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8 Attorneys for Plaintiffs WILLIAM BAISLEY  
and TED PORTILLO, on behalf of themselves  
9 and all others similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ORANGE

12 WILLIAM BAISLEY, an individual, and  
13 TED PORTILLO, an individual, on  
behalf of themselves and all others  
14 similarly situated

15 Plaintiffs,

16 vs.

17 YOSEMITE WATERS COMPANY,  
18 BASTANCHURY WATERS  
COMPANY, INC., and DOES 1 through  
19 25, inclusive,

20 Defendants.

[CLASS ACTION]

The Hon. Nancy Wieben Stock  
Dept. No.: CX105

CASE NO. 30-2009-00242694-CU-OE-CXC

**JOINT STIPULATION FOR FILING THE  
SECOND AMENDED COMPLAINT AND  
[PROPOSED] ORDER**

21  
22 Plaintiffs (William Baisley and Ted Portillo ("Plaintiffs")) and Defendants (Bastanchury  
23 Waters Company, Inc., previously dba as Yosemite Waters Company ("Defendants")), by and  
24 through their attorneys of record, hereby stipulate and agree to the following:

25 WHEREAS, the parties have agreed to amend the complaint to add causes of action for  
26 meal and rest period claims, waiting time penalties, and for civil penalties under the Private  
27 Attorney General's Act at Labor Code §2699 ("PAGA"), (collectively, "Amended Claims")  
28 (attached hereto as Exhibit 1 is the "Second Amended Complaint);

1 WHEREAS, the parties have agreed to amend the complaint to address the Court's  
2 concerns regarding an overly broad release of claims, as stated in the Court's July 6, 2011 ruling.

3 WHEREAS, the parties conducted extensive discovery over a two-year period on the  
4 Amended Claims;

5 WHEREAS, the parties engaged in deposition questioning regarding the facts underlying  
6 the Amended Claims;

7 WHEREAS, the Amended Claims are based on the same underlying set of facts explored  
8 in discovery and discussed in settlement negotiations;

9 WHEREAS, Plaintiffs' Counsel intended to amend the complaint to include the  
10 Amended Claims had mediation efforts been unsuccessful;

11 WHEREAS, the parties considered the value of the Amended Claims during mediation  
12 and settlement negotiations;

13 WHEREAS, the parties have agreed to amend the complaint to include such claims;

14 WHEREAS, California has a liberal policy of allowing amendments to pleadings. *Nestle*  
15 *v. Santa Monica* (1972) 6 Cal.3d 920, 939; *see also Mesler v. Bragg Management Co.* (1985) 39  
16 Cal.3d 290, 296;

17 WHEREAS, California allows for the amendment of pleadings "in the furtherance of  
18 justice" up to the time of trial. C.C.P. §§ 473(a)(1) and 576;

19 WHEREAS, amendments that state a new cause of action are generally permitted if based  
20 on the same general set of facts. *Godfrey v. Steinpress* (1982) 128 Cal.App.3d 154, 174;

21 WHEREAS, the liberal policy of allowing amendments prevails when the delay in  
22 seeking amendment has not misled or prejudiced the other party. *Mesler*, 39 Cal.3d at 297, 306;  
23 *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564;

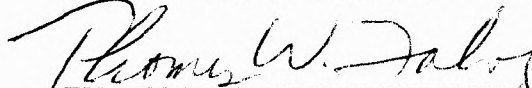
24 WHEREAS, the Court abuses its discretion in denying leave to amend. *Higgins*, (1981)  
25 123 Cal.App.3d 558, 564-565; *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530;

26 WHEREAS, the Amended Claims were the subject of extensive discovery, defendants  
27 have not been prejudiced by the addition of such claims, and the value of the Amended Claims  
28 were included in the settlement amount;

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto,  
2 through their attorneys of record, that for all of the foregoing reasons, good cause exists to amend  
3 the complaint to include meal and rest period claims, waiting time penalties, and civil penalties  
4 under PAGA.

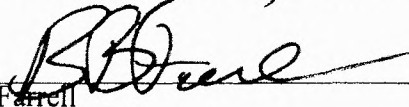
5  
6 Dated: August 24, 2011

LAW OFFICES OF THOMAS W. FALVEY

7   
8 Thomas W. Falvey  
9 Attorneys for Lead Plaintiffs  
WILLIAM BAISLEY and TED PORTILLO

10  
11 Dated: August 24, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

12   
13 Brian Farrell  
14 Attorneys for Defendants  
15 BASTANCHURY WATERS COMPANY, INC. previously  
doing business as YOSEMITE WATERS COMPANY

16 IT IS SO ORDERED.

17  
18 Dated: \_\_\_\_\_

19 Honorable Nancy Wieben-Stock  
20 Judge of the Superior Court

# EXHIBIT 1

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17 YOSEMITE WATERS COMPANY,  
18 BASTANCHURY WATERS  
COMPANY, INC., and DOES 1 through  
19 25, inclusive,

20 Defendants.

[CLASS ACTION]

The Hon. Nancy Wieben Stock  
Dept. No.: CX105

CASE NO. 30-2009-00242694-CU-OE-CXC

**SECOND AMENDED COMPLAINT FOR:**

1. UNPAID WAGES
2. FAILURE TO PAY OVERTIME  
COMPENSATION (CAL. LABOR CODE §§ 510  
and 1194);
3. FAILURE TO FURNISH ACCURATE WAGE  
AND HOUR STATEMENTS (CAL. LABOR  
CODE § 226);
4. UNFAIR COMPETITION (CAL. LABOR  
CODE §§ 17200 *et seq.*);
5. FAILURE TO PROVIDE MEAL & REST  
PERIODS (CAL. LABOR CODE § 226 and 512);
6. WAITING TIME PENALTIES (CAL. LABOR  
CODE §§ 201-203); and
7. PRIVATE ATTORNEYS GENERAL ACT  
(CAL. LABOR CODE §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiffs William Baisley and Ted Portillo (“Plaintiffs”), individually and on behalf of all  
2 similarly situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants YOSEMITE WATERS  
5 COMPANY, BASTANCHURY WATERS COMPANY, INC. (collectively, “Yosemite”), and  
6 DOES 1-25, inclusive (collectively, “Defendants”), on behalf of Plaintiffs and all other  
7 individuals who were employed as non-exempt Route Drivers for Yosemite delivery routes in  
8 California at any time during the four years preceding the filing of this action, and continuing  
9 while this action is pending (“Class Period), and who were denied the benefits and protections  
10 required under the California Labor Code and other statutes and regulations applicable to  
11 employees in the State of California (collectively, “Route Drivers”).

12 2. During the Class Period, Yosemite, in conjunction with other Defendants:

- 13 a. failed to pay wages for all hours worked by the Route Drivers;
- 14 b. failed to pay overtime wages due to the Route Drivers;
- 15 c. failed to provide the Route Drivers with timely and accurate wage and hour  
16 statements;
- 17 d. failed to maintain complete and accurate payroll records for the Route Drivers;
- 18 e. wrongfully withheld wages and compensation due to the Route Drivers;
- 19 f. committed unfair business practices in an effort to increase profits and to gain an  
20 unfair business advantage at the expense of the Route Drivers and the public;
- 21 g. failed to provide meal and rest periods to Route Drivers;
- 22 h. failed to pay Route Drivers all wages due upon involuntary termination or within  
23 72 hours of the voluntary termination; and
- 24 i. violated the California Labor Code and owe civil penalties pursuant to Cal. Labor  
25 Code Section 2699(a).

26 3. The foregoing acts and other acts by Defendants - committed throughout California and  
27 Orange County - violated multiple provisions of the California Labor Code (“Employment  
28 Laws”), violated the applicable Wage Orders issued by California’s Industrial Welfare

1 Commission (“Regulations”), violated California’s Unfair Business Practices Act, California  
2 Business & Professions Code sections 17200 *et seq.*, violated the Private Attorneys General Act,  
3 California Labor Code sections 2698 *et seq.* (“PAGA”), and violated Plaintiffs’ rights and the  
4 rights of the Route Drivers.

5 **JURISDICTION AND VENUE**

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

12 5. The California Superior Court has jurisdiction in this matter because Plaintiffs William  
13 Baisley and Ted Portillo are residents of California, and Defendant Yosemite is qualified to do  
14 business in California and regularly conducts business in California. Further, no federal question  
15 is at issue as the claims are based solely on California law.

16 **THE PARTIES**

17 6. Plaintiff William Baisley is, and at all relevant times was, a competent adult residing in  
18 California. Mr. Baisley brings suit on behalf of himself and all similarly situated individuals  
19 pursuant to California Code of Civil Procedure section 382, and California Business &  
20 Professions Code sections 17200 *et seq.* Mr. Baisley worked as a Yosemite Route Driver in  
21 Orange County, California.

22 7. Plaintiff Ted Portillo is, and at all relevant times was, a competent adult residing in  
23 California. Mr. Portillo brings suit on behalf of himself and all similarly situated individuals  
24 pursuant to California Code of Civil Procedure section 382, and California Business &  
25 Professions Code sections 17200 *et seq.* Mr. Portillo worked as a Yosemite Route Driver in  
26 Orange County, California.

27 8. Defendant Yosemite is, and at all relevant times was, a company which conducts business  
28 throughout the State of California, including in Orange County. Defendants have engaged in

1 unlawful employment practices addressed in this complaint throughout California and in Orange  
2 County.

3 9. Plaintiffs are informed and believe and based thereon allege that Yosemite uniformly  
4 applies its labor staffing guidelines and overtime policies to all of Yosemite's Route Drivers.

5 10. Plaintiffs are currently unaware of the true names and capacities of the defendants sued in  
6 this action by the fictitious names DOES 1 through 25, inclusive, and therefore sues those  
7 defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true  
8 names and capacities of such fictitiously named defendants when they are ascertained. Plaintiffs  
9 are informed and believe and based thereon state that the persons sued herein as DOES are in  
10 some manner responsible for the conduct, injuries and damages herein alleged.

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

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

18 13. Plaintiffs are informed and believe and based thereon allege that Defendants ratified,  
19 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.  
20 Each of the defendants was the agent and/or employee of the others, and the conduct of each  
21 defendant herein alleged was authorized and/or ratified by the others. The conduct of defendant  
22 Yosemite was carried on by and through its authorized agents, including owners, officers,  
23 directors, managers and supervisors.

24 **FACTS**

25 14. During part of the four years preceding the filing of this action, William Baisley was  
26 employed by Defendants as a Route Driver in Orange County, California, and was a non-  
27 exempt/hourly employee under the Employment Laws and Regulations.

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1 15. During part of the four years preceding the filing of this action, Ted Portillo was  
2 employed by Defendants as a Route Driver in Orange County, California, and was a non-  
3 exempt/hourly employee under the Employment Laws and Regulations.

4 16. During the time Plaintiffs were employed by Yosemite, Defendants failed and refused to  
5 pay Plaintiffs for all hours worked (“off-the-clock” work), in violation of the Employment Laws  
6 and Regulations.

7 17. During Plaintiffs’ employment with Yosemite, Plaintiffs were regularly required to work  
8 more than eight hours per day and more than forty hours per workweek. Defendants regularly  
9 failed and refused to compensate Plaintiffs for the overtime hours they worked, in violation of  
10 the Employment Laws and Regulations.

11 18. During Plaintiffs’ employment with Yosemite, Defendants impeded, discouraged, and  
12 dissuaded Plaintiffs from taking rest periods during work shifts over four hours and from taking  
13 30-minute, uninterrupted meal periods during work shifts over five hours, in violation of the  
14 Employment Laws and Regulations.

15 19. During Plaintiffs’ employment with Yosemite, Defendants failed and refused to provide  
16 Plaintiffs with timely and accurate wage and hour statements showing gross hours earned, total  
17 hours worked, all deductions made, net wages earned, the name and address of the legal entity  
18 employing them, accrued vacation, and all applicable hourly rates in effect during each pay  
19 period, as well as the corresponding number of hours worked at each hourly rate.

20 20. Following Plaintiffs’ employment with Yosemite, Defendants failed to pay accrued  
21 wages, including meal and rest period wages and other compensation due within seventy-two  
22 hours to Plaintiffs, in violation of the Employment Laws and Regulations.

23 21. During Plaintiffs’ employment with Yosemite, Defendants wrongfully withheld from  
24 Plaintiffs and failed to pay wages and other compensation which was due for all of the hours they  
25 worked, for overtime work, and as otherwise required pursuant to the Employment Laws and  
26 Regulations.

27 22. Plaintiffs seek restitution and disgorgement of all sums wrongfully obtained by  
28 Defendants through unfair business practices in violation of California’s Business & Professions

1 Code sections 17200 *et seq.*, to prevent the Defendants from benefitting from their violations of  
2 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair  
3 Businesses Act are equitable in nature and are not to be considered damages. Plaintiffs are also  
4 entitled to costs, attorney’s fees, interest and penalties as provided for by the California Labor  
5 Code, the California Business & Professions Code, and the Private Attorneys General Act.

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

12 24. All current and former Route Drivers who were employed in California during the class  
13 period, including Plaintiffs, are putative class members.

14 25. The Route Drivers’ duties and activities during their respective working hours and each  
15 shift are known to and directed by Defendants, and are set and controlled by Defendants.

16 26. During the Class Period, Defendants have routinely failed and refused to compensate  
17 Route Drivers all of the wages they are due (“off-the-clock” work).

18 27. During the Class Period, Route Drivers have been required to work more than eight hours  
19 per day and more than forty hours per workweek. Defendants have routinely failed and refused  
20 to compensate Route Drivers all of the overtime wages they are due.

21 28. During the Class Period, Defendants impeded, discouraged, and dissuaded Route Drivers  
22 from taking rest periods during work shifts over four hours and from taking 30-minute,  
23 uninterrupted meal periods during work shifts over five hours, in violation of the Employment  
24 Laws and Regulations.

25 29. During the Class Period, Defendants have failed and refused to provide Route Drivers  
26 with timely and accurate wage and hour statements showing gross hours earned, total hours  
27 worked, all deductions made, net wages earned, the name and address of the legal entity

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1 employing the Route Drivers, and all applicable hours rates in effect during each pay period and  
2 the corresponding number of hours worked at each hourly rate.

3 30. During the Class Period, Defendants have failed and refused to maintain complete and  
4 accurate payroll records for Route Drivers showing gross hours earned, total hours worked, all  
5 deductions made, net wages earned, the name and address of the legal entity employing the Route  
6 Drivers, and all applicable hours rates in effect during each pay period and the corresponding  
7 number of hours worked at each hourly rate.

8 31. During the Class Period, Defendants failed to pay accrued wages and other compensation  
9 due immediately to each Route Driver who was terminated and failed to pay accrued wages,  
10 including meal and rest period wages and other compensation due within seventy-two hours to  
11 each Route Driver who ended his or her employment, in violation of the Employment Laws and  
12 Regulations.

13 32. During the Class Period, Defendants have wrongfully withheld and failed to pay Route  
14 Drivers wages and other compensation due them for all hours worked, for overtime work, and as  
15 otherwise required pursuant to the Employment Laws and Regulations.

16 33. Plaintiffs seek injunctive relief in the form of an order prohibiting Defendants from  
17 requiring Route Drivers to work without compensation, to work more than eight hours per day,  
18 more than forty hours in any workweek, more than six days consecutively, or more than six days  
19 per workweek, without payment of overtime wages. Plaintiffs also seek payment of overtime  
20 wages and other compensation plus all benefits required pursuant to the Employment Laws and  
21 Regulations, plus all applicable penalties and interest, owed to Route Drivers. Plaintiffs also  
22 seek attorney's fees and costs as provided by statute.

23 34. The proposed class is ascertainable in that its members can be identified using  
24 information contained in Defendants' payroll and personnel records.

25 35. The Route Drivers are so numerous and geographically dispersed throughout California  
26 that joinder of each individual Route Driver would be impracticable, and the disposition of their  
27 claims in a class action, rather than numerous individual actions, will benefit the parties, the  
28 Court and the interests of justice.

1 36. There is a well-defined community of interest in the questions of law and fact involved in  
2 this action because Defendants' failure to pay Route Drivers their wages or afford them the  
3 protections required under the Employment Laws and Regulations affects all Route Drivers.  
4 Common questions of law and fact predominate over questions that affect only individual Route  
5 Drivers because all Route Drivers' duties and activities have been controlled and directed by  
6 Defendants. The predominate questions of law and fact include, but are not limited to:

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

9 b. Did/does Defendants' conduct violate the Employment Laws and Regulations?;  
10 and

11 c. Do/did Defendants' systematic acts and practices violate, *inter alia*, California  
12 Business & Professions Code section 17200 *et seq.* and the Private Attorneys General Act,  
13 California Labor Code sections 2698 *et seq.*

14 37. Plaintiffs' claims are typical of those of the other Route Drivers because all Route Drivers  
15 share the same or similar employment duties and activities and all have been denied the benefits  
16 and protections of the Employment Laws and Regulations in the same manner. As Defendants  
17 have uniformly applied the same labor staffing guidelines and overtime policies to all Route  
18 Drivers, Plaintiffs' claims are typical of the claims of all Route Drivers. Plaintiffs' claims are  
19 also typical because they suffered the same damages as those suffered by all Route Drivers.

20 38. Plaintiffs can fairly and adequately represent and protect the interests of all Route Drivers  
21 in that Mr. Baisley and Mr. Portillo do not have any disabling conflicts of interest which are  
22 antagonistic to those of all other Route Drivers. Plaintiffs seek no relief which is antagonistic or  
23 adverse to the other Route Drivers, and the infringement of their rights and the damages they  
24 have suffered are typical of all other Route Drivers. Plaintiffs' counsel are competent and  
25 experienced in litigating class actions in California based on large employers' violations of the  
26 Employment Laws and Regulations.

27 39. As mentioned above, to the extent that any Route Driver entered into any arbitration  
28 agreement with any defendant and such agreement purports to require arbitration, such

1 agreement is void and unenforceable. Even if such agreement is deemed enforceable, however,  
2 classwide arbitration is appropriate and should be utilized to obtain classwide relief.

3 40. The nature of this action and the nature of laws available to Plaintiffs and the other Route  
4 Drivers in the putative Class make use of the class action a particularly efficient and effective  
5 procedure because:

6 a. For many of the Route Drivers, individual actions or other individual remedies  
7 would be impracticable and litigating individual actions would be too costly;

8 b. The action involves a large corporate employer (Yosemite) and a large number of  
9 individual employees (Plaintiffs and the other Route Drivers), many with relatively small claims  
10 and all with common issues of law and fact;

11 c. If the Route Drivers are forced to bring individual lawsuits, the corporate  
12 defendant would necessarily gain an unfair advantage, the ability to exploit and overwhelm the  
13 limited resources of individual Class members with vastly superior financial and legal resources;

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

15 e. Requiring each Class member to pursue an individual remedy would also  
16 discourage the assertion of lawful claims by current employees of Defendants, who would be  
17 disinclined to pursue an action against their present and/or former employer due to an appreciable  
18 and justified fear of retaliation and permanent damage to their immediate and/or future  
19 employment; and

20 f. Common business practices Plaintiffs experienced are representative of those  
21 experienced by all Route Drivers and can establish the right of all Route Drivers to recover on  
22 the alleged claims.

23 **FIRST CAUSE OF ACTION**

24 **(Failure to Pay Compensation For All Hours Worked - By Plaintiffs Individually and on**  
25 **Behalf of All Route Drivers)**

26 41. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the  
27 allegations contained in this complaint, and incorporate them by reference into this cause of

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1 action as though fully set forth herein, excepting those allegations which are inconsistent with  
2 this cause of action.

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

7 43. The Defendants' conduct described in this Complaint violates, among other things, Labor  
8 Code sections 216 and 1194.

9 44. Defendants failed to pay Plaintiffs and the Route Drivers for all of the actual hours  
10 worked. Defendants knew or should have known that Plaintiffs and the Route Drivers were  
11 working these hours.

12 45. Plaintiffs and the Route Drivers are entitled to recover the unpaid balance of  
13 compensation Defendants owe Plaintiffs and the Route Drivers, plus interest on that amount, and  
14 reasonable attorney fees and costs of this suit pursuant to Labor Code section 1194. Plaintiffs  
15 and the Route Drivers are also entitled to additional penalties and/or liquidated damages pursuant  
16 to statute.

17 46. Defendants committed the acts knowingly and willfully, with the wrongful and deliberate  
18 intention of injuring Plaintiffs and the Route Drivers, from improper motives amounting to  
19 malice, and in conscious disregard of Plaintiffs' and the Route Drivers' rights. Plaintiffs and the  
20 Route Drivers are thus entitled to recover nominal, actual, compensatory, punitive, and  
21 exemplary damages in amounts according to proof at time of trial, but in amounts in excess of  
22 the jurisdiction of this Court.

23 **SECOND CAUSE OF ACTION**

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

26 47. As a separate and distinct cause of action, Plaintiffs complain and reallege all of the  
27 allegations contained in this complaint, and incorporate them by reference into this cause of

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1 action as though fully set forth herein, excepting those allegations which are inconsistent with  
2 this cause of action.

3 48. During the Class Period, Defendants have routinely required Route Drivers, including  
4 Plaintiffs, to work over eight hours in a day and over forty hours in a workweek. However,  
5 Defendants have failed and refused to pay the Route Drivers, including Plaintiffs, the overtime  
6 compensation required by the Employment Laws and Regulations.

7 49. The Route Drivers, including Plaintiffs, have been deprived of their rightfully earned  
8 overtime compensation as a direct and proximate result of Defendants' policies and practices and  
9 Defendants' failure and refusal to pay that compensation. The Route Drivers, including  
10 Plaintiffs, are entitled to recover such amounts, plus interest, attorney's fees and costs.

11 **THIRD CAUSE OF ACTION**

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **(For Unfair Competition - By Plaintiffs Individually and on Behalf of All Route Drivers:**

3 **California Business & Professions Code §§ 17200 *et seq.*)**

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

8 54. Defendants' violations of the Employment Laws and Regulations as alleged in this  
9 Complaint, include Defendants'

10 a. Failure and refusal to pay Route Drivers, including Plaintiffs, wages for all hours  
11 worked;

12 b. Failure and refusal to pay Route Drivers, including Plaintiffs, overtime wages;

13 c. Failure and refusal to provide Route Drivers, including Plaintiffs, with timely and  
14 accurate wage and hour statements;

15 d. Failure to maintain complete and accurate payroll records for Route Drivers,  
16 including Plaintiffs; and

17 e. Failure and refusal to provide Route Drivers, including Plaintiffs, with meal and  
18 rest periods;

19 f. Failure and refusal to pay accrued wages and other compensation due immediately  
20 to each Route Driver who was terminated and failure to pay accrued wages and other  
21 compensation due within seventy-two hours to each Route Driver who ended his or her  
22 employment,

23 all of which constitute unfair business practices in violation of the California Business &  
24 Professions Code section 17200 *et seq.*

25 55. Defendants have avoided payment of wages, overtime wages and other benefits as  
26 required by the California Labor Code, the California Code of Regulations, and applicable  
27 Industrial Welfare Commission Wage Orders. Further, Defendants have failed to record, report

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1 and pay the correct sums of assessment to the State authorities under the California Labor Code  
2 and other applicable regulations.

3 56. As a result of Defendants' unfair business practices, Defendants have reaped unfair  
4 benefits and illegal profits at the expense of Route Drivers, including Plaintiffs, and members of  
5 the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to  
6 Route Drivers, including Plaintiffs.

7 57. Defendants' unfair business practices entitles Plaintiffs to seek preliminary and  
8 permanent injunctive relief including, but not limited to, orders that Defendants account for,  
9 disgorge and restore to the Route Drivers, including Plaintiffs, the wages and other compensation  
10 unlawfully withheld from them.

11 **FIFTH CAUSE OF ACTION**

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

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

18 59. During the Class Period, Defendants have routinely impeded, discouraged, and dissuaded  
19 Route Drivers, including Plaintiffs, from taking meal and rest periods during their work shifts,  
20 and have failed to compensate Route Drivers, including Plaintiffs, for those meal and rest  
21 periods, as required by California Labor Code section 226.7 and the other applicable sections of  
22 the Employment Laws and Regulations.

23 60. The Route Drivers, including Plaintiffs, have been deprived of their rightfully  
24 earned compensation for meal and rest periods as a direct and proximate result of Defendants'  
25 policies and practices and Defendants' failure and refusal to pay that compensation. The Route  
26 Drivers, including Plaintiffs, are entitled to recover such amounts pursuant to California Labor  
27 Code section 226.7(b), plus interest, attorney's fees and costs.

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1 **SIXTH CAUSE OF ACTION**

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

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

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **(For Civil Penalties Under the Private Attorneys General Act- By Plaintiffs Individually**  
17 **and on Behalf of All Route Drivers: California Labor Code §§ 2698 *et seq.*)**

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

22 65. Defendants' violations of the Employment Laws and Regulations as alleged in this  
23 Complaint, include Defendants'

24 a. Failure and refusal to pay Route Drivers, including Plaintiffs, wages for all hours  
25 worked;

26 b. Failure and refusal to pay Route Drivers, including Plaintiffs, overtime wages;

27 c. Failure and refusal to provide Route Drivers, including Plaintiffs, with timely and  
28 accurate wage and hour statements;

1 d. Failure to maintain complete and accurate payroll records for Route Drivers,  
2 including Plaintiffs; and

3 e. Failure and refusal to provide Route Drivers, including Plaintiffs, with meal and  
4 rest periods;

5 f. Failure and refusal to pay accrued wages and other compensation due immediately  
6 to each Route Driver who was terminated and failure to pay accrued wages and other  
7 compensation due within seventy-two hours to each Route Driver who ended his or her  
8 employment.

9 66. Pursuant to Labor Code Section 2699(a) Plaintiffs seek to recover civil penalties, as  
10 otherwise provided by statute, for which Defendants are liable as a result of their violations of the  
11 following Labor Code Sections: For violations of California Labor Code, including section 201-  
12 203, 216, 226, 510, 512, 1194 and provisions of the applicable Industrial Wage Orders, Plaintiffs  
13 are entitled to penalties pursuant to Labor Code Sections 210 and 558; all in amounts to be  
14 proven at trial.

15 **CLASS ACTION ALLEGATIONS**

16 67. The duties and business activities of the proposed class action “Class Members” were  
17 essentially the same as the duties and activities of the Plaintiffs described above. At all times  
18 during the Class Period, all of the Class members were employed in the same or similar job as  
19 the Plaintiffs and were paid in the same manner and under the same standard employment  
20 procedures and practices as the Plaintiffs.

21 68. The members of the Class, like the Plaintiffs, all were subject to the same unlawful  
22 policy or plan to have them perform “off-the-clock” uncompensated work or to not pay them  
23 overtime premium pay.

24 69. During the Class Period, Defendants were fully aware that Plaintiffs and the members of  
25 the Class were performing “off-the-clock” unpaid work or not being paid overtime premium pay  
26 in violation of the provisions of the Labor Code.

27 70. Defendants’ violations of the Labor Code were repeated, willful and intentional.

28 ///

1 71. The Plaintiffs and the members of the Class have been damaged by said violations of  
2 the Labor Code.

3 72. Defendants are liable to the Plaintiffs and the members of the Class for the full amount of  
4 all their unpaid overtime compensation, plus interest, plus the attorneys fees and costs of the  
5 Plaintiffs and members of the Class.

6 73. While the exact number of Class Members is unknown to Plaintiffs at the present time,  
7 based on information and belief, there are more than 40 such persons. Thus, a class action is the  
8 most efficient mechanism for resolution of the claims of the members of the Class.

9 74. In addition, a class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy since the damages suffered by individual members of the Class  
11 may be relatively small, and the expense and burden of individual litigation would make it  
12 impossible for such Class Members individually to redress the wrongs done to them. Moreover,  
13 because of the similarity of the Class members' claims, individual actions would present the risk  
14 of inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

15 75. Plaintiffs are currently unaware of the identities of all the members of the Class.  
16 Accordingly, Defendants should be required to provide to Plaintiffs a list of all persons employed  
17 as a Route Driver beginning four years prior to the filing of this Complaint until the present,  
18 stating their last known addresses and telephone numbers, so that Plaintiffs can give such Class  
19 Members notice of the pendency of this action and an opportunity to make an informed decision  
20 about whether to participate in it.

21 76. The Class that Plaintiffs seek to represent is defined as follows:

22 All non-exempt Route Drivers who are or have been employed by Defendants in the State  
23 of California at any time during the four years prior to the commencement of this suit.

24 77. There is a well-defined community of interest in the litigation and the proposed Class is  
25 easily ascertainable:

26 a. Numerosity: While the precise number of Class Members has not been  
27 determined at this time, Plaintiffs are informed and believe that Defendants have employed in  
28 excess of 40 persons as Route Drivers in California during the Class Period.

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