

MAY 18 2018

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **IN AND FOR THE COUNTY OF COUNTY OF SAN FRANCISCO**

20 STEVEN MOORE, an individual, on behalf of  
21 himself and on behalf of all persons similarly  
22 situated,

23 Plaintiff,

24 v.

25 ZIRX TRANSPORTATION SERVICES, INC.  
26 a Corporation; OOLLOOA, INC., a  
27 Corporation; and DOES 1-50, Inclusive,

28 Defendants.

Case No:

**CGC-18-566655**

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR A JURY TRIAL**

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

5  
6 **INTRODUCTION**

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

23 **THE PARTIES**

24 2. Defendant Zirx transportation Services, Inc. (“DEFENDANT ZIRX”) is a  
25 corporation and at all relevant times mentioned herein conducted and continues to conduct  
26 substantial and regular business throughout California. Defendant Oollooa, Inc.  
27 (“DEFENDANT OOLLOOA”) is a corporation and at all relevant times mentioned herein  
28 conducted and continues to conduct substantial and regular business throughout California.

1 DEFENDANT ZIRX and DEFENDANT OOLLOOA are referred to herein collectively as  
2 DEFENDANTS.

3 3. Defendant ZIRX and Defendant OOLLOOA were the joint employers of  
4 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF  
5 performed work for respectively, and are therefore jointly responsible as employers for the  
6 conduct alleged herein and collectively referred to herein as (“DEFENDANTS”).

7 4. DEFENDANTS are privately-held startup companies based in San Francisco,  
8 California. DEFENDANTS provide customers with on-demand access to Drivers who will  
9 pick up and drop off their cars. DEFENDANTS’ driving services are performed by independent  
10 contractors.

11 5. PLAINTIFF worked for DEFENDANTS as a Driver in California from  
12 December of 2016 to September of 2017. PLAINTIFF was classified by DEFENDANTS as an  
13 independent contractor during his entire employment with DEFENDANTS.

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  
17 “civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen  
18 thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines  
19 permitted by law.” It is further provided that, in the event that an employer is found to  
20 have engaged in “a pattern or practice of these violations,” the penalties increase to “not  
21 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars  
22 (\$25,000) for each violation, in addition to any other penalties or fines permitted by  
23 law.” Cal. Labor Code § 226.8.

24 7. Here, DEFENDANTS have willfully misclassified PLAINTIFF and other  
25 Drivers as described in Cal. Labor Code § 226.8. DEFENDANTS have further engaged in a  
26 “pattern of practice” of such violations as contemplated by the California Labor Code.

27 8. Upon hire, the position of a Driver was represented by DEFENDANTS to  
28 PLAINTIFF and the other Drivers as an independent contractor position capable of paying an  
hourly rate for the time they drove a car for a client. PLAINTIFF and other Drivers were not  
compensated overtime wages for any of their time spent working in excess of eight (8) hours in

1 a workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek.  
2 PLAINTIFF and other Drivers were paid the block rate to perform driving services on  
3 DEFENDANT's behalf. PLAINTIFF and other Drivers were not compensated any other wages  
4 besides the block rate and they were not allowed to record their time until they arrived at the  
5 location to pick-up a car or after they reached the location for drop-off. DEFENDANTS did not  
6 pay PLAINTIFF and other CALIFORNIA CLASS Members for the time spent driving between  
7 appointments and all the other non-driving work tasks. The finite set of tasks required to be  
8 performed by the Drivers is as follows: when notified via cell phone, travel to private homes,  
9 apartments, airports and offices to provide driving services for customers that requested  
10 DEFENDANTS' services all in accordance with DEFENDANTS' business practices and  
11 policies.

12 9. To perform their job duties, PLAINTIFF and the other Drivers performed work  
13 subject to the control of DEFENDANTS in that DEFENDANTS had the authority to exercise  
14 complete control over the work performed and the manner and means in which the work was  
15 performed. DEFENDANTS provided the customers, and DEFENDANTS provided the  
16 instructions on how to perform the driving services.

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

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

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

28 11. As a result, stripped of all the legal fictions and artificial barriers to an honest  
classification of the relationship between PLAINTIFF and all the other Drivers on the one hand,

1 and DEFENDANTS on the other hand, PLAINTIFF and all the other Drivers are and were  
2 employees of DEFENDANTS and not independent contractors of DEFENDANT and should  
3 therefore be properly classified as non-exempt, hourly employees.

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

11 13. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
12 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
13 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice  
14 which failed to lawfully compensate these Drivers. As a matter of company policy, practice and  
15 procedure, DEFENDANTS have unlawfully, unfairly and/or deceptively classified every  
16 CALIFORNIA CLASS Member as “independent contractors” in order to unlawfully avoid  
17 compliance with all applicable federal and state laws that require payment for all time worked,  
18 business expenses, and the employer's share of payroll taxes and mandatory insurance. As a  
19 result of the scheme to defraud the federal and state governments and the CALIFORNIA  
20 CLASS Members, PLAINTIFF and the CALIFORNIA CLASS Members were underpaid  
21 throughout their employment with DEFENDANTS.

22 14. The true names and capacities, whether individual, corporate, subsidiary,  
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege  
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
28 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

1 responsible in some manner for one or more of the events and happenings that proximately  
2 caused the injuries and damages hereinafter alleged

3 15. The agents, servants and/or employees of the Defendants and each of them acting  
4 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
5 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
8 Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
9 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,  
10 servants and/or employees

### 11 **THE CONDUCT**

12 16. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA  
13 CLASS Members as defined by DEFENDANTS was executed by them through the  
14 performance of non-exempt labor.

15 17. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed  
16 non-exempt labor subject to DEFENDANTS' complete control over the manner and means of  
17 performance, DEFENDANTS instituted a blanket classification policy, practice and procedure  
18 by which all of these CALIFORNIA CLASS Members were classified as "independent  
19 contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and  
20 reimbursement for business related expenses. By reason of this uniform misclassification, the  
21 CALIFORNIA CLASS Members were also required to pay DEFENDANTS' share of payroll  
22 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,  
23 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members  
24 who performed this work for DEFENDANTS, DEFENDANTS committed acts of unfair  
25 competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§  
26 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure  
27 which uniformly failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS  
28 Members as employees and thereby failed to pay them wages for all time worked,

1 reimbursement of business related expenses, failed to provide them with meal and rest breaks,  
2 and failed to reimburse these employees for the employer's share of payroll taxes and  
3 mandatory insurance. The proper classification of these employees is DEFENDANTS' burden.  
4 As a result of DEFENDANTS' intentional disregard of the obligation to meet this burden,  
5 DEFENDANTS violated the California Labor Code and regulations promulgated thereunder as  
6 herein alleged. DEFENDANTS did not have in place a policy, practice or procedure that  
7 provided meal and/or rest breaks to PLAINTIFF and CALIFORNIA CLASS Members as  
8 evidenced by DEFENDANTS business records which contain no record of these breaks.

9         18. Specifically as to PLAINTIFF, DEFENDANTS fails to provide all the legally  
10 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
11 Labor Code. DEFENDANTS do not have a policy or practice which provides timely off-duty  
12 meal and rest breaks to PLAINTIFF and also fails to compensate PLAINTIFF for his missed  
13 meal and rest breaks. The nature of the work performed by PLAINTIFF does not prevent him  
14 from being relieved of all of his duties for the legally required off-duty meal periods. As a  
15 result, DEFENDANTS' failure to provide PLAINTIFF with the legally required meal periods is  
16 evidenced by DEFENDANTS' business records. As a result of DEFENDANTS not accurately  
17 recording all missed meal and rest periods and/or reporting time wages due, the wage statements  
18 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code  
19 Section 226(a). The amount in controversy for PLAINTIFF individually does not exceed the  
20 sum or value of \$75,000.

21         19. DEFENDANTS, as a matter of law, have the burden of proving that employees  
22 are properly classified and that DEFENDANTS otherwise comply with applicable laws.  
23 DEFENDANTS, as a matter of corporate policy, erroneously and unilaterally classified all the  
24 CALIFORNIA CLASS Members as independent contractors.

25         20. PLAINTIFF and all the CALIFORNIA CLASS Members are and were  
26 uniformly classified and treated by DEFENDANTS as independent contractors at the time of  
27 hire and thereafter, and DEFENDANTS failed to take proper steps to determine whether the  
28 PLAINTIFF and the CLASS Members are properly classified under the applicable



1 Industrial Welfare Commission Wage Order and Cal. Lab. Code §§ 510, et seq. as exempt  
2 form applicable labor laws. Since DEFENDANTS affirmatively and willfully misclassified  
3 PLAINTIFF and CALIFORNIA CLASS Members in compliance with California labor laws,  
4 DEFENDANTS' practices violated and continue to violate California law. In addition,  
5 DEFENDANTS acted deceptively by falsely and fraudulently classifying PLAINTIFF and each  
6 CALIFORNIA CLASS Member as independent contractors when DEFENDANTS knew or  
7 should have known that this classification was false and not based on known facts.  
8 DEFENDANTS also acted deceptively by violating the California labor laws, and as a result of  
9 this policy and practice, DEFENDANTS also violated the UCL. In doing so, DEFENDANTS  
10 cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors  
11 paid who complied with the law and cheated the CALIFORNIA CLASS by not paying  
12 them in accordance with California law.

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

24 22. In the course of their employment, PLAINTIFF and other CALIFORNIA  
25 CLASS Members, as a business expense, were required by DEFENDANTS to use personal  
26 cellular phones as a result of and in furtherance of their job duties as employees for  
27 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost  
28 associated with the use of the personal cellular phones for DEFENDANTS' benefit. In order to

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

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

23         24. By reason of this uniform conduct applicable to PLAINTIFF and all the  
24 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in  
25 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
26 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to  
27 correctly classify PLAINTIFF and the CALIFORNIA CLASS Members as employees. The  
28 proper classification of these employees is DEFENDANTS' burden. As a result of

1 DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS  
2 failed to pay all required wages for work performed by PLAINTIFF and other CALIFORNIA  
3 CLASS Members and violated the California Labor Code and regulations promulgated  
4 thereunder as herein alleged.

5 25. Specifically as to PLAINTIFF; he worked for DEFENDANTS in California as a  
6 Driver and was classified by DEFENDANTS as an independent contractor from December of  
7 2016 to September of 2017. Upon hire, the position of a Driver was represented by  
8 DEFENDANTS to PLAINTIFF as an independent contractor position capable of paying an  
9 hourly rate for time worked for DEFENDANTS. PLAINTIFF as a Driver, was classified by  
10 DEFENDANTS as an independent contractor and thus did not receive pay for all time worked,  
11 including overtime worked. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also  
12 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a  
13 shift without receiving a meal or rest break as evidenced by daily time reports for PLAINTIFF.  
14 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in  
15 accordance with DEFENDANTS’ strict corporate policy and practice which did not provide for  
16 mandatory meal and rest breaks. To date, DEFENDANTS have not fully paid PLAINTIFF all  
17 wages still owed to him or any penalty wages owed to him under California Labor Code § 203.  
18 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
19 \$75,000.

### 20 **THE CALIFORNIA CLASS**

21 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
24 individuals who worked for Defendant ZIRX and/or Defendant OOLLOOA in California as  
25 Drivers and who were classified as independent contractors (the “CALIFORNIA CLASS”) at  
26 any time during the period beginning four (4) years prior to the filing of this Complaint and  
27 ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The  
28

1 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five  
2 million dollars (\$5,000,000.00).

3 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
4 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted  
5 accordingly.

6 28. All CALIFORNIA CLASS Members who performed and continue to perform  
7 this work for DEFENDANTS during the CALIFORNIA CLASS PERIOD are similarly situated  
8 in that they are subject to DEFENDANTS' uniform policy and systematic practice that required  
9 them to perform work without compensation as required by law.

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

17 30. During the CALIFORNIA CLASS PERIOD, DEFENDANTS uniformly violated  
18 the rights of the PLAINTIFF and the CALIFORNIA CLASS under California law, without  
19 limitation, in the following manners:

- 20 a. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§  
21 17200, *et seq.* the ("UCL"), in that DEFENDANTS, while acting as employer,  
22 devised and implemented a scheme whereby PLAINTIFF and the CALIFORNIA  
23 CLASS Members are forced to unlawfully, unfairly and deceptively shoulder the  
24 cost of DEFENDANTS' wages for all unpaid wages, business related expenses,  
25 and DEFENDANTS' share of employment taxes, social security taxes,  
26 unemployment insurance and workers' compensation insurance;
- 27 b. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
28 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place

1 company policies, practices and procedures that uniformly misclassified  
2 PLAINTIFF and the CALIFORNIA CLASS Members as independent  
3 contractors;

4 c. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
5 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
6 company policies, practices and procedures that accurately determined the  
7 amount of working time spent by PLAINTIFF and the other CALIFORNIA  
8 CLASS Members performing non-exempt employee labor;

9 d. Committing an act of unfair competition in violation of the California Unfair  
10 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
11 provide legally required meal and/or rest breaks to PLAINTIFF and the  
12 CALIFORNIA CLASS members.

13 e. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
14 17200, *et seq.*, by failing to reimburse PLAINTIFF and the CALIFORNIA  
15 CLASS Members with necessary expenses incurred in the discharge of their job  
16 duties; and,

17 f. Committing an act of unfair competition in violation of the UCL, by violating  
18 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to  
19 PLAINTIFF and the members of the CALIFORNIA CLASS who were  
20 improperly classified as independent contractors, and retaining the unpaid  
21 overtime to the benefit of DEFENDANTS.

22 31. As a result of DEFENDANTS' uniform policies, practices and procedures, there  
23 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who  
24 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not  
25 limited, to the following:

26 a. Whether PLAINTIFF and other CALIFORNIA CLASS Members were  
27 misclassified as independent contractors by DEFENDANTS;  
28

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

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

- 19           a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 20           joinder of all such persons is impracticable and the disposition of their claims as
- 21           a class will benefit the parties and the Court;
- 22           b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 23           raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 24           uniformly to every member of the CALIFORNIA CLASS;
- 25           c. The claims of the representative PLAINTIFF are typical of the claims of each
- 26           member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA
- 27           CLASS Members, was classified as an independent contractor upon hiring based
- 28           on the defined corporate policies and practices and labors under DEFENDANTS'

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

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

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

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

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

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

5           b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
6           grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
7           class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
8           DEFENDANTS uniformly classified and treated the CALIFORNIA CLASS  
9           Members as independent contractors and, thereafter, uniformly failed to take  
10           proper steps to determine whether the CALIFORNIA CLASS Members were  
11           properly classified as independent contractors, and thereby denied these  
12           employees wages and payments for business expenses and the employer's share  
13           of payroll taxes and mandatory insurance as required by law.

14                   i. With respect to the First Cause of Action, the final relief on behalf of the  
15                   CALIFORNIA CLASS sought does not relate exclusively to restitution  
16                   because through this claim PLAINTIFF seeks declaratory relief holding  
17                   that the DEFENDANTS' policies and practices constitute unfair  
18                   competition, along with declaratory relief, injunctive relief, and incidental  
19                   relief as may be necessary to prevent and remedy the conduct declared to  
20                   constitute unfair competition;

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

27                   i. The interests of the members of the CALIFORNIA CLASS in  
28                   individually controlling the prosecution or defense of separate actions;



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

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

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

1           improprieties, and in obtaining adequate compensation for the damages and  
2           injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA  
3           CLASS;

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

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

10          h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
11          business records of DEFENDANT; the CALIFORNIA CLASS consists of all  
12          DEFENDANTS’ Drivers in California classified as independent contractors  
13          during the CALIFORNIA CLASS PERIOD and subjected to DEFENDANTS’  
14          policies, practices and procedures as herein alleged; and,

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

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

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**THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
27 SUB-CLASS, making appropriate class-wide relief with respect to the  
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS

1 uniformly classified and treated the members of the CALIFORNIA LABOR  
2 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take  
3 proper steps to determine whether the CALIFORNIA LABOR SUB-CLASS  
4 Members were properly classified as independent contractors, and thereby denied  
5 these employees the protections afforded to them under the California Labor  
6 Code;

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

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

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

22 1. Inconsistent or varying adjudications with respect to individual  
23 members of the CALIFORNIA LABOR SUB-CLASS, which  
24 would establish incompatible standards of conduct for the  
25 DEFENDANTS; and/or,

26 2. Adjudications with respect to individual members of the  
27 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
28 be dispositive of the interests of the other members not parties to

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the adjudication or substantially impair or impede their ability to protect their interests;

- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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



- 1 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
- 2 not be able to obtain effective and economic legal redress unless the action is
- 3 maintained as a Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable
- 5 relief for the acts of unfair competition, statutory violations and other
- 6 improprieties, and in obtaining adequate compensation for the damages and
- 7 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA
- 8 LABOR SUB-CLASS;
- 9 f. There is a community of interest in ensuring that the combined assets of
- 10 DEFENDANTS are sufficient to adequately compensate the members of the
- 11 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
- 13 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
- 14 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 15 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 16 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
- 17 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who
- 18 work or previously worked for DEFENDANTS as Drivers in California and
- 19 classified as independent contractors during the CALIFORNIA LABOR SUB-
- 20 CLASS PERIOD; and
- 21 i. Class treatment provides manageable judicial treatment calculated to bring an
- 22 efficient and rapid conclusion to all litigation of all wage and hour related claims
- 23 arising out of the conduct of DEFENDANTS.

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

- 26 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
- 27 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
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1 violation of the California Labor Code and California regulations and the  
2 applicable California Wage Order;

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

6 c. Whether DEFENDANT failed to accurately record the applicable overtime rates  
7 for all overtime worked PLAINTIFF and the other members of the  
8 CALIFORNIA LABOR SUB-CLASS;

9 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
10 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
11 thirty (30) minute meal breaks and rest periods;

12 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
13 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
14 statements;

15 f. Whether DEFENDANT has engaged in unfair competition by the above-listed  
16 conduct;

17 g. The proper measure of damages and penalties owed to the members of the  
18 CALIFORNIA LABOR SUB-CLASS; and

19 h. Whether DEFENDANT's conduct was willful.

20 **JURISDICTION AND VENUE**

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

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

3  
4 **FIRST CAUSE OF ACTION**

5 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

11 49. DEFENDANTS are “persons” as that term is defined under Cal. Bus. And Prof.  
12 Code § 17021.

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

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

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

1 wrongfully withheld, business expenses wrongfully withheld and for the payment of the  
2 employer's share of income taxes, social security taxes, unemployment insurance and workers'  
3 compensation insurance.

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

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

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

22 55. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
23 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the  
24 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
25 DEFENDANTS.

26 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
27 and do, seek such relief as may be necessary to restore to them the money and property which  
28 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
2 unfair business practices, including earned but unpaid wages for all overtime worked.

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

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

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

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

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

26 62. All the acts described herein as violations of, among other things, the Industrial  
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
28 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive

1 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business  
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

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

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

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

19  
20 **SECOND CAUSE OF ACTION**

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

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

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

28 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
bring a claim for DEFENDANTS' willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to  
2 accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS  
3 Members.

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

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

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

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

16 72. DEFENDANTS' uniform pattern of unlawful wage and hour practices  
17 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
18 whole, as a result of implementing a uniform policy and practice that denied accurate  
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
20 CLASS in regards to minimum wage pay.

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

27 74. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
receive full compensation for their time worked for DEFENDANTS.

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

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

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

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

25           79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
26 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
27 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided  
28 by the California Labor Code and/or other applicable statutes. To the extent minimum wage  
compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§



1 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
2 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA  
3 LABOR SUB-CLASS Members. DEFENDANTS conduct as alleged herein was willful,  
4 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-  
5 CLASS Members are entitled to seek and recover statutory costs.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME COMPENSATION**

8 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

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

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

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

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

26 83. DEFENDANTS knew or should have known that PLAINTIFF and the other  
27 members of the CALIFORNIA LABOR SUB-CLASS were misclassified as independent  
28 contractors and DEFENDANTS systematically elected, either through intentional malfeasance

1 or gross nonfeasance, not to pay them for their labor as a matter of uniform corporate policy,  
2 practice and procedure.

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

28 87. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANTS  
failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other

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

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

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

20  
21 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

20

21

**SIXTH CAUSE OF ACTION**

22

**FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

23

**(Cal. Lab. Code § 226)**

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

24

25

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

26

27

28

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

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

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

26 97. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor  
27 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the  
28 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

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

9  
10 **SIXTH CAUSE OF ACTION**

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

12 **(Cal. Lab. Code § 2802)**

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

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

17 99. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

23 100. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by  
24 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB- CLASS  
25 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'  
26 benefit. Specifically, DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA  
27 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
28 associated with the use of their personal cellular phones for DEFENDANTS' benefit. In order to  
work as a Driver for DEFENDANTS, PLAINTIFF and other CALIFORNIA CLASS Members  
were required to use DEFENDANTS' mobile application and as such it is mandatory to have a  
cell phone that is compatible with DEFENDANTS' mobile application. As a result, in the

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

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

20  
21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

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

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

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

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

109. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,  
PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time of  
termination individuals in the CALIFORNIA LABOR SUB-CLASS who terminated



1 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and  
2 statutory costs as allowed by law.

3  
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
21 action pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory  
23 damages due PLAINTIFF and the other members of the CALIFORNIA LABOR  
24 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS  
25 PERIOD plus interest thereon at the statutory rate;
- 26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
27 the applicable IWC Wage Order;
- 28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

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which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and

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

3. On all claims:

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

DATED: May 17, 2018

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiff