

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/27/2024 at 02:28:47 PM
Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

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

NNT EXPRESS, INC., an Illinois Corporation; TRYTIME TRANSPORT, LLC., an Ohio Limited Liability Company; and DOES 1-50, Inclusive,

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

CLINTON SIMRIL and ELIAS GARCILAZO, individuals, on behalf of themselves 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), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **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), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.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 ó 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): San Diego Superior Court
Hall of Justice - 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso) 37-2024-00014517-CU-OE-CTL

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. T: (619) 255-9047 Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 03/28/2024 Clerk, by _____, Deputy
(Fecha) _____ (Secretario) _____ S. Felix (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

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

ZAKAY LAW GROUP, APLC

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Jackland K. Hom (State Bar #327243)
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Superior Court of California,
County of San Diego

03/27/2024 at 02:29:47 PM

Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CLINTON SIMRIL and ELIAS
GARCILAZO, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

v.

NNT EXPRESS, INC., an Illinois Corporation;
TRYTIME TRANSPORT, LLC., an Ohio
Limited Liability Company; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2024-00014517-CU-OE-CTL

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, 1191, & 1997.1;
- 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;

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- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226
 - 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 - 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

Plaintiffs CLINTON SIMRIL and ELIAS GARCILAZO ("PLAINTIFFS"), individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except their own acts and knowledge, the following:

INTRODUCTION

1. Defendant NNT EXPRESS, INC. ("Defendant NNT Express") and Defendant TRYTIME TRANSPORT, LLC ("Defendant Trytime Transport") ("DEFENDANT" or "DEFENDANTS"), in order to service customers, hire workers to aid DEFENDANT in providing transportation and delivery services as an interstate freight carrier. The cost, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFFS and other drivers. As employer, DEFENDANT is legally responsible for the payment of all these expenses. This lawsuit is brought on behalf of these Drivers who worked for DEFENDANT in California and were classified as independent contractors, in order to collect the wages due them as employees of DEFENDANT, the cost of the employer's share of payments to the federal and state governments for income taxes, social security taxes, medicare insurance, unemployment insurance and payments for workers' compensation insurance, plus penalties and interest.

1 2. Defendant NNT Express and Defendant Trytime Transport were the joint
2 employers of PLAINTIFFS as evidenced by the documents issued to PLAINTIFFS and by the
3 company PLAINTIFFS performed work for respectively and are therefore jointly responsible as
4 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5 3. DEFENDANT at all relevant times mentioned herein conducted and continues to
6 conduct substantial and regular business in the State of California, including in the county of
7 San Diego.

8 4. PLAINTIFF Clinton Simril worked for DEFENDANT as a Driver from March of
9 2023 to May of 2023, and was classified by DEFENDANT as an independent contractor during
10 his entire employment with DEFENDANT.

11 5. PLAINTIFF Elias Garcilzao worked for DEFENDANT as a Driver from March
12 of 2023 to May of 2023, and was classified by DEFENDANT as an independent contractor
13 during his entire employment with DEFENDANT.

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

23 7. Here, DEFENDANT has willfully misclassified PLAINTIFFS and other Drivers
24 as described in Cal. Labor Code § 226.8, and further, that DEFENDANT has engaged in a
25 “pattern or practice” of such violations as contemplated by the California Labor Code.

26 8. Upon hire, the position of a Driver was represented by DEFENDANT to
27 PLAINTIFFS and the other Drivers as an independent contractor position capable of paying a
28 piece rate for the time they spent driving. PLAINTIFFS and other Drivers were not

1 compensated minimum wages for all of their time spent working. PLAINTIFFS and other
2 Drivers were paid the piece rate to perform transportation services on DEFENDANT's behalf.
3 DEFENDANT did not pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
4 time spent waiting for the truck to be stocked and all the other non-driving work tasks. The
5 finite set of tasks required to be performed by the Drivers is to transport goods from
6 DEFENDANT's facility to a requested delivery location for customers that requested
7 DEFENDANT's services all in accordance with DEFENDANT's business practices and
8 policies.

9 9. To perform their job duties, PLAINTIFFS and the other Drivers performed work
10 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
11 complete control over the work performed and the manner and means in which the work was
12 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
13 as to how to perform the driving services.

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

- 23 a. PLAINTIFFS and other Drivers were not involved in a distinct business, but
24 instead were provided with instructions as to how to perform their work and the
25 manner and means in which the work was to be performed by means of
26 DEFENDANT's manuals and written instructions;
- 27 b. PLAINTIFFS and other Drivers were continuously provided with training and
28 supervision, including following DEFENDANT's company documents and

- 1 received training from DEFENDANT as to how and in what way to perform the
2 driving services;
- 3 c. DEFENDANT set the requirements as to what policies and procedures all of the
4 Drivers were to follow;
- 5 d. PLAINTIFFS and other Drivers had no opportunity for profit or loss because
6 DEFENDANT only paid these workers a block rate. DEFENDANT controlled
7 and assigned the Drivers which tasks were to be performed;
- 8 e. PLAINTIFFS and other Drivers performed driving services which are part of
9 DEFENDANT's principal business and is closely integrated with and essential to
10 the employer's business of providing transportation and delivery services to their
11 customers;
- 12 f. PLAINTIFFS and other Drivers performed the work themselves and did not hire
13 others to perform their work for them;
- 14 g. PLAINTIFFS and other Drivers did not have the authority to make
15 employment-related personnel decisions;
- 16 h. PLAINTIFFS and other Drivers performed their work in a particular order and
17 sequence in accordance with DEFENDANT's company policy; and,
- 18 i. DEFENDANT had the "right" to control every critical aspect of DEFENDANT's
19 daily driving services operations in that DEFENDANT provided the customer,
20 assigned where the Drivers were to go, and step-by-step instructions to
21 PLAINTIFFS and other Drivers as to the entire process of picking up and
22 dropping off deliveries at their assigned locations.

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

28 12. PLAINTIFFS bring this Class Action on behalf of themselves and a California

1 class, defined as all individuals who worked for Defendant NNT Express and/or Defendant
2 Trytime Transport in California as Drivers and who were classified as independent contractors
3 (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to
4 the filing of the original Complaint and ending on the date as determined by the Court (the
5 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
6 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

1 servants and/or employees.

2 **THE CONDUCT**

3 **A. Misclassification**

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

16 16. Similarly, PLAINTIFFS and other members of the CALIFORNIA CLASS were
17 not compensated overtime wages for any of their time spent working in excess of eight (8) hours
18 in a workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek.
19 PLAINTIFFS and other members of the CALIFORNIA CLASS were paid the hourly rate to
20 perform labor services on DEFENDANT’s behalf. PLAINTIFFS and other workers were not
21 compensated any other wages besides the non-negotiable hourly rate, and they were not allowed
22 to record their time while they waited for DEFENDANT to give them work. DEFENDANT did
23 not pay PLAINTIFFS and other CALIFORNIA CLASS members for the time spent waiting for
24 the truck to be stocked and all the other non-driving work tasks. The finite set of tasks required to
25 be performed by the workers is, when notified by DEFENDANT, transport goods from
26 DEFENDANT’s facility to a requested delivery location for customers that requested
27 DEFENDANT’s services all in accordance with DEFENDANT’s business practices and policies

28 17. As a result, stripped of all the legal fictions and artificial barriers to an honest

1 classification of the relationship between PLAINTIFFS and all the other members of the
2 CALIFORNIA CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFFS
3 and all the other members of the CALIFORNIA CLASS are and were employees of
4 DEFENDANT and not independent contractors of DEFENDANT and should therefore be
5 properly classified as non-exempt, hourly employees.

6 18. The finite set of tasks required of PLAINTIFFS and the other CALIFORNIA
7 CLASS members as defined by DEFENDANT was executed by them through the performance
8 of non-exempt labor.

9 19. Although PLAINTIFFS and the other CALIFORNIA CLASS members performed
10 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
11 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by
12 which all of these CALIFORNIA CLASS Members were classified as "independent contractors"
13 exempt from compensation for overtime worked, meal breaks and rest breaks, and
14 reimbursement for business related expenses. By reason of this uniform misclassification, the
15 CALIFORNIA CLASS Members were also required to pay DEFENDANT's share of payroll
16 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
17 policy and procedure applicable to PLAINTIFFS and the other CALIFORNIA CLASS Members
18 who performed this work for DEFENDANT, DEFENDANT committed acts of unfair
19 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§
20 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
21 which failed to properly classify PLAINTIFFS and the other CALIFORNIA CLASS members as
22 employees and thereby failed to pay them wages for all time worked, reimbursement of business
23 related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these
24 employees for the employer's share of payroll taxes and mandatory insurance.

25 20. DEFENDANT, as a matter of law, has the burden of proving that employees are
26 properly classified and that DEFENDANT otherwise complies with applicable laws.
27 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
28 CALIFORNIA CLASS Members as independent contractors in violation of the California Labor

1 Code and regulations promulgated thereunder.

2 **i. Plaintiffs and Other Members of the California Class Were Not Free**
3 **from the Control and Direction of Defendant**

4 21. DEFENDANT controlled and directed the work performed by PLAINTIFFS and
5 the other similarly situated misclassified California workers by, among other things, scheduling
6 hours of work, providing job site information, and issuing written policies and procedures for the
7 performance of work and conduct in the workplace. Upon hire, the position was represented by
8 DEFENDANT to PLAINTIFFS and the other workers as an independent contractor position in
9 exchange for an hourly rate of pay for the time they spend providing labor and services to
10 DEFENDANT's third-party customers.

11 22. To perform their job duties, PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS perform work subject to the control of DEFENDANT in that
13 DEFENDANT had the authority to exercise complete control over the work performed and the
14 manner and means in which the work was performed. DEFENDANT provided the customers and
15 DEFENDANT provided the instructions as to how to perform their work.

16 23. California Labor Code § 3357 defines "employee" as "every person in the service
17 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
18 oral or written, whether lawfully or unlawfully employed." Additionally, to the California Labor
19 Code's presumption that workers are employees, the California Supreme Court has determined
20 the most significant factor to be considered in distinguishing an independent contractor from an
21 employee is whether the *employer or principal has control or the right to control the work both*
22 *as to the work performed and the manner and means in which the work is performed.*
23 DEFENDANT heavily controlled both the work performed and the manner and means in which
24 the PLAINTIFFS and other workers performed their work in that:

- 25 a. PLAINTIFFS and other Drivers were not involved in a distinct business,
26 but instead were provided with instructions as to how to perform their
27 work and the manner and means in which the work was to be performed
28 by means of DEFENDANT's manuals and written instructions;

- 1 b. PLAINTIFFS and other Drivers were continuously provided with training
2 and supervision, including following DEFENDANT's company
3 documents and received training from DEFENDANT as to how and in
4 what way to perform the driving services;
- 5 c. DEFENDANT set the requirements as to what policies and procedures all
6 of the Drivers were to follow;
- 7 d. PLAINTIFFS and other Drivers had no opportunity for profit or loss
8 because DEFENDANT only paid these workers a block rate.
9 DEFENDANT controlled and assigned the Drivers which tasks were to be
10 performed;
- 11 e. PLAINTIFFS and other Drivers performed driving services which are part
12 of DEFENDANT's principal business and is closely integrated with and
13 essential to the employer's business of providing transportation and
14 delivery services to their customers;
- 15 f. PLAINTIFFS and other Drivers performed the work themselves and did
16 not hire others to perform their work for them;
- 17 g. PLAINTIFFS and other Drivers did not have the authority to make
18 employment-related personnel decisions;
- 19 h. PLAINTIFFS and other Drivers performed their work in a particular order
20 and sequence in accordance with DEFENDANT's company policy; and,
- 21 i. DEFENDANT had the "right" to control every critical aspect of
22 DEFENDANT's daily driving services operations in that DEFENDANT
23 provided the customer, assigned where the Drivers were to go, and step-
24 by-step instructions to PLAINTIFFS and other Drivers as to the entire
25 process of picking up and dropping off deliveries at their assigned
26 locations.

27 **ii. Plaintiffs and Other Members of the California Class Did Not**
28 **Perform Work Outside the Usual Course of Defendant's Business**

1 24. DEFENDANT willfully misclassified PLAINTIFFS and other members of the
2 CALIFORNIA CLASS who provided DEFENDANT with transportation services for
3 DEFENDANT’s clients. In other words, PLAINTIFFS and other similarly situated California
4 workers provided DEFENDANT with work and services within the usual course of
5 DEFENDANT’s business.

6 25. DEFENDANT markets itself to the public, PLAINTIFFS and other members of
7 the CALIFORNIA CLASS as a provider of driving services. As a result, DEFENDANT
8 unquestionably holds itself out to the public, PLAINTIFFS and other members of the
9 CALIFORNIA CLASS as a provider of driving services. Therefore, the performance of
10 DEFENDANT’s housekeeping services by PLAINTIFFS and other members of the
11 CALIFORNIA CLASS is not outside DEFENDANT’S usual course of business.

12 iii. **Plaintiffs and Other Members of the California Class Were Not**
13 **Engaged in an Independently Established Trade, Occupation, or**
14 **Business of the Same Nature as the Work Performed for Defendant**

15 26. PLAINTIFFS and the other members of the CALIFORNIA CLASS are not and
16 were not engaged in a customarily independently established trade, occupation or business as the
17 same nature of the work performed.

18 **B. Meal Period Violations**

19 27. In California, an employer may not employ an employee for a work period of more
20 than five hours per day without providing the employee with a duty-free meal period of not less
21 than thirty minutes, except that if the total work period per day of the employee is no more than
22 six hours, the meal period may be waived by mutual consent of both the employer and employee.
23 A second duty-free meal period of not less than thirty minutes is required if an employee works
24 more than ten hours per day, except that if the total hours worked is no more than 12 hours, the
25 second duty-free meal period may be waived by mutual consent of the employer and employee
26 only if the first meal period was not waived. Labor Code Section 512.

27 28. If an employer fails to provide an employee a duty-free meal period in accordance
28 with an applicable IWC Order, the employer must pay one additional hour of pay at the

1 employee's regular rate of pay for each workday that the meal period is not provided. IWC
2 Orders and Labor Code Section 226.7. This additional hour is not counted as hours worked for
3 purposes of overtime calculations.

4 29. From time-to-time during the CLASS PERIOD, as a result of their
5 misclassification as independent contractors and their rigorous work schedules, PLAINTIFFS
6 and other CALIFORNIA CLASS members were not provided with a thirty (30) minute duty-free
7 meal period and were not fully relieved of duty for their meal periods. PLAINTIFFS and other
8 CALIFORNIA CLASS members were required from time-to-time to perform work as ordered by
9 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
10 Further, DEFENDANT from time to time failed to provide PLAINTIFFS and CALIFORNIA
11 CLASS members with a second duty-free meal period for some workdays in which these
12 employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and
13 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
14 compensation and in accordance with DEFENDANT's strict corporate policy and practice.
15 Moreover, PLAINTIFFS and other members of the CALIFORNIA CLASS were not provided
16 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

17 **C. Rest Period Violations**

18 30. The applicable IWC Wage Order requires that employers must authorize and
19 permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in
20 the middle of each work period. The rest period is based on the total hours worked daily and
21 must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or
22 major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything
23 more than two hours to be a "major fraction" of four. A rest period is not required for employees
24 whose total daily work time is less than three and one-half hours. The rest period is counted as
25 time worked and therefore, the employer must pay for such periods.

26 31. If an employer fails to provide an employee a rest period in accordance with an
27 applicable IWC Order, the employer shall pay the employee one additional hour of pay at the
28 employee's regular rate of pay for each workday that the rest period is not provided. Labor Code

1 Section 226.7. Thus, if an employer does not provide all of the rest periods required in a
2 workday, the employee is entitled to one additional hour of pay for that workday, not one
3 additional hour of pay for each rest period that was not provided during that workday.

4 32. From time-to-time during the CLASS PERIOD, as a result of their
5 misclassification as independent contractors and their rigorous work schedules PLAINTIFFS and
6 other CALIFORNIA CLASS members were also required to work in excess of four (4) hours
7 without being provided ten (10) minute rest periods. Further, these employees were denied their
8 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
9 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
10 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least
11 ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFFS and other
12 CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
13 a result of their misclassification and rigorous work schedules, PLAINTIFFS and other
14 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
15 DEFENDANT and DEFENDANT’S managers.

16 **D. Failure to Pay Minimum, Regular and Overtime Wages**

17 33. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
18 record and pay PLAINTIFFS and other CALIFORNIA CLASS members for the actual amount
19 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
20 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS members for
21 all time worked, meaning the time during which an employee was subject to the control of an
22 employer, including all the time the employee was permitted or suffered to permit this work.
23 DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS members to work off the
24 clock without paying them for all the time they were under DEFENDANT’S control.
25 PLAINTIFFS and other CALIFORNIA CLASS Members also worked more than eight hours in
26 a workday and/or forty hours in a workweek, but DEFENDANT failed to pay these employees
27 overtime pay as DEFENDANT only paid a flat rate or a flat hourly rate for all time worked.
28 Consequently, PLAINTIFFS and other CALIFORNIA CLASS members forfeited minimum

1 wages and overtime wage compensation by working without their time being correctly recorded
2 and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
3 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by
4 DEFENDANT's business records. As a result, DEFENDANT failed to compensate
5 PLAINTIFFS and the members of the CALIFORNIA CLASS all minimum, regular and
6 overtime wages for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and
7 510.

8 **E. Failure to Reimburse Necessary and Required Business Expenses**

9 34. Under California Labor Code Section 2802, employers are required to indemnify
10 employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
11 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
13 of his or her duties, or of his or her obedience to the directions of the employer, even though
14 unlawful, unless the employee, at the time of obeying the directions, believed them to be
15 unlawful."

16 35. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of
17 corporate policy, practice and procedure, intentionally, knowingly and systematically failed to
18 reimburse and indemnify PLAINTIFFS and the other CLASS MEMBERS for required business
19 expenses incurred by PLAINTIFFS and other the CLASS MEMBERS in direct consequence of
20 discharging their duties on behalf of DEFENDANT.

21 36. From time-to-time during the CLASS PERIOD, in the course of their employment
22 PLAINTIFFS and other CALIFORNIA CLASS members as a business expense, were required
23 by DEFENDANT to use personal cellular phones, personal computers, and personal home
24 internet, as a result of and in furtherance of their job duties as employees for DEFENDANT but
25 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of the
26 personal cellular phones, personal computers, and personal home internet for DEFENDANT's
27 benefit. In order to work for DEFENDANT, PLAINTIFFS and other CALIFORNIA CLASS
28 Members were required use their personal cell phones to review, receive and accept job

1 assignments and as such it is mandatory to have a cell phone. Additionally, PLAINTIFFS and
2 other CALIFORNIA CLASS Members were required to provide their own personal computer
3 and personal home internet in order to map out driving routes. As a result, in the course of their
4 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
5 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
6 related to the use of their personal cellular phones, personal computers, and personal home
7 internet on behalf of and for the benefit of DEFENDANT.

8 **F. Wage Statement Violations**

9 37. California Labor Code Section 226 requires an employer to furnish its employees
10 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
11 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
12 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
13 paid, (7) the name of the employee and only the last four digits of the employee's social security
14 number or an employee identification number other than a social security number, (8) the name
15 and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee.

18 38. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
19 DEFENDANT's intentional and willful misclassification of PLAINTIFFS and the members of
20 the CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT
21 issued inaccurate itemized wages statements to PLAINTIFFS and the members of the
22 CALIFORNIA CLASS that failed to accurately showing (1) gross wages earned, (2) total hours
23 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
24 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
25 paid, (7) the name of the employee and only the last four digits of the employee's social security
26 number or an employee identification number other than a social security number, (8) the name
27 and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect
28 during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee.

2 39. As a result, DEFENDANT issued PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
4 DEFENDANT's violations are knowing and intentional, were not isolated or due to an
5 unintentional payroll error due to clerical or inadvertent mistake.

6 **G. Unfair Competition**

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

16 41. PLAINTIFFS as workers for DEFENDANT, was classified by DEFENDANT as
17 an independent contractor and thus did not receive pay for all time worked, including minimum
18 and overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS were also
19 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
20 without receiving a meal or rest break as evidenced by daily time reports for PLAINTIFFS.
21 PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in
22 accordance with DEFENDANT's strict corporate policy and practice which did not provide for
23 mandatory meal and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFFS all
24 wages still owed to them or any penalty wages owed to them under California Labor Code § 203.
25 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of
26 \$75,000.

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THE CALIFORNIA CLASS

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2 42. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
3 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL")
4 as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,
5 defined as all individuals who worked for Defendant NNT Express and/or Defendant Trytime
6 Transport in California as Drivers and who were classified as independent contractors (the
7 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
8 filing of the original Complaint and ending on the date as determined by the Court (the
9 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
10 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

11 43. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

14 44. All CALIFORNIA CLASS Members who performed and continue to perform
15 this work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated
16 in that they are subject to DEFENDANT's uniform policy and systematic practice that required
17 them to perform work without compensation as required by law.

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

25 46. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated
26 the rights of the PLAINTIFFS and the CALIFORNIA CLASS Members under California law,
27 without limitation, in the following manners:

28 a. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§

1 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer,
2 devised and implemented a scheme whereby PLAINTIFFS and the
3 CALIFORNIA CLASS Members are forced to unlawfully, unfairly and
4 deceptively shoulder the cost of DEFENDANT's wages for all unpaid wages,
5 business related expenses, and DEFENDANT's share of employment taxes,
6 social security taxes, unemployment insurance and workers' compensation
7 insurance;

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

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

18 d. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
19 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFFS and the other
20 members of the CALIFORNIA CLASS with all legally required meal and rest
21 breaks; and

22 e. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
23 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to
24 reimburse PLAINTIFFS and the CALIFORNIA CLASS members with
25 necessary expenses incurred in the discharge of their job duties.

26 47. As a result of DEFENDANT's uniform policies, practices and procedures, there
27 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who
28 worked for DEFENDANT during the CALIFORNIA CLASS PERIOD. These questions

1 include, but are not limited, to the following:

- 2 a. Whether PLAINTIFFS and other CALIFORNIA CLASS Members were
- 3 misclassified as independent contractors by DEFENDANT;
- 4 b. Whether the PLAINTIFFS and the CALIFORNIA CLASS Members all afforded
- 5 all the protections of the California Labor Code that apply when properly
- 6 classified as non-exempt employees;
- 7 c. Whether DEFENDANT's policies, practices and pattern of conduct described in
- 8 this Complaint was and is unlawful;
- 9 d. Whether DEFENDANT unlawfully failed to pay their share of state and federal
- 10 employment taxes as required by state and federal tax laws;
- 11 e. Whether DEFENDANT's policy, practice and procedure of classifying the
- 12 CALIFORNIA CLASS Members as independent contractors exempt from hourly
- 13 wages laws for all time worked and failing to pay the CALIFORNIA CLASS
- 14 Members all amounts due violates applicable provisions of California State law;
- 15 f. Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
- 16 CLASS Members with accurate records of all time worked;
- 17 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 18 conduct; and
- 19 h. Whether DEFENDANT's conduct was willful.

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

- 22 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 23 joinder of all such persons is impracticable and the disposition of their claims as a
- 24 class will benefit the parties 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 CLASS and will apply
- 27 uniformly to every CALIFORNIA CLASS Member;
- 28 c. The claims of the representative PLAINTIFFS are typical of the claims of each

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

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

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

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

- 27 1. Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA CLASS which would establish

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incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

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

b. The parties opposing the CALIFORNIA CLASS have acted 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;

c. 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 the PLAINTIFFS seek declaratory relief holding that DEFENDANT's policies and practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

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

1. The interest of the CALIFORNIA CLASS Members in

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- individually controlling the prosecution or defense of separate actions;
- 2. The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA CLASS;
- 3. In the context of wage litigation because as a practical matter 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;
- 4. The desirability or undesirability of concentration the litigation of the claims in the particular forum;
- 5. The difficulties likely to be encountered in the management of a Class Action; and,
- 6. The basis of DEFENDANT's policies and practices uniformly applied to all the CALIFORNIA CLASS Members

50. 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 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 CALIFORNIA CLASS Members are so numerous that it is impractical to bring all CALIFORNIA CLASS Members before the Court;
- d. PLAINTIFFS and the CALIFORNIA CLASS Members will not be able to obtain effective and economic legal redress unless the action is maintained as a Class

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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 and available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA CLASS Members for any injuries sustained;
- g. DEFENDANT has acted or has refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the 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 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

51. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

52. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth causes of Action on behalf of a California sub-class, defined as all individuals who worked for Defendant NNT Express and/or Defendant Trytime Transport in California as

1 Drivers and who were classified as independent contractors (the “CALIFORNIA LABOR SUB-
2 CLASS”) at any time during the period three (3) years prior to the filing of the original
3 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR
4 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
5 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
6 dollars (\$5,000,000.00).

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

17 54. DEFENDANT maintains records from which the Court can ascertain and
18 identify by name and job title, each of DEFENDANT’s employees who have been
19 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,
20 practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the
21 Complaint to include these additional job titles when they have been identified.

22 55. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

24 56. DEFENDANT, as a matter of corporate policy, practice and procedure,
25 erroneously classified all Drivers as independent contractors making these employees exempt
26 from California labor laws. All Drivers, including PLAINTIFFS, performed the same finite set
27 of tasks and were paid by DEFENDANT according to uniform and systematic company
28 procedures, which, as alleged herein above, failed to correctly pay minimum wage

1 compensation. This business practice was uniformly applied to each and every member of the
2 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
3 adjudicated on a class-wide basis.

4 57. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
5 under California law by:

- 6 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
7 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
8 the correct minimum wage pay for which DEFENDANT is liable pursuant to
9 Cal. Lab. Code §§ 1194 and 1197;
- 10 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
11 and the other members of the CALIFORNIA CLASS with all legally required
12 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
13 rest breaks;
- 14 c. Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and the
15 members of the CALIFORNIA LABOR SUB-CLASS who were improperly
16 classified as independent contractors with an accurate itemized statement in
17 writing showing the gross wages earned, the net wages earned, all applicable
18 hourly rates in effect during the pay period and the corresponding amount of time
19 worked at each hourly rate by the employee;
- 20 d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
21 CALIFORNIA CLASS members with necessary expenses incurred in the
22 discharge of their job duties; and,
- 23 e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
24 employee is discharged or quits from employment, the employer must pay the
25 employee all wages due without abatement, by failing to tender full payment
26 and/or restitution of wages owed or in the manner required by California law to
27 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
28 their employment.

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

3 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
4 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
5 is impracticable and the disposition of their claims as a class will benefit the
6 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 LABOR SUB-
9 CLASS and will apply uniformly to every member of the CALIFORNIA
10 LABOR SUB-CLASS;

11 c. The claims of the representative PLAINTIFFS are typical of the claims of each
12 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
13 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
14 employee paid on an hourly basis who was subjected to the DEFENDANT's
15 practice and policy which failed to pay the correct amount of wages due to the
16 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
17 as a result of DEFENDANT's employment practices. PLAINTIFFS and the
18 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
19 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
20 of misconduct engaged in by DEFENDANT; and

21 d. The representative PLAINTIFFS will fairly and adequately represent and protect
22 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel
23 who are competent and experienced in Class Action litigation. There are no
24 material conflicts between the claims of the representative PLAINTIFFS and the
25 members of the CALIFORNIA LABOR SUB-CLASS that would make class
26 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
27 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
28 Members.

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

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

7 1. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS which
9 would establish incompatible standards of conduct for the parties
10 opposing the CALIFORNIA LABOR SUB-CLASS; or

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

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

26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
2 Class Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

4 1. The interests of the members of the CALIFORNIA LABOR SUB-
5 CLASS in individually controlling the prosecution or defense of
6 separate actions in that the substantial expense of individual
7 actions will be avoided to recover the relatively small amount of
8 economic losses sustained by the individual CALIFORNIA
9 LABOR SUB-CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this
11 litigation;

12 2. Class certification will obviate the need for unduly duplicative
13 litigation that would create the risk of:

14 a. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA LABOR SUB-
16 CLASS, which would establish incompatible standards of
17 conduct for the DEFENDANT; and/or,

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

23 3. In the context of wage litigation because a substantial number of
24 individual CALIFORNIA LABOR SUB-CLASS Members will
25 avoid asserting their legal rights out of fear of retaliation by
26 DEFENDANT, which may adversely affect an individual's job
27 with DEFENDANT or with a subsequent employer, the Class
28 Action is the only means to assert their claims through a

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representative; and,

4. 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.

60. 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 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. PLAINTIFFS, 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;

- 1 f. There is a community of interest in ensuring that the combined assets of
- 2 DEFENDANT are sufficient to adequately compensate the members of the
- 3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
- 5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
- 6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 8 ascertainable from the business records of DEFENDANT. The CALIFORNIA
- 9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
- 10 employed by DEFENDANT in California during the CALIFORNIA LABOR
- 11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an
- 13 efficient and rapid conclusion to all litigation of all wage and hour related claims
- 14 arising out of the conduct of DEFENDANT as to the members of the
- 15 CALIFORNIA LABOR SUB-CLASS.

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

- 18 a. Whether DEFENDANT unlawfully failed to correctly classify the members of
- 19 the CALIFORNIA LABOR SUB-CLASS;
- 20 b. Whether DEFENDANT failed to provide the members of the CALIFORNIA
- 21 LABOR SUB-CLASS with meal and rest breaks in violation of the California
- 22 Labor Code and California regulations and the applicable California Wage
- 23 Order;
- 24 c. Whether DEFENDANT failed to provide the PLAINTIFFS and the other
- 25 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
- 26 wage statements;
- 27 d. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 28 conduct;

- 1 e. The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and
3 f. Whether DEFENDANT’s conduct was willful.

4 **JURISDICTION AND VENUE**

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

9 63. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395
10 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
11 its principal offices and facilities in this County and/or conducts substantial business in this
12 County, and (ii) committed the wrongful conduct herein alleged in this County against members
13 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

14 **FIRST CAUSE OF ACTION**

15 **UNLAWFUL BUSINESS PRACTICES**

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

17 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

21 65. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
22 Code § 17021.

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

27 Any person who engages, has engaged, or proposes to engage in unfair competition may
28 be enjoined in any court of competent jurisdiction. The court may make such orders or

1 judgments, including the appointment of a receiver, as may be necessary to prevent the
2 use or employment by any person of any practice which constitutes unfair competition,
3 as defined in this chapter, or as may be necessary to restore to any person in interest any
4 money or property, real or personal, which may have been acquired by means of such
5 unfair competition. (Cal. Bus. & Prof. Code § 17203).

6 67. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to the
8 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 221,
9 226.7, 226.8, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations
10 § 11090, for which this Court should issue declaratory, injunctive, and other equitable relief,
11 pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct
12 held to constitute unfair competition, including restitution of wages wrongfully withheld,
13 business expenses wrongfully withheld and for the payment of the employer's share of income
14 taxes, social security taxes, unemployment insurance and workers' compensation insurance.

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

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

26 70. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the
28 CALIFORNIA CLASS Members that they were not entitled to minimum wages, payment for

1 payroll taxes or mandatory insurance and other benefits as required by California law, when in
2 fact these representations were false and likely to deceive and for which this Court should issue
3 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
4 of wages wrongfully withheld.

5 71. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
7 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 72. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
10 to, and do, seek such relief as may be necessary to restore to them the money and property
11 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
13 unfair business practices, including earned but unpaid wages for all time worked.

14 73. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
17 engaging in any unlawful and unfair business practices in the future.

18 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and
19 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
20 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
21 required by Cal. Lab. Code §§ 226.7 and 512.

22 75. Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of each
23 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll
24 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
26 for each workday in which a second off-duty meal period was not timely provided for each ten
27 (10) hours of work.

28 76. PLAINTIFFS further demands on behalf of themselves and on behalf of each

1 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
2 was not timely provided as required by law.

3 77. By and through the unlawful and unfair business practices described herein,
4 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
5 other members of the CALIFORNIA CLASS, including earned wages for all time worked and
6 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
7 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
8 to unfairly compete against competitors who comply with the law.

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

14 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
15 to, and do, seek such relief as may be necessary to restore to them the money and property
16 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
17 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
18 unfair business practices.

19 80. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
20 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
21 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
22 engaging in any unlawful and unfair business practices in the future.

23 PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy
24 and/or adequate remedy at law that will end the unlawful and unfair business practices of
25 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
26 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
28 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to

1 engage in these unlawful and unfair business practices.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

4 **(Cal. Lab. Code §§ 1194 and 1197 AND 1197.1)**

5 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**
6 **Defendants)**

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

10 82. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
11 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
12 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
13 accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS
14 Members.

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

17 84. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a less wage than
19 the minimum so fixed is unlawful.

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

22 86. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
23 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
24 amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice
25 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
26 other members of the CALIFORNIA LABOR SUB-CLASS.

27 87. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a

1 result of implementing a uniform policy and practice that denied accurate compensation to
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
3 minimum wage pay.

4 88. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately calculates the correct time worked and consequently underpays the actual time
6 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
7 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
8 benefits in violation of the California Labor Code, the Industrial Welfare Commission
9 requirements and other applicable laws and regulations.

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

13 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
14 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
15 they were entitled to, constituting a failure to pay all earned wages.

16 91. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
17 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
18 CLASS for the true time they worked, PLAINTIFFS and the other members of the
19 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
20 injury in amounts which are presently unknown to them and which will be ascertained
21 according to proof at trial.

22 92. DEFENDANT knew or should have known that PLAINTIFFS and the other
23 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
24 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
26 Members for their labor as a matter of uniform company policy, practice and procedure, and
27 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the
28 other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for

1 their time worked.

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

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

21 **THIRD CAUSE OF ACTION**

22 **For Failure to Pay Overtime Wages**

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

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **DEFENDANTS)**

26 95. PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

1 96. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed
2 to pay PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for
3 the time they worked in excess of the maximum hours permissible by law as required by Cal.
4 Lab. Code §§ 510 & 1198, even though PLAINTIFFS and the CALIFORNIA LABOR SUB-
5 CLASS Members were regularly required to work, and did in fact work, overtime that
6 DEFENDANT never recorded as evidenced by DEFENDANT’S business records and witnessed
7 by DEFENDANT’S employees.

8 97. By virtue of DEFENDANT’S unlawful failure to pay compensation to
9 PLAINTIFFS and the CALIFORNIA CLASS Members for all overtime worked by these
10 employees, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have suffered,
11 and will continue to suffer, an economic in amounts which are presently unknown to them and
12 which can be ascertained according to proof at trial.

13 98. DEFENDANT knew or should have known that PLAINTIFFS and the
14 CALIFORNIA CLASS Members were misclassified as independent contractors and
15 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay
16 them for their labor as a matter of corporate policy, practice and procedure.

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

25 100. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
27 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
28 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order to
4 increase corporate profits at the expense of these employees.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

26 103. DEFENDANT further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the

1 applicable Wage Order, one additional hour of compensation at each employee's regular rate of
2 pay for each workday that a meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
10 **Defendants)**

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

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

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

1 pay for each workday that rest period was not provided.

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

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code § 226)**

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

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

13 110. Cal. Labor Code § 226 provides that an employer must furnish employees with
14 an “accurate itemized” statement in writing showing:

- 15 a. Gross wages earned,
16 b. total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment
18 of overtime under subdivision (a) of Section 515 or any applicable order
19 of the Industrial Welfare Commission,
20 c. the number of piece-rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis,
22 d. all deductions, provided that all deductions made on written orders of the
23 employee may be aggregated and shown as one item,
24 e. net wages earned,
25 f. the inclusive dates of the period for which the employee is paid,
26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of
28 an employee identification number other than social security number may be

1 shown on the itemized statement,

2 h. the name and address of the legal entity that is the employer, and

3 i. all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate by the employee.

5 111. From time to time, DEFENDANT violated Labor Code § 226, in that
6 DEFENDANT failed and continues to fail to properly and accurately itemize the amount of time
7 worked by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS
8 at the effective rates of pay. DEFENDANT also violated Labor Code Section 226 in that
9 DEFENDANT failed to properly and accurately itemize the amount of penalties paid to
10 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members when they missed their
11 meal and rest breaks.

12 112. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
13 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR
14 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
15 true amount of time worked and the amount of employment taxes which were not properly paid
16 to state and federal tax authorities. These damages are difficult to estimate Therefore,
17 PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
18 recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred,
19 and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an
20 amount according to proof at the time of trial (but in no event more than \$4,000.00 for
21 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

24 **(Cal. Lab. Code §§ 2802)**

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

27 113. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
28 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior

1 paragraphs of this Complaint.

2 114. Cal. Lab. Code § 2802 provides, in relevant part, that:

3 An employer shall indemnify his or her employee for all necessary expenditures
4 or losses incurred by the employee in direct consequence of the discharge of his
5 or her duties, or of his or her obedience to the directions of the employer, even
6 though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful.

8 115. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
9 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
10 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
11 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA
12 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost
13 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
14 result, in the course of their employment with DEFENDANT, PLAINTIFFS and other members
15 of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which
16 included, but were not limited to, the costs related to the use of their personal cellular phones all
17 on behalf of and for the benefit of DEFENDANT. These expenses are necessary to complete
18 their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
19 waiver of this expectation. Although these expenses are necessary expenses incurred by
20 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
21 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
22 for these expenses as an employer is required to do under the laws and regulations of California.

23 116. PLAINTIFFS therefore demand reimbursement for expenditures or losses
24 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
25 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
26 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

27 **EIGHTH CAUSE OF ACTION**

28 **FAILURE TO PAY WAGES WHEN DUE**

1 (Cal. Lab. Code § 203)

2 (Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all
3 Defendants)

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

7 118. Cal. Lab. Code § 200 provides that:

8 As used in this article:

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

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

15 119. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
16 an employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately."

18 120. Cal. Lab. Code § 202 provides, in relevant part, that:

19 If an employee not having a written contract for a definite period quits his or her
20 employment, his or her wages shall become due and payable not later than 72 hours
21 thereafter, unless the employee has given 72 hours previous notice of his or her intention
22 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
23 Notwithstanding any other provision of law, an employee who quits without providing a
24 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
25 designates a mailing address. The date of the mailing shall constitute the date of
26 payment for purposes of the requirement to provide payment within 72 hours of the
27 notice of quitting.

28 121. There was no definite term in PLAINTIFFS's or any CALIFORNIA LABOR

1 SUB-CLASS Members' employment contract.

2 122. Cal. Lab. Code § 203 provides:

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

8 123. The employment of PLAINTIFFS and many other CALIFORNIA LABOR
9 SUB-CLASS Members has terminated, yet as to those individuals whose employment
10 terminated, DEFENDANT did not timely tender payment of all wages owed as required by law.

11 124. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
12 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
13 PLAINTIFFS demand thirty days of pay as penalty for not paying all wages due at time of
14 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
15 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
16 statutory costs as allowed.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

- 21 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
22 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 23 b. An order temporarily, preliminarily and permanently enjoining and restraining
24 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 25 c. An order requiring DEFENDANT to pay all minimum wages and all sums
26 unlawfully withheld from compensation due to PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS; and
- 28 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 4 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
5 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
6 action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. Compensatory damages, according to proof at trial, including compensatory
8 damages for overtime compensation due to PLAINTIFFS and the other members
9 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
10 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
11 statutory rate;
- 12 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
13 the applicable IWC Wage Order;
- 14 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
15 which a violation occurs and one hundred dollars (\$100) per each member of the
16 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
18 an award of costs for violation of Cal. Lab. Code § 226;
- 19 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
20 CLASS as a penalty from the due date thereof at the same rate until paid or until
21 an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 22 f. The amount of the expenses PLAINTIFFS and each member of the
23 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
24 plus interest, and costs of suit.

25 3. On all claims:

- 26 a. An award of interest, including prejudgment interest at the legal rate;
- 27 b. Such other and further relief as the Court deems just and equitable; and
- 28 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the

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law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 1198
and/or § 1198.5.

DATED: March 27, 2024

ZAKAY LAW GROUP, APLC



By: _____

Shani O. Zakay

Attorney for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

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

DATED: March 27, 2024

ZAKAY LAW GROUP, APLC



By: _____

Shani O. Zakay

Attorney for PLAINTIFFS