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11 Individually and on Behalf of All Similarly Situated Individuals

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 19 2013

John A. Clarke, Executive Officer/Clerk
By SHAUKYA WESLEY Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14 VICTOR FUENTES, an individual, JOSE
15 AVILA, an individual; MARIO
NAVARRO, an individual; GEORGE
16 GARCIA, JR., an individual; Individually
and on Behalf of All Similarly Situated
17 Individuals,

18 Plaintiffs,

19 vs.

20 MACY'S WEST STORES, INC., an Ohio
corporation; JOSEPH ELETTO
21 TRANSFER, INC., a New York
corporation, and DOES 1 through 25,
22 Inclusive,

23 Defendants.

CASE NO.

[CLASS ACTION]

BC 528221

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194)
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194)
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);
4. FAILURE TO PROVIDE MEAL AND REST PERIODS (LABOR CODE §§ 512 and 226.7);
5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
6. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
7. INDEMNIFICATION (LABOR CODE §§ 2800 and 2802);
8. CONVERSION (LABOR CODE §§ 3336 and 3294); and
9. UNFAIR COMPETITION (LABOR CODE §§ 17200 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiffs Victor Fuentes, Jose Avila, Mario Navarro, and George Garcia, Jr.
2 (“Plaintiffs”), individually and on behalf of all similarly situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants MACY’S WEST
5 STORES, INC., JOSEPH ELETTO TRANSFER, INC., and DOES 1-25, inclusive (collectively,
6 “Defendants”), on behalf of Plaintiffs and all other individuals who worked in California as a
7 Driver and/or Helper for Defendants at any time during the four years preceding the filing of this
8 action, and continuing while this action is pending (“Class Period”), who were denied the
9 benefits and protections required under the California Labor Code and other statutes and
10 regulations applicable to California employees.

- 11 2. During the Class Period, Defendants:
- 12 a. failed to pay wages for all hours worked by Drivers and Helpers;
 - 13 b. failed to pay Drivers and Helpers the legal minimum wage of \$8.00/hour;
 - 14 c. failed to pay overtime wages due to Drivers and Helpers;
 - 15 d. failed to provide meal and rest periods due to Drivers and Helpers;
 - 16 e. failed to provide the Drivers and Helpers with timely and accurate wage
17 and hour statements;
 - 18 f. failed to pay the Drivers and Helpers compensation in a timely manner
19 upon their termination or resignation;
 - 20 g. failed to maintain complete and accurate payroll records for the Drivers
21 and Helpers;
 - 22 h. wrongfully withheld wages and compensation due to the Drivers and
23 Helpers; and
 - 24 i. committed unfair business practices in an effort to increase profits and to
25 gain an unfair business advantage at the expense of the Drivers and Helpers and the public.

26 3. The foregoing acts and other acts by Defendants - committed throughout
27 California and Los Angeles County - violated provisions of the California Labor Code, including
28 sections 201, 202, 203, 226, 226.7, 510, 512, 515, 551, 552, 1194, and 1198 (collectively,

1 “Employment Laws”), violated the applicable Wage Orders issued by California’s Industrial
2 Welfare Commission, including Wage Orders 5-2001 during the Class Period (“Regulations”),
3 violated California’s Unfair Business Practices Act, California Business & Professions Code
4 sections 17200 *et seq.*, and violated Plaintiffs’ rights.

5 **JURISDICTION AND VENUE**

6 4. Venue is proper in this Judicial District and the County of Los Angeles because
7 work was performed by Plaintiffs and other members of the Class for Defendants in the County
8 of Los Angeles, California, and Defendants’ obligations under the Employment Laws and
9 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage
10 statements to Plaintiffs and other members of the Class arose and were breached in the County of
11 Los Angeles.

12 5. The California Superior Court has jurisdiction in this matter because Plaintiffs are
13 all residents of California, and Defendants are corporations qualified to do business in California
14 and regularly conduct business in California. Further, no federal question is at issue as the
15 claims are based solely on California law.

16 **THE PARTIES**

17 6. Plaintiff Victor Fuentes is, and at all relevant times was, a competent adult
18 residing in California. Mr. Fuentes brings suit on behalf of himself and all similarly situated
19 individuals pursuant to California Code of Civil Procedure section 382, and California Business
20 & Professions Code sections 17200, *et seq.* Mr. Fuentes is unlawfully classified by Defendants
21 as an independent contractor and currently works as a Driver out of Macy’s Logistics and
22 Operations Center located in the City of Industry, California.

23 7. Plaintiff Jose Avila is, and at all relevant times was, a competent adult residing in
24 California. Mr. Avila brings suit on behalf of himself and all similarly situated individuals
25 pursuant to California Code of Civil Procedure section 382, and California Business &
26 Professions Code sections 17200, *et seq.* Mr. Avila is unlawfully classified by Defendants as an
27 independent contractor and currently works as a Driver out of Macy’s Logistics and Operations
28 Center located in the City of Industry, California.

1 8. Plaintiff Mario Navarro is, and at all relevant times was, a competent adult
2 residing in California. Mr. Navarro brings suit on behalf of himself and all similarly situated
3 individuals pursuant to California Code of Civil Procedure section 382, and California Business
4 & Professions Code sections 17200, *et seq.* Mr. Navarro was unlawfully classified by
5 Defendants as an independent contractor and worked as a Driver out of Macy's Logistics and
6 Operations Center located in the City of Industry, California.

7 9. Plaintiff George Garcia, Jr. is, and at all relevant times was, a competent adult
8 residing in California. Mr. Garcia brings suit on behalf of himself and all similarly situated
9 individuals pursuant to California Code of Civil Procedure section 382, and California Business
10 & Professions Code sections 17200, *et seq.* Mr. Garcia was unlawfully classified by Defendants
11 as an independent contractor and worked as a Driver Assistant or commonly referred to by
12 Defendants as a "Helper" out of Macy's Logistics and Operations Center located in the City of
13 Industry, California.

14 10. Defendant Macy's West Stores, Inc. is, and at all relevant times was, an Ohio
15 corporation registered with the State of California's Secretary of State. Macy's is one of the
16 nation's premier chain of department stores and is a retailer of a variety of private and in-store
17 brands. Macy's conducts business throughout the State of California, including in Los Angeles
18 County.

19 11. Defendant Joseph Eletto Transfer, Inc. is, and at all relevant times was, a New
20 York corporation registered with the State of California's Secretary of State. Eletto is a carrier
21 for department stores providing logistics management. Defendants have engaged in unlawful
22 employment practices addressed in this Complaint throughout California and in Los Angeles
23 County.

24 12. Defendants Macy's and Eletto, are, and at all relevant times were, corporations
25 conducting business in the State of California, including the County of Los Angeles. Plaintiffs
26 are informed and believe, and based upon such information and belief, allege that Macy's
27 exercised control over the operations of Eletto from its resources, preparation, and management,
28 to Eletto utilizing Macy's criteria and standards for hiring personnel and performing deliveries.

1 13. The degree of control exercised by Macy's over Eletto is enough to reasonably
2 deem Eletto an agent of Macy's under traditional agency principles. Eletto can legitimately be
3 described as only a means through which Macy's acts and conducts its global business.
4 Defendants Eletto and Macy's have such a unity of interest and ownership that the separate
5 personalities do not in reality exist and that the corporate structure is just a shield for the alter ego
6 of each other. Plaintiffs therefore are informed and believe and thereupon allege Eletto, Macy's,
7 and each of them, were their employer under California law, that Defendants herein did acts
8 consistent with the existence of an employer-employee relationship with Plaintiffs - despite their
9 unlawful classification of Plaintiffs as independent contractors - and that Eletto was owned,
10 controlled, directly or indirectly, by Macy's.

11 14. Plaintiffs are informed and believe and based thereon allege that Defendants
12 uniformly apply their pay practices, and overtime policies to all Drivers and Driver Assistants.

13 15. Plaintiffs are currently unaware of the true names and capacities of the defendants
14 sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those
15 defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true
16 names and capacities of such fictitiously named defendants when they are ascertained.

17 16. Plaintiffs are informed and believe and based thereon allege that each defendant
18 sued in this action, including each defendant sued by the fictitious names DOES 1 through 25,
19 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
20 below.

21 17. Plaintiffs are informed and believe and based thereon allege that DOES 1 through
22 25, inclusive were the agents, servants and/or employees of Defendants and, in doing the things
23 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
24 servants and employees, and with the permission and consent of Defendants.

25 18. Plaintiffs are informed and believe and based thereon allege that Defendants
26 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged
27 herein.

28 ///

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 19. Defendants unlawfully classified Plaintiffs as independent contractors when, in
3 fact, they were heavily regulated through a series of work-related restrictions and directives.
4 Macy's directs Eletto to secure truck owners to have them contract with Macy's for purposes of
5 delivering Macy's products to its customers. These truck owners arrive at Macy's Logistics and
6 Operations Center and go through a hiring process with Macy's employees who office at the
7 same site. Truck owners are hired by Macy's and are required to have a Macy's banner put on
8 the truck. Truck owners then bring on Drivers and Driver Assistant or commonly referred to by
9 Defendants as "Helpers", like Plaintiffs, who are also evaluated by Macy's employees for hiring
10 purposes.

11 20. After Defendants hired Plaintiffs, Macy's instructed Plaintiffs to follow a series of
12 directives related to the delivery of Macy's products. These directives include, but are not
13 limited to, the following:

- 14 a. the truck must bear a Macy's logo and cannot be used for any others
15 purposes while having the Macy's banner;
- 16 b. the truck must be left at the site at the end of the work day;
- 17 c. the delivery schedules are set and controlled by Macy's and cannot be
18 varied by Drivers or Driver's Assistants, like Plaintiffs;
- 19 d. Plaintiffs were required to purchase at their own cost and wear Macy's
20 distinct uniforms;
- 21 e. Drivers and Helpers, like Plaintiffs, were required to carry personalized
22 Macy's business cards that they give out to customers carrying the Macy's logo ;
- 23 f. Plaintiffs were also required to announce themselves to Macy's customers
24 as "Macy's delivery" and "from Macy's";
- 25 g. Plaintiffs were required to provide felt and plastic at their own cost and
26 expense in connection with delivering Macy's products;
- 27 h. each morning Plaintiffs and other similarly situated Drivers and Helpers
28 were required to go through a process of "role-playing" where Macy's employees evaluate

1 whether the Driver or Helper, like Plaintiffs, met Macy's standards and expectations of delivery
2 and customer service;

3 i. on each delivery - and as part of their "role-playing" exercise -
4 Plaintiffs were instructed to use a red carpet provided by Macy's in delivering Macy's products
5 and if that red carpet was lost or destroyed, then the Driver and/or Helper must purchase a red
6 carpet for \$200;

7 j. if a customer has furniture and offers it to a Driver or Helper, Macy's
8 considers the donation as Macy's property and it must be delivered and left at the site or
9 warehouse;

10 k. Drivers and Helpers must offer to vacuum the floor when they remove
11 furniture;

12 l. if Drivers and Helpers are requested to remove mattress, they must do it
13 even if it is covered in bedbugs, feces, or blood;

14 m. if any of the furniture is damaged, even if the damage comes from the
15 store, the Driver must pay for it and/or receives a negative evaluation - the negative evaluation is
16 in turn assessed by Macy's employees and is used as a basis to dock pay;

17 n. Drivers and Helpers, including Plaintiffs, were required to leave customers
18 with a performance checklist with "Macy's" printed on it, and customers are encouraged to
19 provide feedback directly to Macy's to rate the performance of the Driver or Helper;

20 o. Plaintiffs were required to obtain worker's compensation insurance and
21 umbrella insurance at their own expense and must purchase the umbrella insurance from Macy's.

22 21. Plaintiffs, including the putative class of Drivers and Helpers they seek to
23 represent, were all compensated on a flat-rate - \$120/day for Drivers and \$100/day for Helpers -
24 regardless of how many hours were actually worked. Plaintiffs received their compensation by
25 personal check issued by the truck owners, and not from Defendants. This "flat rate" also
26 constitutes an unlawful piece-rate compensation system because Drivers and Helpers had no
27 control over how many hours they worked and could do nothing to change the amount of pay
28 through their own efficiencies. This unlawful compensation scheme did not account for all the

1 work performed by Drivers or Helpers, like Plaintiffs, who typically worked 12 to 15 hours a day
2 and performed various non-driving tasks all under the control and direction of Defendants. This
3 compensation scheme is illegal and is in violation of the Employment Laws and Regulations.

4 22. During the time Plaintiffs were employed by Defendants and as part of the four
5 years preceding the filing of this action, Defendants failed to provide Plaintiffs and similarly
6 situated Drivers and Helpers with rest periods during work shifts over four hours. Defendants
7 also routinely failed to provide Plaintiffs and similarly-situated employees a 30-minute meal
8 period in which they were relieved of all duties when they worked over five hours. These
9 practices are in violation of the Employment Laws and Regulations.

10 23. During Plaintiffs' employment with Defendants, Plaintiffs and Drivers and
11 Helpers were regularly required to work more than eight hours per day and more than forty hours
12 per workweek. Defendants regularly did not compensate Plaintiffs and Drivers and Helpers for
13 the overtime hours they worked, in violation of the Employment Laws and Regulations.

14 24. During Plaintiffs' employment with Defendants, Macy's and Eletto failed to
15 provide Plaintiffs with timely and accurate wage and hour statements showing gross hours
16 earned, total hours worked, all deductions made, net wages earned, accrued vacation, and all
17 applicable hourly rates in effect during each pay period, as well as the corresponding number of
18 hours worked at each hourly rate.

19 25. During Plaintiffs' employment with Defendants, Defendants wrongfully withheld
20 from Plaintiffs and failed to pay their wages and other compensation which was due them for all
21 of their hours worked, for overtime work, for missed meal and rest periods, and as otherwise
22 required pursuant to the Employment Laws and Regulations.

23 26. Plaintiffs seek restitution and disgorgement of all sums wrongfully obtained by
24 Defendants through unfair business practices in violation of California's Business & Professions
25 Code sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of
26 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair
27 Businesses Act are equitable in nature and are not to be considered damages. Plaintiffs are also
28 entitled to costs, attorney's fees, interest and penalties as provided for by the California Labor

1 Code, the California Business & Professions Code, and the Private Attorney General Act,
2 California Code of Civil Procedure section 1021.5.

3 27. To the extent that any Class Member, including Plaintiffs, entered into any
4 arbitration agreement with any Defendant and such agreement purports to require arbitration,
5 such agreement is void and unenforceable. Any such agreement was one of adhesion, executed
6 under duress, lacked consideration and mutuality, and was otherwise void under both California
7 Labor Code section 229 and the California Supreme Court case of *Armendariz v. Foundation*
8 *Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

9 **CLASS ACTION ALLEGATIONS**

10 28.. Plaintiffs bring these claims as a class action pursuant to Code of Civil Procedure
11 § 382 and Business and Professions Code §§ 17203 & 17204. Plaintiffs bring this action on their
12 own behalf and on behalf of the following class of individuals (the “Class” or “Class Members”):

13 All individuals employed by, or formerly employed by, Defendants as Drivers at
14 Macy’s Logistic and Operations Center located in the City of Industry in the State
15 of California at any time from November 19, 2009, and continuing while this
action is pending.

16 All individuals employed by, or formerly employed by, Defendants as Driver
17 Assistants or referred to as “Helpers” at Macy’s Logistic and Operations Center
18 located in the City of Industry in the State of California at any time from
November 19, 2009, and continuing while this action is pending.

19 29. All Drivers or Helpers, including Plaintiffs, are putative class members.

20 30. During the Class Period, by virtue of unlawfully classifying Plaintiffs and Class
21 Members as independent contractors and compensating Class Members with a “flat rate”
22 Defendants have routinely failed to compensate Drivers and Helpers all of the wages they are due
23 (“off-the-clock” work).

24 31. During the Class Period, Plaintiffs and Drivers and Helpers were subject to
25 Defendants’ unlawful company practice of classifying employees as independent contractors and
26 subjecting them to Defendants’ unlawful piece rate system. All who were subject to this
27 unlawful classification and compensation scheme were not paid for all hours worked, including
28 overtime, and were deprived of compliant meal and rest periods, among other things. Defendants

1 applied this illegal wage device uniformly to all Drivers and Helpers who worked out of Macy's
2 Logistic and Operations Center to the disadvantage of Class Members. All who were subject to
3 this unlawful classification and compensation scheme suffered damages.

4 32. As a result, during the Class Period, Defendants have failed to provide Drivers
5 and Helpers with accurate wage and hour statements since the daily "flat rate" did not fully
6 compensate Drivers and Helpers for all hours worked. Defendants have failed to provide Drivers
7 and Helpers with accurate wage and hour statements since the gross hours earned, total hours
8 worked, all deductions made, net wages earned, and all applicable hourly rates in effect during
9 each pay period and the corresponding number of hours worked at each hourly rate were
10 incomplete, inaccurate, and/or missing from all wage statements.

11 33. During the Class Period, Plaintiffs and Drivers and Helpers have been required to
12 work more than eight hours per day and more than forty hours per workweek. Defendants have
13 routinely failed to compensate Drivers and Helpers all of the overtime wages they are due.

14 34. During the Class Period, Defendants have failed to pay accrued wages and other
15 compensation due immediately to Drivers and Helpers who were terminated, and Defendants
16 have failed to pay accrued wages and other compensation due within seventy-two hours to
17 Drivers and Helpers who ended their employment.

18 35. The proposed class is ascertainable in that its members can be identified using
19 information contained in Defendants' payroll and personnel records.

20 36. Numerosity. The Drivers and Helpers are so numerous, conservatively estimated
21 to include over 100 Drivers and Helpers, that joinder of each individual Class Member would be
22 impracticable, and the disposition of their claims in a class action, rather than numerous
23 individual actions, will benefit the parties, the Court and the interests of justice.

24 37. Commonality. There is a well-defined community of interest in the questions of
25 law and fact involved in this action, because Defendants' failure to pay Drivers and Helpers their
26 wages or afford them the protections required under the Employment Laws and Regulations
27 affects all Class Members. Common questions of law and fact predominate over questions that
28 affect only individual Driver and Helpers, because all Drivers and Helpers were subject to the

1 uniform, unlawful pay practices and policies. The predominate questions of law and fact include,
2 but are not limited to:

3 a. Did Defendants devise a scheme and plan to circumvent California wage and hour
4 laws?;

5 b. Was/is Defendants' conduct fraudulent and deceitful?;

6 c. Did/does Defendants' conduct violate the Employment Laws and Regulations?;

7 and

8 (i) failing to compensate Plaintiff and the Class Members for all
9 hours worked;

10 (ii) failing to compensate Plaintiff and the Class Members at the
11 applicable and legally-mandated minimum hourly rate of \$8.00;

12 (iii) failing to provide Plaintiffs and the Class Members with compliant
13 meal and rest periods;

14 (iii) failing to provide Plaintiffs and the Class Members with timely and
15 accurate wage and hour statements; and

16 (iv) failing to maintain complete and accurate payroll records for
17 Plaintiffs and the Class Members;

18 d. Do/did Defendants' systematic acts and practices violate, *inter alia*, California
19 Business & Professions Code section 17200, *et seq.*?

20 38. Typicality. Plaintiffs' claims are typical of those of the other Drivers and Helpers
21 because all Drivers and Helpers share the same or similar employment duties and activities, all
22 are automatically classified as independent contractors, and all have been denied the benefits and
23 protections of the Employment Laws and Regulations in the same manner. Since Defendants
24 have uniformly applied the same pay practices and policies to each Driver and Helper, Plaintiffs'
25 claims are typical of the claims of all Drivers and Helpers. Plaintiffs' claims are also typical
26 because they have suffered the same damages as those suffered by all Class Members.

27 39. Adequacy of Representation. Plaintiffs can fairly and adequately represent and
28 protect the interests of all Drivers and Helpers in that neither Plaintiffs have disabling conflicts of

1 interest which are antagonistic to those of all other Drivers and Helpers. Plaintiffs seek no relief
2 which is antagonistic or adverse to the other Class Members, and the infringement of their rights
3 and the damages they have suffered are typical of all other Class Members. Plaintiffs' counsel is
4 competent and experienced in litigating class actions in California based on large employers'
5 violations of the Employment Laws and Regulations.

6 40. As mentioned above, to the extent that any Driver or Helper entered into any
7 arbitration agreement with any Defendant and such agreement purports to require arbitration,
8 such agreement is void and unenforceable. Even if such agreement is deemed enforceable,
9 however, classwide arbitration is appropriate and should be utilized to obtain classwide relief.

10 41. Superiority of Class Action. The nature of this action and the nature of laws
11 available to Plaintiffs and the other Drivers and Helpers in the putative Class make use of the
12 class action a particularly efficient and effective procedure because:

13 a. For many of the Drivers and Helpers, individual actions or other individual
14 remedies would be impracticable and litigating individual actions would be too costly;

15 b. The action involves large corporate employers (Macy's and Eletto) and a large
16 number of individual employees (Plaintiffs and the other Class Members), many with relatively
17 small claims and all with common issues of law and fact;

18 c. If the Drivers and Helpers are forced to bring individual lawsuits, the corporate
19 defendants would necessarily gain an unfair advantage, the ability to exploit and overwhelm the
20 limited resources of individual Class Members with vastly superior financial and legal resources;

21 d. The costs of individual suits would likely consume the amounts recovered;

22 e. Requiring each Class Member to pursue an individual remedy would also
23 discourage the assertion of lawful claims by current employees of Defendants, who would be
24 disinclined to pursue an action against their present and/or former employer due to an appreciable
25 and justified fear of retaliation and permanent damage to their immediate and/or future
26 employment; and

27 ///

28 ///

1 f. Common business practices Plaintiffs experienced are representative of those
2 experienced by all Drivers and Helpers and can establish the right of all Drivers and Helpers to
3 recover on the alleged claims.
4

5 **FIRST CAUSE OF ACTION**

6 **(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194**
7 **By Plaintiffs Individually and on Behalf of All Drivers and Helpers)**

8 42. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
9 allegations contained in this complaint, and incorporate them by reference into this cause of
10 action as though fully set forth herein, excepting those allegations which are inconsistent with
11 this cause of action.

12 43. Plaintiffs bring this action to recover their unpaid compensation for all hours
13 worked as defined by the applicable Industrial Welfare Commission wage order as the time
14 during which an employee is subject to the control of an employer, and includes all the time the
15 employee is suffered or permitted to work, whether or not required to do so.

16 44. Drivers and Helpers, including Plaintiffs, were unlawfully classified as
17 independent contractors but were instructed, directed or otherwise controlled by Defendants to
18 perform their work through a series of Defendants' requirements, expectations, and standards for
19 performance. Defendants knew or should have known that Plaintiffs were working these hours
20 because a) Defendants required employees to "swipe-in" and "swipe-out" on an electronic cash
21 register, thus Defendants knew the actual hours worked by employees, and b) Plaintiffs were
22 informed that this directive to not report all hours worked on their hand-written time records
23 came from the highest level of management.

24 45. Current and former employees who were food servers (waiters and waitresses)
25 were instructed to record a meal period on their hand-written time log regardless of the fact that
26 they were not relieved of duty for a meal period. Defendants would "auto-deduct" for a meal
27 period each and every shift without any confirmation that the meal period was provided. This
28 ///

1 half-hour a day of unpaid time for meal periods not taken is further indicia of "Off the Clock"
2 work and violates the Employment Laws and Regulations.

3 47. Plaintiffs are entitled to recover the unpaid balance of compensation Defendants
4 owe Plaintiffs, plus interest, associated statutory penalties, and reasonable attorney fees and costs
5 pursuant to Labor Code section 1194.

6
7 **SECOND CAUSE OF ACTION**

8 **(Failure to Pay Minimum Wages - Labor Code § 1194**

9 **By Plaintiffs Individually and on Behalf of All Class Members)**

10 48. As a separate and distinct cause of action, Plaintiffs complain and reallege all of
11 the allegations contained in this complaint, and incorporate them by reference into this cause of
12 action as though fully set forth herein, excepting those allegations which are inconsistent with
13 this cause of action.

14 49. At all relevant times, the IWC Wage Order 5-2001 applied to Plaintiffs in
15 Plaintiffs' capacity as employees of Defendants. The Wage Orders and California law provided,
16 among other things, that Plaintiffs must receive minimum wage earnings for all hours worked.

17 50. During the Class Period, Defendants have routinely failed to pay Drivers and
18 Helpers, including Plaintiffs, the minimum wage required by the Employment Laws and
19 Regulations for all hours worked. Defendants unlawfully classified Drivers and Helpers as
20 independent contractor and compensated Plaintiffs through an unlawful piece rate - a flat rate -
21 for work. Defendants' unlawful scheme of a "flat rate" violates the provisions of Wage Order 5-
22 2001 as it exceeds the maximum allotted amount that can be charged to an employee.

23 51. Drivers and Helpers, including Plaintiffs, have been deprived of their rightfully
24 earned minimum wages as a direct and proximate result of Defendants' policies and practices
25 and Defendants' failure and refusal to pay said wages for all hours worked. Drivers and Helpers,
26 including Plaintiffs, are entitled to recover the past wages owed to them, under the minimum
27 wage laws, plus an additional equal amount as liquidated damages as permitted under the Wage

28 ///

1 Orders and California law, plus interest thereon and attorneys' fees and costs, pursuant to Labor
2 Code § 1194, in an amount according to proof at the time of trial.

3
4 **THIRD CAUSE OF ACTION**

5 **(Failure to Pay Overtime Compensation - By Plaintiffs Individually and on Behalf of All**
6 **Drivers and Helpers: California Labor Code §§ 510 and 1194)**

7 52. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
8 allegations contained in this complaint, and incorporate them by reference into this cause of
9 action as though fully set forth herein, excepting those allegations which are inconsistent with
10 this cause of action.

11 53. During the Class Period, Defendants have routinely required Drivers and Helpers,
12 including Plaintiffs, to work over eight hours in a day and over forty hours in a workweek.
13 However, Defendants have failed and refused to pay the Drivers and Helpers, including
14 Plaintiffs, the overtime compensation required by the Employment Laws and Regulations.

15 54. The Drivers and Helpers, including Plaintiffs, have been deprived of their
16 rightfully earned overtime compensation as a direct and proximate result of Defendants' policies
17 and practices and Defendants' failure and refusal to pay that compensation. Drivers and Helpers,
18 including Plaintiffs, are entitled to recover such amounts, plus interest, attorney's fees and costs.

19
20 **FOURTH CAUSE OF ACTION**

21 **(Failure to Provide Meal and Rest Periods - By Plaintiffs Individually and on Behalf of All**
22 **Drivers and Helpers: California Labor Code §§ 226.7 and 512)**

23 55. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
24 allegations contained in this complaint, and incorporate them by reference into this cause of
25 action as though fully set forth herein, excepting those allegations which are inconsistent with
26 this cause of action.

27 56. During the Class Period, Defendants have routinely failed to provide employees in
28 the position of Drivers and Helpers, including Plaintiffs, with meal and rest periods during their

1 work shifts, and have failed to compensate these Drivers and Helpers, including Plaintiffs, for
2 those meal and rest periods, as required by California Labor Code section 226.7 and the other
3 applicable sections of the Employment Laws and Regulations.

4 57. Drivers and Helpers, including Plaintiffs, have been deprived of their rightfully
5 earned compensation for meal and rest periods as a direct and proximate result of Defendants'
6 policies and practices and Defendants' failure and refusal to pay that compensation. These
7 Drivers and Helpers, including Plaintiffs, are entitled to recover such amounts pursuant to
8 California Labor Code section 226.7(b), plus interest, attorney's fees and costs.

9
10 **FIFTH CAUSE OF ACTION**

11 **(Failure to Accurate Furnish Wage and Hour Statements - By Plaintiffs Individually and**
12 **on Behalf of All Drivers and Helpers: California Labor Code § 226)**

13 58. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
14 allegations contained in this complaint, and incorporate them by reference into this cause of
15 action as though fully set forth herein, excepting those allegations which are inconsistent with
16 this cause of action.

17 59. During the Class Period, Defendants have routinely failed to provide Drivers and
18 Helpers, including Plaintiffs, with timely and accurate wage and hour statements showing gross
19 hours earned, total hours worked, all deductions made, net wages earned, the name and address
20 of the legal entity employing the Drivers and Helpers, and all applicable hours rates in effect
21 during each pay period and the corresponding number of hours worked at each hourly rate.

22 60. As a consequence of Defendants' actions, Drivers and Helpers are entitled to all
23 available statutory penalties, costs and reasonable attorney's fees, including those provided in
24 California Labor Code section 226(e), as well as all other available remedies.

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1 **SIXTH CAUSE OF ACTION**

2 **(For Waiting Time Penalties - By Plaintiffs Individually and on Behalf of All Drivers and**
3 **Helpers: California Labor Code §§ 201-203)**

4 61. As a separate and distinct cause of action, Plaintiffs complain and reallege all the
5 allegations contained in this complaint, and incorporate them by reference into this cause of
6 action as though fully set forth herein, excepting those allegations which are inconsistent with
7 this cause of action.

8 62. During the Class Period, Defendants failed to pay accrued wages and other
9 compensation due immediately to each Driver and Helper who was terminated and failed to pay
10 accrued wages, including meal and rest period wages and other compensation due within
11 seventy-two hours to each Driver and Helper who ended his or her employment.

12 63. As a consequence of Defendants' actions, Drivers and Helpers are entitled to all
13 available statutory penalties, including those provided in California Labor Code section 203, as
14 well as all other available remedies.

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16 **SEVENTH CAUSE OF ACTION**

17 **(For Indemnification - By Plaintiffs Individually and on Behalf of All Drivers and Helpers-**
18 **Labor Code § 2802)**

19 64. As a separate and distinct cause of action, Plaintiffs complain and reallege all of
20 the allegations contained in this complaint, and incorporate them by reference into this cause of
21 action as though fully set forth herein, excepting those allegations which are inconsistent with
22 this cause of action.

23 65. Pursuant to Labor Code § 2802(a), an employer shall indemnify its employees for
24 all necessary expenditures or losses incurred by the employees in direct consequence of the
25 discharge of their duties, or of their obedience to the directions of the employer, even though
26 unlawful, unless the employee, at the time of obeying the directions, believed them to be
27 unlawful.

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1 72. Defendants have knowingly and intentionally failed to pay Drivers and Helpers,
2 including Plaintiffs, the legal minimum wage, overtime wages for hours worked over eight hours
3 in a day and forty hours in a workweek, failed to compensate them for meal and rest periods, and
4 failed to provide them with other compensation due. Defendants have intentionally converted
5 the wages and compensation of Drivers and Helpers, including Plaintiffs, by

6 a. Withholding earned overtime wages and other compensation which the
7 Drivers and Helpers, including Plaintiffs, owned or had the right to own and had the legal right to
8 hold, possess and dispose of, and then,

9 b. Taking the overtime wages and other compensation due to the Drivers and
10 Helpers, including Plaintiffs, and utilizing such wages and compensation for Defendants' own
11 use and benefit.

12 73. Among other thing, by employing an unlawful company practice as demonstrated
13 by Defendants' compensation scheme of paying "flat rate", Defendants have converted such
14 wages and compensation as part of an intentional and deliberate scheme to maximize profits at
15 the expense of Drivers and Helpers, including Plaintiffs. Defendants' conversion has been done
16 with the advance knowledge, express or implied authorization, and/or ratification of Defendants'
17 respective corporate officers, directors and managing agents.

18 74. In refusing to pay all of the wages, overtime wages, expense reimbursements and
19 other compensation due to the Drivers and Helpers, including Plaintiffs, Defendants have
20 knowingly, unlawfully and intentionally taken, appropriated and converted such wages and
21 compensation for Defendants' own use, purpose and benefit. At the time the conversion took
22 place, Drivers and Helpers, including Plaintiffs, were entitled to immediate possession of the
23 wages earned.

24 75. The Drivers and Helpers, including Plaintiffs, have been injured by Defendants'
25 intentional conversion of such wages and compensation. The Drivers and Helpers, including
26 Plaintiffs, are entitled to all monies converted by Defendants, with interest, as well as any and all
27 profits, whether direct or indirect, which Defendants' acquired by their unlawful conversion.

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1 h. Wrongful conversion of wages and compensation due to Drivers and
2 Helpers, including Plaintiffs,
3 all constitute unfair business practices in violation of the California Business &
4 Professions Code section 17200, *et seq.*

5 79. Defendants have avoided payment of wages, overtime wages and other benefits as
6 required by the California Labor Code, the California Code of Regulations, and applicable
7 Industrial Welfare Commission Wage Orders.

8 80. As a result of Defendants' unfair business practices, Defendants have reaped
9 unfair benefits and illegal profits at the expense of Drivers and Helpers, including Plaintiffs, and
10 members of the public. Defendants should be made to disgorge their ill-gotten gains and to
11 restore them to Drivers and Helpers, including Plaintiffs.

12 81. Defendants' unfair business practices entitles Plaintiffs to an order that
13 Defendants account for, disgorge and restore to the Drivers and Helpers, including Plaintiffs, the
14 wages and other compensation unlawfully withheld from them.

15
16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs, individually and on behalf of all Drivers and Helpers, pray
18 that the Court enter judgment in their favor and against Defendants as follows:

- 19 1. For an Order requiring and certifying this action as a class action;
- 20 2. For an Order appointing Plaintiffs' counsel as Class Counsel;
- 21 3. For compensatory damages in an amount to be ascertained at trial;
- 22 4. For restitution in an amount to be ascertained at trial;
- 23 5. For punitive damages in an amount to be ascertained at trial;
- 24 6. For penalties as required by the applicable Wage Order or otherwise by law;
- 25 7. For prejudgment interest at the legal rate pursuant to California Labor Code
26 section 218.6 and other applicable sections;
- 27 8. For reasonable attorney's fees pursuant to California Labor Code §§ 1194;
- 28 9. For cost of suit incurred herein;

