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FILED
Superior Court of California
County of Los Angeles

JAN 23 2015

Sherri R. Carter, Executive Officer/Clerk
By Myrna Beltran Deputy
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Attorneys for Plaintiff

D-322 WILLIAM F. HIGHBERGER
SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARIN CAMPOS, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

CALIFORNIA CARTAGE COMPANY, LLC,
CALIFORNIA CARTAGE EXPRESS, LLC,
and DOES 1-100,

Defendants.

Case No.

BC 570310

COMPLAINT

Class Action

By Fax

1. Wilful Misclassification in Violation of California Labor Code Section 226.8;
2. Failure to Pay for all Hours Worked in Violation of California Labor Code Section 204;
3. Unlawful Deductions from Wages in Violation of IWC Wage Order No. 9-2001, Section 8;
4. Failure to Pay Overtime and Double Time Wages in Violation of California Labor Code Section 510, IWC Wage Order No. 9-2001, Section 3;
5. Failure to Pay Minimum Wage in Violation of California Labor Code Section 510, 1194;
6. Failure to Pay All Wages Upon Separation in Violation of California Labor Code Section 201, 203;
7. Failure to Furnish Accurate Wage Statements in Violation of California Labor Code Section 226;
8. Failure to Provide Meal Breaks in Violation of California Labor Code Section 512, IWC Wage Order No. 2001, Section 11;

01/23/2015

RECEIPT #: CCH28097052
DATE PAID: 01/23/15 11:55 AM
PAYMENT: \$1,435.00
COURT: LOS ANGELES
CASE NO: BC570310
LEADER#: CCH28097052
CIT/CORSE: BC570310

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9. Failure to Provide Rest Breaks in Violation of California Labor Code Section 226.7, IWC Wage Order No. 9-2001, Section 12;
10. Failure to Indemnify Employees' Losses and Expenses in Violation of California Labor Code Section 2802;
11. Violation of California Unfair Competition Law ("UCL"), Business and Professions Code Section 17200 *et seq.*;
12. Private Attorney General Act Claims ("PAGA"), California Labor Code § 2698 *et seq.*

01 / 23 / 2015

1 Plaintiff Marin Campos (hereinafter "Plaintiff"), by and through his attorneys, bring this
2 action individually and on behalf of all other similarly-situated employees and former employees
3 of California Cartage Company, LLC and California Cartage Express, LLC and Does 1-100, for
4 compensatory damages and equitable, injunctive and declaratory relief. Plaintiff hereby alleges:

5 **NATURE OF THE ACTION**

6 1. This is a class action brought on behalf a class of delivery drivers, all of whom have been
7 improperly classified as independent contractors and denied the basic guarantees of the California
8 Labor Code and applicable Wage Order.

9 **PARTIES, JURISDICTION AND VENUE**

10 2. At all relevant times herein, Plaintiff Marin Campos was a citizen of the State of California.

11 3. All of the members of the class of consumers who Plaintiff seeks to represent are citizens of
12 the State of California.

13 4. The injuries complained of herein were incurred in the State of California.

14 5. Defendants California Cartage Company, LLC, (hereinafter "CCC"), and California
15 Cartage Express, LLC, (hereinafter "CCE"), are California limited liability corporations with their
16 principal place of business in Los Angeles County, California. On information and belief, these
17 two joint employers share common ownership and financial control, common management,
18 common control over labor relations, and the two operations are completely interrelated. Pursuant
19 to California Labor Code Section 2810.3, as well as common law, these entities share
20 responsibility for the violations complained of herein.

21 6. CCC is a trucking and delivery company, claiming to operate the "largest landbridge
22 network on the West Coast, including the largest fleet of specialized equipment in the country."¹
23 CCC further claims to operate "Over 650 clean trucks operating within the Ports of Long Beach
24 and Los Angeles,"² which is the ". . . the largest fleet of clean trucks in the entire region."³ CCC
25 list CCE as one of the entities in the "California Cartage Family of Companies."⁴

26
27 ¹ <http://www.calcartage.com/services/trucking> (Last visited January 5, 2015).

28 ² *Id.*

1 7. During the three year period before this action was filed, no other class actions have been
2 filed against Defendants asserting the same or similar factual allegations.

3 8. Defendants DOES 1-100 are sued under fictitious names. Their true names and capacities
4 are unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges that DOES 1-100
5 are business organizations of unknown form who were responsible for the actions complained of
6 herein. Plaintiff will amend this complaint to show their true names and capacities when they have
7 been ascertained, if different than stated. Plaintiff is informed and believes and thereon alleges that
8 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
9 alleged, and such Defendants caused Plaintiff's damages as herein alleged.

10 9. Plaintiff further alleges that at all relevant times, each Defendant was the agent, servant, or
11 employee of the other Defendants and in acting and/or omitting to act as alleged herein did so
12 within the course and scope of that agency or employment. Each Defendant is sued individually
13 and as a co-conspirator and aided and abettor. Defendants, and each of them, knowingly and/or
14 recklessly conspired in, and/or aided, the common course of conduct set forth herein.

15 10. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.5,
16 because the unlawful acts and omissions were committed, and the liability arose, in Los Angeles
17 County, California.

18 11. This Court has personal jurisdiction over Defendants because they are California limited
19 liability corporations, authorized to do business in California, and in fact do business in Los
20 Angeles County, California.

21 **FACTUAL BACKGROUND**

22 12. Defendants hired Plaintiff Marin Campos as a delivery driver for CCE on or about
23 November 1, 2007.

24 13. At all times relevant herein, Defendants exercised extensive control over Campos' work
25 activities, and the work activities of all of its drivers. Among others, the following factors
26

27 ³ <http://www.calcartage.com/sites/default/files/Trucking.pdf> (Last visited January 5, 2015).

28 ⁴ <http://www.calcartage.com> (Last visited January 6, 2015).

1 evidence Defendants' right to control its drivers' work activities, as well as other indicia of
2 employer status:

3 a. First, beginning in 2010, CCE's drivers, including Campos, were required to
4 purchase or lease specific LNG-powered trucks as a condition of their employment.
5 The drivers were not given any discretion in determining which truck to utilize. In
6 fact, when drivers showed up at the dealership, the paperwork was already
7 completed in their names and the trucks were already identified. Critically, drivers
8 cannot use these trucks, which bear the CCE name and logo, to drive for any other
9 carrier.⁵ Rather, their agreement with CCE provides CCE with the exclusive right
10 to control the use of these trucks.

11 b. Second, drivers are an integral part of Defendants' delivery and trucking business.
12 CCC claims to operate the ". . . largest fleet of specialized equipment in the
13 country."⁶ CCC further promises that it is ". . . able to adjust [its] priorities minute
14 by minute and have one destination in mind: uninterrupted deliveries made with a
15 value-driven efficiency. Whether your shipment is headed for one of our
16 warehouses, your store's receiving dock or even into Mexico, we promise time-
17 conscious, cost-friendly service management of a highly capable trucking fleet."⁷
18 That trucking fleet requires a team of drivers to pick up and deliver loads for
19 Defendants' customers.⁸ Because freight delivery is the core of Defendants'

21
22 ⁵ See *Yellow Cab Coop., Inc. v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 3d 1288, 1298, 277
23 Cal. Rptr. 434 (Ct. App. 1991). "Yellow exercised control over various other aspects of the
24 relationship. Perhaps most significant was the prohibition on driving cabs for other companies."

25 ⁶ <http://www.calcartage.com/services/trucking> (Last visited January 5, 2015).

26 ⁷ <http://www.calcartage.com/sites/default/files/Trucking.pdf> (Last visited January 5, 2015).

27 ⁸ See *Ruiz v. Affinity Logistics Corp.*, 754 F.3d 1093, 1105 (9th Cir. 2014). "Affinity, by its own
28 definition, is an 'experienced and competent home delivery contractor [that] desires to perform home
delivery services.' (emphasis added). As the district court recognized, Affinity's drivers perform those
very home delivery services that are the core of Affinity's regular business. Without drivers, Affinity
could not be in the home delivery business."

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business, these delivery drivers are “essential” to Defendants’.⁹

c. Third, CCE drivers do not “own” their tools and equipment. Rather, they are required to lease or purchase specific vehicles through CCE, for which CCE deducts monthly payments from their wages, and, as stated above, the drivers cannot use these trucks for any purpose other than for driving for CCE.¹⁰

d. Fourth, CCE drivers do not require any special skills.¹¹

e. Fifth, CCE requires its drivers to wear specified safety equipment, including hard hats, steel-toe boots, safety glasses and a vest.

f. Sixth, CCE requires its drivers to attend mandatory training sessions, requires its drivers to complete monthly maintenance and inspection reports (beyond what is required by State and Federal regulators), and requires its drivers to enroll in a drug and alcohol monitoring program.

g. Seventh, CCE controls its drivers’ hours by requiring that drivers pick up or deliver shipments within a specific window of time, using a sophisticated dispatch system.¹²

This system ensures that CCE, not the drivers, possess the “. . . right to control how the end result is achieved.”¹³ Likewise, this system means that the drivers’ work is “. . . usually done under the direction of the principal.”¹⁴

⁹ See *Estrada v. FedEx Ground Package Sys., Inc.*, 154 Cal. App. 4th 1, 9 (2007).

¹⁰ See *Ruiz, supra*, at 1104. “Affinity supplied the drivers with the major tools of the job by encouraging or requiring that the drivers obtain the tools from them through paid leasing arrangements.”

¹¹ See *Estrada, supra*, at 12. “Drivers—who need no experience to get the job in the first place and whose only required skill is the ability to drive—must be at the terminal at regular times for sorting and packing as well as mandatory meetings, and they may not leave until the process is completed.” See also *Ruiz, supra*, at 1104. “[T]he drivers’ work did not require substantial skill.”

¹² <http://www.calcartage.com/services/trucking> (Last visited January 5, 2015).

¹³ See *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal. 4th 522, 528 (2014).

¹⁴ See *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981, 989 (9th Cir. 2014) (citing *S. G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal. 3d 341, 351 (1989)).

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- h. Eighth, Defendants are the sole point of contact with its customers. Customers enter into delivery agreements with Defendants alone, as opposed to with the drivers.¹⁵ On information and belief, Defendants negotiate the rates, job specifications, and other terms with the customer directly, and without any driver involvement or participation.
- i. Ninth, CCE maintains the right to discipline or terminate its drivers, and has repeatedly exercised that right. For example, CCE managers have issued written and verbal disciplinary action for violations of the company's policies and expectations, and CCE terminated Plaintiff Campos.
- j. Tenth, CCE promises that its drivers will be provided with a minimum number of loads per month, ensuring continuity of compensation just like an employer would provide to its employees.
- k. Eleventh, drivers operate their own businesses in name only, and only because they were required to set up their own companies by CCE.¹⁶
- l. Twelfth, CCE drivers cannot subcontract out their work without the express written permission of CCE.

14. Because is misclassified its drivers as independent contractors, CCE likewise failed to compensate its drivers for all hours worked, failed to pay minimum wages, failed to pay overtime, failed to pay drivers for all hours worked, failed to provide meal and rest breaks, and failed to make timely payments of all wages due upon drivers' termination or resignation.

15. Further, because CCE classified Campos, and all of the drivers he seeks to represent, as independent contractors, CCE did not reimburse them for the tens of thousands of dollars worth of expenses they necessarily incurred as a direct consequence of the performance of their duties. This

¹⁵ See *Alexander, supra*, at 993.

¹⁶ See *Ruiz, supra*, at 1103. "Moreover, in the real world, these businesses were in name only. The drivers' only business was with Affinity because the drivers could not use their trucks for any purpose other than their work for Affinity."

1 included lease payments, costly repairs to his truck, maintenance, fuel and other expenses. Further,
2 CCE unlawfully deducted certain expenses, such as lease payments, from the drivers' paychecks.

3 16. Plaintiff exhausted his administrative remedies by sending a certified letter to the
4 California Labor & Workforce Development Agency ("LWDA") on or about October 6, 2014,
5 providing notice pursuant to California Labor Code Section 2698. Plaintiff sent a copy of this
6 letter to Defendants via certified mail.

7 **CLASS ACTION ALLEGATIONS**

8 17. Campos brings this action on behalf of himself and all others similarly situated. The class is
9 composed of and defined as follows:

10 **All individuals who have provided delivery services for**
11 **California Cartage Express LLC while being classified as**
12 **independent contractors at any time in the last four years.**

13 17. The proposed class shares a well-defined community of interest in the litigation and are
14 ascertainable. All elements for certifying the classes are met:

15 **A. Numerosity**

16 18. Defendants employ hundreds of drivers throughout California.¹⁷ Although the exact number
17 of Class Members is not presently known, it is likely to be comprised of many hundreds of
18 individuals, making joinder impracticable. Defendants' employment records would provide
19 information as to the number and location of all Class Members.

20 **B. Predominance**

21 19. Common questions of law and fact exist as to all members of the Class, and predominate
22 over individual questions. They include, but are not limited to:

- 23 a. Whether Defendants wilfully misclassified their employees in violation of
24 California Labor Code Section 226.8? Specifically, under *Ayala v. Antelope Valley*
25 *Newspapers, Inc.*, 59 Cal. 4th 522, 533 (2014) the question before the court is
26 whether Defendants' "... right of control over its [drivers], whether great or small,

27 ¹⁷ Cal Cartage's website claims that it operates a fleet of 650 trucks in California.
28 <http://www.calcartage.com/services/trucking> (Last visited January 5, 2015).

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1 [is] sufficiently uniform to permit classwide assessment?"

- 2 b. Whether Defendants failed to reimburse its employee for all necessary expenditures
3 or losses incurred by the employee in direct consequence of the discharge of his or
4 her duties as required by California Labor Code Section 2820? See *Villalpando v.*
5 *Exel Direct Inc.*, 2014 WL 6625011, at *19 (N.D. Cal. Nov. 20, 2014).
- 6 c. Whether Defendants' policies violate California Labor Code Sections 510 and 204,
7 and IWC Wage Order No. 4-2001, Section 9(B) by failing to pay all regular and
8 overtime wages due.
- 9 d. Whether Defendants' policies violate California Labor Code Sections 510 and 204,
10 and IWC Wage Order No. 4-2001, Section 9(B) by failing to pay all regular and
11 overtime wages due.
- 12 e. Whether Defendants' failed to provide accurate wage statements in violation of
13 California Labor Code Section 226.
- 14 f. Whether Defendants' violated California Business and Professions Code § 17200 by
15 failing to pay regular and overtime wages, failing to reimburse for all necessary
16 tools and equipment, failing to pay wages upon termination, wilfully misclassifying
17 its workers, and making unlawful deductions from wages.
- 18 g. Whether Campos and the members of the Class are entitled to injunctive relief and
19 restitution pursuant to Business & Professions Code § 17200, *et seq.*;
- 20 h. Whether Campos and Class Members are entitled to seek recovery of penalties for
21 the California Labor Code and Wage Order violations alleged herein, pursuant
22 to Labor Code § 2698 and § 2699 and, if so, for what waiting times;
- 23 i. The nature and extent of class-wide injury and the measure of damages, restitution,
24 or other relief owed;
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1 j. Whether Defendants' policies have resulted in willful failure to pay all wages due to
2 terminated employees.

3 **C. Typicality**

4 20. Campos' claims are typical of the claims of the members of the Class because he suffered
5 the same violations as the rest of the Class. Thus, Campos and Class Members sustained the same
6 damages arising out of Defendants' common course of conduct in violation of law as complained
7 of herein. The damages of each Class Member were caused directly by Defendants' wrongful
8 conduct in violation of law as alleged herein.

9 **D. Adequacy**

10 21. Campos will fairly and adequately protect the interests of the Class Members because it is
11 in his best interest to prosecute the claims alleged herein to obtain full compensation due to him for
12 the unfair and illegal conduct of which he complains. Campos has retained highly competent and
13 experienced class action attorneys to represent their interests and that of the Class. Campos and his
14 counsel have the necessary financial resources to adequately and vigorously prosecute this class
15 case. Campos has no adverse or antagonistic interests to those of the Class. Campos is willing and
16 prepared to serve in a representative capacity with all of the obligations and duties material thereto
17 and are determined to diligently discharge those duties by vigorously seeking the maximum
18 possible recovery for Class Members.

19 **E. Superiority**

20 22. A class proceeding is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all members of the class is impractical. Class
22 treatment will permit a large number of claims to be resolved in a single forum simultaneously,
23 which will avoid unnecessary duplication of effort and expense that many individual actions would
24 require. Furthermore, as the damages suffered by many individual members of the class may be
25 relatively small, the expenses and burden of individual litigation would make it difficult or
26 impossible for individual members of the class to redress the wrongs done to them, while an
27 important public interest will be served by addressing the matter on a class basis.

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CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION

(Wilful Misclassification in Violation of California Labor Code Section 226.8)

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23. Plaintiff refers to and incorporates by reference all of the factual allegations in the preceding paragraphs as though fully set forth herein.

24. It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." Cal. Lab. Code § 226.8(i)(4).

25. If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b).

26. If the person or employer has engaged in or is engaging in a pattern or practice of willfully misclassifying individuals as independent contractors, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(c).

27. Defendants violated Labor Code Section 226.8 by willfully misclassifying their drivers, past and present, as independent contractors.

28. Defendants have engaged in a pattern and practice of misclassifying their drivers as independent contractors to avoid the taxes, insurance and other costs that accompany treating individuals as employees.

29. Plaintiff is entitled to maintain a civil action under Labor Code Section 2699 to recover the civil penalties assessed under Labor Code Section 226.8 for intentional misclassification of employees.

30. Plaintiff is entitled to recover 25% of the civil penalties assessed against Defendants for their violations of Labor Code Section 226.8 as it relates to Plaintiff and all other current or former

1 employees. Plaintiff is also entitled to recover an award of reasonable attorney's fees and costs.
2 Cal. Lab. Code § 2699(g)(1).

3 31. Plaintiff is informed and believes there are other current and former aggrieved employees
4 who suffered similar violations. Plaintiff brings this action on behalf of other current and former
5 aggrieved employees.

6 **SECOND CAUSE OF ACTION**
7 **(Failure to Pay for All Hours Worked in Violation of California Labor Code Section 204)**

8 32. Plaintiff refers to and incorporates by reference all of the factual allegations in the
9 preceding paragraphs as though fully set forth herein.

10 33. All employers in the State of California must pay their employees all wages due twice
11 during each calendar month pursuant to California Labor Code Section 204.

12 34. Notwithstanding the requirements of California Labor Code Section 204, Defendants do not
13 regularly pay its drivers, including Campos, for all of the hours that they work. Defendants only
14 pays their drivers by the load, and after making unlawful deductions from wages. Defendants do
15 not pay its drivers for all of the time they spend devoted to Defendants' business operations.

16 35. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have
17 suffered damages in an amount, subject to proof, to the extent they were not paid all wages each
18 pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be
19 determined based on information from Defendants' records.

20 **THIRD CAUSE OF ACTION**
21 **(Unlawful Deductions from Wages in Violation of IWC Wage Order No. 9-2001, Section 8)**

22 36. Plaintiff refers to and incorporates by reference all of the factual allegations in the
23 preceding paragraphs as though fully set forth herein.

24 37. IWC Wage Order 9-2001, Section 8 provides that "No employer shall make any deduction
25 from the wage or require any reimbursement from an employee for any cash shortage, breakage, or
26 loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a
27 dishonest or willful act, or by the gross negligence of the employee."
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1 38. Notwithstanding, the Wage Order's requirements, Defendants have a policy and practice of
2 making deductions from its drivers wages for broken equipment or loss of equipment in the
3 absence of dishonest or willful conduct and in the absence of gross negligence.

4 39. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have
5 suffered damages in an amount, subject to proof, to the extent they had their wages unlawfully
6 reduced to account for breakages and loss of equipment. The precise amount of unpaid wages is
7 not presently known to Plaintiff but can be determined based on information from Defendants'
8 records.

9 **FOURTH CAUSE OF ACTION**
10 **(Failure to Pay Overtime and Double Time Wages in Violation of California Labor Code**
11 **Section 510, IWC Wage Order No. 9-2001, Section 3)**

12 40. Plaintiff refers to and incorporates by reference all of the factual allegations in the
13 preceding paragraphs as though fully set forth herein.

14 41. Section 510 of the Labor Code provides that, "Any work in excess of eight hours in one
15 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked
16 on the seventh day of work in any one workweek shall be compensated at the rate of no less than
17 one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in
18 one day shall be compensated at the rate of no less than twice the regular rate of pay for an
19 employee"

20 42. Section 3(a)(l) of Wage Order No. 9-2001 also mandates that employers pay one and one-
21 halftimes the employees' regular rate of pay for employees who work more than eight (8) hours in a
22 day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess of
23 twelve (12) hours in one day.

24 43. At all times relevant herein, Plaintiff and members of the Class were non-exempt for
25 purposes of the overtime and double pay requirements set forth in the Labor Code and Wage
26 Order.

27 44. At all times relevant herein, Plaintiff and members of the Class worked in excess of eight
28 (8) hours in a day or forty (40) hours in a week and in excess of twelve (12) hours in one day.

1 However, Cal Cartage did not pay Plaintiff or the members of the Class the overtime or double time
2 that they were owed.

3 45. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have
4 suffered damages in an amount, subject to proof, to the extent they were not paid all overtime and
5 double wages they were owed. The precise amount of unpaid wages is not presently known to
6 Plaintiff but can be determined based on information from Defendants' records.

7
8 **FIFTH CAUSE OF ACTION**
9 **(Failure to Pay Minimum Wage in Violation of California Labor Code Section 510, 1194)**

10 46. Plaintiff refers to and incorporates by reference all of the factual allegations in the
11 preceding paragraphs as though fully set forth herein.

12 47. California Labor Code Section 1197 provides: "The minimum wage for employees fixed by
13 the commission is the minimum wage to be paid to employees, and the payment of a less wage
14 than the minimum so fixed is unlawful."

15 48. California Labor Code Section 1194(a) provides: "Notwithstanding any agreement to work
16 for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
17 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
18 of the full amount of this minimum wage or overtime compensation, including interest thereon,
19 reasonable attorney's fees, and costs of suit."

20 49. California Labor Code Section 1194.2 provides in relevant part: "In any action under
21 Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the
22 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

24 50. Pursuant to IWC Wage Order No. 9-2001, at all times material hereto, "hours worked"
25 includes "the time during which an employee is subject to the control of an employer, and includes
26 all the time the employee is suffered or permitted to work, where or not required to do so."

27 51. Pursuant to Section 4 of WC Wage Order No. 9-2001, Plaintiff and members of each Class
28 were entitled to receive not less than \$8.00 per hour for all hours worked.

1 52. At all times relevant during the liability period, Defendant willfully failed and refused, and
2 continues to willfully fail and refuse, to pay Plaintiff and Class members the proper amounts owed.

3 53. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have
4 suffered damages in an amount, subject to proof, to the extent they were not paid all overtime and
5 double wages they were owed. The precise amount of unpaid wages is not presently known to
6 Plaintiff but can be determined based on information from Defendants' records.

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8 **SIXTH CAUSE OF ACTION**
9 **(Failure to Pay All Wages Upon Separation in Violation of**
10 **California Labor Code Section 201, 203)**

11 54. Plaintiff refers to and incorporates by reference all of the factual allegations in the
12 preceding paragraphs as though fully set forth herein.

13 55. California Labor Code Section 201(a) provides, "(a) If an employer discharges an
14 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

15 56. California Labor Code Section 203(a) provides "If an employer willfully fails to pay,
16 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
17 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
18 a penalty from the due date thereof at the same rate until paid or until an action therefor is
19 commenced; but the wages shall not continue for more than 30 days."

20 57. Plaintiff Campos was terminated on or about October 29, 2014. Nonetheless, Defendants
21 willfully failed to pay Plaintiff and other members of the Class who are no longer employed by
22 Defendants for their uncompensated hours, uncompensated overtime, and missed, untimely or on-
23 duty meal and rest periods upon their termination or separation from employment with Defendants
24 as required by California Labor Code §§ 201 and 202. As a result, Defendants are liable to Plaintiff
25 and other members of the Class who are no longer employed by Defendants for waiting time
26 penalties amounting to thirty days wages for Plaintiff and each such Class member pursuant to
27 California Labor Code § 203. The precise amount of unpaid wages and penalties is not presently
28 known to Plaintiff but can be determined based on information from Defendant's records.

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SEVENTH CAUSE OF ACTION
(Failure to Furnish Accurate Wage Statements in Violation of
California Labor Code Section 226, 226.3)

58. Plaintiff refers to and incorporates by reference all of the factual allegations in the preceding paragraphs as though fully set forth herein.

59. California Labor Code Section 226(a) provides that:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

60. Despite these obligations, Defendants fail to provide their drivers, including Campos and members of the Class, with accurate wage statements that include, but are not limited a statement of the total hours worked.

61. California Labor Code Section 226.3 provides "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for

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1 each violation in a subsequent citation, for which the employer fails to provide the employee a
2 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
3 The civil penalties provided for in this section are in addition to any other penalty provided by
4 law.”

5 62. Defendants’ failure to provide Campos and members of the class with accurate, itemized
6 wage statements during the Class period has caused Campos and Class members to incur economic
7 damages in that they were not aware that they were owed and not paid compensation for hours
8 worked without pay, and for overtime worked without pay. In addition, as set forth above,
9 Defendants provided inaccurate information regarding hours worked, which masked their
10 underpayment of wages to Campos and the Class.

11 63. As a result of Defendants’ issuance of inaccurate itemized wage statements to Campos and
12 members of the Class in violation of Labor Code § 226(a), Campos and the members of the Class
13 are each entitled to recover penalties pursuant to § 226(e) of the Labor Code.

14 **EIGHTH CAUSE OF ACTION**
15 **(Failure to Provide Meal Breaks in Violation of**
16 **California Labor Code Section 512, IWC Wage Order No. 9-2001, Section 11)**

17 64. Plaintiff refers to and incorporates by reference all of the factual allegations in the
18 preceding paragraphs as though fully set forth herein.

19 65. California Labor Code § 226.7(a) provides, “No employer shall require any employee to
20 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
21 Commission.”

22 66. IWC Order No. 9-2001(11)(A) provides, in relevant part: “No employer shall all employ
23 any person for a work period of more than five (5) hours without a meal period of not less than 30
24 minutes, except that when a work period of not more than six (6) hours will complete the day’s
25 work the meal period may be waived by mutual consent of the employer and the employee.”

26 67. Section 512(a) of the California Labor Code provides, in relevant part, that: “An employer
27 may not employ an employee for a work period of more than five hours per day without providing
28 the employee with a meal period of not less than 30 minutes, except that if the total work period

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

7 68. At all times relevant herein, Defendants failed to authorize and permit uninterrupted meal
8 breaks for Campos and the Class during the Class period. Plaintiff and members of the Class were
9 routinely required to work without an uninterrupted meal break at the direction of Defendants
10 and/or with Defendants’ knowledge and acquiescence.

11 69. By its actions in requiring its employees to work through meal periods and/or its failure to
12 relieve drivers of their duties for their off-duty meal periods, Defendants have violated California
13 Labor Code § 226.7 and § 11 of IWC Wage Order No. 9-2001, and are liable to Plaintiff and the
14 Class.

15 70. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of
16 timely off-duty meal periods, and are entitled to recovery under Labor Code § 226.7(b) and § 11 of
17 WC Wage Order No. 9-2001, in the amount of one additional hour of pay at the employee's regular
18 rate of compensation for each work period during each day in which Defendants failed to provide
19 their drivers and crewmembers with timely statutory off-duty meal periods.

20 **NINTH CAUSE OF ACTION**
21 **(Failure to Provide Rest Breaks in Violation of**
22 **California Labor Code Section 226.7, IWC Wage Order No. 9-2001, Section 12)**

23 71. Plaintiff refers to and incorporates by reference all of the factual allegations in the
24 preceding paragraphs as though fully set forth herein.

25 72. California Labor Code § 226.7(a) provides, “No employer shall require any employee to
26 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
27 Commission.”

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1 73. IWC Order No.9-2001(12)(A) provides, in relevant part: "Every employer shall authorize
2 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
3 each work period. The authorized rest period time shall be based on the total hours worked daily at
4 the rate of ten (10) minutes net rest time per four hours or major fraction thereof. However, a rest
5 period need not be authorized for employees whose total daily work times is less than three and
6 one-half hours. Authorized rest period time shall be counted as hours worked for which there shall
7 be no deduction from wages."

8 74. IWC Order No. 9-2001 (12)(B) further provides, "If an employer fails to provide an
9 employee with a rest period in accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided."

12 75. Notwithstanding the requirements above, Defendants failed to authorize and permit rest
13 breaks for Campos and the Class during the Class period. Campos and members of the Class were
14 routinely required to work through rest periods at the direction of Defendants and/or with
15 Defendants' knowledge and acquiescence.

16 76. By their actions in requiring their employees during the Class period to work through rest
17 periods, Defendants violated § 12 of IWC Wage Order No. 9-2001 and California Labor Code §
18 226.7, and are liable to Plaintiff and the Class.

19 77. Defendants' unlawful conduct alleged herein occurred in the course of employment of
20 Plaintiff and all others similarly situated and such conduct has continued through the filing of this
21 complaint.

22 78. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class
23 have been deprived of timely rest periods and/or were not paid for rest periods taking during the
24 Class period, and are entitled to recovery under Labor Code § 226. 7(b) in the amount of one
25 additional hour of pay at the employee's regular rate of compensation for each work period during
26 each day in which Defendants failed to provide employees with timely and/or paid rest periods.
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**TENTH CAUSE OF ACTION
(Failure to Indemnify Employees' Losses and Expenses in Violation of
California Labor Code Section 2802)**

79. Plaintiff refers to and incorporates by reference all of the factual allegations in the preceding paragraphs as though fully set forth herein.

80. California Labor Code Section 2802(a) provides, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

81. Notwithstanding this requirement, Defendants routinely refuses to indemnify their drivers, including Campos and members of the Class for all of their necessary expenditures and losses. Campos and members of the Class are required to pay for repairs to their equipment, fuel, maintenance, insurance, taxes and other losses and expenses necessarily incurred as a result of their employment with Defendants.

82. Further, California Labor Code Section 2802(c) provides, "For purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

83. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have suffered damages in an amount, subject to proof, to the extent they were not reimbursed for necessary expenditures or losses. The precise amount of such expenditures and losses is not presently known to Plaintiff but can be determined based on information from Defendants' records, the records of third parties, and the records maintained by Campos and the Class.

**ELEVENTH CAUSE OF ACTION
(Violation of California Unfair Competition Law ("UCL"),
Business and Professions Code Section 17200 et seq.)**

84. Plaintiff refers to and incorporates by reference all of the factual allegations in the preceding paragraphs as though fully set forth herein.

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1 85. Section 17200 of the California Business & Professions Code (“Unfair Competition Law”
2 or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent” business practice.

3 86. Section 17200 specifically prohibits any “*unlawful* . . . business act or practice.” Cal
4 Cartage violated § 17200’s prohibition against engaging in an unlawful act or practice by, *inter*
5 *alia*, failing to pay all wages when due, failure to pay minimum wages, overtime and double time
6 wages, failure to indemnify employees for expenditures and losses, wilfully misclassifying its
7 drivers, failing to provide timely and accurate wage statements, failure to provide meal and rest
8 periods and for making unlawful deductions from wages in violation of state law.

9 87. As discussed above, Defendants’ ongoing conduct that does not conform to state law
10 violated, and continues to violate the California Labor Code and applicable wage order.

11 88. Section 17200 also prohibits any “*unfair* . . . business act or practice.” As described in the
12 preceding paragraphs, Cal Cartage engaged in the unfair business practice of failing to pay all
13 wages when due, failure to pay minimum wages, overtime and double time wages, failure to
14 indemnify employees for expenditures and losses, wilfully misclassifying its drivers, failing to
15 provide timely and accurate wage statements, failure to provide meal and rest periods and for
16 making unlawful deductions from wages.

17 89. Defendants knowingly failed to implement policies in accordance with and/or adhere to the
18 aforementioned laws, all of which bind and burden Defendants’ competitors. This creates an unfair
19 competitive advantage for Defendants and therefore constitutes a reason why Defendants’ practices
20 are unfair business practice, as set forth in the UCL.

21 90. Defendants’ conduct caused, and continues to cause, substantial injury to Campos and other
22 Class Members. Campos has suffered injury in fact and has lost money or property as a result of
23 this conduct, all while Defendants have been enriched, due to their unfair conduct. Pursuant to
24 California Business & Professions Code § 17203, Campos seek an order requiring Defendants to
25 immediately cease such acts of unlawful, unfair and fraudulent business practices, and an order of
26 restitution of all wages and expenses due and owed, plus pre-judgment and post-judgment interest
27 thereon.

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TWELFTH CAUSE OF ACTION
(Private Attorney General Act Claims, California Labor Code § 2698 et seq.)

91. Plaintiff refers to and incorporates by reference all facts alleged in paragraphs 1-16 and 23-90 as if fully set forth herein.

92. "An aggrieved employee suing in a representative capacity under PAGA is not required to satisfy class action requirements if the action is brought in state court." *Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D. Cal. Nov. 10, 2014) (citing *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009)).

93. Plaintiff is an aggrieved employee as defined in Labor Code §2699(a). He brings this cause on behalf of all aggrieved delivery drivers affected by the Labor Code violations alleged in this complaint.

94. As described more fully above, Defendants have committed violations of the California Labor Code against Plaintiff, and, on information and belief, against other current or former employees while they were and are employed by Defendants. These violations include California Labor Code Sections 201, 203, 204, 226, 226.7, 226.8, 510, 512, 2802.

95. As a result of these violations, Defendants are liable for penalties under PAGA.

96. In addition, Labor Code §1198 makes it unlawful to employ any employee under conditions prohibited by the applicable wage order. As described above, Defendants employ drivers in violation of IWC Wage Order No. 9-2001. As such, Campos seeks penalties for such violations pursuant to PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all other similarly situated, pray for judgment against Defendants as follows:

1. For an Order certifying the class and any appropriate subclasses thereof under the appropriate provisions of Cal. Civ. Proc. Code § 382 and appointing Plaintiff and his counsel to represent the class and any subclass;
2. For declaratory relief;
3. For equitable and injunctive relief, including an appropriate award of restitution;

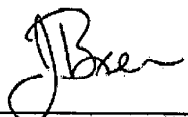
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- 4. For damages under the statutory and common law as alleged herein;
- 5. For attorneys' fees pursuant to Cal. Civ. Proc. Code § 1021.5, Cal. Labor Code § 1194, 1197.1, 2699(g)(1), 2802(c).
- 6. For pre- and post-judgment interest;
- 7. For costs of suit;
- 8. For waiting time penalties and liquidated damages;
- 9. For a jury trial on all issues so triable; and
- 10. For such other relief as is just.

Dated: January 22, 2015

BRAMSON, PLUTZIK, MAHLER &
BIRKHAEUSER, LLP



Joshua D. Boxer
Attorneys for Plaintiff

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