

21 9. This Court also has jurisdiction over the Representative Plaintiff's and Class
22 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from
23 Defendant's unfair and/or fraudulent business practices under California Business & Professions
24 Code § 17200, *et seq.*

25 10. Venue as to Defendant is proper in this judicial district pursuant to California
26 Code of Civil Procedure § 395(a). Defendant maintains a facility and provides services within
27 the County of San Diego where Plaintiff and numerous Class Members worked, transacts
28 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of

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1 process. The unlawful acts alleged herein have and have had a direct effect on Representative
2 Plaintiff and those similarly situated within the State of California and within the County of San
3 Diego.

4 **PLAINTIFF(S)**

5 11. Representative Plaintiff Charley Baskett is a natural person who was employed by
6 Defendant as a courier during the Class Period.

7 **DEFENDANT(S)**

8 12. Representative Plaintiff is informed and believes and, based thereon, alleges that,
9 at all times herein relevant, defendants Green Messengers, Inc. and Does 1 through 100, did
10 business within the state of California providing courier services including expedited same-day
11 delivery, scheduled professional courier services, and overnight deliveries of a wide variety of
12 items.

13 13. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
14 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
15 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
16 basis, alleges that at all relevant times herein mentioned, defendant Green Messengers, Inc. and
17 those identified as Does 1 through 100, inclusive, employed, and/or exercised control over the
18 wages, hours, and/or working conditions of the Representative Plaintiff and Class Members
19 within the State of California.

20 14. The Representative Plaintiff is unaware of the true names and capacities of those
21 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
22 such fictitious names. The Representative Plaintiff will seek leave of court to amend this
23 Complaint when such names are ascertained. The Representative Plaintiff is informed and
24 believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible
25 in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and
26 that the Representative Plaintiff's and Class Members' damages, as herein alleged, were
27 proximately caused thereby.

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1 15. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
2 all relevant times herein mentioned, each of the defendants was the agent and/or employee of
3 each of the remaining defendants and, in doing the acts herein alleged, was acting within the
4 course and scope of such agency and/or employment.

5
6 **CLASS ACTION ALLEGATIONS**

7 16. The Representative Plaintiff brings this action on behalf of himself and as a class
8 action on behalf of all persons similarly situated and proximately damaged by Defendant's
9 conduct including, but not necessarily limited to, the following Plaintiff Class:

10 "All persons performing courier services for Green Messengers,
11 Inc. in California at any time on or after October 18, 2012."

12 17. Green Messengers, Inc., its officers and directors are excluded from the Plaintiff
13 Class.

14 18. This action has been brought and may properly be maintained as a class action
15 under California Code of Civil Procedure § 382 because there is a well-defined community of
16 interest in the litigation and the proposed Class is easily ascertainable.

17 a. Numerosity: A class action is the only available method for the fair
18 and efficient adjudication of this controversy. The members of the
19 Plaintiff Class are so numerous that joinder of all members is
20 impractical, if not impossible, insofar as Representative Plaintiff is
21 informed and believes and, on that basis, alleges that there are
22 sufficient Class Members to meet the numerosity requirement.
23 Membership in the Class will be determined upon analysis of
24 employee and payroll, among other, records maintained by
25 Defendant.

26 b. Commonality: The Representative Plaintiff and the Class Members
27 share a community of interests in that there are numerous common
28 questions and issues of fact and law which predominate over any
questions and issues solely affecting individual members,
including, but not necessarily limited to:

1) Whether Defendant violated the applicable IWC Wage Order
and/or California Labor Code § 510 by failing to pay overtime
compensation to its couriers who worked in excess of forty
hours per week and/or eight hours per day;

2) Whether Defendant violated California Business and
Professions Code § 17200, *et seq.* by failing to pay overtime

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- compensation to its couriers who worked in excess of forty hours per week and/or eight hours per day;
- 3) Whether Defendant violated California Labor Code §§ 400-410 and/or § 2802 by requiring Class Members to pay all or a portion of the normal business expenses of Defendant;
 - 4) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 5) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated;
 - 6) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and
 - 7) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representatives of the Plaintiff Class in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, 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 Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

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1 COMMON FACTUAL ALLEGATIONS

2 19. As described herein, for years, Defendant has knowingly failed to adequately
3 compensate those employees within the class definition identified above for all wages earned
4 (including premium wages such as overtime wages and/or compensation for missed meal and/or
5 rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby
6 enjoying a significant competitive edge over service providers.

7 20. Defendant has declined to pay these wages, even upon a Class Member's
8 termination or resignation from employment, in blatant violation of California Labor Code § 201
9 and/or § 202.

10 21. California Labor Code §§ 201 and 202 require Defendant to pay severed
11 employees all wages due and owed to the employee immediately upon discharge or within 72
12 hours of resignation of their positions, in most circumstances. California Labor Code § 203
13 provides that an employer who willfully fails to timely pay such wages must, as a penalty,
14 continue to pay the subject employees' wages until the back wages are paid in full or an action is
15 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

16 22. Moreover, according to Defendant's policies, Class Members were required to
17 incur business expenses related to the operations of Defendant.

18 23. In addition, Defendant engaged in a pattern and/or practice of willfully
19 misclassifying Plaintiff and Class Members as independent contractors, in violation of California
20 Labor Code § 226.8.

21 24. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
22 Members' entitlement to compensation for all hours worked, Defendant violated California
23 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of
24 time records by members of the Plaintiff Class. Defendant also failed to provide the
25 Representative Plaintiff and Class Members with accurate semimonthly itemized statements of
26 the total number of hours worked by each, and all applicable hourly rates in effect, during the
27 pay period, in violation of California Labor Code § 226. In failing to provide the required
28 documents, Defendant has not only failed to pay its workers the full amount of compensation due

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1 but the company has also, until now, effectively shielded itself from its employees' scrutiny by
2 concealing the magnitude and financial impact of its wrongdoing that such documents might
3 otherwise have led workers to discover.

4 25. Representative Plaintiff and all persons similarly situated are entitled to unpaid
5 compensation, yet, to date, have not received such compensation despite many of the same
6 having been terminated by and/or resigned from Defendant's employ. More than 30 days have
7 passed since certain Class Members have left Defendant's employ.

8 26. As a consequence of Defendant's willful conduct in not paying former employees
9 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff and
10 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor
11 Code § 203, together with attorneys' fees and costs.

12 27. As a direct and proximate result of Defendant's unlawful conduct, as set forth
13 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
14 including compensation for loss of earnings for hours worked on behalf of Defendant, in an
15 amount to be established at trial. As a further direct and proximate result of Defendant's
16 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
17 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide
18 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
19 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate
20 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class
21 Members are also entitled to recover costs and attorneys' fees pursuant to California Labor Code
22 § 1194 and/or California Civil Code § 1021.5, among other authorities.

23 28. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
24 engaging in the complained-of illegal labor acts and practices in the future. Representative
25 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members
26 under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
27 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt
28 of Defendant's unlawful conduct. As a further direct and proximate result of Defendant's

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1 unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also
2 entitled to recover costs and attorneys' fees, pursuant to statute.

3 29. Representative Plaintiff complied with the procedures for bringing suit specified
4 in California Labor Code § 2699.3. By letter dated October 11, 2016, Representative Plaintiff
5 gave written notice to the LWDA and Defendants, by electronic and certified mail, respectively,
6 of the specific provisions of the California Labor Code alleged to have been violated, including
7 the facts and theories to support those violations. After receiving no response from the LWDA
8 within 65 days, Plaintiff commenced the instant action.

9 **FIRST CAUSE OF ACTION**
10 **UNLAWFUL FAILURE TO PAY WAGES**
11 **(California Labor Code §§ 200, *et seq.*, 510, 558, 1194 and 1198)**

12 29. Representative Plaintiff incorporates in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 30. During the class period, Representative Plaintiff and Class Members performed
16 work for Defendant, oftentimes in excess of eight hours in a workday and/or forty hours in a
17 workweek. The precise number of hours will be proven at trial.

18 31. During the class period, Defendant refused to compensate Representative Plaintiff
19 and Class Members for all of the wages earned, in violation of the applicable IWC Wage Order
20 and provisions of the California Labor Code.

21 32. At all relevant times, Defendant was aware of, and was under a duty to comply
22 with the wage and overtime provisions of the California Labor Code, including, but not limited
23 to California Labor Code §§ 200, *et seq.*, 510, 1194 and 1198.

24 33. California Labor Code § 510 provides, in pertinent part:

25 Any work in excess of eight hours in one workday and any work in excess
26 of 40 hours in any one workweek and the first eight hours worked on the
27 seventh day of work in any one workweek shall be compensated at the rate
28 of no less than one and one-half times the regular rate of pay for an
employee ...

34. California Labor Code § 1194, in pertinent part, provides:

1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage or
5 overtime compensation, including interest thereon, reasonable attorney's
6 fees, and costs of suit.

7
8 35. Finally, California Labor Code § 1198, in pertinent part, provides:

9 The maximum hours of work and the standard conditions of labor fixed by
10 the commission shall be the maximum hours of work and the standard
11 conditions of labor for employees. The employment of any employee for
12 longer hours than those fixed by the order or under conditions of labor
13 prohibited by the order is unlawful.

14 36. Defendant's conduct, as heretofore detailed, represents underpayment of wages
15 pursuant to California Labor Code § 558 for which Plaintiff and Class Members seek damages
16 and/or penalties according to proof.

17 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, Representative Plaintiff and Class Members have sustained damages, including loss of
19 earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at
20 trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
21 herein, Representative Plaintiff and Class Members are entitled to attorneys' fees and costs, and
22 restitution, pursuant to statute.

23
24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY THE MINIMUM WAGE**
26 **(California Labor Code § 1194, *et seq.*)**

27 38. Representative Plaintiff incorporates in this cause of action each and every
28 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
herein.

39. At all relevant times, Defendant was aware of and was under a duty to comply
with California Labor Code § 1194, *et seq.*

40. California Labor Code § 1194(a) in relevant part provides:

Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees, and costs of suit.

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41. Moreover, California Labor Code § 1197 provides:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

42. Finally, California Labor Code § 1194.2(a) provides:

In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

43. During the class period, the Representative Plaintiff and Class Members did not receive the applicable minimum wage for all hours worked on Defendant's behalf. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendant.

44. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class Members have sustained damages, including loss of earnings for hours worked on behalf of Defendant, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7, 512, and 558)

45. Representative Plaintiff incorporates 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.

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

47. 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.

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48. Moreover, California Labor Code § 512(a) 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.

49. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

50. Section 11 of the applicable IWC Wage Order provides:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...
- (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

51. Moreover, Section 12 of the applicable IWC Wage Order provides:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

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1 52. By failing to consistently provide uninterrupted thirty-minute meal periods within
2 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to
3 Representative Plaintiff and Class Members, Defendant violated the California Labor Code and
4 applicable IWC Wage Order provisions.

5 53. Representative Plaintiff is informed and believes and, on that basis, alleges that
6 Defendant has never paid the one hour of compensation to any Class Member due to its
7 violations of the California Labor Code and applicable IWC Wage Order provisions.

8 54. As a direct and proximate result of Defendant's unlawful conduct, as set forth
9 herein, Representative Plaintiff and Class Members have sustained damages, including lost
10 compensation resulting from missed meal and/or rest periods, in an amount to be established at
11 trial.

12 55. As a further direct and proximate result of Defendant's unlawful conduct, as set
13 forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in
14 amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to
15 statute.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
18 **(California Labor Code §§ 226 and 1174)**

19 56. Representative Plaintiff incorporates in this cause of action each and every
20 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
21 herein.

22 57. California Labor Code § 226(a) provides:

23 Each employer shall semimonthly, or at the time of each payment
24 of wages, furnish each of his or her employees either as a
25 detachable part of the check, draft or voucher paying the
26 employee's wages, or separately when wages are paid by personal
27 check or cash, an itemized wage statement in writing showing: (1)
28 gross wages earned; (2) total number of hours worked by each
employee whose compensation is based on an hourly wage; (3) all
deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item; (4) net
wages earned; (5) the inclusive date of the period for which the
employee is paid; (6) the name of the employee and his or her
social security number; and (7) the name and address of the legal
entity which is the employer.

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58. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover 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 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

59. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall. . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

60. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees under these provisions on behalf of himself and on behalf of all Class Members.

61. Defendant has failed to provide timely, accurate itemized wage statements to the Representative Plaintiff and Class Members in accordance with California Labor Code § 226. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

62. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members have sustained damages in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

**FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)**

63. Representative Plaintiff incorporates 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.

64. California Labor Code § 203 provides that:

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1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall
4 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.

5 65. Numerous Class Members were employed by Defendant during the class period
6 and were thereafter terminated or resigned from their positions, yet they were not paid all
7 premium (overtime) wages due upon said termination or within 72 hours of said resignation of
8 employment therefrom. Said non-payment was the direct and proximate result of a willful refusal
9 to do so by Defendant.

10 66. More than 30 days have elapsed since certain Class Members were involuntarily
11 terminated or voluntarily resigned from Defendant's employ.

12 67. As a direct and proximate result of Defendant's willful conduct in failing to pay
13 said Class Members for all hours worked, affected Class Members are entitled to recover
14 "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in
15 an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

16 **SIXTH CAUSE OF ACTION**
17 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**
(California Labor Code §§ 406 and 2802)

18 68. Representative Plaintiff incorporates in this cause of action each and every
19 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
20 herein.

21 69. During the class period, Defendant required the Representative Plaintiff and Class
22 Members to incur expenses related to the business operations of Defendant. These expenses
23 include(d), without limitation, mileage for performing deliveries. These expenditures were
24 incurred in direct consequence of the discharge of the duties of Representative Plaintiff and
25 members of the Plaintiff Class, or of their obedience to the directions of the employer and have
26 not yet been reimbursed by Defendant.

27
28

1 70. At all relevant times, Defendant was aware of and was under a duty to comply
2 with various provisions of the California Labor Code, including, but not necessarily limited to §§
3 406 and 2802(a).

4 71. California Labor Code § 406 provides:

5 Any property put up by an employee, or applicant as a part of the contract
6 of employment, directly or indirectly, shall be deemed to be put up as a
7 bond and is subject to the provisions of this article whether the property is
8 put up on a note or as a loan or an investment and regardless of the
9 wording of the agreement under which it is put up.

10 72. California Labor Code § 2802(a) provides:

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

16 73. By requiring the Representative Plaintiff and members of the Plaintiff Class to
17 incur uncompensated expenses in direct consequence of the discharge of their duties,
18 Representative Plaintiff and Class Members were forced and/or brought to contribute to the
19 capital and expenses of Defendant's business which is legally a cash bond and which must be
20 refunded by Defendant to each Class Member.

21 74. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
22 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
23 attorneys' fees to collect reimbursement.

24 75. Therefore, Representative Plaintiff demands reimbursement for expenditures or
25 losses incurred by himself and other members of the Plaintiff Class in direct consequence of the
26 discharge of their duties, or of their obedience to the directions of the employer, plus return of all
27 cash bonds or other coerced investments in the business of Defendant, with interest, at the
28 statutory rate, plus attorneys' fees.

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1 88. California Labor Code § 226.8(a)(1) provides that it is unlawful for any person
2 or employer to engage in willful misclassification of an individual as an independent contractor.

3 89. California Labor Code § 226.8(b) further provides that:
4 If the Labor and Workforce Development Agency or a court
5 issues a determination that a person or employer has engaged in
6 any of the enumerated violations of subdivision (a), the person
7 or employer shall be subject to a civil penalty of not less than
8 five thousand dollars (\$5,000) and not more than fifteen
9 thousand dollars (\$15,000) for each violation, in addition to any
10 other penalties or fines permitted by law.

11 90. California Labor Code § 226.8(c) further provides that:
12 If the Labor and Workforce Development Agency or a court
13 issues a determination that a person or employer has engaged in
14 any of the enumerated violations of subdivision (a) and the
15 person or employer has engaged in or is engaging in a pattern or
16 practice of these violations, the person or employer shall be
17 subject to a civil penalty of not less than ten thousand dollars
18 (\$10,000) and not more than twenty-five thousand dollars
19 (\$25,000) for each violation, in addition to any other penalties
20 or fines permitted by law.

21 91. As a direct and proximate result of Defendants' unlawful conduct, as set forth
22 herein, Plaintiff and the Plaintiff Class are entitled to recover penalties pursuant to California
23 Labor Code § 226.8, in an amount to be established at trial, as well as attorneys' fees and costs,
24 pursuant to statute.

25 **RELIEF SOUGHT**

26 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the proposed
27 Plaintiff Class, prays for judgment and the following specific relief against defendants, and each
28 of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed Class and/or any other appropriate subclasses under California Code of Civil Procedure § 382;

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1 2. That the Court declare, adjudge, and decree that Defendant violated the overtime
2 provisions of the California Labor Code and the applicable California Industrial Welfare
3 Commission Wage Order as to the Representative Plaintiff and Class Members;

4 3. That the Court declare, adjudge, and decree that Defendant willfully violated its
5 legal duties to pay all wages due under the California Labor Code and the applicable California
6 Industrial Welfare Commission Wage Orders;

7 4. That the Court declare, adjudge and decree that Defendant violated California
8 Labor Code §§ 406 and 2802(a) by, *inter alia*, willfully failing to reimburse the Representative
9 Plaintiff and Class Members for expenses made on behalf of Defendant;

10 5. That the Court make an award to the Representative Plaintiff and the Class
11 Members of one hour of pay at each employee's regular rate of compensation for each workday
12 that a meal period was not provided;

13 6. That the Court make an award to the Representative Plaintiff and the Class
14 Members of one hour of pay at each employee's regular rate of compensation for each workday
15 that a rest period was not provided;

16 7. That the Court declare, adjudge, and decree that the Representative Plaintiff and
17 Class Members were, at all times relevant hereto, and are still, entitled to be paid overtime for
18 work beyond 8 hours in a day and 40 hours in a week;

19 8. That the Court make an award to the Representative Plaintiff and Class Members
20 of damages and/or restitution for the amount of unpaid overtime compensation, including interest
21 thereon, and penalties in an amount to be proven at trial;

22 9. That the Court make an award to the Representative Plaintiff and Class Members
23 of damages and/or restitution for the amount of unpaid minimum wages, including interest
24 thereon, and penalties in an amount to be proven at trial;

25 10. That the Court order Defendant to pay restitution to the Representative Plaintiff
26 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
27 and Professions Code §§ 17200-17208;

28

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1 11. That the Court further enjoin Defendant, ordering it to cease and desist from
2 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*

3 12. That the Court declare, adjudge and decree that Defendant engaged in a pattern
4 and/or practice of willfully misclassifying Plaintiff and Class Members as independent
5 contractors, in violation of California Labor Code § 226.8;

6 13. That the Court make an award to Plaintiff and Class Members of damages and/or
7 penalties pursuant to California Labor Code §§ 203, 226, 226.8, 558, and/or 1174.5;

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

10 15. For interest on the amount of any and all economic losses, at the prevailing legal
11 rate;

12 16. For reasonable attorneys' fees, pursuant to California Labor Code §§ 1194, 2699
13 and/or California Code of Civil Procedure § 1021.5; and

14 14. That the Court declare, adjudge, and decree that this action is a proper
15 representative action pursuant to California Labor Code § 2699;

16 15. That the Court make and award of civil penalties for violations of the Labor Code,
17 pursuant to Labor Code section 2699; and

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

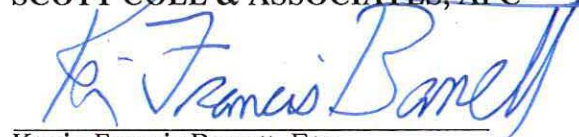
20 **JURY DEMAND**

21 Representative Plaintiff, on behalf of himself and the Plaintiff Class, hereby demands a
22 trial by jury.

23
24 Dated: June 19, 2017

SCOTT COLE & ASSOCIATES, APC

25
26 By:



27 Kevin Francis Barrett, Esq.
28 Attorneys for Representative Plaintiff
and the Plaintiff Class