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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

DEC 03 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

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

10 **SUPERIOR COURT OF LOS ANGELES COUNTY**

11 TAMARA JONES²⁻², on behalf of herself and
12 others similarly situated

Case No:

19STCV43097

CLASS ACTION COMPLAINT FOR:

13 Plaintiff,

1. FAILURE TO REIMBURSE FOR
BUSINESS EXPENSES

14 v.

2. UNAUTHORIZED DEDUCTIONS
FROM WAGES

15 WESTWAYS STAFFING SERVICES, INC.;
16 HAROLD STERLING; and DOES 1-20,
inclusive

3. FAILURE TO PAY FOR ALL HOURS
WORKED

17 Defendants.

4. FAILURE TO PAY OVERTIME

5. FAILURE TO PAY MINIMUM WAGE

6. FAILURE TO AUTHORIZE AND/OR
PERMIT MEAL BREAKS

7. FAILURE TO AUTHORIZE AND/OR
PERMIT REST BREAKS

8. WAITING TIME PENALTIES

9. BREACH OF CONTRACT

10. NEGLIGENT MISREPRESENTATION

11. UNFAIR BUSINESS PRACTICES

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

1 g. Failed and continue to fail to authorize or permit rest periods in violation
2 of Labor Code §§ 226.7, and the Applicable Wage Orders;

3 h. Failed and continue to fail to timely furnish complete and accurate
4 itemized wage statements in violation of Labor Code § 226, and the Applicable Wage Orders;

5 i. Willfully failed to pay, without abatement or reduction, all final wages
6 owed in accordance with Labor Code §§ 201, 202, and in violation of Labor Code § 203; and

7 j. Committed and continue to commit unfair business practices in violation
8 of Business & Professions Code § 17200, et seq.

9
10 3. The acts complained of herein occurred and will occur, at least in part, within the
11 time-period of four (4) years preceding the filing of the original Complaint, up to and through
12 the time of trial.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over Defendants because they are entities or
15 individuals with sufficient minimum contacts in California, and/or because they intentionally
16 availed themselves of the California market so as to render the exercise of jurisdiction over them
17 by the California courts consistent with traditional notions of fair play and justice.

18 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
19 at least some of the acts and omissions that are the subject matter of this Complaint occurred
20 herein and/or each Defendants either are found, maintain offices, transact business, exist and/or
21 have an agent herein.

22 **PARTIES**

23 6. At all relevant times mentioned herein, Plaintiff was a licensed nurse and a
24 resident of the State of Florida.

25 7. Upon information and belief, Defendant Westways is an employment staffing
26 agency and is, and at all times herein mentioned was, a California corporation with its principal
27 place of business in California, and duly authorized to do business therein.
28

1 8. Upon information and belief, Defendant Sterling is, and at all relevant times
2 mentioned herein was, the owner, managing agent, Director, Officer and/or Chief Executive
3 Officer of Defendant Westways, and responsible for its operational, financial, personnel and/or
4 administrative functions. Defendant Sterling is personally liable for some of claims alleged in
5 this Complaint pursuant to Labor Code § 558.1, which provides that persons acting on behalf of
6 an employer, including owners, officers, directors, and managing agents who violate or cause to
7 be violated certain provisions of the Labor Code, are personally liable for such violations.

8 9. Upon information and belief, there is such a unity of interest and ownership
9 between Defendant Westways and Defendant Sterling that the separate personalities between
10 them do not exist; and that, if the acts complained of herein are treated as those of Defendant
11 Westways alone, inequitable results will follow.

12 10. Defendants employ, compensate and/or assign healthcare professionals to work
13 at various kinds of healthcare facilities throughout California.

14 11. The true names or capacities, whether individual, associate or otherwise, of Does
15 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
16 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
17 such names and capacities as soon as they are ascertained. Upon information and belief, each of
18 these fictitiously named defendants is responsible in some manner for the occurrences alleged
19 herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately
20 caused by such fictitiously named defendants.

21 12. Upon information and belief, Plaintiff alleges that at all relevant times each of the
22 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
23 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
24 predecessor in interest of some or all of the other defendants, and was engaged with some or all
25 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
26 or all of the other defendants so as to be liable for the conduct of each of them.

1 16. Moreover, while Defendants directly paid third-party vendors for Plaintiff's
2 lodging accommodations, they sometimes deducted these lodging costs from her paychecks
3 without her written consent. Such deductions, even if authorized by Plaintiff, would still be
4 unlawful under California law because Plaintiff's lodging costs were incurred for the benefit of
5 Defendants. At times, Defendants' unlawful deductions from Plaintiff's earned wages had the
6 effect of lowering her hourly rate below minimum wage. For example, during the workweek
7 spanning from December 12, 2016 to December 18, 2016, Plaintiff worked 8 regular hours and
8 4 overtime hours with her gross pay totaling \$350. However, after Defendants' deduction of \$235
9 from her paycheck for that workweek, Plaintiff's gross pay dropped to \$115, bringing her hourly
10 rate of pay from \$25 an hour down to approximately \$8.2 an hour. During this time period,
11 minimum wage in California was \$10 an hour. Defendants also made other unidentifiable
12 deductions from Plaintiff's paychecks without her consent.
13

14 17. Upon information and belief, during the applicable recovery period, Defendants
15 similarly failed to reimburse their other employees for their incurred business-related travel
16 expenses, and also willfully made unauthorized and illegal deductions from their employees'
17 paychecks to recoup business-related expenses that were incurred for their own benefit.

18 **II. Defendants' Failure to Pay for All Hours Worked, Including All Overtime**
19 **and Double-Time Hours**

20 18. During the applicable recovery period, Defendants have had a policy and/or
21 practice of not paying their non-exempt employees for all hours worked, including overtime and
22 double-time hours. For example, during the workweek spanning from May 22, 2017 to May 28,
23 2017, Plaintiff's timesheets indicate that she worked a total of 45.82 hours, but her corresponding
24 paystub for that workweek indicates that Defendants only paid her for 42.25 hour. Additionally,
25 Plaintiff's timesheets for the same workweek indicate that she worked 12.50 hours of overtime
26 and 1.32 hours of double-time, but Defendants paid her for only 9.50 hours of overtime and .75
27 hours of double-time.
28

1 19. Upon information and belief, during the applicable recovery period Defendants
2 similarly failed to pay their other non-exempt employees for all their worked hours, including
3 their overtime and double-time hours.

4 **III. Defendants’ Failure to Include “Travel Stipends” in Their Employees’**
5 **Regular Rates of Pay to Determine Their Overtime and Double-Time Rates**
6 **of Pay**

7 20. During the applicable recovery period, Defendants paid their non-exempt
8 employees so-called “travel stipends” for lodging, meals and incidentals costs they incurred
9 while working away from their homes. However, such “travel stipends” were not meant to
10 actually or reasonably reimburse employees for such costs, but were rather a form of disguised
11 wages intended by Defendants to, among other things, evade California overtime laws. For
12 instance, with respect to Plaintiff’s assignment in California, as alleged above, Defendants
13 directly paid a third-party vendor for her lodging accommodations, so that the “travel stipends”
14 Defendants sporadically paid her could not have reimbursed her for incurred lodging costs.

15 21. Moreover, Defendants adjusted the so-called “travel stipends” based on number
16 of hours worked in a day, even though the actual or reasonable travel costs incurred by their
17 employees remained the same regardless of the number of hours they worked in a day. For
18 instance, Defendants paid Plaintiff \$218.70 in “travel stipends” for 9 hours of work on May 28,
19 2017, but paid her \$157.95 in “travel stipends” on June 2, 2017, even though she worked at the
20 same facility and lodged at the same location on both days. Because these so-called “travel
21 stipends” are actually a form of wages, Defendants were required to include them in Plaintiff’s
22 regular rate of pay in order to determine her lawful overtime and double-time rates of pay.
23

24 22. Upon information and belief, during the applicable recovery period, Defendants
25 similarly failed to include the so-called “travel stipends” in their other non-exempt employees’
26 regular rates of pay to determine their lawful overtime and double-time rates of pay.
27
28

1 **IV. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks**
2 **and Their Failure to Pay Required Premiums for Non-Complaint Breaks**

3 23. During the applicable recovery period, Defendants have had policy and/or
4 practice of not authorizing and/or permitting their non-exempt employees to take lawful meal or
5 rest breaks under California law. For instance, Plaintiff's timesheet for January 13, 2017 indicates
6 that she took no break during her 13.67-hour shift, but her paystub for that workweek indicates
7 that Defendants did not pay her a meal break premium for that shift. Similarly, Defendants did
8 not authorize and/or permit Plaintiff to take her lawful rest breaks, and did not provide her with
9 premium pay for such non-complaint rest breaks.

10 24. Upon information and belief, during the applicable recovery period, Defendants
11 also did not authorize and/or permit their other non-exempt employees to take lawful meal or rest
12 breaks under California law and did not pay them premiums for non-complaint breaks, as
13 required under California law.

14 **CLASS ALLEGATIONS**

15 25. This action is brought and may properly be maintained as a class action pursuant
16 to the provisions of Code of Civil Procedure § 382.

17 26. Plaintiff reserves the right under California Rules of Court, Rule 1855 (b) to
18 amend or modify the description of the class, as defined below, with greater specificity or
19 division into subclasses or limitation to certain issues.

20 27. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
21 because there is a well-defined community of interest in the litigation and the proposed class is
22 easily ascertainable.

23 28. For the purposes of this Complaint, "Class Period" means any time from four
24 years prior to the filing of this Complaint until the date of class certification.

25 29. The putative class Plaintiff will seek to certify is currently composed of and
26 defined as follows:
27
28

1 All of Defendants' non-exempt employees who were assigned to work at
2 any healthcare facility inside California during the Class Period (the
3 "Class").

4 30. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the Class
5 are so numerous that their individual joinder is impracticable. The precise number of class
6 members and their addresses will be known to Plaintiff through discovery. Class members may
7 be notified of the pendency of this action by mail, electronic mail, the internet, or published
8 notice.

9 31. **Common Questions Predominate:** Common questions of law and fact exist as
10 to all members of the Class and predominate over any questions that affect only individual
11 members of the Class. The predominant common questions of law and fact, among other things,
12 include, whether Defendants:

- 13 a. Failed and continue to fail to reimburse for all incurred business-related travel
14 expenditures in violation of Labor Code § 2802;
- 15 b. Made and continue to make unauthorized deductions from earned wages in
16 violation of Labor Code §§ 221 & 223;
- 17 c. Failed and continue to fail to pay for all hours worked in violation of Labor Code
18 §§ 200, 223, 226, 500, 1197, 1198 and the applicable California Industrial Welfare
19 Commission Wage Orders ("Applicable Wage Orders");
- 20 d. Failed and continue to fail to pay all overtime wages for all overtime hours worked
21 in violation of Labor Code §§ 510, 1194, and the Applicable Wage Orders;
- 22 e. Willfully failed and continue to fail to pay minimum wage for all hours worked
23 in violation of Labor Code §§ 1194, 1197, and the Applicable Wage Orders;
- 24 f. Failed and continue to fail to authorize or permit meal periods in violation of
25 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 26 g. Failed and continue to fail to authorize or permit rest periods in violation of Labor
27 Code §§ 226.7, and the Applicable Wage Orders;
- 28

- 1 h. Failed and continue to fail to timely furnish complete and accurate itemized wage
2 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
3 i. Willfully failed to pay, without abatement or reduction, all final wages owed in
4 accordance with Labor Code §§ 201, 202, and in violation of Labor Code § 203;
5 and
6 j. Committed and continue to commit unfair business practices in violation of
7 Business & Professions Code § 17200, et seq.

8 32. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class
9 she seeks to represent because Plaintiff, as an employee of Defendants, was exposed and
10 subjected to the same unlawful business practices as the other members of the Class. Plaintiff
11 and the members of the Class she seeks to represent sustained the same types of damages and
12 losses.

13 33. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class.
14 Plaintiff's attorneys have experience in employment and class action matters and may adequately
15 represent the Class in this matter. Plaintiff has no adverse interests to those in the Class.

16 34. **Superiority:** A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy. Because individual joinder of all members of the Class
18 is impractical, class action treatment will permit a large number of similarly situated persons to
19 prosecute their common claims in a single forum simultaneously, efficiently and without the
20 unnecessary duplication of effort and expense that numerous individual actions would engender.
21 The relatively minor amount of individual damages in question coupled with the expenses and
22 burdens of individual litigation would make it difficult or impossible for individual members of
23 the Class to redress the wrongs done to them, while important public interests will be served by
24 addressing the matter as a class action. The cost to and burden on the court system of adjudication
25 of individualized litigation would be substantial and substantially more than the costs and
26 burdens of a class action. Individualized litigation would also present the potential for
27 inconsistent or contradictory judgments.

28

1 **FIRST CAUSE OF ACTION**

2 **[FAILURE TO REIMBURSE FOR BUSINESS EXPENSES]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 35. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 36. Labor Code § 2802 (a) provides:

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

13 37. As alleged above, during the applicable recovery period, Defendants have had a
14 policy and/or practice of failing to pay Plaintiff and the Class for their business-related travel
15 expenses incurred in the direct consequence of the discharge of their duties, including, but not
16 limited to, their flight and rental car costs when they temporarily relocated to perform work for
17 Defendants. In failing to reimburse Plaintiff and the Class for their business-related travel
18 expenses, Defendants violated Labor Code § 2802.

19 38. As a direct and proximate result of Defendants' failure to reimburse the
20 Plaintiff and the Class for their business-related travel expenses, they have been injured in an
21 amount to be proven at trial. Among other things, Plaintiff and the Class are entitled to recover
22 for such incurred expenses, as well as interest, penalties, costs, and attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **[UNAUTHORIZED DEDUCTIONS FROM WAGES]**

25 **(Plaintiff and the Class Against Defendants and Does 1-20)**

26 39. Plaintiff hereby incorporates by reference all other allegations contained in this
27 Complaint as though fully set forth herein.

28 40. Labor Code § 221 provides:

1 It shall be unlawful for any employer to collect or receive from an
2 employee any part of wages theretofore paid by said employer to said
employee.

3 41. Labor Code § 223 further provides:

4 Where any statute or contract requires an employer to maintain the
5 designated wage scale, it shall be unlawful to secretly pay a lower wage
6 while purporting to pay the wage designated by statute or by contract.

7 42. As alleged above, during the applicable recovery period, Defendants have had a
8 policy and/or practice of making willful deductions from paychecks of Plaintiff and the Class
9 without their written consent or authorization in order to recoup certain travel costs, including,
10 but not limited to lodging costs, that were incurred for Defendants' own benefit. By making such
11 unauthorized deductions from wages earned by Plaintiff and the Class, Defendants violated
12 Labor Code §§ 221 and 223.

13 43. As a direct and proximate result of Defendants' unauthorized deductions from
14 wages earned by Plaintiff and the Class, they have been injured in an amount to be proven at
15 trial. Among other things, Plaintiff and the Class are entitled to recover wages unlawfully
16 deducted, as well as interest, penalties, costs, and attorneys' fees.

17 **THIRD CAUSE OF ACTION**

18 **[FAILURE TO PAY FOR ALL HOURS WORKED]**

19 **(Plaintiff and the Class Against Defendants and Does 1-20)**

20 44. Plaintiff hereby incorporates by reference all other allegations contained in this
21 Complaint as though fully set forth herein.

22 45. At all times relevant hereto, Defendants were required to compensate their non-
23 exempt employees for all hours worked and all pay promised pursuant to the Applicable Wage
24 Orders, and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198.

25 46. In violation of California law, Defendants have knowingly and willfully refused
26 to perform their obligations to compensate Plaintiff and the Class for all their worked hours.

27 47. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
28 substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid

1 wages, incurred expenses and attorneys' fees in seeking to compel Defendants to fully perform
2 their obligations under California law, all to their respective damage in amounts according to
3 proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

4 48. Defendants' conduct described herein violates Labor Code §§ 200, 223, 226, 500,
5 1197, 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
6 226, 558, 1194 and 1194.2, Plaintiff and the Class are entitled to recover damages for the
7 nonpayment of wages of all their worked hours, in addition to penalties, reasonable attorneys'
8 fees, expenses, and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **[FAILURE TO PAY OVERTIME]**

11 **(Plaintiff and the Class Against Defendants and Does 1-20)**

12 49. Plaintiff hereby incorporates by reference all other allegations contained in this
13 Complaint as though fully set forth herein.

14 50. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage
15 Orders at all times relevant hereto, Defendants were required to compensate Plaintiff and the
16 Class for all worked overtime hours, which is calculated at one and one-half times the regular
17 rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendants
18 were also required to compensate Plaintiff and the Class for all hours worked in excess of 12
19 hours in any workday at double their regular rate of pay.

20 51. Plaintiff, and the Class are non-exempt employees entitled to the protections of
21 the Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198.

22 52. Throughout their employment with Defendants, Plaintiff and the Class worked in
23 excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However,
24 Defendants failed to properly compensate them for all their overtime and/or double-time hours
25 worked as required under the aforementioned laws.

26 53. As a direct result of aforementioned violations, Plaintiff and the Class have
27 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
28 lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to

1 fully perform their obligations under state law, all to these employees' respective damage in
2 amounts according to proof at time of trial, but in amounts in excess of the jurisdiction of this
3 Court.

4 54. Pursuant to Labor Code § 200, 203, 218.5, 226, 558, and 1194, Plaintiff and the
5 Class are entitled to recover owed overtime and double-time compensation from Defendants, as
6 well as penalties, interest, attorney's fees, and costs.

7 **FIFTH CAUSE OF ACTION**

8 **[FAILURE TO PAY MINIMUM WAGE]**

9 **(Plaintiff and the Class Against Defendants and Does 1-20)**

10 55. Plaintiff hereby incorporates by reference all other allegations contained in this
11 Complaint as though fully set forth herein.

12 56. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer
13 to suffer or permit a California employee to work without paying wages at the proper minimum
14 wage for all time worked as required by the Applicable Wage Orders.

15 57. Pursuant to the Applicable Wage Orders "hours worked" include "the time during
16 which an employee is subject to the control of an employer, and includes all the time the
17 employee is suffered or permitted to work, whether or not required to do so."

18 58. At all times relevant hereto, Plaintiff and the Class suffered, were permitted, and
19 required to perform work for which they received no pay. As a direct and proximate result of
20 Defendants' failure to pay Plaintiff and the Class, they have been damaged in the amount of the
21 owed minimum wages.

22 59. The aforementioned acts by Defendants were undertaken with the intention of
23 depriving Plaintiff and the Class of their property and/or legal rights and causing injury to them.

24 60. Pursuant to Labor Code §§ 1194 and 1194.2, Plaintiff and the Class are entitled
25 to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount,
26 interest and attorney's fees, all in a total amount subject to proof at time of trial.

1 **SIXTH CAUSE OF ACTION**

2 **[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 61. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 62. Labor Code § 226.7(a) provides, "No employer shall require any employee to
7 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
8 Commission."

9 63. Labor Code § 512(a) provides, in relevant part, that: "An employer may not
10 employ an employee for a work period of more than five hours per day without providing the
11 employee with a meal period of not less than 30 minutes, except that if the total work period per
12 day of the employee is no more than six hours, the meal period may be waived by mutual consent
13 of both the employer and employee. An employer may not employ an employee for a work period
14 of more than 10 hours per day without providing the employee with a second meal period of not
15 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
16 meal period may be waived by mutual consent of the employer and the employee only if the first
17 meal period was not waived."

18 64. Throughout their employment with Defendants, Plaintiff and the Class regularly
19 worked in excess of 5-hour work periods without being authorize and/or permitted to take a
20 lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

21 65. Throughout their employment with Defendants, Defendants failed to pay Plaintiff
22 and the Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.
23 As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders,
24 Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

25 66. Plaintiff and the Class are entitled to recover one additional hour of pay at their
26 regular rate of compensation for each workday that a meal period was not authorized and/or
27 permitted. Plaintiff and the Class are also entitled to their costs and reasonable attorneys' fees,
28 according to proof and to interest on all due and unpaid wages at the legal rate of interest.

1 **SEVENTH CAUSE OF ACTION**

2 **[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 67. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein

6 68. California Labor Code § 226.7(a) provides, "No employer shall require any
7 employee to work during any meal or rest period mandated by an applicable order of the
8 Industrial Welfare Commission."

9 69. The Applicable Wage Orders require that employers authorize or permit non-
10 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
11 each work period. The rest break is based on the total hours worked daily and must be at the
12 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
13 thereof.

14 70. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
15 employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
16 the employee one additional hour of pay at the employee's regular rate of pay for each workday
17 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
18 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
19 employee reaches an area away from the work area that is appropriate for rest.

20 71. Throughout their employment with Defendants, Defendants did not authorize or
21 permit pay Plaintiff and the Class to take lawful rest breaks and failed to pay premium wages
22 mandated by Labor Code § 226.7(b) to this group of employees. As a result of violations of Labor
23 Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant
24 to Labor Code §§ 558 and 2698 et seq.

25 72. Plaintiff and the Class are entitled to recover one additional hour of pay at their
26 regular rate of compensation with Defendants for each workday that a rest break was not
27 authorized and/or permitted. Plaintiff and the Class are also entitled to their costs and reasonable
28

1 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
2 interest.

3 **EIGHTH CAUSE OF ACTION**

4 **[WAITING TIME PENALTIES]**

5 **(Plaintiff and the Class Against Defendants and Does 1-20)**

6 73. Plaintiff hereby incorporates by reference all other allegations contained in this
7 Complaint as though fully set forth herein.

8 74. Labor Code §§ 201 and 202 require that an employer pay all wages due to an
9 employee after said employee is discharged or quits.

10 75. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
11 to an employee who is discharged or quits. This penalty consists of an amount equal to the sum
12 of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in
13 an amount not to exceed the equivalent of 30 days' pay.

14 76. During the applicable recovery period, Plaintiff and numerous members of the
15 Class have separated from Defendants as a result of being discharged or having voluntarily
16 resigned their employment.

17 77. While employed by Defendants, these employees were entitled to compensation
18 for the violations set forth in this Complaint. Defendants failed to pay all wages due to the
19 Plaintiff and the members of the Class who separated from Defendants, by failing to pay for,
20 among other things, all hours worked, overtime and double-time, and premium wages for
21 unlawful meal or rest breaks. Defendants are required to compensate these employees for all their
22 unpaid wages earned and an additional penalty equal to the daily earnings of such employees up
23 to an amount equal to those owed for 30 days of work.

24 **NINTH CAUSE OF ACTION**

25 **[BREACH OF CONTRACT]**

26 **(Plaintiff and the Class Against Defendants and Does 1-20)**

27 78. Plaintiff hereby incorporates by reference all other allegations contained in this
28 Complaint as though fully set forth herein.

1 **ELEVENTH CAUSE OF ACTION**

2 **[UNFAIR BUSINESS PRACTICES]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 85. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 86. Defendants have engaged in unfair business practices in California by practicing,
7 employing and utilizing the employment practices outlined in this Complaint by requiring their
8 drivers and other non-exempt employees to perform the labor complained of herein without
9 proper compensation. Defendants' utilization of such unfair business practices constitutes unfair
10 competition and provides an unfair advantage over their competitors.

11 87. Plaintiff and the Class seek full restitution and disgorgement of monies, as
12 necessary and according to proof, to restore any and all monies withheld, acquired and/or
13 converted by Defendants by means of the unfair practices complained of herein.

14 88. Plaintiff and the Class seek, on their own behalf and on behalf of the general
15 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
16 least in part, within the last four (4) years preceding the filing of the original complaint in this
17 action.

18 89. Upon information and belief, Plaintiff alleges that at all times herein mentioned
19 Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by
20 Business and Professions Code § 17200 et seq., including those set forth in the Complaint herein,
21 thereby depriving Plaintiff and the Class, and other members of the general public the minimum
22 working condition standards and conditions due to them under the California labor laws and the
23 applicable Wage Orders as specifically described herein.

24 90. Plaintiff and the Class are further entitled to and do seek both a declaration that
25 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
26 relief restraining Defendants from engaging in any of such business practices in the future. Such
27 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
28 irreparable injury in that Defendants will continue to violate these California laws, represented

1 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
2 expectation of future violations will require current and future employees to repeatedly and
3 continuously seek legal redress in order to gain compensation to which they are entitled under
4 California law. Plaintiff and the Class have no other adequate remedy at law to ensure future
5 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
6 violated herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, pray for
9 relief and judgment against Defendants as follows:

10 1. Certification of this action as a class action on behalf of each of the Class alleged
11 in this Complaint;

12 2. For general damages, according to proof, on each cause of action for which such
13 damages are available;

14 3. For compensatory damages, according to proof, on each cause of action for which
15 such damages are available;

16 4. For consequential damages, according to proof, on each cause of action for which
17 such damages are available

18 5. For restoration and restitution of lost wages, statutory penalties, and all other
19 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

20 6. For declaratory and injunctive relief as requested herein;

21 7. For prejudgment and post-judgment interest according to law;

22 8. For reasonable attorneys' fees incurred in this action on those causes of action for
23 which such fees are recoverable under the law;

24 9. For costs of suit incurred in this action;

25 10. Disgorgement of all gains unjustly gained by Defendants; and

26 11. Any other remedies, whether in law or equity, that the Court deems properly.
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Dated: December 2, 2019

Respectfully submitted,
SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff and the Proposed
Class

DEMAND FOR JURY TRIAL

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

Dated: December 2, 2019

Respectfully submitted,
SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff and the Proposed
Class