

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

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

MXD GROUP, INC., a California corporation; RYDER SYSTEM, INC., a Florida Corporation; and DOES 1-10, inclusive

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

JOSEPH KIMBO, an individual; on behalf of himself and all others similarly situated

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

Superior Court Of California,
Sacramento

12/12/2018

irono2

By _____, Deputy

Case Number:

34-2018-00246338

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court for the State of California
County of Sacramento, 720 9th Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Joshua Konecky, 2000 Powell Street, Suite 1400, Emeryville, CA 94608

DATE: **DEC 12 2018**
(Fecha)

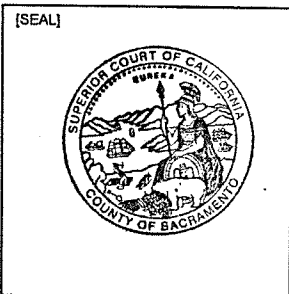
Clerk, by
(Secretario)

I. ROMO

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):

BY FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Joshua Konecky, SBN 182897; Leslie Joyner SBN 262705; Nathan Piller SBN 300569
 Schneider Wallace Cottrell Konecky Wotkyns LLP
 2000 Powell Street, Suite 1400, Emeryville, CA 94608

TELEPHONE NO.: (415) 421-7100 FAX NO.: (415) 421-7105
 ATTORNEY FOR (Name): Plaintiffs

FOR COURT USE ONLY

FILED
 Superior Court Of California,
 Sacramento
 12/12/2018
 ironeo2
 By _____, Deputy
 Case Number:
 34-2018-00246338

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento
 STREET ADDRESS: 720 9th Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Sacramento, CA 95814
 BRANCH NAME:

CASE NAME:
 JOSEPH KIMBO, et al v. MXD GROUP, INC., RYDER SYSTEM, INC.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 JUDGE:
 DEPT:


Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)
 <input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)
 <input type="checkbox"/> Product liability (24)
 <input type="checkbox"/> Medical malpractice (45)
 <input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)
 <input type="checkbox"/> Civil rights (08)
 <input type="checkbox"/> Defamation (13)
 <input type="checkbox"/> Fraud (16)
 <input type="checkbox"/> Intellectual property (19)
 <input type="checkbox"/> Professional negligence (25)
 <input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)
 <input checked="" type="checkbox"/> Other employment (15)</p> | <p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)
 <input type="checkbox"/> Rule 3.740 collections (09)
 <input type="checkbox"/> Other collections (09)
 <input type="checkbox"/> Insurance coverage (18)
 <input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)
 <input type="checkbox"/> Wrongful eviction (33)
 <input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)
 <input type="checkbox"/> Residential (32)
 <input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)
 <input type="checkbox"/> Petition re: arbitration award (11)
 <input type="checkbox"/> Writ of mandate (02)
 <input type="checkbox"/> Other judicial review (39)</p> | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)
 <input type="checkbox"/> Construction defect (10)
 <input type="checkbox"/> Mass tort (40)
 <input type="checkbox"/> Securities litigation (28)
 <input type="checkbox"/> Environmental/Toxic tort (30)
 <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)
 <input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)
 <input type="checkbox"/> Other petition (not specified above) (43)</p> |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 12
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 12, 2018
 Leslie Joyner

BY FAX


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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13 Attorneys for Plaintiff

FILED
Superior Court Of California,
Sacramento
12/12/2018
irono2
By _____, Deputy
Case Number:
34-2018-00245318

14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

15 COUNTY OF SACRAMENTO

BY FAX

16 JOSEPH KIMBO, an individual; on behalf
17 of himself and all others similarly situated,

18 Plaintiffs,

19 v.

20 MXD GROUP, INC., a California
21 corporation; RYDER SYSTEM, INC., a
22 Florida Corporation; and DOES 1-10,
23 inclusive,

24 Defendants.

CASE NO.

CLASS ACTION COMPLAINT

(1) CALIFORNIA LABOR CODE;

(2) CALIFORNIA INDUSTRIAL WELFARE
COMMISSION WAGE ORDERS; and

(3) CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§17200, *et seq.*

JURY TRIAL DEMANDED

25 Plaintiff Joseph Kimbo by and through his undersigned attorneys, hereby brings this Class
26 Action Complaint against Defendant MXD Group Inc. ("MXD"), a California corporation; Ryder
27 System, Inc. ("Ryder"), A Florida corporation and Does 1-10, inclusive (hereinafter collectively
28 referred to as "Defendants") and allege as follows:

1 NATURE OF THE CASE

2 1. “In recent years, the relevant regulatory agencies of both the federal and state
3 governments have declared that the misclassification of workers as independent contractors rather
4 than employees is a very serious problem, depriving federal and state governments of billions of
5 dollars in tax revenue and millions of workers of the labor law protections to which they are
6 entitled.” *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 913, *reh'g denied*
7 (June 20, 2018). In 2014, then Secretary of Labor Thomas Perez declared that the
8 misclassification of employees as independent contractors “is nothing short of workplace fraud,
9 and it is a practice that has spread from construction to a variety of low-wage industries[.]”¹ Not
10 surprisingly, truck drivers are among the workers most often misclassified, according to a report
11 by the New York Times.² Indeed, unlawful misclassification is precisely what Defendants have
12 done in this case.

13 2. In fact, this is not the first time Defendants have been sued for unlawful
14 misclassification of their delivery drivers. Prior to September 2013, Defendants were formally
15 known as Exel Direct, Inc and a lawsuit filed on June 14, 2012, *Villalpando v. Exel Direct Inc.*,
16 challenged defendants practice of misclassifying these very same drivers as independent
17 contractors. On September 3, 2015, the United States District Court for the Northern District of
18 California granted summary judgment in favor of the plaintiffs on Exel’s independent contractor
19 defense, and ruled that the Class Members were employees as a matter of law. *Villalpando v. Exel*
20 *Direct Inc.*, 2015 WL 5179486, at *51 (N.D. Cal. Sept. 3, 2015). Yet despite this ruling,
21 Defendants have made only small cosmetic changes to the circumstances of these Drivers’
22 employment and have otherwise willfully maintained their unlawful policy of misclassifying
23 them as independent contractors.

24 3. This is a putative class action arising out of Defendants’ misclassification of its
25 delivery drivers (“Drivers”) as “independent contractors” instead of “employees.” Defendants
26

27 ¹ Secretary of Labor Thomas E. Perez, Testimony before the Committee on Education and the
28 Workforce, U.S. House of Representatives, March 26, 2014.

² Steven Greenhouse, *U.S. Cracks Down on ‘Contractors’ as a Tax Dodge*, The New York Times,
Business, Feb. 17, 2010.

1 operate a “local delivery” service, which makes deliveries of furniture, appliances and other items
2 on behalf of Defendants’ retail clients. Under California law, Defendants are the legal employers
3 of the Drivers they hire to provide this service to their clients and the customers of their clients.

4 4. On April 30, 2018, the California Supreme Court issued its decision in *Dynamex*
5 *Operations W., Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. Apr. 30, 2018), which confirmed the
6 use of the ABC Test to determine whether a worker is an employee or an independent contractor
7 for the purposes of California wage orders. The ABC Test presumes that all workers should be
8 classified as employees, unless the worker (a) is free from control and direction of the hiring entity
9 in connection with the performance of the work, both under the contract for the performance of
10 such work and in fact; (b) performs work outside the usual course of the hiring entity’s business;
11 and (c) is customarily engages in an independent trade occupation, or business of the same nature
12 as that involved in the work performed. *Id.* at 916-917.

13 5. The burden is on Defendants to prove each of the three exceptions and if Defendants
14 cannot prove that all three apply, the worker must be classified as an employee as a matter of law.
15 Here, none of the three factors justify Defendant’s misclassification. Alternatively, Defendants
16 also have established an employer-employee relationship with the Drivers under the right to
17 control test early articulated by the California Supreme Court in *S. G. Borello & Sons, Inc. v.*
18 *Dep’t of Indus. Relations*, (1989) 48 Cal. 3d 341, 350, not to mention the secondary factors cited
19 in that decision as well.

20 6. Defendants retain the right to exercise extensive control over the way the Drivers
21 perform their deliveries; Defendants treat the Drivers as employees in every material respect.
22 Among other things, Defendants retain the right to control the Drivers’ schedules, routes,
23 customers, equipment, appearance, pay rate, insurance, helpers, and other details of the job. Yet,
24 by misclassifying the Drivers as independent contractors, rather than as employees, Defendants
25 unlawfully evade their obligation to pay them the full wages and employment benefits they are
26 due under applicable law.

27 7. Throughout the proposed class period, Defendants have employed over a hundred
28 Drivers in California. These Drivers make deliveries to the residential customers of Defendants’

1 clients, an integral part of Defendants' delivery business. No specialized skills are required for
2 the job.

3 8. Defendants require that the Drivers arrive at Defendant's terminal early in the
4 morning, dressed in Defendants' uniforms or the uniforms of Defendants' clients. They must
5 attend mandatory morning meetings with Defendants before they begin loading their vehicles and
6 making the deliveries in accordance with Defendants' routes and instructions. Drivers routinely
7 work 12-14 hour days, driving standard 26-foot trucks and hauling heavy furniture and appliances
8 for Defendants' retail clients. They rarely stop to rest or sit down to eat, due to the delivery
9 schedules and other demands Defendants place on them. Moreover, Defendants track and monitor
10 the Drivers' movements throughout the day to ensure they are adhering to Defendants' strict
11 delivery schedule. Defendants also reserve the right to discipline Drivers reduce their work
12 assignments, and/or terminate or disqualify them if they do not adhere to Defendants' strict
13 schedules and other demands.

14 9. Defendants pay the Drivers according to a common compensation schedule that pays
15 a flat rate based on each delivery. Drivers have no say in which routes or how many stops they
16 can make, and no meaningful opportunity to negotiate pay rates or routes. Defendants also make
17 deductions from these wages to cover the costs of equipment they require the Drivers to use as
18 well as other ordinary business expenses and losses incurred by Defendants. Defendants'
19 scheduling demands, personal appearance standards, and other policies of control also do not
20 permit the Drivers a realistic opportunity to offer their services to customers independently of
21 their work for Defendants.

22 10. As further defined herein, Plaintiff brings this class action on behalf of himself and
23 other similarly situated individuals who personally made one or more deliveries for Defendants
24 in California, while being classified as independent contractors at any time beginning four years
25 before the filing of this Complaint.

26 11. Plaintiff seeks to represent other former and current Drivers against Defendants for
27 violating California wage and hour laws stemming based on Defendants' misclassification
28 Drivers as independent contractors.

1 12. Plaintiff seeks injunctive and declaratory relief, restitution and compensation for all
2 uncompensated work, reimbursement for all expenses incurred as required by employment,
3 liquidated and/or other damages as permitted by applicable law, penalties, interest, attorneys'
4 fees, and costs

5 13. Plaintiff, on his own behalf and on behalf of all Class Members, brings this action
6 pursuant to Labor Code §§ 201-203, 221, 223, 226.3, 226.7, 226.8 400-410, 510, 512, 1182, 1174,
7 1194, 1197, 1197.1, and 2802; and California Code of Regulations, Title 8 §11090 §§ 7 & 11-12
8 (Wage Order No. 9). Plaintiff challenges Defendants' policies of: (1) misclassifying Drivers as
9 independent contractors instead of employees; (2) failing to reimburse Plaintiff and the Class for
10 necessary and reasonable business expenses; (3) making unlawful deductions from Plaintiff's and
11 the Class' wages; (4) failing to provide, authorize, permit and/or make available meal and rest
12 periods to Plaintiff and the Class as required by California law; (5) denying Plaintiff and the Class
13 full compensation for all hours worked; (6) failing to pay Plaintiff and the Class minimum wage;
14 (7) failing to pay Plaintiff and the Class overtime and double time; (8) failing to provide Plaintiff
15 and the Class with accurate, itemized wage statements; and (9) failing to timely pay Plaintiff and
16 the Class full wages upon termination or resignation. Plaintiff seeks compensation, damages,
17 penalties, and interest to the full extent permitted by the California Labor Code and the applicable
18 IWC Wage Orders.

19 14. Plaintiff, on his behalf and all others similarly situated, also brings this action pursuant
20 to Business & Professions Code §§ 17200-17208, for unfair competition due to Defendants'
21 unlawful violations of the Labor Code and IWC Wage Orders. Plaintiff, on his own behalf and
22 all others similarly situated, seek declaratory and injunctive relief, including restitution under
23 §17203.

24 15. Plaintiff, on his own behalf and all other aggrieved employees, also seeks penalties
25 under the Labor Code Private Attorneys General Act of 2004 (PAGA). The PAGA provides that
26 any civil penalty assessed and collected by the Labor and Workforce Development Agency
27 (LWDA) for violations of applicable provisions of the California Labor Code may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself and other current or former employees pursuant to procedures outlined in California
2 Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil action
3 on behalf of other aggrieved employees for violation of any other Labor Code provision that does
4 not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
5 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
6 per pay period for each subsequent violation. On August 16, 2018, Plaintiff provided written
7 notice via online upload to the LWDA and by certified mail to Defendants of the specific
8 provisions of the California Labor Code alleged to have been violated, including the facts and
9 theories to support the alleged violations. Sixty-five (65) days have passed since this notice, and
10 the LWDA has not expressed an intent to investigate. Thus, Plaintiff has satisfied the
11 administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil
12 penalties against Defendants for violations of California Labor Code identified in this Complaint.

13 16. Plaintiff, on his own behalf and all others similarly situated, also requests reasonable
14 attorneys' fees and costs pursuant to, inter alia, Labor Code §§ 225.5, 226, 226.7, 558, 1194,
15 1197, 2699(g), and 2802; and Code of Civil Procedure § 1021.5.

16 **JURISDICTION AND VENUE**

17 17. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
18 California Constitution and California Code of Civil Procedure § 410.10.

19 18. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
20 injunctive relief, including restitution of earned wages, arising from Defendants' unfair
21 competition under Business & Professions Code §§ 17203 and 17204. The Court also has
22 jurisdiction over Plaintiff's and the Class' claims for penalties in violation of the Labor Code
23 pursuant to Business and Professions Code § 17202, as well as pursuant to the applicable Labor
24 Code provisions.

25 19. The Court has jurisdiction over Defendants because they are corporations authorized
26 to do business in the State of California and are registered with the California Secretary of State.
27 Defendants do sufficient business with sufficient minimum contacts in California, and/or
28 otherwise intentionally avail themselves of the California market through the advertising,

1 marketing and sale of goods and services, to render the exercise of jurisdiction over Defendants
2 by the California court consistent with traditional notions of fair play and substantial justice.

3 20. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5.
4 Defendants employed Plaintiff and the other Drivers in this County, transact business in this
5 County, and the events complained of in this Complaint occurred in this County.

6 **THE PARTIES**

7 21. Plaintiff and the Class members, as set forth below, are current or former Drivers of
8 Defendants who personally made one or more deliveries for Defendants in California, while being
9 classified by Defendants as independent contractors at any time beginning four years before the
10 filing of this Complaint.

11 22. Plaintiff, Joseph Kimbo, resides in the County of Sacramento. Plaintiff worked as a
12 Driver for Defendants, transacting business on behalf of Defendants in the County of Sacramento,
13 among other locations throughout Northern California, until Defendants terminated his
14 employment in March 2018.

15 23. Prior to September 2013, Defendant MXD was formally known as Exel Direct, Inc.

16 24. On or about April 3, 2018, Defendant MXD was acquired by Defendant Ryder System.

17 25. Defendants, have and at all relevant times have been engaged in the business of
18 delivery services in the State of California. Defendant Ryder is headquartered and has its principal
19 place of business in, Miami, Florida in the County of Miami-Dade. Defendant MXD is
20 incorporated in California and headquartered in Ohio. MXD maintains a delivery facility in the
21 County of Sacramento, California.

22 26. Plaintiff does not know the true names and capacities of Defendants sued herein as
23 DOES 1-50, and therefore sues these Defendants by fictitious names. Plaintiff will amend this
24 Complaint to state the true names and capacities when ascertained. Plaintiff is informed and
25 believes and thereon alleges that each of the fictitiously named Defendants are responsible in
26 some manner for the occurrences and damages alleged herein, and that Plaintiff's damages as
27 hereinafter set forth were proximately caused by said Defendants.

28 27. Throughout this Complaint, any reference to "Defendants," "Defendant," "MXD" or

1 “Ryder” is intended to refer to all Defendants jointly.

2 **FACTUAL ALLEGATIONS**

3 28. Plaintiff incorporates herein by reference the allegations set forth above.

4 29. During the relevant time period of this action, Defendants have employed, and
5 continue to employ, Drivers to provide delivery and other moving services. Their job duties
6 include driving delivery vehicles, loading and unloading delivery vehicles, physically retrieving
7 goods from and delivering goods to a customers’ homes and other locations, and performing
8 additional miscellaneous duties at the direction of Defendants.

9 30. Defendants classify all of their Drivers in California as “independent contractors.”

10 **A. Defendants’ Misclassification of Drivers as Independent Contractors**

11 **i. Facts regarding Defendants’ control and direction under the contract**

12 31. The Master Services Agreement and exhibits thereto (MSA) drafted by MXD---which
13 all Drivers must sign---gives Defendants an expansive right of control by imposing mandatory
14 policies & procedures, delivery service standards and schedules that must be adhered to under the
15 threat of financial penalization and/or termination.

16 32. The MSA requires Drivers to make deliveries as directed by MXD. Defendants also
17 have the right to terminate and/or transfer any driver to any of the Defendants other locations at
18 any time under the threat of termination.

19 33. Under the MSA, Defendants pay the Drivers according to a uniform compensation
20 scheme, whereby each Driver is paid a flat rate based on each delivery made. Pay rates are
21 presented on a take-it-or-leave it basis and Defendants do not negotiate that rate of pay or pay
22 structure with individual Drivers.

23 34. The MSA also prohibits Drivers from working with or for any of Defendants’
24 customers, contractors or employees while working for Defendants and also for three years after
25 the contract is terminated.

26 **ii. Facts regarding Defendants’ control and direction over the performance of
the work**

27 35. Drivers work pre-determined routes throughout the duration of their employment with
28 Defendants. The Drivers’ basic duties do not change materially and the Drivers do not provide

1 additional services to Defendants or Defendants' customers.

2 36. Defendants' Drivers operate under managerial control and supervision exercised by
3 Defendants' corporate headquarters and regional corporate offices. There are no material
4 deviations in job duties or descriptions of the Drivers.

5 37. Defendants pay the Drivers according to a uniform compensation scheme, whereby
6 each Driver is paid a flat rate based on a percentage of each delivery made. Defendants do not
7 negotiate the rates of pay or pay structure with individual Drivers.

8 38. Defendants assign the Drivers their routes, the rates are predetermined by Defendants,
9 and each Driver is paid the same or similar piece rate. Defendants, at their discretion, change the
10 piece rate from time to time, but all Drivers are compensated at the same or similar piece rate at
11 a given time.

12 39. Drivers have no meaningful opportunity to create or determine the routes they drive,
13 the goods they deliver, or the customers they serve. Rather, Defendants predetermine the Drivers'
14 routes, goods, and customers before they arrive for work each day.

15 40. Drivers have no meaningful opportunity to negotiate or bid for particular routes,
16 goods, or customers. Rather, the Drivers provide delivery services to Defendants' retail customers
17 in the manner dictated by Defendants' pre-existing contracts with its retail customers.

18 41. The route assignments imposed upon Drivers by Defendants include so many stops,
19 such geographically scattered delivery destinations, and such long distances in between stops that
20 Drivers must work long, twelve (12) to fourteen (14) hour days just to finish their day's assigned
21 deliveries. It is not uncommon for drivers to work for 18 hours in a workday. The mandatory
22 delivery windows and distances between them, as well as the quantity of stops and long hours
23 prevent Drivers from providing deliveries to customers other than those on the routes provided
24 by Defendants. Defendants subject the Drivers to termination, reduced work, or other forms of
25 discipline if they do not meet the schedules or other demands presented by Defendants.

26 42. Defendants reserve, and frequently exercise the authority to alter the Drivers' routes
27 after they are assigned, and to add additional deliveries to the routes, post-hoc.

28 43. Drivers work regular schedules for Defendants, often six to seven days a week. Drivers

1 must get Defendants' approval prior to taking any time off. Approval is rarely granted, and
2 granted even less so without negative consequences, and Drivers are often subject to reprimand
3 and other discipline for requesting or taking time off.

4 44. It is impracticable for Drivers to drive a vehicle for other clients, because Defendants
5 routinely terminate their relationships with Drivers whose other commitments make it impractical
6 to meet Defendants' service demands and schedules.

7 45. Additionally, Defendants require Drivers to sign non-compete agreements that
8 prohibit Drivers from directly or indirectly attempting to service, call-on or solicit business from
9 any account or customer of Defendants while working for Defendants, and for three years after
10 termination.

11 46. Defendants require Drivers to purchase equipment and other items for the job,
12 including, but not limited to, uniforms, GPS devices, booties and gloves, dollies, blankets, ropes
13 and straps for tying down and securing merchandise, and other standardized delivery supplies and
14 equipment. Like a company store, Defendants provide many of these items to the Drivers, for a
15 cost. Defendants then deduct the costs directly from the Drivers' paychecks.

16 47. Defendants require Drivers to hire at least one helper and retain ultimate control over
17 who may serve as a Drivers' helper.

18 48. Drivers are required to wear uniforms bearing Defendants' logo or the logos of
19 Defendants' clients.

20 49. Some Drivers own the trucks which they use to perform deliveries for Defendants
21 (often through financing or other loans that they struggle to pay off). Other Drivers lease their
22 trucks from Defendants. Defendants deduct lease costs directly from Drivers' paychecks.

23 50. When Drivers' vehicles are not available, Defendants retain and exercise the right to
24 require Drivers to rent a vehicle. Rental agreements are often arranged by Defendants and
25 Defendants deduct the costs of the rental directly from Drivers' paychecks.

26 51. Defendants also routinely provide Drivers with loans so that they may purchase
27 necessary equipment and pay for other costs of doing business. Defendants frequently offer loans
28 to Drivers unable to afford the necessary equipment, costly repairs, fuel or other expenses, and

1 then deduct the repayment directly from the Drivers' settlements.

2 52. Defendants require the Drivers to attend regular meeting and trainings covering
3 Defendants' preferred loading and delivery techniques.

4 53. Defendants require Drivers to obtain insurance coverage for general liability,
5 automobile liability, Worker's Compensation, Occupational Accident Insurance, and Cargo
6 Liability Insurance, all meeting coverage thresholds prescribed by Defendants. Drivers must
7 name Defendants as additional insureds on their policies and, at Defendants' request must also
8 name Defendants customers as additional insureds.

9 54. Defendants require the Drivers to arrive in the early morning, before they are
10 scheduled to depart. Drivers are presented with manifests mandating "time-windows" for each
11 pre-scheduled delivery.

12 55. Defendants monitor the Drivers' progress on their routes by requiring the Drivers to
13 verify deliveries to Defendants throughout the day. Defendants also require Drivers to install
14 GPS tracking equipment on their trucks through which they monitor Drivers' progress throughout
15 the day.

16 56. If Drivers are late to a delivery, perform the deliveries out of order or miss a delivery,
17 they are fined by Defendants. Defendants deduct the fines directly from Drivers' paychecks.

18 57. Upon completing the day's deliveries, the Drivers have been required to return to the
19 terminal to fill out paperwork, log their completion times, and drop off undelivered merchandise.

20 **iii. Drivers are Part of Defendants' usual business operation**

21 58. Defendants are a delivery company that specializes in the delivery of large consumer
22 products for its retail store clients and their customers.

23 59. Drivers that work for Defendants perform the Defendants' core business. The Drivers
24 job is to load products from warehouses belonging to the Defendant's clients and deliver them to
25 the customers of Defendant's clients.

26 **iv. Drivers are not engaged in independently established business**

27 60. The Drivers do not operate distinct businesses but rather are a regular and integrated
28 portion of Defendants' business operation. For example, class members serve Defendants clients

1 as representatives of MDX and Ryder. Defendants require drivers to wear uniforms affixed with
2 Defendants' logo or the logos of Defendants' customers.

3 61. Defendants keep Drivers economically dependent by acting as an employer-lender,
4 routinely advancing Drivers money to cover operational expenses. These advance are then
5 deducted from the Driver's compensation.

6 62. Moreover, as noted above, the MSA prohibits Drivers from working with or for any
7 of Defendant's customer, contractors or employees while working for MDX and also for three
8 years after the contract is terminated.

9 **B. Defendants Required Drivers to Cover Defendants' Business Costs**

10 63. As a result of misclassifying Drivers as independent contractors, Defendants passed
11 on many of costs of running their business to Drivers, including, among others, vehicle
12 rentals/leases, towing, diesel/gasoline and other fuel, tires, vehicle maintenance, vehicle repairs,
13 insurance in connection with Drivers' operation of the vehicles used to perform the deliveries,
14 claims for lost or damaged items, and service and merchandise claims granted to customers.

15 **C. Defendants Took Deductions from Drivers' Paychecks**

16 64. Defendants subject all Drivers to the same categories of deductions to cover certain
17 ordinary business expenses of Defendants, including, among others, vehicle rentals/leases,
18 towing, diesel/gasoline and other fuel, tires, vehicle maintenance and repairs, vehicle washes,
19 insurance, uniforms, booties and gloves, fees associated with GPS monitoring and tracking of
20 Drivers, standard moving and delivery equipment and supplies, claims for lost or damaged items,
21 and service and merchandise claims granted to customers.

22 **D. Defendants' Failure to Pay Minimum Wages**

23 65. As a result of the considerable expenses covered by Drivers, the substantial deductions
24 made by Defendants from Drivers' paychecks, long work days and weeks, and Defendants' non-
25 negotiable piece rate compensation scheme, Drivers' net earnings frequently do not reach
26 minimum wage for all hours worked.

27 **E. Defendants' Failure to Pay for Hours Worked Not Covered by the Piece Rate**

28 66. Defendants pay the Drivers according to a uniform compensation scheme, whereby

1 each Driver is paid a flat rate for each delivery made, remitted in bi-weekly pay statement.
2 However, under Defendants' compensation system, Drivers receive no pay (not their regular rate
3 of pay or even minimum wage) for an array of activities that Defendants require them to perform
4 before and after deliveries. Such activities include, among others, attending regular meetings,
5 reviewing route assignments, mapping destinations, inspecting vehicles, fueling vehicles,
6 completing daily paperwork, waiting on customers, waiting on route assignments, loading and
7 unloading vehicles, and returning equipment and undelivered merchandise to Defendants'
8 location at the end of the workday.

9 **F. Defendants' Failure to Pay Overtime and Double-time Compensation**

10 67. As noted above, Drivers routinely work long, twelve (12) to fourteen (14) hour days
11 just to finish their day's assigned deliveries and it is not uncommon for drivers to work for Drivers
12 to work 18 hours in a workday. Yet, Defendants' standardized compensation schedules pay on a
13 piece rate basis and do not include any premiums for overtime or double-time.

14 **G. Defendants' Failure to Provide Off-Duty Meal Periods**

15 68. Defendants fail to provide the Drivers an opportunity to take off-duty meal periods of
16 at least 30 minutes by each 5-hour segment of work. The delivery schedules Defendants assign
17 to its Drivers simply do not permit an opportunity to take these off-duty meal periods, because
18 they cover such long distances and require Drivers to meet specific delivery time windows.
19 Moreover, Defendants' route sheets do not include designated windows of time in which Drivers
20 may take meal breaks. If Drivers stop to eat meals, they are subject to being called by Defendants'
21 dispatchers or managers to get back to their deliveries, being assigned less work, having their
22 contracts terminated, or other forms of discipline. As a result of these policies, the Drivers rarely,
23 if ever, have 30 minutes meal periods by the 5th and 10th or of work, much less an opportunity to
24 take any meal periods that are truly off-duty for least 30 minutes by the fifth and tenth hours of
25 work. Instead, they typically eat while driving or otherwise on the run.

26 **H. Defendants' Failure to Authorize and Permit or Pay for Rest Periods**

27 69. Defendants also fail to authorize or permit off duty, paid rest periods of at least 10
28 minutes of rest time for every 4 hours of work or major fraction thereof. Like meal periods, the

1 arrangement of the routes, delivery windows, the long distances required by the schedules, and
2 the need to remain vigilant for customers routinely do not permit the Drivers an opportunity to
3 stop and rest, while off-duty, for 10 minutes during each 4 hour work period or major fraction
4 thereof. Even assuming a Driver manages to catch a moment of rest, this downtime is subject to
5 interruption and on duty. Defendants not actually authorize or permit rest periods of any kind,
6 much less off-duty rest periods for every 4 hour work period or major fraction thereof, or paid
7 rest periods, as the law requires.

8 70. Additionally, Defendants' piece rate compensation system does not include any
9 separate compensation for rest periods, even assuming they were authorized and permitted.

10 **I. Defendants' Failure to Maintain Adequate Employment Records**

11 71. Defendants also fail to maintain documentation of the actual hours worked each day
12 by Drivers, all wages and piece rate units earned and meal breaks taken.

13 **J. Defendants' Failure to Provide Accurate Itemized Wage Statements**

14 72. Wage statements provided to Drivers by Defendants do not show, among others, gross
15 wages, total hours worked, number of piece-rate units earned, and all applicable piece and/or
16 hourly rates.

17 **K. Defendants' Failure to Pay All Wages Due Upon Termination of Employment**

18 73. Defendants fail, upon termination of employment, to pay Drivers all accrued
19 compensation including, among others, repayment of all unlawful deductions from wages;
20 reimbursement of expenses, payment of minimum wage, overtime and double-time
21 compensation; wages owed to Drivers for performing various unpaid common tasks; wages owed
22 to; and missed meal and rest period compensation.

23 **L. Facts Regarding Willfulness**

24 74. Defendants knew or should have known that Drivers were Defendants' employees
25 under California law; were entitled to reimbursement for all work-related expenditures or losses
26 incurred by Drivers in direct consequence of their work for Defendants and to other benefits and
27 privileges, which Drivers are entitled to under the California Labor Code and Wage Order No. 9.

28 75. Indeed, as noted above, this is not the first time Defendants have been sued for

1 unlawful misclassification of their delivery drivers. Prior to September 2013, Defendants were
2 formally known as Exel Direct, Inc and a lawsuit filed on June 14, 2012, *Villalpando v. Exel*
3 *Direct Inc.*, challenged defendants practice of misclassifying these very same drivers as
4 independent contractors. On September 3, 2015, the United States District Court for the Northern
5 District of California granted summary judgment in favor of the plaintiffs on Exel's independent
6 contractor defense, and ruled that the Class Members were employees as a matter of law.
7 *Villalpando v. Exel Direct Inc.*, 2015 WL 5179486, at *51 (N.D. Cal. Sept. 3, 2015). Yet despite
8 this ruling, Defendants have willfully maintained their unlawful policy of misclassifying these
9 same Drivers as independent contractors.

10 CLASS ACTION ALLEGATIONS

11 76. Pursuant to Code of Civil Procedure § 382, this action is brought and may be properly
12 maintained as a class action. This action satisfies the ascertainability, numerosity, commonality,
13 typicality, adequacy, predominance, and superiority requirements of that provision.

14 **A. Class Definition**

15 77. Plaintiff brings this suit as a class action on behalf of himself and all others similarly
16 situated. The Class that Plaintiff seeks to represent is composed of and defined as follows:

17 All individuals who have personally made one or more deliveries for Defendants
18 in California, while being classified by Defendants as an independent contractor
19 at any time beginning January 7, 2015 until the date judgment is rendered in this
action. ("Class")

20 78. Plaintiff further seeks to establish a subclass comprised of all members of the putative
21 class who no longer work for Defendants.

22 **B. The Proposed Class is Ascertainable**

23 79. The proposed Class is ascertainable because it is comprised of a discreet, well defined
24 and objectively identifiable group - all individuals who have personally made one or more
25 deliveries for Defendants in California, while being classified by Defendants as an independent
26 contractor within the last four years. The Class members are easily identifiable from Defendants'
27 business records.

28 **C. The Proposed Class is Too Numerous to Join**

1 80. Defendants have employed at least one hundred Drivers in California within four years
2 preceding the filing of this Complaint. Class members are therefore far too numerous to be
3 individually joined in this lawsuit.

4 **D. Common Issues of Fact and Law Predominate**

5 81. Common questions of law and/or fact exist as to the members of the Class and, in
6 addition, common questions of law and/or fact predominate over questions affecting only
7 individual members of the Class. The common questions include the following:

- 8 i. Whether the Drivers are independent contractors or employees under applicable
9 law;
- 10 ii. Whether Defendants have the right to control the manner and means by which
11 the Drivers perform their work;
- 12 iii. Whether Defendants retain the right to direct and/or supervise the work that the
13 Drivers perform;
- 14 iv. Whether Defendants retain the right to assign the Drivers' delivery schedules and
15 routes;
- 16 v. Whether Defendants retain the right to exercise control, directly or indirectly,
17 over Drivers' work hours;
- 18 vi. Whether Defendants retain the right to exercise control, directly or indirectly,
19 over Drivers' working conditions;
- 20 vii. Whether Defendants retain the right to control, directly or indirectly, the kinds of
21 equipment and the uniforms the Drivers use;
- 22 viii. Whether Defendants retain the right to require the Drivers to wear uniforms as
23 specified by Defendants and their clients;
- 24 ix. Whether the Drivers need special skills or education to perform their work;
- 25 x. Whether Defendants supply particular tools and equipment to the Drivers;
- 26 xi. Whether the Drivers' work is part of the regular business of Defendants;
- 27 xii. Whether the Drivers are entitled to be reimbursed for Defendants' business
28 expenses and deductions;

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- xiii. Whether Defendants pay the Drivers overtime or double-time wages for performing work over eight (8) hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week;
- xiv. Whether the Drivers are denied minimum wage by virtue of the length of the routes Defendants assign in comparison to the compensation actually paid to them, after the deductions Defendants make from the payments and the other expenses the Drivers must pay out of their own pockets;
- xv. Whether Defendants deny the Drivers minimum wage for work activities that are not compensated by the per stop delivery piece rates;
- xvi. Whether Defendants fail to provide the drivers an opportunity to take off-duty meal periods as required by applicable law;
- xvii. Whether Defendants fail to authorize and permit rest periods as required by applicable law;
- xviii. Whether, assuming rest periods are authorized, permitted, and taken, Defendants have failed to provide rest period compensation.
- xix. Whether Defendants have failed to pay meal and rest period premiums when meal and rest periods were not provided.
- xx. Whether the paychecks provided to the Drivers in connection with their compensation contain all the elements mandated for accurate itemized wage statements under Cal. Labor Code § 226(a);
- xxi. Whether Drivers who had their employment relationship with Defendants terminated are entitled to penalty wages for Defendants' failure to timely pay all outstanding amounts of compensation owed upon termination of the employment relationship;
- xxii. Whether Defendants' policies and practices have resulted in violation of one or more of the Labor Code provisions cited herein;

1 as if fully set forth herein.

2 86. At all relevant times, Plaintiff, and members of the Class, were employees covered by
3 Labor Code §§ 2800, 2802, and 2804.

4 87. California Labor Code § 2800 provides: “An employer shall in all cases indemnify
5 his employee for losses caused by the employer’s want of ordinary care.”

6 88. California Labor Code § 2802 provides “An employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
9 even though unlawful, unless the employee, at the time of obeying the directions, believed them
10 to be unlawful.”

11 89. During the applicable statutory period, Plaintiff and the Class members incurred
12 necessary expenditures and losses in direct consequence of the discharge of their employment
13 duties and in obedience to the directions of Defendants, for which Defendants did not reimburse
14 Plaintiff and Class members, including but not limited to: (1) vehicle rentals/leases, towing,
15 diesel/gasoline and other fuel, tires, vehicle maintenance, vehicle repairs, vehicle washes, and
16 insurance in connection with their operation of the vehicles used to perform the deliveries; (2)
17 expenditures in connection with delivery supplies required by Defendants for the Class members
18 to perform delivery services; (3) automobile insurance and occupational accident insurance to
19 cover accidental injury to Class members during the course and scope of their employment with
20 Defendants, which constitutes workers’ compensation insurance, in violation of California Labor
21 Code § 3751(a); (4) mobile phones and GPS units required for mapping and driving the routes
22 efficiently, and to allow Defendants to communicate with the Drivers and track their progress;
23 and (5) claims for lost or damaged items, and service and merchandise claims granted to
24 customers.

25 90. Labor Code §2804 provides: “Any contract or agreement, express or implied, made
26 by any employee to waive the benefits of this article or any part thereof, is null and void, and this
27 article shall not deprive any employee or his personal representative of any right or remedy to
28 which he is entitled under the laws of this State.”

1 91. Thus, regardless of the agreement signed by all the Class members, Defendants have
2 engaged in illegal expense-shifting practices by failing to fully reimburse Plaintiff and the
3 members of the Class for necessary business-related expenses and costs.

4 92. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable
5 law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest.

6 93. Under California Labor Code §§ 2800, 2802, and 2804, Plaintiff and Class Members
7 are entitled to recover their unreimbursed expenditures and losses, interest thereon, attorney's
8 fees, and costs of suit, in an amount to be proven at trial.

9 **SECOND CAUSE OF ACTION**

10 **Unlawful Deductions from Wages**

11 **California Labor Code §§ 204, 218, 218.6, 221, 223, and 400-410; California Civil Code**
12 **§3287(a); IWC Wage Order No. 9, and Title 8 C.C.R. §11090, ¶ 8.**

13 94. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
14 as if fully set forth herein.

15 95. At all relevant times, Plaintiff, and members of the Class, were employees covered by
16 Labor Code §§ 204, 218, 218.6, 221, 223, and 400-410, IWC Wage Order 9-2001, and Title 8
17 C.C.R. §11090, ¶ 8.

18 96. Pursuant to Labor Code § 204, Labor Code §221, and Wage Order 9-2001, Plaintiff,
19 and other members of the Class, were entitled to receive on regular paydays all wages earned for
20 the pay period corresponding to the payday without any deductions, except for those legally
21 permissible deductions authorized in writing or required by law.

22 97. Pursuant to Labor Code § 223, it is unlawful for employers to secretly pay a lower
23 wage scale while purporting to pay the wage scale designated by statute or by contract.

24 98. Pursuant to Labor Code §§ 400-410, employers are not entitled to a setoff of debts
25 owed by their employees against wages due those employees on termination.

26 99. IWC wage order No. 9, §8, and Title 8 of the California Code of Regulations §11090,
27 ¶ 8, provide that the only circumstances under which an employer can make a deduction from an
28 employee's wage are: 1) cash shortage; 2) breakage; or 3) loss of equipment if the employer can
show the shortage, breakage, or loss was the result of the employee's gross negligence or
dishonest or willful act.

1 100. Under these statutes, regulations and California's fundamental public policy
2 protecting wages and wage scales, employers cannot subject employees to unanticipated
3 reductions in their wages. Nor can they make employees the insurers of their employer's business
4 losses, or otherwise pass the ordinary business losses of the company onto the employee.

5 101. Defendants have violated California Labor Code §§ 221, 223, and 400-410, and IWC
6 wage order No. 9, §8, by unlawfully taking deductions from Plaintiff and Class members'
7 compensation to cover certain ordinary business expenses of Defendants, including but not
8 limited to claims for lost or damaged cargo, property damage claims, bodily injury claims, service
9 and merchandise claims granted to customers, insurance, fees associated GPS monitoring and
10 tracking of the Class members, loans made to drivers for necessary equipment, costly repairs, or
11 other expenses, and the cost of fuel, vehicle maintenance, and uniforms.

12 102. Because Defendants have taken unlawful deductions from the Class members'
13 compensation, they are liable to Plaintiff and Class members for the compensation that should be
14 paid, 'but for' the unlawful deductions under California Labor Code §§221, 223 and 400-410,
15 IWC Wage Order No. 9, and Title 8 of the California Code of Regulations §11090. Pursuant to
16 Labor Code §218, Plaintiff, and other members of the Class, are entitled to recover the full amount
17 of the wages earned but not paid every pay period.

18 103. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable
19 law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest on
20 wages earned, but not paid every pay period.

21 104. As a result of Defendants' unlawful deductions made from wages and refusal to pay
22 the Plaintiff and Class Members, Defendants are liable for penalties, reasonable attorneys' fees,
23 and costs of suit.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Pay Minimum Wages**

26 **California Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1;**

27 **IWC Wage Order No. 9; and Minimum Wage Order**

28 105. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
as if fully set forth herein.

106. During the applicable statutory period, California Labor Code §§1182.11, 1182.12 and

1 1197, and the Minimum Wage Order were in full force and effect and required that the Class
2 members receive the minimum wage for all hours worked irrespective of whether nominally paid
3 on a piece rate, or any other bases, at the rate of not less than eight dollars (\$8.00) per hour from
4 January 1, 2008 to June 30, 2014; at a rate not less than nine dollars (\$9.00) per hour from July
5 1, 2014 to December 31, 2015; and at a rate not less than ten dollars (\$10.00) per hour
6 commencing on January 1, 2016.

7 107. "Hours worked" is the time during which an employee is subject to the control of an
8 employer, and includes all the time the employee is suffered or permitted to work, whether or not
9 required to do so.

10 108. The right to minimum wage cannot be waived. California Labor Code §1194 states:

11 Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than the legal minimum wage or the legal overtime compensation
13 applicable to the employee is entitled to recover in a civil action the unpaid
14 balance of the full amount of this minimum wage or overtime compensation,
15 including interest thereon, reasonable attorney's fees, and costs of suit.

16 109. The Class members regularly work twelve (12) to fourteen (14) hours per day, and
17 often many more. Class members begin a typical workday by reporting to Defendants' location
18 to obtain their routes and load merchandise, and often to attend morning meetings. Upon finishing
19 the day's deliveries, the Drivers must return to Defendants' location, fill out paperwork, and drop
20 off undelivered merchandise.

21 110. The Class members work tirelessly throughout the day into the night to comply with
22 Defendants' policies and meet their expectations. It is common for the Class members to drive
23 late into the night, only to begin again early the next morning.

24 111. Defendants pay the Class members a fixed rate for each customer delivery; this is
25 referred to as a piece-rate payment schedule.

26 112. Working days are often lengthened by supervisors who order the Class members to
27 add additional stops to their schedules post-hoc.

28 113. In addition to the long hours, there are a considerable amount of deductions made by
Defendants to the Drivers' paychecks. Deductions include items such as: vehicle costs; insurance;
damaged merchandise; equipment/tools; fines; in-home damage to customer property; gas/fuel;

1 vehicle repairs; vehicle washes; GPS units and recurring monitoring fees; and tires, among other
2 things.

3 114. The Class members must also pay out of their own pocket for expenses necessarily
4 and reasonably incurred to perform their job. This includes the substantial costs of vehicles and
5 other driving related costs, such as maintenance, licensing, permits, tolls, and the like.

6 115. Between the lengthy routes and work days, substantial deductions, and the need to pay
7 for other necessary costs out of their own pockets, the Class members often work for wages that
8 fall below the minimum wage.

9 116. As a separate and independent basis for the denial of minimum wage, Defendants also
10 maintain a policy of paying the Class members nothing for an array of activities it requires them
11 to perform before and after performing deliveries. These activities include: attending regular
12 morning and other ongoing meetings with management; reviewing route assignments and
13 mapping destinations; loading and unloading vehicles; filling out paperwork; returning delivery
14 equipment and undelivered merchandise to the terminal at the end of the workday; and other
15 uncompensated work. This work is performed off the clock and often takes as long as 2-3 hours
16 per day.

17 117. Defendants do not compensate Plaintiff and Class members for these work activities,
18 yet Defendants suffer and permit Plaintiff and Class members to perform them, and exercise
19 control over the way they are performed.

20 118. The substantial time the Class members regularly spend on these work activities is
21 compensable working time and Defendants are required by law to pay the Class members at a
22 rate of no less than minimum wage for it. Defendants' failure to compensate the Class members
23 at all for this time results in the denial of the Class members' statutorily-mandated minimum
24 wages for those periods of work, in violation of the Labor Code provisions cited herein.

25 119. Because of Defendants' policies and practices with regard to compensating the Class
26 members, Defendants have failed to pay minimum wages as required by law. Plaintiff and
27 members of the Class frequently work time for which they are compensated below the statutory
28 minimum, as determined by the Industrial Welfare Commission.

1 120. Labor Code §1194.2 provides that, in any action under §1194 to recover wages
2 because of the payment of a wage less than minimum wage fixed by an order of the commission,
3 an employee shall be entitled to recover liquidated damages in an amount equal to the wages
4 unlawfully unpaid and interest thereon.

5 121. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other members
6 of the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay
7 period.

8 122. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
9 Plaintiff and members of the Class have been deprived of minimum wages in an amount to be
10 determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
11 interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and
12 1197.1.

13 **FOURTH CAUSE OF ACTION**

14 **Failure to Pay Regular Rates for All Hours Worked in Violation of**
15 **California Labor Code §, 204, and 221-223**

16 123. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
17 as if fully set forth herein.

18 124. California Labor Code §200 defines wages as “all amounts for labor performed by
19 employees of every description, whether the amount is fixed or ascertained by the standard of
20 time, task, piece, commission basis or other method of calculation.”

21 125. California Labor Code §204 provides that employers must compensate employees for
22 all hours worked “twice during each calendar month, on days designated in advance by the
23 employer as the regular paydays.”

24 126. California Labor Code §§221-223 prohibit employers from withholding and deducting
25 wages, or otherwise artificially lowering the wage scale of an employee.

26 127. Defendants also maintain a policy of paying the Class members nothing for an array
27 of activities it requires them to perform before and after performing deliveries. These activities
28 include: attending regular morning and other ongoing meetings with management; reviewing
route assignments and mapping destinations; loading and unloading vehicles; filling out

1 paperwork; returning delivery equipment and undelivered merchandise to the terminal at the end
2 of the workday; and other uncompensated work. This work is performed off the clock and often
3 takes as long as 2-3 hours per day.

4 128. Defendants do not compensate Plaintiff and Class members for these work activities,
5 yet Defendants suffer and permit Plaintiff and Class members to perform them, and exercise
6 control over the way they are performed.

7 129. The substantial time the Class members regularly spend on these work activities is
8 compensable working time and Defendants are required by law to pay the Class members for it.
9 Nevertheless, Defendants paid less than minimum wages and less than the agreed upon
10 compensation owed to Plaintiff and the members of the Class for such uncompensated work,
11 while purporting to pay the designated wage scale. Defendants' failure to compensate the Class
12 members for this time results in the denial of the Class members' wages for those periods of work,
13 in violation of the Labor Code provisions cited herein.

14 130. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other members
15 of the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay
16 period.

17 131. As a proximate result of these violations, Defendants have damaged Plaintiff and the
18 Class in amounts to be determined according to proof at trial.

19 132. Defendants are liable to Plaintiff and the Class for unpaid compensation, penalties,
20 interest and attorneys' fees and costs set forth below.

21 **FIFTH CAUSE OF ACTION**

22 **Failure to Pay Overtime Compensation**

23 **California Labor Code §§ 510, 515.5, 1194, and 1198 *et seq.*, and IWC Wage Order No. 9.**

24 133. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
25 as if fully set forth herein.

26 134. California Labor Code §§ 510 and 1198, and IWC Wage Order No. 9, § 3, provides
27 that employees in California shall not be employed more than eight (8) hours in any workday or
28 forty (40) hours in any workweek unless they receive additional compensation beyond their
regular wages in amounts specified by law.

1 135. Defendants have failed to pay Plaintiff, and other members of the Class, overtime
2 compensation for the hours they worked in excess of the maximum hours permissible by law
3 under California Labor Code §§ 510 and 1198, and IWC Wage Order No. 9, § 3. Defendants
4 require and/or suffer and permit Plaintiff and other members of the Class to work overtime hours.

5 136. Defendants' failure to pay additional, premium rate compensation to Plaintiff and
6 members of the Class for their overtime hours worked has caused Plaintiff and Class members,
7 and continues to cause many Class Members, to suffer damages in amounts which are presently
8 unknown to them but which exceed the jurisdictional threshold of this Court and which will be
9 ascertained according to proof at trial.

10 137. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other members
11 of the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay
12 period.

13 138. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
14 Plaintiff and Class members have been deprived of overtime and double time compensation in an
15 amount to be determined at trial. Plaintiff and other members of the Class request recovery of
16 overtime and double time compensation according to proof, interest, attorney's fees and costs of
17 suit pursuant to California Labor Code §§1194(a), 554, 1194.3 and 1197.1, as well as the
18 assessment of any statutory penalties against Defendants, in a sum as provided by the California
19 Labor Code and/or other statutes.

20 **SIXTH CAUSE OF ACTION**

21 **Failure to Provide Off Duty and Compliant Meal Periods, or Compensation in Lieu**
22 **California Labor Code §§ 226.7 and 512; and Title 8 C.C.R. §11090 ¶¶ 7 & 11**

23 139. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
24 as if fully set forth herein.

25 140. California Labor Code §§ 226.7 and 512, and Title 8 of the California Code of
26 Regulations § 11090, ¶ 11 require Defendants to provide meal periods to Plaintiff and members
27 of the proposed Class. California Labor Code §§ 226.7 and 512, and Title 8 of the California
28 Code of Regulations § 11090, § 11 prohibit employers from employing an employee for more
than five hours without a meal period no less than thirty (30) minutes and for more than ten (10)

1 hours without a second meal period. Unless the employee is relieved of all duty during the thirty
2 (30) minute meal period, the employee is considered “on-duty” and the meal or rest period is
3 counted as time worked.

4 141. Defendants do not provide the Class members with meal periods during which they
5 are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again
6 by the tenth hour of work. To the contrary, Drivers are on duty and on call throughout their work
7 day.

8 142. As an additional basis for Defendants’ violation of the meal period requirements, the
9 quantity of deliveries, time needed to drive between deliveries, and windows of time mandated in
10 the routes Defendants assign to the Class members and enforced by Defendants’ managers and
11 dispatchers, actually preclude the Class members from the opportunity to stop driving and take
12 off-duty meal periods for thirty (30) minutes or more by the fifth or tenth hour of work.

13 143. Rather, the Class members regularly work twelve (12) to fourteen (14) hours in a day,
14 and often far more, without the opportunity to take a meal period during which they are relieved
15 of all duty.

16 144. Because the Class members must adhere to Defendants’ demanding schedules to avoid
17 having their contracts terminated or receiving reduced work assignments, they do not have an
18 opportunity to take an off-duty break during their long shifts. Instead, Class members routinely
19 must eat while they drive, eat while they work, or forego eating meals entirely until the day’s
20 duties are complete.

21 145. Title 8 of the California Code of Regulations §11090, ¶ 7 requires Defendants to keep
22 time records of meal periods in order to satisfy the requirements of California’s meal period laws
23 and regulations. Defendants’ records or lack thereof demonstrate that they have not provided off
24 duty meal periods as required by applicable law.

25 146. Defendants have failed to perform their obligations to provide Plaintiff and Class
26 members’ off-duty meal periods. Defendants also have failed to pay Plaintiff and Class members
27 one (1) hour of pay for each day that an off-duty meal period was not provided. Defendants’
28 conduct described herein violates California Labor Code §§226.7 and 512 and Title 8 of the

1 California Code of Regulations §11090. Therefore, Plaintiff and members of the putative Class
2 are entitled to compensation for Defendants' failure to provide meal periods, plus interest,
3 expenses, and costs of suit pursuant to California Labor Code §§226.7(b) and Title 8 of the
4 California Code of Regulations §11090.

5 147. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable
6 law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest.

7 **SEVENTH CAUSE OF ACTION**
8 **Failure to Provide Paid, Off Duty or Compliant Rest Periods,**
9 **and/or Compensation in Lieu Thereof**
10 **California Labor Code §§ 226.7 and Title 8 C.C.R. § 11090 ¶ 12**

11 148. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
12 as if fully set forth herein.

13 149. California Labor Code §226.7 and Title 8 of the California Code of Regulations §
14 11090, ¶ 12 requires Defendants to authorize and permit off-duty rest periods to Plaintiff and
15 members of the proposed Class at the rate of ten minutes net rest time per four hours or major
16 fraction thereof.

17 150. Defendants simply do nothing to authorize or permit such rest periods, even if there
18 were an opportunity to take them.

19 151. To the contrary, the Class members regularly work twelve (12) to fourteen (14) hours
20 in a day, and often far more, without any realistic opportunity to rest for even ten minutes during
21 a four hour period or major fraction thereof. Defendants' policy is for the Class members to make
22 deliveries in a timely fashion, according to a pre-determined schedule setting forth a window of
23 time in which each delivery must be made. The arrangement of the routes, delivery windows, the
24 long distances required by the schedules, and the need to remain vigilant for customers routinely
25 do not permit the Class members an opportunity to stop and rest for even 10 minutes during each
26 4 hour work period or major fraction thereof. Moreover, despite the highly regimented nature of
27 the assigned delivery schedules, Defendants fail to budget any time into the routes for rest breaks.

28 152. Under both California Labor Code § 226.7 and Title 8 of the California Code of
Regulations §1190, ¶ 12, an employer must pay an employee who was denied a required rest
period one (1) hour of pay at the employee's regular rate of compensation for each workday that

1 the rest period was not provided.

2 153. As a separate and independent basis for the denial of rest periods, Defendants' piece
3 rate pay system includes no separate pay for rest periods in violation of California law, assuming
4 rest periods were permitted, authorized and taken.

5 154. At all relevant times herein, Defendants have failed to perform their obligations to
6 authorize and permit Plaintiff and Class Members to take rest periods as set forth above.
7 Defendants also failed to pay for rest periods taken and to pay Plaintiff and Class members one
8 (1) hour of pay for each rest period they have been denied. Defendants' conduct described herein
9 violates California Labor Code §§ 226.7 and Title 8 of the California Code of Regulations §11090.
10 Therefore, Plaintiff and members of the putative Class are entitled to compensation for
11 Defendants' failure to authorize, permit and pay for rest periods, plus interest, and costs of suit
12 pursuant to California Labor Code §§ 226.7(b), and Title 8 of the California Code of Regulations
13 § 11090.

14 155. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable
15 law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest.

16 **EIGHTH CAUSE OF ACTION**
17 **Failure to Keep Accurate Payroll Records**
18 **California Labor Code §§ 1174 & 1174.5**

19 156. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
20 as if fully set forth herein.

21 157. California Labor Code §1174 requires Defendants to maintain payroll records
22 showing the actual hours worked daily by Plaintiff and the Class members.

23 158. Defendants knowingly, intentionally, and willfully have failed to maintain payroll
24 records showing the actual hours worked by Plaintiff and the Class members as required by
25 California Labor Code §1174 and in violation of §1174.5. As a direct result of Defendants' failure
26 to maintain payroll records, Plaintiff and the Class members have suffered actual economic harm
27 as they have been precluded from accurately monitoring the number of hours they have worked
28 and thus seeking all accrued minimum wages, agreed upon wages, and overtime pay. As a direct
and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiff and the Class

1 members are entitled to recover damages and civil penalties in an amount to be determined at
2 trial, plus interest, attorneys' fees, and costs of suit.

3 **NINTH CAUSE OF ACTION**

4 **Failure to Provide Accurate, Itemized Wage Statements**
5 **California Labor Code § 226(a)**

6 159. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
7 as if fully set forth herein.

8 160. California Labor Code §226(a) provides that every employer must furnish each
9 employee with an accurate itemized wage statement, in writing, showing nine pieces of
10 information, including: 1) gross wages earned; 2) total hours worked by the employee; 3) the
11 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece
12 rate basis; 4) all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item; 5) net wages earned; 6) the inclusive dates of the
14 period for which the employee is paid; 7) the name of the employee and the last four digits of his
15 or her social security number or an employee identification number other than a social security
16 number; 8) the name and address of the legal entity that is the employer; and 9) all applicable
17 hourly rates in effect during the pay period and the corresponding number of hours worked at
18 each hourly rate by the employee. California Labor Code §226(e) provides that if an employer
19 knowingly and intentionally fails to provide a statement itemizing, *inter alia*, the total hours
20 worked by the employee, then the employee is entitled to recover the greater of all actual damages
21 or fifty-dollars (\$50.00) for the initial violation and one-hundred dollars (\$100.00) for each
22 subsequent violation, up to a maximum of four-thousand dollars (\$4,000.00).

23 161. Effective January 1, 2013, the Legislature added Labor Code § (e)(2), which provides
24 that an employee is "deemed to suffer injury" if the wage statement fails to provide the
25 information required by section 226(a) "and the employee cannot promptly and easily determine
26 from the wage statement alone... [t]he amount of the gross wages or net wages paid to the
27 employee during the pay period or any of the information required to be provided on the itemized
28 wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)." Labor Code
§ 226(e)(2)(B).

1 162. Defendants knowingly, intentionally, and willfully failed to furnish Plaintiff and Class
2 members with timely, accurate, itemized statements showing, among others, total hours worked,
3 inclusive dates of pay period, name and last four digits of social security number or employee
4 identification number, and all applicable rates of pay as required by California Labor Code
5 §226(a).

6 163. Specifically, Plaintiff and the Class Members have been injured by Defendants'
7 violation of California Labor Code §226(a) because they have been denied their legal right to
8 receive and their protected interest in receiving, accurate, itemized wage statements, and could
9 not promptly and easily ascertain from the wage statement alone the total number of hours
10 worked, and the hourly rates in effect during each pay period, among other required information.

11 164. Further, Plaintiff and the Class Members are deemed to have suffered injury pursuant
12 to Labor Code § 226(e)(2)(B) because the wage statements fail to provide the information
13 required by section 226(a) and because Plaintiff and the Class Members cannot promptly and
14 easily determine from the wage statement alone the amount of the gross wages or net wages paid
15 to them during the pay period pursuant to pursuant to items (2) to (4), inclusive, (6) and (9) of
16 subdivision (a).

17 165. Plaintiff and Class Members have also been injured as a result of having to bring this
18 action to obtain correct wage information following Defendants' refusal to comply with many
19 requirements of the California Labor Code. As a result, Defendants are liable to Plaintiff and
20 Class Members, for the amounts, penalties, attorneys' fees, and costs of suit provided by
21 California Labor Code §226(e) and California Labor Code §2699(a).

22 166. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable
23 law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest.

24 167. Plaintiff, on behalf of themselves and the proposed Class, requests an assessment of
25 penalties as stated herein and other relief as described below.

26 **TENTH CAUSE OF ACTION**
27 **Waiting Time Penalties**
28 **California Labor Code §§ 201-203**

168. Plaintiff hereby realleges and incorporates by reference the allegations set forth above

1 as if fully set forth herein.

2 169. California Labor Code §201 requires an employer who discharges an employee to pay
3 all compensation due and owing to said employee immediately upon discharge. California Labor
4 Code §202 requires an employer to promptly pay compensation due and owing to said employee
5 within seventy-two (72) hours of that employee's termination of employment by resignation.
6 California Labor Code §203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge or resignation, as required under California Labor Code §§201-202, then
8 the employer is liable for waiting time penalties in the form of continued compensation for up to
9 thirty (30) work days.

10 170. Plaintiff and other members of the Class have left their employment with Defendants
11 during the statutory period. Defendants willfully failed and refused, and continue to willfully fail
12 and refuse, to timely pay minimum wages, overtime compensation and sums wrongfully deducted
13 from compensation to Plaintiff and to all other proposed Class Members whose employment with
14 Defendants have ended or been terminated at any point during the statutory period. As a result,
15 Defendants are liable to Plaintiff and other formerly employed members of the proposed Class
16 for waiting time penalties, together with interest thereon, attorneys' fees, and costs of suit, under
17 California Labor Code §203.

18 171. Plaintiff, on behalf of themselves and the proposed Class, request waiting time
19 penalties pursuant to California Labor Code §203 and as described below.

20 172. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable
21 law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest.

22 **ELEVENTH CAUSE OF ACTION**

23 **Unfair Competition and Unlawful Business Practices**
24 **California Business and Professions Code §§ 17200, et seq.**

25 173. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
26 as if fully set forth herein.

27 174. California Business and Professions Code §17200 defines unfair competition to
28 include, "unlawful, unfair or fraudulent business practices."

175. Plaintiff and all proposed Class members are "persons" within the meaning of

1 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
2 property as a result of Defendants' unfair competition.

3 176. Defendants have been committing, and continue to commit, acts of unfair competition
4 by engaging in the unlawful, unfair and fraudulent business practices and acts described in this
5 Complaint, including, but not limited to:

- 6 i. misclassifying Plaintiff and the Class members as independent contractors when
7 they are employees;
- 8 ii. violations of California Labor Code §§ 1197, 1197.1, 1198;
- 9 iii. violations of California Labor Code § 510;
- 10 iv. violations of California Labor Code §§ 226.7 and 512;
- 11 v. violations of California Code Regulations, Title 8 § 11090 ¶¶ 7, 11, and 12;
- 12 vi. violations of California Labor Code §§ 204, 221-223 and 400-410;
- 13 vii. violation of California Labor Code § 2802;
- 14 viii. violations of California Labor Code §§ 1174 and 1174.5;
- 15 ix. violations of California Labor Code §226; and
- 16 x. violations of California Labor Code §§ 201-202.

17 177. Plaintiff reserves the right to identify additional unfair and unlawful practices by
18 Defendants as further investigation and discovery warrants.

19 178. As a result of its unlawful and/or unfair acts, Defendants have reaped and continue to
20 reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class members.
21 Defendants' unlawful and/or unfair conduct has also enabled Defendants to gain an unfair
22 competitive advantage over law-abiding employers and competitors. Defendants must be
23 enjoined from this activity and made to restore to Plaintiff and proposed Class members their
24 wrongfully withheld wages, interest thereon, and related statutory penalties, pursuant to Business
25 and Professions Code §§ 17202 and 17203.

26 179. Business and Professions Code §17203 provides that the Court may restore to an
27 aggrieved party any money or property acquired by means of unlawful and unfair business
28 practices.

1 180. Plaintiff seeks a court order requiring an audit and accounting of the payroll records
2 to determine the amount of restitution of all unpaid wages owed to himself and members of the
3 proposed Class, according to proof, as well as a determination of the amount of funds to be paid
4 to current and former employees that can be identified and located pursuant to a court order and
5 supervision.

6 181. Plaintiff, on behalf of themselves and the proposed Class, requests restitution of
7 unpaid wages, wage premiums, injunctive relief and other relief as described below.

8 **TWELFTH CAUSE OF ACTION**
9 **Statutory Penalties Pursuant to PAGA (Labor Code §§2698, *et seq.*)**
10 **(On behalf of All Aggrieved Employees)**

11 182. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
12 as if fully set forth herein.

13 183. At all times herein set forth, the Private Attorneys General Act of 2004 (PAGA)
14 applied to Defendants' employment of Plaintiff and the proposed Class members.

15 184. At all times herein set forth, the PAGA provided that any provision of law under the
16 California Labor Code that provides for a civil penalty to be assessed and collected by the Labor
17 and Workforce Development Agency (LWDA) for violations of the California Labor Code may,
18 as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
19 of himself and other current or former employees pursuant to procedures outlined in California
20 Labor Code § 2699.3.

21 185. A civil action under PAGA may be brought by an "aggrieved employee," any person
22 that was employed by the alleged violator and against whom one or more of the alleged violations
23 was committed.

24 186. Plaintiff was employed by Defendants and the alleged violations were committed
25 against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff
26 and other employees are "aggrieved employees" as defined by California Labor Code §2699(c)
27 in that they are all current or former employees of Defendants, and one or more of the alleged
28 violations were committed against them.

187. At all times herein set forth, the PAGA provided that for the violation of any Labor

1 Code provision that does not itself contain a civil penalty, there are established civil penalties of
2 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
3 aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

4 188. Pursuant to California Labor Code section 2699.3, an aggrieved employee, such as
5 Plaintiff, may pursue a civil action arising under PAGA after the following requirements have
6 been met:

- 7 i. The aggrieved employee must file written notice online with the LWDA and by
8 certified mail to the employer of the specific provisions of the California Labor
9 Code alleged to have been violated, including the facts and theories to support the
10 alleged violations;
- 11 ii. The notice filed with the LWDA must be accompanied by a filing fee of seventy-
12 five dollars (\$75);
- 13 iii. The LWDA shall notify the employer and the aggrieved employee or
14 representative by certified mail that it does not intend to investigate the alleged
15 violations within sixty (60) calendar days of the postmark date of the notice
16 received pursuant to paragraph (1). Upon receipt of that notice or if no notice is
17 provided within sixty-five (65) calendar days of the postmark date of the notice
18 given, the aggrieved employee may commence a civil action pursuant to Section
19 2699.

20 189. On August 16, 2018, Plaintiff provided written notice online to the LWDA and by
21 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
22 have been violated, including the facts and theories to support the alleged violations.

23 190. Sixty-five (65) calendar days have passed since the postmark date of the notice given,
24 and the LWDA has provided no notice or indication it intends to investigate the claims and
25 allegations. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor
26 Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California
27 Labor Code stated above.

28 191. At such time, Plaintiff and the other aggrieved employees will be entitled to and seek

1 to recover civil penalties for Defendants' violations of the Labor Code during the applicable
2 limitations period in the following amounts:

- 3 i. For violations of California Labor Code Section 226.8(a), Fifteen Thousand
4 Dollars (\$15,000.00) for each of Defendants' violations in addition to any other
5 penalties or fines permitted by law (penalty amounts established by California
6 Labor Code § 226.8(b)) or for pattern and practice violations of California Labor
7 Code Section 226.8(a), Twenty-Five Thousand Dollars (\$25,000.00) for each of
8 Defendants' violations in addition to any other penalties or fines permitted by law
9 (penalty amounts established by California Labor Code § 226.8(c));
- 10 ii. For violations of California Labor Code Sections 200, 201, 202, 226.7, 1198, and
11 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
12 for each initial violation and two hundred dollars (\$200.00) for each aggrieved
13 employee per pay period for each subsequent violation (penalty amounts
14 established by California Labor Code § 2699(f)(2));
- 15 iii. For violations of California Labor Code Section 1197, one hundred dollars
16 (\$100.00) for each aggrieved employee per pay period for each initial violation
17 and two hundred dollars and fifty (\$250.00) for each aggrieved employee per pay
18 period for each subsequent violation regardless of whether the initial violation is
19 intentionally committed (penalty amounts established by California Labor Code
20 § 1197.1);
- 21 iv. For violations of California Labor Code Sections 221 and 223 one hundred dollars
22 (\$100.00) for each aggrieved employee for each initial violation and two hundred
23 dollars (\$200.00) for each aggrieved employee for each subsequent or willful
24 violation, plus 25 percent of the amount unlawfully withheld. (penalty amounts
25 established by California Labor Code §225.5);
- 26 v. For violations of California Labor Code Section 510 and 512 and Wage Order No.
27 9 Sections 3, 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for
28 each initial violation for pay period for which the employee was underpaid and

1 one hundred dollars (\$100.00) for each underpaid employee for each pay period
2 for which the employee was underpaid (penalty amounts established by
3 California Labor Code § 558);

4 vi. For violations of California Labor Code Section 1174, five hundred dollars
5 (\$500.00) for each of Defendants' violations in addition to any other penalties or
6 fines permitted by law (penalty amounts established by California Labor Code §
7 1174.5);

8 vii. For violations of California Labor Code Section 226, two hundred fifty dollars
9 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)
10 per employee for each subsequent violation (penalty amounts established by
11 California Labor Code § 226.3); and

12 viii. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for
13 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
14 period for which the employee was underpaid in addition to an amount sufficient
15 to recover unpaid wages; for each subsequent violation, one hundred dollars
16 (\$100.00) for each underpaid employee for each pay period for which the
17 employee was underpaid in addition to an amount sufficient to recover underpaid
18 wages.

19 192. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and
20 the other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the proposed Class he seeks to
23 represent in this action, request the following relief:

- 24 a. That the Court determine that this action may be maintained as a class action
25 under Code of Civil Procedure § 382;
- 26 b. For an order appointing Plaintiff as representatives of the Class
- 27 c. For an order appointing Plaintiff's attorneys as Class Counsel;
- 28 d. That the Court find that Defendants have been in violation of California Labor

1 Code § 2802 by failing to reimburse the Plaintiff and the Class reasonable
2 business expenses and losses;

- 3 e. That the Court find that Defendants have been in violation of California Labor
4 Code §§ 221, 223 and 400-410, and IWC Wage Order No. 9 by making
5 unlawful deductions from Plaintiff's and the Class' wages;
- 6 f. That the Court find that Defendants have been in violation of applicable
7 provisions of the California Labor Code and IWC Wage Order No. 9 by failing
8 to pay each member of the proposed Class for all hours worked, including
9 minimum wages and wages at the designated rate;
- 10 g. That the Court find that Defendants have been in violation of applicable
11 provisions of the California Labor Code §§510, 1194, and IWC Wage Order No.
12 9 by failing to pay overtime wages to Plaintiff and members of the Class;
- 13 h. That the Court find that Defendants have been in violation of California Labor
14 Code §§226.7 and 512 by failing to provide Plaintiff and members of the Class
15 with meal periods and therefore owe compensation under California Labor Code
16 §226.7(b) with respect to violations of California Code of Regulations, Title 8
17 §11090, ¶¶ 7 and 11;
- 18 i. That the Court find that Defendants have been in violation of California Labor
19 Code §§226.7 by failing to authorize and permit rest periods for Plaintiff and
20 members of the Class, and therefore owe compensation under California Labor
21 Code §226.7(b) with respect to violations of California Code of Regulations,
22 Title 8 §11090, ¶ 12;
- 23 j. That the Court find that Defendants have violated the recordkeeping provisions
24 of California Labor Code §§ 1174 and 1174.5 as to Plaintiff and the Class;
- 25 k. That the Court find that Defendants have been in violation of California Labor
26 Code § 226 by failing to timely furnish Plaintiff and members of the Class with
27 itemized statements accurately showing the total hours worked, vacation
28 benefits, bonus benefits, and wages earned by each of them during each pay

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- period;
- l. That the Court find that Defendants have been in violation of California Labor Code §§201 and 202 and therefore owe waiting time penalties under California Labor Code §203 for willful failure to pay all compensation owed at the time of termination of employment to Plaintiff and other members of the formerly employed subclass;
 - m. That the Court find that Defendants have committed unfair and unlawful business practices, in violation of California Business and Professions Code §17200, *et seq.*, by their violations of the Labor Code and Wage Orders as described above;
 - n. That the Court order an accounting of the payroll records and/or delivery logs to determine what restitution is owed and to whom, pursuant to California Business and Professions Code §17203;
 - o. That the Court award to Plaintiff and the proposed Class members compensation and restitution for all wages owed, including minimum wages, wages at the designated rate, and overtime, for all wage deductions, for the value of all meal and rest periods that were not provided or authorized by Defendants, and for all reasonable and necessary business expenses incurred by Drivers;
 - p. That the Court award to Plaintiff and the proposed Class members statutory and/or civil penalties as provided herein, including but not limited to Labor Code §§ 203, 210, 226, 2699(a), 2699(f), and California Business and Professions Code § 17202;
 - q. Pursuant to Labor Code §218.6 Civil Code §§ 3287(a), 3829, and/or other applicable law, Plaintiff and other members of the Class are entitled to recover pre-judgment interest.
 - r. That Plaintiff and the Class be awarded reasonable attorneys’ fees and costs pursuant to Labor Code §§ 203, 225.5, 226, 1194, 1197, 2699(g)(1), and 2804, Code of Civil Procedure § 1021.5, and/or other applicable law;

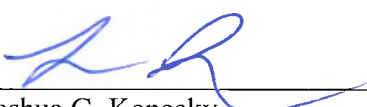
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- s. Any and all other applicable statutory penalties, as provided by law; and
- t. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

DATED: December 12, 2018

**SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs**

By: 
Joshua G. Konecky
Leslie H. Joyner
Attorneys for Plaintiff

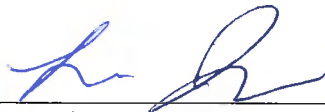
JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: December 12, 2018

**SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS**

By: _____



Joshua G. Konecky
Leslie H. Joyner
Attorneys for Plaintiff

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Leslie Joyner, 262705 Schneider Wallace Cottrell Konecky Wotkyns LLP 2000 Powell Street, Suite 1400 Emeryville, CA 94608 TELEPHONE NO.: (415) 421-7100 Ext 321 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Sacramento County	

DEFENDANT/RESPONDENT: MXD Group, Inc., et al	34-2018-00246338
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: 101478

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons; Complaint; Civil Case Cover Sheet;
3. a. Party served: Ryder System, Inc., a Florida Corporation
 b. Person Served: Robert D. Fatovic - Person Authorized to Accept Service of Process
4. Address where the party was served: 11690 NW 105th Street
 Miami, FL 33178
5. I served the party
 b. **by substituted service.** On (date): 12/27/2018 at (time): 10:00AM I left the documents listed in item 2 with or in the presence of: Lina Trenert - Paralegal - Person In Charge
 (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 (4) A declaration of mailing is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 d. on behalf of:
 Ryder System, Inc., a Florida Corporation
 under: CCP 416.10 (corporation)
7. **Person who served papers**
 a. Name: Jose Espino
 b. Address: One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947
 c. Telephone number: 415-491-0606
 d. The fee for service was: \$ 205.75
 e. I am:
 (1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 12/27/2018

Jose Espino
(NAME OF PERSON WHO SERVED PAPERS)


(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Leslie Joyner, 262705 Schneider Wallace Cottrell Konecky Wotkyns LLP 2000 Powell Street Emeryville, CA 94608 ATTORNEY FOR (Name): Plaintiff		TELEPHONE NO.: (415) 421-7100 Ext 321	FOR COURT USE ONLY
		Ref. No. or File No. 101478	
Insert name of court, judicial district or branch court, if any: Sacramento 720 9th Street Sacramento, CA 95814-1302			
PLAINTIFF: Joseph Kimbo			
DEFENDANT: MXD Group, Inc., et al			
PROOF OF SERVICE BY MAIL			CASE NUMBER: 34-2018-00246338

I am a citizen of the United States, over the age of 18 and not a party to the within action. My business address is 504 Redwood Blvd., Suite 223 Novato, CA 94947.

On 12/27/2018, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCP 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable), I mailed copies of the:

Summons; Complaint; Civil Case Cover Sheet;

to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Ryder System, Inc., a Florida Corporation
Robert D. Fatovic
11690 NW 105th Street
Miami, FL 33178

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

Fee for Service: \$ 205.75

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947

Peter Fuster

Peter Fuster