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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MOHIT NARAYAN, HANNA RAHAWI,  
THOMAS HEATH and UGO IHEONU, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

EGL, INC., a Texas Corporation; CEVA  
Freight, LLC, a Delaware Corporation, and  
DOES 2-10, inclusive,

Defendants.

**CLASS ACTION**

**Case No. C 05-04181 RMW**

**SECOND AMENDED COMPLAINT**

- (1) REIMBURSEMENT OF BUSINESS EXPENSES (Labor Code §2802);**
- (2) UNLAWFUL DEDUCTIONS FROM WAGES (Labor Code §§221, 223, 400-410);**
- (3) COERCED PURCHASES (Labor Code §450);**
- (4) FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§226.7, 512);**
- (5) FAILURE TO PAY MINIMUM WAGE COMPENSATION (Labor Code §§1182.11, 1182.12, 1194, 1194.2, 1197);**
- (6) FAILURE TO PAY OVERTIME COMPENSATION (Labor Code §§510, 1194);**
- (7) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §§226, 226.3);**
- (8) FAILURE TO KEEP ACCURATE PAYROLL RECORDS (Labor Code §§1174, 1174.5);**
- (9) WAITING TIME PENALTIES (Labor Code §§201-203); and**
- (10) VIOLATIONS OF UCL (Labor Code §17200 et seq.)**

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1           1.       PLAINTIFFS Mohit Narayan, Hanna Rahawi, Thomas Heath, and Ugo Iheonu  
2       allege as follows on behalf of themselves, all others similarly situated, and the general public:

### 3                                   **I.       JURISDICTION**

4           2.       DEFENDANTS removed this action from the Superior Court of California, Santa  
5       Clara County, pursuant to the Class Action Fairness Act of 2005 (CAFA), *codified at* 28 U.S.C. §§  
6       1332(d), 1453, and 1711-1715.

### 7                                   **II.       VENUE AND INTRADISTRICT ASSIGNMENT**

8           3.       Venue is proper in this district, pursuant to 28 U.S.C. § 1441(a), because the County  
9       in which the removed action was originally brought is within this District. A substantial part of the  
10      events or omissions giving rise to the claims stated herein arose within this District, and a  
11      substantial number of the members of the class on whose behalf this action is brought work or  
12      worked for DEFENDANTS in facilities and operations maintained by DEFENDANTS within this  
13      District and within the Division and Courthouse to which this action has been assigned.

### 14                                  **III.       INTRODUCTION**

15          4.       This is an action for relief from defendants' misclassification of their California  
16      pick-up and delivery drivers as "independent contractors." Defendant EGL, Inc. dba "EGL Eagle  
17      Global Logistics" ("EGL"), CEVA Freight, LLC ("CEVA"), and their affiliates (collectively  
18      "DEFENDANTS") are in the freight transport business, relying on PLAINTIFFS and similarly  
19      situated drivers for the pick-up and delivery of the freight. DEFENDANTS retain and exercise  
20      pervasive control over their freight transport operations, including by exercising such control over  
21      PLAINTIFFS and similarly situated drivers, such that the drivers operating in California are in fact  
22      DEFENDANTS' employees under California law.

23          5.       By misclassifying the drivers as independent contractors, DEFENDANTS have  
24      sought to avoid various duties and obligations owed to employees under California's Labor Code  
25      and Industrial Welfare Commission ("IWC") wage orders, including: the duty to indemnify  
26      employees for all expenses and losses necessarily incurred in connection with their employment  
27      (Cal. Labor Code §2802; IWC wage order No. 9, §§ 8-9); the duty to provide workers'  
28      compensation coverage (Cal. Labor Code § 3200 *et seq.*); the duty to provide off-duty meal periods



(Cal. Labor Code §§ 512, 226.7; IWC wage order No. 9, § 11); the duty to pay California minimum wage for all hours worked (Cal. Labor Code §§ 1182.11, 1182.12, 1197; Minimum Wage Order; IWC wage order No. 9, § 4); the duty to avoid coercion in the purchase of necessary equipment, materials, and services (Cal. Labor Code § 450); the duties to pay overtime premium pay to those drivers operating vehicles with a gross vehicle weight rating of less than 10,001 pounds, including but not limited to small step package vans (hereinafter “Van Drivers”) and to document those drivers’ actual hours worked (Cal. Labor Code §§ 510, 1174, 226, 1194; IWC wage order No. 9, §§ 3, 7); and other legal obligations.

6. DEFENDANTS have maintained their unlawful policy and practice of treating their drivers as independent contractors despite acknowledging that “[t]he Internal Revenue Service, state authorities and other third parties have at times successfully asserted that independent owner/operators in the transportation industry, including those of the type we use in connection with your local pick up and delivery operations, are ‘employees’ rather than ‘independent contractors.’” (EGL’s 2004 10-K filing with the S.E.C., p. 10.)

7. PLAINTIFFS Narayan, Rahawi, Heath, and Iheonu bring their claims individually and as a class action, under Federal Rule of Civil Procedure 23, on behalf of similarly situated pick-up and delivery drivers working from DEFENDANTS’ California facilities (collectively hereinafter “Drivers” or “Class Members”). PLAINTIFFS challenge DEFENDANTS’ policy of willfully and unlawfully misclassifying their Drivers as “independent contractors” and thereby refusing to indemnify them for employment-related expenses and losses, failing to provide workers’ compensation insurance, taking wrongful deductions from their wages, coercing them to purchase necessary services and items, failing to provide off-duty meal periods, failing to pay minimum wage for all hours worked, and failing to pay overtime compensation and to document actual hours worked as required by California law. This misclassification policy has been in effect since at least four years prior to the filing of this action.

8. PLAINTIFFS Narayan, Rahawi, and Heath, and Iheonu, on behalf of themselves and other current and former Drivers, bring claims for reimbursement of business expenses and losses, reimbursement of deductions wrongfully taken from wages, meal period pay, unpaid



1 minimum wage (and liquidated damages), unpaid overtime compensation, statutory and civil  
 2 penalties, interest, and attorneys' fees and costs, under Cal. Labor Code §§ 203, 218.5, 226.7,  
 3 1194, 1194.2, and 2802, and Cal. Code of Civil Procedure § 1021.5. PLAINTIFFS also seek relief  
 4 on behalf of the class and in a representative capacity, pursuant to Cal. Business and Professions  
 5 Code §§ 17200-17208 (also referred to herein as the "UCL"), including restitution and  
 6 disgorgement of all benefits DEFENDANTS have obtained from the unlawful practices referenced  
 7 above and detailed below. These class and representative action claims are brought on behalf of  
 8 PLAINTIFFS and all current and former similarly situated Drivers employed by DEFENDANTS  
 9 during the period commencing September 12, 2001 (the "Class Period").

#### 10 IV. PARTIES

##### 11 A. Plaintiffs

12 9. Plaintiff Mohit Narayan resides in Stockton, California (San Joaquin County). He  
 13 was a full-time EGL pick-up and delivery truck driver for Defendant EGL from approximately July  
 14 1999 to September 2006. Throughout his tenure as an EGL truck driver he worked out of  
 15 DEFENDANTS' facilities in Sacramento, California (Sacramento County). Plaintiff Narayan  
 16 leased a bobtail truck to carry out his duties for DEFENDANTS throughout his tenure as an EGL  
 17 truck driver.

18 10. Plaintiff Hanna Rahawi resides in Stockton, California (San Joaquin County). He  
 19 was a full-time EGL pick-up and delivery truck driver for Defendant EGL from late 1998 to  
 20 October 2005. Starting in approximately May 2003, Rahawi served as a full-time EGL truck driver  
 21 working out of DEFENDANTS' facilities located in Brisbane, California (San Mateo County).  
 22 Prior to that he worked out of DEFENDANTS' facilities in San Jose, California (Santa Clara  
 23 County). Plaintiff Rahawi owned the bobtail truck he used to carry out his duties for  
 24 DEFENDANTS.

25 11. Plaintiff Thomas Heath currently resides in Clio, Michigan. He was a full-time  
 26 EGL pick-up and delivery van driver for Defendant EGL from late 1999 to approximately July  
 27 2002. Throughout this time, Heath served as an EGL van driver working out of DEFENDANTS'  
 28

1 Sacramento facilities. Heath owned the GMC Savana one ton cargo van that he used to carry out  
2 his duties for DEFENDANTS.

3 12. Plaintiff Ugo Iheonu resides in Torrance, California (Los Angeles County). He was  
4 a full-time pick-up and delivery truck driver and van driver for DEFENDANTS from 1998 to 2008.  
5 Throughout his tenure, Iheonu served as a full-time truck or van driver working out of  
6 DEFENDANTS' facilities located in Hawthorne and Torrance, California (Los Angeles County).  
7 Plaintiff Iheonu owned the bobtail truck and van he used to carry out his duties for  
8 DEFENDANTS.

9 **B. Defendants**

10 13. Defendant EGL, Inc. is incorporated under the laws of Texas. It is a publicly-traded  
11 company (NASDAQ: EAGL) engaged in what it describes as "the business of domestic and  
12 international freight transportation, customs brokerage, global logistics, supply chain management  
13 and information services for commercial and industrial customers." EGL's corporate headquarters  
14 are in Houston, Texas. Defendant EGL is and at all relevant times was an employer covered by the  
15 Cal. Labor Code and IWC wage order No. 9.

16 14. Upon the filing of the prior complaints, Plaintiffs Narayan, Rahawi and Heath,  
17 being ignorant of the true name of the Defendant and having designated the Defendant in the prior  
18 complaints by the fictitious name of Doe 1, and having discovered the true name of the Defendant  
19 to be CEVA Freight, LLC, Inc. (hereinafter "CEVA") amends the First Amended Complaint by  
20 substituting the true name for the fictitious name whenever it appears herein. Defendant CEVA is  
21 incorporated under the laws of Delaware and is a wholly-owned subsidiary of EGL, Inc. CEVA  
22 was formed in August 2007 through the merger of EGL, Inc. and TNT Logistics. CEVA's  
23 corporate headquarters are in Houston, Texas. Defendant CEVA is, and at all relevant times since  
24 August 2007 was, an employer covered by the Cal. Labor Code and IWC wage order No. 9.

25 15. The true names and capacities, whether individual, corporate, associate, or  
26 otherwise, of defendants sued herein as DOES 2 through 10, inclusive, are currently unknown to  
27 PLAINTIFFS, who therefore sue defendants by such fictitious names under Cal. Code of Civil  
28 Procedure § 474. PLAINTIFFS are informed and believe, and based thereon allege, that each of



1 the defendants designated herein as a DOE is legally responsible in some manner for the unlawful  
2 acts referred to herein. PLAINTIFFS will seek leave of court to amend this Complaint to reflect  
3 the true names and capacities of the defendants designated hereinafter as DOES when such  
4 identities become known. Hereinafter DEFENDANTS and the DOE defendants shall be referred  
5 to collectively as "DEFENDANTS."

6 16. PLAINTIFFS are informed and believe, and on such information and belief allege,  
7 that each defendant acted in all respects pertinent to this action as the agent of the other defendants,  
8 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and that the acts  
9 of each defendant are legally attributable to the other defendants.

#### 10 V. STATEMENT OF FACTS

11 17. DEFENDANTS are a domestic and international freight shipping and delivery  
12 operation, using an integrated network of transportation, sorting, warehousing, and communication  
13 facilities.

14 18. During the Class Period, DEFENDANTS have employed hundreds of pick-up and  
15 delivery truck and van drivers (collectively referred to as "Drivers") in facilities located in  
16 California, including in or about Brisbane, Los Angeles, Ontario, Sacramento, San Diego, San  
17 Jose, and South San Francisco. These Drivers were integral to the operations of DEFENDANTS'  
18 core business, as they were hired to timely deliver and pick-up packages and other freight based on  
19 times, locations, and for amounts determined by DEFENDANTS.

20 19. DEFENDANTS retain the exclusive right to control the manner and means by  
21 which PLAINTIFFS and similarly situated Drivers perform their jobs. The Drivers work from  
22 DEFENDANTS' terminals, where they are assigned packages for delivery and locations for pick-  
23 ups each day. They work shifts that are pre-determined by DEFENDANTS. Some Drivers are  
24 assigned pre-determined routes, in which they service customers within a specific geographic  
25 region; while others serve as "floaters," serving whatever area their pick-up and delivery  
26 assignments take them. DEFENDANTS employ dispatchers, customer service representatives, and  
27 a variety of managerial employees at their terminals who have supervisory responsibility over the  
28



1 Drivers and those Drivers' daily assignments and paperwork. Drivers interact with  
2 DEFENDANTS' personnel on a daily basis.

3 20. DEFENDANTS unilaterally set the compensation to be paid to the Drivers.  
4 DEFENDANTS purport to pay the Drivers a percentage of the fees that DEFENDANTS charge  
5 their customers.

6 21. DEFENDANTS unilaterally set the prices charged to their customers for the  
7 services rendered by the Drivers. The Drivers have no control over the rates charged to  
8 DEFENDANTS' customers.

9 22. The Drivers' remuneration depends on their ability to drive their vehicles and to  
10 load and un-load freight.

11 23. When Drivers do not follow DEFENDANTS' rules or instructions, they are subject  
12 to various types of punishment, some financial and some disciplinary.

13 24. PLAINTIFFS and similarly situated Drivers have provided services that are an  
14 integral part of DEFENDANTS' business enterprise. By providing vehicles with required  
15 DEFENDANTS' logos and advertising, by reliably serving DEFENDANTS' customers, by  
16 following DEFENDANTS' controlled delivery and pick-up routes, by using DEFENDANTS'  
17 dedicated web site and mobile equipment to track packages, and in other material ways,  
18 PLAINTIFFS and other Drivers have rendered services to DEFENDANTS that are integral to  
19 DEFENDANTS' freight transport system.

20 25. Despite DEFENDANTS' pervasive control over all aspects of its freight transport  
21 operations, including over the Drivers, DEFENDANTS have uniformly classified and treated all  
22 Drivers as "independent contractors."

23 26. Although the nature of the work performed by PLAINTIFFS and similarly situated  
24 Drivers makes detailed control by management unnecessary, DEFENDANTS retain the right to  
25 control and exercise extensive control over the work of the Drivers, and do in fact exercise such  
26 control.

1           27.    DEFENDANTS' right of control over PLAINTIFFS and similarly situated Drivers  
2 is retained and/or exercised by DEFENDANTS as demonstrated by DEFENDANTS' written rules  
3 and policies and unwritten practices.

4           28.    DEFENDANTS' classification and treatment of PLAINTIFFS throughout the  
5 period covered by this lawsuit similarly situated Drivers as "independent contractors" rather than  
6 as "employees" is and has been unlawful.

7           29.    As a result of DEFENDANTS misclassifying their Drivers as "independent  
8 contractors," DEFENDANTS have unlawfully failed to indemnify the Drivers for employment-  
9 related expenses, including the costs of providing the leased vehicles; all operation costs associated  
10 with the vehicle, including fuel, maintenance, repair, cleaning, and licensing; a portion of the  
11 decals and other identifying marks adorning the leased vehicles; liability and other insurance  
12 covering work place injuries; cellular telephone and DEFENDANTS' designated text messaging  
13 and package-tracking services; uniform laundry fees; and miscellaneous tools, such as dollies and  
14 pallet jacks. PLAINTIFFS are informed and believe and on such information and belief allege that  
15 DEFENDANTS have also failed to indemnify the Drivers for employment-related losses, such as  
16 cargo loss or damage, bodily and property damage claims, uncollected or lost C.O.D. payments,  
17 and "service claims" granted to customers. PLAINTIFFS are informed and on that basis allege that  
18 DEFENDANTS have taken deductions from Drivers' compensation to cover many of these  
19 employment-related expenses. Under the Driver Contract, DEFENDANTS reserved the right to  
20 and have taken deductions from the compensation of PLAINTIFFS and similarly situated Drivers  
21 to cover many of these employment-related expenses.

22           30.    As a result of DEFENDANTS misclassifying their Drivers as "independent  
23 contractors," DEFENDANTS have regularly failed to provide a timely 30 minute off-duty meal  
24 period to PLAINTIFFS and similarly situated Drivers who worked more than five hours in a day.

25           31.    As a result of DEFENDANTS misclassifying their Drivers as "independent  
26 contractors," DEFENDANTS have regularly failed to provide a second timely 30 minute meal  
27 period to PLAINTIFFS and similarly situated Drivers who worked more than 10 hours in a day.  
28



1           32. As a result of DEFENDANTS misclassifying their Drivers as “independent  
2 contractors,” DEFENDANTS have regularly failed to pay Drivers the California minimum wage  
3 for all hours worked, including but not limited to waiting time, “show up” time, and time spent in  
4 company meetings.

5           33. Plaintiffs Heath and Iheonu and other similarly situated Drivers operate vehicles  
6 with a gross vehicle weight rating of less than 10,001 pounds, including but not limited to small  
7 step package vans. Persons who operate such vehicles are not subject to the maximum hours  
8 regulations promulgated pursuant to the Federal Motor Carrier Safety Act and are therefore not  
9 exempt from the overtime requirements established by the Cal. Labor Code and IWC wage order  
10 No. 9.

11           34. DEFENDANTS required and/or knowingly permitted Plaintiffs Heath and Iheonu  
12 and have required and/or knowingly permitted similarly situated Van Drivers to work hours  
13 considerably in excess of eight hours per day and/or 40 hours a week throughout the period  
14 covered by this lawsuit. PLAINTIFFS are informed and believe and on such information and  
15 belief allege that it has been DEFENDANTS’ policy and practice to require and/or knowingly  
16 permit their Van Drivers to work overtime hours without receiving overtime compensation.

17           35. As a result of DEFENDANTS misclassifying their Van Drivers as “independent  
18 contractors,” DEFENDANTS have willfully and knowingly failed to pay premium overtime  
19 compensation to Plaintiffs Heath and Iheonu and similarly situated Van Drivers for hours worked  
20 in excess of eight hours per day and 40 hours in a week.

21           36. As a result of DEFENDANTS misclassifying their Drivers as “independent  
22 contractors,” DEFENDANTS have failed to record the actual hours worked by Plaintiffs and  
23 similarly situated Drivers during the Class Period.

24           37. As a result of DEFENDANTS misclassifying their Drivers as “independent  
25 contractors,” DEFENDANTS have failed to itemize the total hours worked on wage statements  
26 furnished to Plaintiff and similarly situated Drivers.

27           38. PLAINTIFFS are informed and on that basis allege that, as a result of  
28 DEFENDANTS’ misclassifying their Drivers as “independent contractors,” DEFENDANTS have



1 not properly maintained payroll records showing the actual hours worked and meal periods taken  
2 and missed each day by Drivers, including PLAINTIFFS.

3 39. As a result of DEFENDANTS misclassifying their Drivers as "independent  
4 contractors," DEFENDANTS have willfully and knowingly failed to pay PLAINTIFFS, and  
5 similarly situated Drivers, upon termination of employment all accrued compensation, including  
6 for repayment of all unlawful deductions from wages, payment of missed meal period  
7 compensation, minimum wage compensation, and payment of overtime compensation to Van  
8 Drivers.

## 9 VI. CLASS ACTION ALLEGATIONS

10 40. PLAINTIFFS bring this lawsuit as a class action pursuant to Rules of Civil  
11 Procedure 23(b)(3) on behalf of themselves and all similarly situated Drivers. The class  
12 PLAINTIFFS seek to represent is defined as:

13 All persons who are or have operated as pick-up and delivery drivers for  
14 DEFENDANTS EGL, Inc. and/or CEVA Freight, LLC in the State of California  
15 under an "independent contractor services" contract or similar written contract  
16 (referred to as "Drivers") during the period commencing September 12, 2001  
through trial in this action. This class of Drivers includes a sub-class of those  
operating vehicles with a gross vehicle weight rating of less than 10,001 pounds,  
including but not limited to small step package vans (referred to as "Van Drivers").

17 The claims herein have been brought and may properly be maintained as a class action under  
18 Rules of Civil Procedure 23(b)(3) because PLAINTIFFS can demonstrate that all of the necessary  
19 requirements of Rule 23 are met, as follows:

20 a. Numerosity: The potential members of the class as defined herein are so  
21 numerous that joinder would be impracticable. PLAINTIFFS are informed and believe and on  
22 such information and belief allege that DEFENDANTS have employed over 300 Drivers in  
23 California during the Class Period. The names and addresses of the Class Members are available  
24 from the DEFENDANTS. Notice can be provided to the Class Members via first class mail using  
25 techniques and a form of notice similar to those customarily used in class action lawsuits of this  
26 nature.  
27  
28

1                   b.     Commonality and Predominance of Common Questions: Questions of law  
 2 and fact common to PLAINTIFFS and the class predominate over any questions affecting only  
 3 individual members of the class. These common questions of law and fact include, without  
 4 limitation:

- 5                   i.     Whether the Drivers have served DEFENDANTS as employees  
 6                   rather than independent contractors under California law;
- 7                   ii.    Whether Drivers have necessarily incurred employment-related  
 8                   expenses and losses in carrying out their duties for DEFENDANTS;
- 9                   iii.   Whether DEFENDANTS have failed to indemnify Drivers for their  
 10                  necessarily incurred employment-related-expenses and losses, in  
 11                  violation of Cal. Labor Code § 2802;
- 12                  iv.   Whether DEFENDANTS have failed to provide Drivers with  
 13                  workers' compensation insurance, in violation of Cal. Labor Code §  
 14                  3200, *et seq*;
- 15                  v.    Whether DEFENDANTS' failure to provide workers' compensation  
 16                  insurance constitutes an unlawful, unfair, and/or fraudulent business  
 17                  practice, under Cal. Business & Professions Code §17200, *et seq*;
- 18                  vi.   Whether DEFENDANTS' failure to indemnify Drivers for  
 19                  necessarily incurred employment-related expenses and losses  
 20                  constitutes an unlawful, unfair, and/or fraudulent business practice,  
 21                  under Cal. Business & Professions Code § 17200 *et seq*;
- 22                  vii.   Whether DEFENDANTS have made deductions from the  
 23                  compensation paid to DRIVERS in violation of California law;
- 24                  viii.   Whether DEFENDANTS' deductions from Drivers' compensation  
 25                  constitute an unlawful, unfair, and/or fraudulent business practice,  
 26                  under Cal. Business & Professions Code § 17200 *et seq*;
- 27                  ix.    Whether DEFENDANTS have coerced or compelled Drivers to  
 28                  patronize DEFENDANTS and/or other companies in the purchase or

1 lease of uniforms, uniform laundry service, communication  
 2 equipment, electronic message services, and other items in violation  
 3 of Cal. Labor Code § 450;

4 x. Whether DEFENDANTS' coercion or compulsion of Drivers to  
 5 patronize DEFENDANTS and/or other companies constitutes an  
 6 unlawful, unfair, and/or fraudulent business practice, under Cal.  
 7 Business & Professions Code § 17200 *et seq*;

8 xi. Whether DEFENDANTS have failed to provide adequate off-duty  
 9 meal periods and meal period compensation, in violation of Cal.  
 10 Labor Code §§ 226.7 and 512 and IWC wage order No. 9, § 11;

11 xii. Whether DEFENDANTS' failure to provide adequate off-duty meal  
 12 periods and meal period compensation constitutes an unlawful,  
 13 unfair, and/or fraudulent business practice, under Cal. Business &  
 14 Professions Code § 17200 *et seq*;

15 xiii. Whether DEFENDANTS have required, encouraged, suffered, or  
 16 permitted Drivers to performed certain work-related duties without  
 17 compensation equal to at least the California minimum wage;

18 xiv. Whether DEFENDANTS knew or should have known that their  
 19 Drivers regularly performed certain work-related duties without  
 20 compensation equal to at least the California minimum wage;

21 xv. Whether DEFENDANTS violated IWC wage order No. 9, § 4, the  
 22 California Minimum Wage Order, and Cal. Labor Code §§ 1182.11  
 23 and 1194 by their failure to pay Drivers minimum wage  
 24 compensation for all hours worked;

25 xvi. Whether DEFENDANTS' failure to pay Drivers minimum wage  
 26 compensation for all hours worked constitutes an unlawful, unfair,  
 27 and/or fraudulent business practice, under Cal. Business &  
 28 Professions Code § 17200 *et seq*;



- xvii. Whether DEFENDANTS have required, encouraged, suffered, or permitted Van Drivers to work in excess of 40 hours per week and/or eight hours per day;
- xviii. Whether DEFENDANTS knew or should have known that their Van Drivers regularly worked over 40 hours per week and/or eight hours per day;
- xix. Whether DEFENDANTS have failed to pay their Van Drivers overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;
- xx. Whether DEFENDANTS have employed Van Drivers in a position subject to, and not exempt from, California's overtime pay and other wage and hour requirements;
- xxi. Whether DEFENDANTS have violated IWC wage order No. 9, § 3 and Cal. Labor Code §§ 510 and 1194 by their failure to pay Van Drivers overtime compensation;
- xxii. Whether DEFENDANTS' failure to pay overtime compensation to Van Drivers constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq.*;
- xxiii. Whether DEFENDANTS knowingly and intentionally failed to provide Drivers with an itemized statement showing total hours worked with each payment of wages, as required by Cal. Labor Code § 226 and IWC wage order No. 9, § 7;
- xxiv. Whether DEFENDANTS' failure to provide an itemized statement showing total hours worked with each payment of wages constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq.*;

- xxv. Whether DEFENDANTS have violated Cal. Labor Code § 1174 and IWC wage order No. 9, § 7 by failing to maintain documentation of the actual hours worked each day by Drivers;
- xxvi. Whether DEFENDANTS' failure to maintain documentation of the actual hours worked each day by Drivers constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;
- xxvii. Whether DEFENDANTS have violated Labor Code §§ 201-203, by failing, upon termination, to timely pay Drivers wages that were due for minimum wage, overtime, missed meal periods, and/or wrongful deductions from wage;
- xxviii. Whether DEFENDANTS' failure to pay all compensation owed at time of termination of employment constituted an unlawful, unfair, and/or fraudulent business practice, under Business & Professions Code § 17200 *et seq*; and
- xxix. What constitutes the proper formula for calculating restitution, damages, and waiting time and other statutory penalties owed to PLAINTIFFS and the class alleged herein.

c. Typicality: PLAINTIFFS' claims are typical of the claims of the class. DEFENDANTS' common course of unlawful conduct has caused PLAINTIFFS and similarly situated Drivers to sustain the same or similar injuries and damages caused by the same practices of DEFENDANTS. PLAINTIFFS' claims are thereby representative of and co-extensive with the claims of the class.

d. Adequacy of Representation: PLAINTIFFS are all members of the class, PLAINTIFFS do not have any conflicts of interest with other class members and will prosecute the case vigorously on behalf of the class. PLAINTIFFS will fairly and adequately represent and protect the interests of the class members. PLAINTIFFS' counsel are competent and experienced in litigating employment class actions, including complex wage and hour class actions.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class Members may be relatively small, albeit significant, the expense and burden of individual litigation make it impractical for most Class Members individually to seek redress for the wrongful conduct alleged. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

## **VII. DAMAGES**

41. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, DEFENDANTS owe PLAINTIFFS and similarly situated Drivers un-reimbursed business expenses plus interest, repayment of unlawfully deducted wages plus interest, meal period compensation plus interest, minimum wages plus interest and liquidated damages, waiting time penalties under Labor Code § 203, and other statutory penalties in an amount that exceeds \$25,000, the precise amount of which will be proven at trial. Plaintiffs Heath and Iheonu and similarly situated Van Drivers are also owed overtime compensation plus interest.

## **VIII. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION REIMBURSEMENT OF BUSINESS EXPENSES (CAL. LABOR CODE § 2802)**

42. The allegations of Paragraphs 1 through 41 are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Drivers employed by DEFENDANTS in California.

43. While acting on the direct instruction of DEFENDANTS and discharging their duties for them, PLAINTIFFS and similarly situated Drivers have incurred work-related expenses. Such expenses include but are not limited to the costs of purchase or lease of vehicles; fuel, maintenance, and other vehicle operating costs; vehicle decals and other markings; various forms of insurance; communications equipment; electronic message service; cellular telephones; and uniforms and laundry services. DEFENDANTS have also reserved the right to hold drivers accountable for losses such as cargo loss or damage, bodily and property damage claims,



1 uncollected or lost C.O.D. payments, and "service claims" granted to customers. PLAINTIFFS  
 2 and class members necessarily incurred these substantial expenses and losses as a direct result of  
 3 performing their job duties for DEFENDANTS.

4 44. DEFENDANTS have failed to indemnify or in any manner reimburse PLAINTIFFS  
 5 and similarly situated Drivers for these expenditures and losses. By misclassifying Drivers as  
 6 "independent contractors," and further by requiring those employees to pay expenses and cover  
 7 losses that they incurred in direct consequence of the discharge of their duties for DEFENDANTS  
 8 and/or in obedience to DEFENDANTS' direction, DEFENDANTS have violated and continue to  
 9 violate Cal. Labor Code § 2802.

10 45. As a direct and proximate result of DEFENDANTS' conduct, PLAINTIFFS and  
 11 similarly situated Drivers have suffered substantial losses according to proof, as well as pre-  
 12 judgment interest, costs, and attorney fees for the prosecution of this action.

13 46. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief  
 14 as described below.

15 **SECOND CAUSE OF ACTION**  
 16 **UNLAWFUL DEDUCTIONS FROM WAGES**  
 17 **(CAL. LABOR CODE §§ 221, 223, 400-410, IWC. WAGE ORDER NO. 9)**

18 47. The allegations of Paragraphs 1 through 46 are realleged and incorporated herein by  
 19 reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the  
 20 above-described class of similarly situated Drivers employed by DEFENDANTS in California.

21 48. Labor Code § 221 provides: "It shall be unlawful for any employer to collect or  
 22 receive from an employee any part of wages theretofore paid by said employer to said employee."

23 49. Labor Code § 223 provides: "Where any statute or contract requires an employer to  
 24 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while  
 25 purporting to pay the wage designated by statute or by contract."

26 50. Labor Code §§ 400-410 ("Employee Bond Law") provide the limited circumstances  
 27 under which an employer can exact a cash bond from its employees. These provisions are  
 28 designed to protect employees against the very real danger of an employer taking or  
 misappropriating employee funds held by the employer in trust.

1           51. IWC wage order No. 9, § 8 provides that the only circumstance under which an  
2 employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss  
3 of equipment is if the employer can show that the shortage, breakage, or loss was the result of the  
4 employee's gross negligence or dishonest or willful act.

5           52. These and related statutes, along with California's fundamental public policy  
6 protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated  
7 or unpredicted reductions in their wages; making employees the insurers of their employer's  
8 business losses; otherwise passing the ordinary business losses of the employer onto the employee;  
9 taking deductions from wages for business losses unless the employer can establish that the loss  
10 was caused by a dishonest or willful act, or gross negligence of the employee; or taking other  
11 unpredictable deductions that may impose a special hardship on employees.

12           53. DEFENDANTS have violated Cal. Labor Code §§ 221, 223, and 400-410, and IWC  
13 wage order No. 9, § 8 by unlawfully taking deductions from PLAINTIFFS' and Class Members'  
14 compensation to cover certain ordinary business expenses of DEFENDANTS, including but not  
15 limited to uniform laundry service, claims for loss or damaged cargo, property damage and bodily  
16 injury claims, uncollected or lost C.O.D. amounts, and "service claims" granted to customers.

17           54. Because DEFENDANTS took unlawful deductions from Drivers' compensation,  
18 they are liable to PLAINTIFFS and Class Members for the compensation that should have been  
19 paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221, 223, and 400-410, and  
20 IWC wage order No. 9, § 8.

21           55. By unlawfully deducting wages and failing to pay PLAINTIFFS and other similarly  
22 situated Drivers, DEFENDANTS are also liable for penalties, reasonable attorneys' fees, and costs  
23 under Labor Code §§ 218.5 and 1194.

24           56. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief  
25 as described below.  
26  
27  
28



**THIRD CAUSE OF ACTION**  
**COERCED PURCHASES**  
**(CAL. LABOR CODE § 450 ET SEQ.)**

57. The allegations of Paragraphs 1 through 56 are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Drivers employed by DEFENDANTS in California.

58. DEFENDANTS have compelled and/or coerced PLAINTIFFS and Class Members to patronize DEFENDANTS by requiring PLAINTIFFS and Class Members to lease or purchase data communication equipment and services, uniforms, uniform cleaning services, and other items directly from DEFENDANTS and/or other companies in violation of Cal. Labor Code § 450. The violation of Cal. Labor Code § 450 also provides the basis for a claim for penalties, attorneys' fees, and costs under Cal. Labor Code § 2699.

59. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS**  
**(CAL. LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9)**

60. The allegations of Paragraphs 1 through 59 are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Drivers employed by DEFENDANTS in California.

61. PLAINTIFFS and similarly situated Drivers have regularly worked in excess of five (5) hours a day without being afforded at least a half-hour meal period in which they were relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, § 11(A).

62. Because DEFENDANTS failed to afford proper and timely meal periods, they are liable to PLAINTIFFS and similarly situated Drivers for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 11(B).



63. By violating Cal Labor Code §§ 226.7 and 512, and IWC wage order No. 9, § 11, DEFENDANTS are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code §§ 218.5 and 1194.

64. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

**FIFTH CAUSE OF ACTION  
FAILURE TO PAY MINIMUM WAGE  
(CAL. LABOR CODE §§ 1182.11, 1182.12, 1194 ET SEQ., IWC WAGE ORDER NO. 9,  
MINIMUM WAGE ORDER)**

65. The allegations of Paragraphs 1 through 64 are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Drivers employed by DEFENDANTS in California.

66. At all times relevant to this complaint, Labor Code §§ 1182.11, 1182.12, and 1197, wage order 9-2001, and the Minimum Wage Order were in full force and effect and required that DEFENDANTS' California Drivers receive the minimum wage for all hours worked irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate \$6.25 per hour commencing January 1, 2001, \$6.75 per hour commencing January 1, 2002, \$7.50 per hour commencing January 1, 2007, and \$8.00 per hour commencing January 1, 2008.

67. DEFENDANTS failed to pay PLAINTIFFS and Drivers for all hours worked at the statutory minimum wage rate, as required by law, including for work time being engaged to wait at DEFENDANTS' facilities or at DEFENDANTS' direction and time spent attending meetings.

68. By failing to maintain adequate time records as required by Cal. Labor Code § 1174(d) and IWC wage order No. 9, § 7(A), DEFENDANTS have made it difficult to calculate the minimum wage compensation due Plaintiffs Heath and Iheonu and the similarly situated Van Drivers.

69. As a direct and proximate result of the acts and/or omissions of DEFENDANTS, PLAINTIFFS and other Drivers have been deprived of minimum wages due in amounts to be determined at trial, and to additional amounts as liquidated damages, pursuant to Labor Code §§ 1194 and 1194.2.

70. By violating Cal Labor Code §§ 1182.11, 1182.11 and 1197, IWC wage order No. 9, § 4, and the Minimum Wage Order, DEFENDANTS are also liable for reasonable attorneys' fees and costs under Cal. Labor Code § 1194.

71. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

**SIXTH CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME COMPENSATION**  
**(CAL. LABOR CODE §§ 510, 1194 ET SEQ., IWC WAGE ORDER NO. 9.)**

72. The allegations of Paragraphs 1 through 71 are realleged and incorporated herein by reference, and Plaintiffs Heath and Iheonu allege as follows a cause of action on behalf of themselves and the above-described sub-class of similarly situated Van Drivers employed by DEFENDANTS in California.

73. By failing to pay overtime compensation to Plaintiffs Heath and Iheonu and a sub-class of Van Drivers as alleged above, DEFENDANTS have violated and continue to violate Cal. Labor Code § 510 and IWC wage order No. 9, § 3, which require overtime compensation to non-exempt employees.

74. By failing to maintain adequate time records as required by Cal. Labor Code § 1174(d) and IWC wage order No. 9, § 7(A), DEFENDANTS have made it difficult to calculate the overtime compensation due Plaintiffs Heath and Iheonu and the similarly situated Van Drivers.

75. As a result of DEFENDANTS' unlawful acts, Plaintiffs Heath and Iheonu and a sub-class of Van Drivers have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs, under Cal. Labor Code § 1194.

76. By violating Cal. Labor Code § 510, DEFENDANTS are liable for civil penalties and attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, and 1197.1.

77. Plaintiffs Heath and Iheonu, on behalf of themselves and similarly situated Van Drivers, request relief as described below.



**SEVENTH CAUSE OF ACTION**  
**FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**  
**(CAL. LABOR CODE §§ 226 & 226.3; IWC WAGE ORDER NO. 9)**

78. The allegations of Paragraphs 1 through 77 are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Drivers employed by DEFENDANTS in California.

79. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-monthly or at the time of each payment of wages to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee. Cal. Labor Code § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among other things, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

80. DEFENDANTS knowingly and intentionally failed to furnish PLAINTIFFS and similarly situated Drivers with timely, itemized statements showing the total hours worked, as required by Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B). As a result, DEFENDANTS are liable to PLAINTIFFS and similarly situated Drivers for the amounts provided by Cal. Labor Code § 226(b) and for penalties, and attorneys' fees.

81. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

**EIGHTH CAUSE OF ACTION**  
**FAILURE TO KEEP ACCURATE PAYROLL RECORDS**  
**(CAL. LABOR CODE §§ 1174 & 1174.5; IWC WAGE ORDER NO. 9)**

82. The allegations of Paragraphs 1 through 81 are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Drivers employed by DEFENDANTS in California.

83. DEFENDANTS have violated Cal. Labor Code § 1174 and IWC wage order No. 9, § 7(A) by willfully failing to keep required payroll records showing the actual hours worked each day by PLAINTIFFS and similarly situated Drivers. As a direct and proximate result of DEFENDANTS' failure to maintain payroll records, PLAINTIFFS and similarly situated Drivers



1 have suffered actual economic harm as they have been precluded from accurately monitoring the  
 2 number of hours worked and thus seeking all accrued minimum wage (and overtime pay for Van  
 3 Drivers).

4 84. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief  
 5 as described below.

6 **NINTH CAUSE OF ACTION**  
 7 **WAITING TIME PENALTIES**  
 8 **(CAL. LABOR CODE §§ 201, 202 & 203)**

9 85. The allegations of Paragraphs 1 through 84 are realleged and incorporated herein by  
 10 this reference, and PLAINTIFFS allege as follows a cause of action on behalf of himself and the  
 11 above-described class of similarly situated Drivers employed by DEFENDANTS in California.

12 86. Cal. Labor Code § 201 requires an employer who discharges an employee to pay all  
 13 compensation due and owing to that employee immediately upon discharge.

14 87. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing  
 15 to an employee who quits within 72 hours of that employee quitting, unless the employee provides  
 16 at least 72 hours notice of quitting, in which case all compensation is due at the end of the  
 17 employee's final day of work.

18 88. Cal. Labor Code § 203 provides that if an employer willfully fails to pay  
 19 compensation promptly upon discharge, as required by § 201 or § 202, then the employer is liable  
 20 for waiting time penalties in the form of continued compensation of up to 30 work days.

21 89. DEFENDANTS willfully failed and refused to timely pay compensation and wages,  
 22 including unpaid meal period compensation, minimum wage compensation, overtime  
 23 compensation to van drivers and sums wrongfully deducted from compensation, to PLAINTIFFS  
 24 and similarly situated Drivers whose employment terminated. DEFENDANTS further willfully  
 25 failed and refused to pay unpaid overtime pay to Plaintiffs Heath and Iheonu and the above-  
 26 described sub-class of similarly situated Van Drivers. As a result, DEFENDANTS are liable to  
 27 PLAINTIFFS and similarly situated Drivers for waiting time penalties, together with interest  
 28 thereon and reasonable attorneys' fees and costs, under Cal. Labor Code § 203.

1           90.     PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief  
2 as described below.

3                                   **TENTH CAUSE OF ACTION**  
4                                   **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**  
5                                   **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-09)**

6           91.     The allegations of Paragraphs 1 through 90 are realleged and incorporated herein by  
7 this reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and  
8 the above-described class of similarly situated Drivers and in a representative capacity under Cal.  
9 Business and Professions Code § 17204.

10          92.     Cal. Business & Professions Code § 17200 prohibits unfair competition in the form  
11 of any unlawful, unfair, or fraudulent business act or practice.

12          93.     Cal. Business & Professions Code § 17204 allows “any person acting for the  
13 interests of itself, its members or the general public” to prosecute a civil action for violation of the  
14 UCL.

15          94.     Beginning at an exact date unknown to PLAINTIFFS, but at least four years prior to  
16 the filing of this action, DEFENDANTS have improperly, fraudulently, and unlawfully classified  
17 its Drivers as “independent contractors” and have thereby committed unlawful, unfair, and/or  
18 fraudulent business acts and practices as defined by Cal. Business & Professions Code § 17200, by  
19 engaging in the following:

20                 a.     failing to indemnify PLAINTIFFS and similarly situated Drivers for  
21 employment-related business expenses and losses;

22                 b.     failing and refusing to provide PLAINTIFFS and similarly situated Drivers  
23 with workers’ compensation insurance;

24                 c.     improperly and unlawfully making deductions from Drivers’ compensation  
25 because of cash shortages, breakage, equipment loss, and other work-related expenses and losses  
26 not attributable to the Drivers’ dishonest or willful act, or to the gross negligence of the Drivers, as  
27 described above;

28                 d.     failing and refusing to provide meal periods to PLAINTIFFS and similarly  
situated Drivers;

1 e. failing to pay minimum wage compensation to PLAINTIFFS and similarly  
2 situated Drivers;

3 f. unlawfully deducting money from wages owed to PLAINTIFFS and  
4 similarly situated Drivers;

5 g. coercing or compelling PLAINTIFFS and similarly situated Drivers to  
6 patronize DEFENDANTS and allied companies;

7 h. failing to pay overtime compensation to Plaintiffs Heath and Iheonu and  
8 similarly situated Van Drivers;

9 i. failing to provide accurate itemized wage statements to PLAINTIFFS and  
10 similarly situated Drivers;

11 j. failing to maintain payroll records showing the actual hours worked each  
12 day by PLAINTIFFS and similarly situated Drivers;

13 k. failing to pay all accrued overtime and meal period compensation and failing  
14 to repay unlawfully deducted commissions to Drivers upon termination of their employment; and

15 l. by intentionally, recklessly and/or negligently misrepresenting to  
16 PLAINTIFFS and similarly situated Drivers the true nature of their employment status.

17 The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and  
18 practices for purposes of Cal. Business and Professions Code § 17200.

19 95. As a direct and proximate result of DEFENDANTS' unlawful, unfair, and/or  
20 fraudulent acts and practices described herein, DEFENDANTS have received and continue to hold  
21 ill-gotten gains belonging to PLAINTIFFS and class members. As a direct and proximate result of  
22 DEFENDANTS' unlawful business practices, PLAINTIFFS and class members have suffered  
23 economic injuries including, but not limited to out-of-pocket business expenses, unlawful  
24 deductions from compensation, loss of minimum wage compensation, loss of overtime wages (for  
25 Van Drivers), compensation for missed meal periods, and waiting time penalties. DEFENDANTS  
26 have profited from their unlawful, unfair, and/or fraudulent acts and practices in the amount of  
27 those business expenses, improper deductions from compensation, unpaid overtime, minimum  
28



1 wage, meal period compensation, and interest accrued by PLAINTIFFS and similarly situated  
2 Drivers.

3 96. Plaintiff and similarly situated Drivers are entitled to restitution pursuant to Cal.  
4 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful  
5 deductions from compensation, overtime (for Van Drivers), minimum wage and meal period  
6 compensation, and interest since four years prior to the filing of this action.

7 97. PLAINTIFFS and similarly situated Drivers are entitled to enforce all applicable  
8 penalty provisions of the Cal. Labor Code pursuant to Cal. Business & Professions Code § 17202.

9 98. By all of the foregoing alleged conduct, DEFENDANTS have committed, and are  
10 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the  
11 meaning of Cal. Business & Professions Code §17200 et seq.

12 99. As a direct and proximate result of the unfair business practices described above,  
13 PLAINTIFFS and other Drivers have all suffered significant losses and Defendants have been  
14 unjustly enriched.

15 100. Pursuant to Cal. Business & Prof. Code §17203, PLAINTIFFS and other Drivers,  
16 and member of the general public are entitled to: (a) restitution of money acquired by  
17 DEFENDANTS by means of their unfair business practices, in amounts not yet ascertained but to  
18 be ascertained at trial; (b) a declaration that DEFENDANTS' business practices are unfair within  
19 the meaning of the statute.

20 101. PLAINTIFFS have assumed the responsibility of enforcement of the laws and  
21 lawful claims specified herein. There is a financial burden incurred in pursuing this action which is  
22 in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code  
23 of Civil Procedure § 1021.5.

24 102. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief  
25 as described below.

## 26 **IX. REQUEST FOR JURY TRIAL**

27 103. PLAINTIFFS request a trial by jury on behalf of themselves and the above  
28 described class of similarly situated Drivers.

**X. PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS Narayan, Rahawi, Heath, and Iheonu, on behalf of themselves and the above-described class of similarly situated Drivers, request relief as follows:

A. Certification of the above-described class as a class action, pursuant to Federal Rule of Civil Procedure 23(b)(3);

B. Class notice be provided to all Drivers who worked for DEFENDANTS in California during the Class Period described above;

C. A declaratory judgment that DEFENDANTS have knowingly and intentionally violated the following provisions of law:

1. Cal. Labor Code § 2802 by failing to indemnify PLAINTIFFS and the class for all necessarily incurred business expenses and losses;

2. Cal. Labor Code §§ 221 and 400-410 and IWC wage order No. 9, by making unlawful deductions from the compensation paid to PLAINTIFFS and the class for ordinary business expenses and losses without a showing that the expenses and/or losses were due to the Drivers' dishonest or willful act, or to the gross negligence of the Drivers;

3. Cal. Labor Code § 450 by coercing or compelling PLAINTIFFS and the class to purchase or lease certain items and services;

4. Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9 by failure to provide off-duty meal periods to PLAINTIFFS and the class;

5. Cal. Labor Code §§ 1182.11, 1182.11 and 1197, IWC wage order No. 9, and the Minimum Wage Order, by failure to pay at least minimum wage for all hours worked by PLAINTIFFS and the class;

6. Cal. Labor Code §§ 510, 1194 et seq. and IWC wage order No. 9 by failure to pay overtime compensation to Plaintiffs Heath and Iheonu and the sub-class of Van Drivers;

7. Cal. Labor Code § 226 and IWC wage order No. 9, § 7(B), by failing to provide PLAINTIFFS and the class of Drivers with itemized statements of total hours worked with each payment of wages;

8. Cal. Labor Code § 1174 and IWC wage order No. 9, § 7(A), by failing to maintain payroll records of the actual hours worked each day by PLAINTIFFS and the class of Drivers;

9. Cal. Labor Code §§ 201-203, for willful failure to pay overtime, minimum wage, and meal period compensation and failure to repay unlawfully deducted wages at the time of termination of employment, resulting in unpaid waiting time penalties; and

10. Cal. Business and Professions Code §§ 17200-17208, by failing to reimburse Drivers for necessarily incurred business expenses, by requiring Drivers to indemnify DEFENDANTS for ordinary business losses, by coercing or compelling Drivers to purchase or lease certain items and services from DEFENDANTS or affiliated companies, by failing to provide off-duty meal periods and/or pay meal period compensation to Drivers, by failing to pay at least minimum wage for all hours worked, by failing to pay its Van Drivers overtime compensation, by failing to provide Drivers with itemized wage statements showing all hours worked, by failing to maintain payroll records that document all hours worked by Drivers, and by willfully failing to pay all compensation owed to Drivers upon termination of employment;

E. A declaratory judgment that DEFENDANTS' violations as described above were willful;

F. An equitable accounting to identify, locate, and restore to all current and former Drivers the wages that are due;

G. An award to PLAINTIFFS and the Class Members of damages in the amount of necessarily incurred business expenses, unpaid overtime, minimum wage compensation (plus liquated damages), meal period compensation and amounts unlawfully deducted from wages, including interest thereon, subject to proof at trial;

H. An award to PLAINTIFFS and the Class Members of statutory penalties because of DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with itemized wage statements that comply with the requirements of Cal. Labor Code § 226, subject to proof at trial;

I. An award of payments due to them as waiting time penalties as to those Class Members who have left DEFENDANTS' employ, pursuant to Labor Code § 203;



1 K. An order requiring DEFENDANTS to pay restitution of all amounts owed to  
2 PLAINTIFFS and similarly situated Drivers for DEFENDANTS' failure to pay legally required  
3 overtime, minimum wage, and meal period pay, and interest thereon and DEFENDANTS' failure  
4 to repay amounts unlawfully deducted, and interest thereon, in an amount according to proof,  
5 pursuant to Business & Professions Code § 17203;

6 L. An award to PLAINTIFFS and the Class Members of reasonable attorneys' fees and  
7 costs, pursuant to Cal. Code of Civil Procedure § 1021.5 and Cal. Labor Code §§ 218.5, 226, 1194,  
8 , and 2802 and/or other applicable law; and

9 M. An award to PLAINTIFFS and the Class Members of such other and further relief  
10 as this Court deems just and proper.

11 DATED: January 27 2011.

HINTON, ALFERT & SUMNER

12  
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