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11 *and all others similarly situated*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF ALAMEDA

14 JOSELITO R. DELA CRUZ and JEFF  
15 PANGILINAN, on behalf of themselves  
16 and all others similarly situated,

17 Plaintiffs,

18 vs.

19 ADDISON LEE INC., AMERICAN  
20 LIMOUSINE LLC, A T H  
21 TRANSPORT LLC, and DOES 1  
22 through 50, inclusive,

23 Defendants.

CASE NO.: RG19021433

**FOURTH AMENDED CLASS AND  
REPRESENTATIVE ACTION COMPLAINT**

- 24 (1) **Failure to Pay Minimum Wage in Violation  
of Cal. Lab. Code Sections 223, 1194, et seq.,  
IWC Wage Order No. 9, Minimum Wage  
Order MW-2019;**
- 25 (2) **Failure to Pay Minimum Wage in Violation  
of S.F. Admin. Code Section 12R.1, et seq.;**
- 26 (3) **Failure to Pay Minimum Wage in Violation  
of Oakland Code Section 5.92.010, et seq.;**
- 27 (4) **Failure to Pay Minimum Wage in Violation  
of San Jose Code Section 4.100.010, et seq.;**
- 28 (5) **Failure to Compensate for All Hours Worked  
in Violation of Cal. Lab. Code Sections 223  
and IWC Wage Order No. 9;**
- (6) **Failure to Pay Overtime in Violation of Cal.  
Lab. Code Sections 510, 558, 1194 et. seq.,  
1197.1, 1198, and IWC Wage Order No. 9;**
- (7) **Failure to Compensate for Split Shifts  
Worked in Violation of IWC Wage Order  
No. 9;**
- (8) **Failure to Reimburse Business Expenses in  
Violation of Cal. Lab. Code Section 2802;**
- (9) **Failure to Provide Timely, Accurate,  
Itemized Wage Statements in Violation of  
California Labor Code Sections 226, 1174,  
and IWC Wage Order No. 9;**

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**(10) Failure to Pay Earned Wages Upon Discharge, Waiting Time Penalties in Violation of California Labor Code Sections 200-203;**

**(11) Unlawful and/or Unfair Business Practices in Violation of California Business & Professions Code Section 17200, *et seq.***

**(12) Civil Penalties Under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.***

**(13) Failure to Pay Minimum Wage and Overtime in Violation of the Fair Labor Standards Act, 29 U.S.C. Sections 206-207.**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Joselito R. Dela Cruz and Jeff Pangilinan, on behalf of themselves, as  
2 representatives pursuant the Private Attorneys General Act of 2004 (“PAGA”), and on behalf  
3 of all others similarly situated, complain against Defendants Addison Lee Inc. (hereafter,  
4 “Addison Lee”), American Limousine LLC (“hereafter, “American Limousine”), and A T H  
5 Transport LLC (hereafter “A T H Transport”), and DOES 1 through 50, inclusive, as follows:

6 **PRELIMINARY STATEMENT**

7  
8 1. This is a class, collective, and representative action for relief from Defendants’  
9 noncompliance with state, federal, and local wage and hour laws. Addison Lee and its agents and  
10 affiliates are in the luxury transportation business. Plaintiffs are informed and believe and thereon  
11 allege that, unless otherwise indicated, each Defendant was the agent and/or employee of every  
12 other Defendant within the course and scope of said agency and/or employment, with the  
13 knowledge and/or consent of said Defendant.

14 2. Defendants utilized Plaintiffs and similarly situated Chauffeurs to transport  
15 customers. Until July 2019, Chauffeurs, employees of Defendants, were paid hourly and by  
16 customer tips. In July 2019, Defendants began paying Chauffeurs an hourly wage only, and on  
17 information and belief, began withholding from Chauffeurs tips paid by customers for  
18 Chauffeurs’ services. Plaintiffs challenge Defendants’ failure to adequately compensate Plaintiffs  
19 by failing to pay all tips earned, requiring Plaintiffs to work without pay, failing to pay Plaintiffs  
20 minimum wages for time worked, failing to pay Plaintiffs’ overtime including by altering  
21 Plaintiffs’ logged time to deny them double-time wages, failing to indemnify Plaintiffs for  
22 expenditures they incurred in direct consequence of the discharge of their work duties, failing to  
23 pay all tips earned, and failing to provide accurate itemized wage statements as required by  
24 California law. These violations occurred throughout Plaintiffs’ employment with Defendants.

25 3. Plaintiffs bring claims under California and federal law for unpaid compensation  
26 for hours worked, unpaid minimum wages, unpaid overtime wages, business expenses and losses,  
27 unpaid tips, restitution, disgorgement, statutory penalties, interest, and attorneys’ fees and costs.  
28 The California class claims in this action are brought pursuant to California Code of Civil

1 Procedure (“CCP”) section 382 on behalf of Chauffeurs employed by Defendants in California  
2 (“Class Members”) during the period commencing four years prior to the filing of this action  
3 through the entry of final judgment in this action (the “Class Period”). The PAGA representative  
4 claims in this action are brought pursuant to PAGA. The federal collective action claims are  
5 brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), on behalf of  
6 Chauffeurs employed by Defendants in California during the period commencing three years  
7 prior to the filing of this action through the entry of final judgment in this action (“Collective  
8 Period”).

### 9 **THE PARTIES**

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11 4. Plaintiff Jeff Pangilinan was a Chauffeur for Defendants from approximately  
12 October 2017 until around September 24, 2019. Throughout his tenure, he was based out of  
13 Defendants’ South San Francisco location, performing services for Defendants throughout the  
14 San Francisco Bay Area, including substantial work in San Francisco, Oakland, and San Jose.  
15 Mr. Pangilinan signed a consent to join the Fair Labor Standards Act Collective in this matter,  
16 pursuant to 29 U.S.C. Section 216(b). The signed consent form is attached hereto as Exhibit A.

17 5. Plaintiff Joselito Dela Cruz was a Chauffeur for Defendants from approximately  
18 June 2018 until around September 24, 2019. Throughout his tenure, he was based out of  
19 Defendants’ South San Francisco location, performing services for Defendants throughout the  
20 San Francisco Bay Area, including substantial work in San Francisco, Oakland, and San Jose.  
21 Mr. Dela Cruz signed a consent to join the Fair Labor Standards Act Collective in this matter,  
22 pursuant to 29 U.S.C. Section 216(b). The signed consent form is attached hereto as Exhibit B.

23 6. Defendant Addison Lee Inc. is a Delaware corporation. Addison Lee provided  
24 luxury limousine transportation services and has offices throughout California, the United States,  
25 and in more than 100 locations throughout the world. Addison Lee utilized an internet application  
26 to interface with customers, who were able to schedule rides through their smartphones or on  
27 Addison Lee’s website. A significant portion of Addison Lee’s rides were made to or from  
28 airports, including the San Francisco International Airport, Oakland International Airport, and

1 San Jose International Airport. Upon information and belief, on around September 24, 2019,  
2 Defendant Addison Lee ceased operations in California and laid off all California-based  
3 Chauffeurs. At all times relevant to this action, Addison Lee was an employer covered by the  
4 California Labor Code and the IWC Wage Order No. 9.

5 7. Defendant American Limousine LLC is a New Jersey limited liability corporation.  
6 On information and belief, American Limousine is a wholly owned subsidiary of Addison Lee.  
7 Defendant Addison Lee provided its luxury limousine services in California, including San  
8 Francisco, Oakland, and San Jose, through subsidiary American Limousine. At all times relevant  
9 to this action, American Limousine LLC was an employer covered by the California Labor Code  
10 and the IWC Wage Order No. 9.

11 8. Defendant A T H Transport LLC is a corporation that is registered to do business  
12 in California. A T H Transport provides luxury limousine transportation services and has offices  
13 in California and New Jersey. A T H Transport's business address is 16521 Arminta Street, Van  
14 Nuys, CA 91406-1745. A T H Transport is the employer name listed at the top of Plaintiff  
15 Pangilinan's employee pay history statements. At all times relevant to this action, A T H  
16 Transport was an employer covered by the California Labor Code and the IWC Wage Order No.  
17 9.

18 9. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their  
19 true names and capacities are unknown to Plaintiffs. When their true names and capacities are  
20 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities  
21 herein. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously-named  
22 defendants is responsible in some manner for the occurrences herein alleged, and that the damages  
23 sustained by Plaintiffs and the Class and Collective Members herein alleged were proximately  
24 caused by Doe Defendants.

25 10. Plaintiffs are informed, believe, and thereon allege that each of the Defendants  
26 herein was, at all times relevant to this action, the joint venturer of the remaining Defendants and  
27 was acting within the course and scope of the relationship. Plaintiffs are further informed, believe,  
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1 and thereon allege, that each of the Defendants herein gave consent to, ratified and authorized the  
2 acts alleged herein to the remaining Defendants.

3 **VENUE**

4 11. Venue in Alameda County is proper under CCP section 395.5, because Defendants  
5 are each an association, corporation, business entity, or individual, and Defendants conduct  
6 substantial business which gives rise to Defendants' liability, and hold significant contacts, and  
7 employs Plaintiffs and some Class and Collective Members to perform work within Alameda  
8 County. The relief requested is within the jurisdiction of this Court.

9 **GENERAL ALLEGATIONS**

10 12. Defendants employed, upon information and belief, Plaintiffs and dozens of Class  
11 Members as Chauffeurs in California (hereafter, "Covered Positions") during the Class Periods.

12 13. Chauffeurs were Defendants' employees, and received W-2 tax forms.

13 14. Upon information and belief, all employees in Covered Positions were paid on an  
14 hourly basis and were paid tips from customers.

15 15. During the Class Periods, upon information and belief, Defendants employed  
16 dozens of Chauffeurs who operate out of their California facilities to timely pick-up, transport,  
17 and deliver passengers to and from locations throughout California, including the San Francisco  
18 Bay Area. Chauffeurs picked up and dropped off passengers in the East Bay, South Bay, North  
19 Bay, and San Francisco. A substantial portion of Chauffeurs' work involved transporting  
20 customers to and from the airports in San Francisco, Oakland, and San Jose.

21 16. All Class and Collective Members were subject to the same policies in violation  
22 of California law. Plaintiffs are informed and believe that Defendants knowingly failed to  
23 properly compensate Plaintiffs and Class and Collective Members for all hours worked, failed to  
24 pay for all wages earned and due (including, but not necessarily limited to, minimum, regular,  
25 and overtime wages), failed to pay all tips earned, and failed to reimburse business expenses,  
26 thereby enjoying a competitive edge over other companies within its industry.

27 17. Upon information and belief, while working for Defendants, Chauffeurs earned  
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1 less than the minimum wage provided by the State of California, City of San Francisco, City of  
2 Oakland, and City of San Jose.

3 18. At all times relevant to this action, Defendants' regional office in the Bay Area  
4 was located in South San Francisco.

5 19. Upon information and belief, Chauffeurs received assignments from distant  
6 dispatch centers, including one in Los Angeles.

7 20. Defendants gave assignments that cause Chauffeurs to work several hours in many  
8 municipalities. In each of several weeks, Plaintiff Pangilinan worked for more than two hours in  
9 San Francisco, Oakland, and/or San Jose, including driving, picking up, dropping off, and waiting  
10 for customers. By way of example, in or around October 2018, Plaintiff Pangilinan worked for  
11 more than two hours a day for three consecutive days in San Francisco. On another day around  
12 October 2018, Plaintiff Pangilinan worked for more than two hours in San Jose. Plaintiff  
13 Pangilinan worked in Oakland on several occasions in or around January 2019 for more than two  
14 hours. These instances are non-exhaustive examples of work Plaintiff Pangilinan performed for  
15 Defendants in these locations.

16 21. Likewise, in each of several weeks, Plaintiff Dela Cruz worked more than two  
17 hours in San Francisco, Oakland, and/or San Jose. Most weeks, he spent over two hours picking  
18 up or dropping off clients in San Francisco on behalf of Defendants, including multiple trips  
19 transporting clients from San Francisco International Airport to downtown San Francisco and  
20 vice versa. In late 2018, Plaintiff Dela Cruz was assigned to pick up a customer from Oakland  
21 International Airport and transport the client to the Oakland Convention Center, wait for the  
22 customer's event to end, then return the customer to the airport. Also in late 2018, Plaintiff Dela  
23 Cruz was assigned to pick up a customer from San Jose International Airport and transport the  
24 client to the San Jose Convention Center, wait for the customer's event to end, then return the  
25 customer to the airport. These instances represent non-exhaustive examples of work Plaintiff Dela  
26 Cruz performed for Defendants in these locations.

27 22. Defendants knowingly failed to implement a policy or practice that would allow  
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1 Chauffeurs to perform their essential job functions without using their personal cell phones.  
2 Defendants do not provide Chauffeurs with cell phones, nor do they compensate Chauffeurs for  
3 the on-the-job use of their personal cell phones and cell phone plans. Dispatch contacts  
4 Chauffeurs with assignments via Chauffeurs' personal cell phones. If a Chauffeur did not use a  
5 cell phone for work, the Chauffeur would not be able to receive assignments from dispatch and  
6 therefore would not be able to perform work duties.

7 23. Chauffeurs frequently worked more than eight or 12 hours in a day.

8 24. Upon information and belief, all Chauffeurs recorded their work hours with  
9 Defendants through a mobile online application. Defendants provided Chauffeurs with electronic  
10 tablets to record their hours.

11 25. Chauffeurs were directed to clock in on the mobile online application no more  
12 than 15 minutes before picking up a customer. Chauffeurs were not permitted to clock in earlier  
13 even when driving to a customer more than 15 minutes away, in which event Chauffeurs were  
14 made to clock in en route. Chauffeurs were not permitted to clock in any earlier than 15 minutes  
15 before picking up their first customer of the shift, regardless of how long it took to drive to the  
16 pickup location. Chauffeurs were directed to clock out immediately upon dropping off the final  
17 customer of the shift and were not credited for required driving time that followed. For instance,  
18 on several occasions throughout 2018, Plaintiff Pangilinan transported customers to downtown  
19 San Francisco, then was required to clock out while he drove to San Francisco International  
20 Airport to pick up his next scheduled customer. For those trips, Plaintiff Pangilinan was not  
21 compensated for his hours for the amount of time over 15 minutes during which he drove from  
22 downtown San Francisco to the San Francisco airport for his next assignment.

23 26. Starting on or around March 2019, Defendants implemented new policies  
24 requiring Chauffeurs to park company vehicles in a lot at Defendants' South San Francisco office  
25 at the end of the workday, and retrieve the vehicles at the start of the workday. Defendants did  
26 not compensate Chauffeurs for the time over 15 minutes that it takes to drive from the South San  
27 Francisco lot to their first assignments. Similarly, Defendants did not compensate Chauffeurs for  
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1 time spent driving from the last customer drop-off location back to the South San Francisco lot  
2 to deposit the company vehicle.

3 27. If a Chauffeur attempted to clock in at the time they picked up the company vehicle  
4 and more than 15 minutes before a scheduled pick-up time, or clock in after the Chauffeur's final  
5 drop-off for the day, the Chauffeur risked reprimand. Plaintiff Pangilinan was verbally  
6 reprimanded by Defendants for violating this policy as recently as around February 2019. Around  
7 early April 2019, Plaintiff Dela Cruz was verbally reprimanded by Defendants for violating this  
8 policy and was told that if he did not clock in or out according to the policy, "You don't belong  
9 here," or words to that effect.

10 28. Chauffeurs frequently transported customers to and from meetings, conventions,  
11 or other events. In these instances, Chauffeurs were required to wait for the event to end before  
12 retrieving the customer. However, Defendants instructed Chauffeurs to clock out while waiting  
13 for a meeting to end. This policy and practice caused Chauffeurs to work off the clock. Further,  
14 Defendants failed to pay Chauffeurs a split-shift premium as required by California law.

15 29. For example, one workday, in or around October 2018, Defendants assigned  
16 Plaintiff Jeff Pangilinan to pick up a customer in Santa Rosa and drive the customer to a meeting  
17 in San Jose. Plaintiff Pangilinan clocked out and waited for about six hours for the meeting to  
18 end before clocking back in and driving the customer back to Santa Rosa. Defendants did not  
19 compensate him for the time he was required to wait for the customer's meeting to end.

20 30. In late 2018, Plaintiff Dela Cruz transported a client to the Oakland Convention  
21 Center, where he was required to wait until the customer's event ended, then transport the  
22 customer to the airport. Also in late 2018, Plaintiff Dela Cruz transported a client to the San Jose  
23 Convention Center, where he was required to wait until the customer's event ended, then transport  
24 the customer to the airport. Plaintiff Dela Cruz was required to clock out while he was waiting  
25 for the customers' events to end. As a result, Plaintiff Dela Cruz was not compensated for all  
26 hours worked on those days.

27 31. If a Chauffeur attempted to log time during which they waited for a meeting to  
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1 end, temporarily leave the vehicle, or drive to another location of their choosing while they  
2 waited, they risked reprimand.

3 32. Defendants intentionally implemented these policies requiring Chauffeurs to work  
4 for Defendants without compensation, and Defendants imposed disciplinary measures on  
5 Chauffeurs who attempted to record the hours during which Defendants controlled Chauffeurs'  
6 activities.

7 33. Although Defendants compensated Chauffeurs time-and-a-half for recorded  
8 overtime hours up to 12 hours in a day, they frequently did not compensate Chauffeurs for double-  
9 time overtime when they work more than 12 hours in a day. Instead, Defendants altered  
10 Chauffeurs' time logs, rearranging the hours so as to prevent any one workday from exceeding  
11 12 hours. For instance, when Plaintiff Pangilinan worked for 17 hours a day on three consecutive  
12 days in or around October 2018, Defendants moved several hours from the days on which he  
13 worked 17 hours to other days that week when he had worked fewer than 12 hours. Similarly, on  
14 multiple days in around March 2019, Plaintiff Dela Cruz worked more than 12 hours, but  
15 Defendants moved time from those days to days on which Plaintiff Dela Cruz worked less than  
16 12 hours. This practice intentionally denied double time compensation to which Chauffeurs are  
17 entitled under California law.

18 34. Chauffeurs were further compensated by gratuity from customers. Customers left  
19 tips for their Chauffeur through a mobile online application. According to the online mobile  
20 application and Defendant Addison Lee's website, 100% of the tip was paid to the driver. Upon  
21 information and belief, until July 2019, Defendants retained a portion of at least some tips, and  
22 the compensation Chauffeurs received from customer tips was smaller than the tipped amount.  
23 Sometime in July 2019, on information and belief, Defendants stopped passing on any portion of  
24 customers' tips to Chauffeurs. In this way, Defendants knowingly denied Chauffeurs  
25 compensation.

26 35. Chauffeurs' paystubs did not accurately report Chauffeurs' compensation.  
27 Chauffeurs received pay stubs that did not include all tips earned, all hours actually worked, and  
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1 all wages actually earned.

2 36. Chauffeurs were not granted access to their pay information except through their  
3 Defendants-issued electronic tablet.

4 37. On around September 24, 2019, Defendants ceased operations in California and  
5 laid off all California-based Chauffeurs.

6 38. Defendants' conduct, as set forth in this Complaint, was willful. Defendants  
7 operated under a scheme that caused significant damages to Plaintiffs, other aggrieved  
8 employees, and Class and Collective Members.

9 **CLASS ACTION ALLEGATIONS**

10 39. Plaintiffs bring all claims alleged herein under California law as a Class on behalf  
11 of all persons who worked in California during the time period covered herein as Chauffeurs for  
12 the corporate Defendants. Plaintiffs seek to pursue their claims on behalf of the following Class:

- 13
- 14 • All persons who worked for Defendants in the State of California as a Chauffeur,  
15 Driver, or in a similar or related position, at any time during the period  
16 commencing four years prior to the filing of this action through the entry of final  
17 judgment in this action.

18 40. This Class also includes the following subclasses:

- 19 • those Chauffeurs who worked for Defendants within one year prior to the filing of  
20 this action through the entry of final judgment in this action (“Wage Statement  
21 Subclass”);
- 22 • those Chauffeurs who performed work for Defendants within the city of San  
23 Francisco, California, for at least two hours during at least one week, within four  
24 years prior to the filing of this action through the entry of final judgment in this  
25 action (“San Francisco Subclass”);
- 26 • those Chauffeurs who performed work for Defendants within the city of Oakland,  
27 California, for at least two hours during at least one week, within four years prior  
28 to the filing of this action through the entry of final judgment in this action

1 (“Oakland Subclass”); and

- 2 • those Chauffeurs who performed work for Defendants within the city of San Jose,  
3 California, for at least two hours during at least one week, within four years prior  
4 to the filing of this action through the entry of final judgment in this action (“San  
5 Jose Subclass”).

6 41. Defendants and their officers and directors are excluded from any class or subclass  
7 defined in the preceding paragraphs.

8 42. The class claims herein have been brought and may properly be maintained as a  
9 class action under CCP section 382 because there is a well-defined community of interest among  
10 Class Members with respect to the claims asserted herein and the proposed Class is easily  
11 ascertainable. The Class and Subclasses defined herein satisfy all class action requirements.

12 43. Numerosity: The Proposed Class is so numerous that joinder of all members is  
13 impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the  
14 relevant time period, Defendants employed dozens of people who are geographically dispersed  
15 and who satisfy the definition of the Class Members. The names and addresses of the Class  
16 Members are available to the Defendants. Notice can be provided to Class Members via first-  
17 class mail using techniques and a form of notice similar to those customarily used in class action  
18 lawsuits of this nature.

19 44. Typicality: Plaintiffs’ claims are typical of the Class Members. Plaintiffs, like  
20 other Class Members, were subjected to Defendants’ common, unlawful policies, practices, and  
21 procedures. The claims of Plaintiffs are typical of the claims of the Chauffeurs who worked for  
22 Defendants. Defendants’ unlawful practices described here were applied to Chauffeurs employed  
23 throughout California in the same or highly similar manner as to Plaintiffs. The claims of  
24 Plaintiffs are typical of the claims of the Chauffeurs who worked for Defendants within the last  
25 year (Wage Statement Subclass). Plaintiffs’ positions at the company are typical of those of other  
26 Class Members. Defendants’ common course of unlawful conduct caused Plaintiffs and similarly  
27 situated Class Members, including the members of the Subclasses, to sustain the same or similar  
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1 injuries and damages caused by the same practices of Defendants. Plaintiffs' claims are thereby  
2 representative of and co-extensive with the claims of the Class Members and the Sub-Classes.

3 45. Adequacy: Plaintiffs are both members of the Class, do not have any conflicts of  
4 interest with other Class Members, and will prosecute the case vigorously on behalf of the Class.  
5 Plaintiffs will fairly and adequately protect the interests of the members of the Class Members  
6 and the Subclasses. Plaintiffs have retained counsel competent and experienced in complex class  
7 actions, and California employment litigation. Plaintiffs are not subject to any individual defenses  
8 unique from those conceivably applicable to the Class as a whole. Plaintiffs anticipate no  
9 management difficulties in this litigation.

10 46. Commonality: There are questions of law and fact common to Plaintiffs and the  
11 Class Members that predominate over any questions affecting only individual members of the  
12 class. These common questions of law and fact include, without limitation:

- 13 (a) Whether the Class Members have necessarily incurred employment-  
14 related expenses and losses in carrying out their duties for Defendants;
- 15 (b) Whether Defendants have failed to indemnify Class Members for  
16 their necessary employment-related expenses and losses in violation of  
17 California Labor Code section 2802;
- 18 (c) Whether Defendants' failure to indemnify Class Members for their  
19 necessary employment-related expenses and losses constitutes an unlawful,  
20 unfair, and/or fraudulent business practice under California Business &  
21 Professions Code section 17200 *et seq.*;
- 22 (d) Whether Defendants failed to pay all tips earned by Class Members,  
23 in violation of California law;
- 24 (e) Whether Defendants' failure to pay all tips earned by Class  
25 Members' constitutes an unlawful, unfair, and/or fraudulent business  
26 practice under California Business & Professions Code section 17200 *et*  
27 *seq.*
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(f) Whether Defendants have required, encourage, or permitted Class Members to work in excess of 12 hours per day;

(g) Whether Defendants knew or should have known that its Class Members regularly worked over 12 hours per day;

(h) Whether Defendants violated IWC Wage Order No. 9, § 4 and California Labor Code section 1194 *et seq.* by their failure to pay Class Members minimum wage for all hours worked;

(i) Whether Defendants’ failure to pay Class Members minimum wages for all hours worked constitutes an unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code section 17200 *et seq.*;

(j) Whether Defendants have failed to pay its Class Members overtime wages for time worked in excess of 12 hours per day;

(k) Whether Defendants violated IWC Wage Order No. 9, § 3 and California Labor Code sections 510 and 1194 by their failure to pay Class Members overtime compensation;

(l) Whether Defendants’ failure to pay overtime compensation to Class Members constitutes and unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code section 17200 *et seq.*;

(m) Whether Defendants knowingly and intentionally failed to provide Wage Statement Subclass Members with an itemized statement showing tips earned, all hours worked, and/or all wages due for each pay period, as required by California Labor Code section 226 and IWC Wage Order No. 9, § 7;

(n) Whether Defendants’ failure to provide an itemized statement

1 showing tips earned, all hours worked, and/or all wages due for each pay  
2 period, with each payment of wages constitutes an unlawful, unfair, and/or  
3 fraudulent business practice under California Business & Professions Code  
4 section 17200 *et seq.*;

5 (o) Whether Defendants’ failure to compensate Class Members with  
6 split shift premiums constitutes a violation of IWC Wage Order No. 9, §  
7 4(C);

8 (p) Whether Defendants’ failure to compensate Class Members with  
9 all wages owed upon discharge constitutes a violation of California Labor  
10 Code Sections 201-203; and

11 (q) The proper formula for calculating restitution, damages, and other  
12 statutory penalties owed to Plaintiffs and the Class alleged herein.

13 47. This action is appropriate and practical as a class action because the prosecution  
14 of individual actions for each Class Member would likely result in inconsistent and varying  
15 rulings that could and likely would impede the interests of other Class Members in protecting  
16 their rights, as well as potentially establishing incompatible patterns of conduct for Defendants.

17  
18 **COLLECTIVE ACTION ALLEGATIONS**

19 48. Plaintiffs bring all claims alleged herein under federal law as a Collective on  
20 behalf of all persons who worked in California during the time period covered herein as  
21 Chauffeurs for the corporate Defendants. Plaintiffs seek to pursue their claims on behalf of the  
22 following Collective:

- 23 • All persons who worked for Defendants in the State of California as a  
24 Chauffeur, Driver, or in a similar or related position, at any time during the  
25 period commencing three years prior to the filing of this action through the  
26 entry of final judgment in this action.

1           49. Upon information and belief, and based on the facts previously alleged, Defendants  
2 suffered and permitted Plaintiffs and the Collective to work without appropriate minimum wage  
3 compensation.

4           50. Upon information and belief, and based on the facts previously alleged, Defendants  
5 suffered and permitted Plaintiffs and the Collective to work more than 40 hours per week without  
6 appropriate overtime compensation.

7           51. Defendants' unlawful conduct has been widespread, repeated, and consistent.

8           52. Upon information and belief, Defendants knew that Plaintiffs and the Collective  
9 performed work that required overtime pay. Defendants have operated under a scheme to deprive  
10 these employees of appropriate minimum wage and overtime compensation by failing to properly  
11 compensate them for all hours worked.

12           53. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith,  
13 and has caused significant damages to Plaintiffs and the Collective.

14           54. Defendants are liable under the FLSA for failing to properly compensate Plaintiff  
15 sand the Collective, and as such, notice should be sent to the Collective.

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17                                   **FIRST CAUSE OF ACTION**  
18                                   **FAILURE TO PAY MINIMUM WAGE**  
19                                   **(California Labor Code §§ 223, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, et seq.; IWC**  
20                                   **Wage Order 9-2001; Minimum Wage Order MW-2019)**  
21                                   **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS AGAINST DEFENDANTS)**

22           55. Plaintiffs incorporate by reference in this cause of action the allegations of the  
23 preceding paragraphs as though fully set forth herein.

24           56. At all times relevant to this complaint, California Labor Code sections 1194, *et*  
25 *seq.* and Wage Order 9-2001, were in full force and effect and required that Defendants'  
26 California nonexempt employees receive the minimum wage for all hours worked: at the rate of  
27 \$9.00 per hour commencing July 1, 2014; at a rate of \$10.00 per hour commencing January 1,  
28 2016; at a rate of \$10.50 per hour commencing January 1, 2017; at a rate of \$11.00 per hour  
commencing January 1, 2018; and at a rate of \$12.00 per hour commencing January 1, 2019.



1           57. Plaintiffs and Class Members routinely performed work off-the-clock. As alleged  
2 above, Defendants prohibited Plaintiffs and Class Members from clocking in or required them to  
3 clock out despite controlling Plaintiffs and Class Members' activities outside of the time periods  
4 officially logged.

5           58. As a direct and proximate result of the acts and/or omissions of Defendants,  
6 Plaintiffs and Class Members were deprived of minimum wages due in amounts to be determined  
7 at trial, and to additional amounts as liquidated damages, pursuant to California Labor Code  
8 sections 1194, 1194.2, and 1197.1.

9           59. By violating California Labor Code sections 1182.11, 1182.12, 1194, 1194.2,  
10 1197 and IWC Wage Order No. 9, § 4, Defendants are also liable for reasonable attorneys' fees  
11 and costs under California Labor Code sections 1194 and CCP section 1021.5.

12                                   **SECOND CAUSE OF ACTION**  
13                                   **FAILURE TO PAY MINIMUM WAGE**  
14                                   **(San Francisco Admin. Code §§ 12R.1, et seq.)**  
15                                   **(ON BEHALF OF PLAINTIFFS AND THE SAN FRANCISCO SUBCLASS AGAINST**  
16                                   **DEFENDANTS)**

17           60. Plaintiffs incorporate by reference in this cause of action the allegations of the  
18 preceding paragraphs as though fully set forth herein.

19           61. At all times relevant to this complaint, San Francisco Administrative Code Section  
20 12R.1, *et seq.*, were in full force and effect and required that Defendants' San Francisco's  
21 nonexempt employees receive the City-specific minimum wage for all hours worked: at the rate  
22 of \$12.25 per hour commencing May 1, 2015.; at a rate of \$13.00 per hour commencing July 1,  
23 2016; at a rate of \$14.00 per hour commencing July 1, 2017; and at a rate of \$15.00 per hour  
24 commencing July 1, 2018. The San Francisco minimum wage will increase to \$15.59 per hour  
25 on July 1, 2019. The San Francisco minimum wage applies to any person who performs at least  
26 two hours of work in a week for an employer within the geographic boundaries of the city of San  
27 Francisco. *See* San Francisco Admin. Code Section 12R.3(a).

28           62. Defendants directed Plaintiffs and members of the San Francisco Subclass to pick  
up customers within, drop off customers within, wait for customers within, and drive through the

1 geographical limits the city of San Francisco. Plaintiffs and members of the San Francisco  
2 subclass frequently performed these tasks for at least two hours each week, although some weeks  
3 they spent far longer in San Francisco.

4 63. Plaintiffs and Class Members routinely performed work off-the-clock. As alleged  
5 above, Defendants prohibited Plaintiffs and Class Members from clocking in or clocking out  
6 despite controlling Plaintiffs and Class Members' activities outside of the time periods officially  
7 logged.

8 64. As a direct and proximate result of the acts and/or omissions of Defendants,  
9 Plaintiffs and Class Members were deprived of minimum wages due in amounts to be determined  
10 at trial, in addition to liquidated damages pursuant to San Francisco Admin. Code section  
11 12R.7(d).

12 65. By violating the above-referenced municipal wage provisions, Defendants are also  
13 liable for reasonably attorneys' fees and costs under San Francisco Admin. Code section  
14 12R.7(d).

15 **THIRD CAUSE OF ACTION**  
16 **FAILURE TO PAY MINIMUM WAGE**  
17 **(Oakland, Cal. Code of Ordinances §§ 5.92.010, et seq.)**  
18 **(ON BEHALF OF PLAINTIFFS AND THE OAKLAND SUBCLASS AGAINST**  
19 **DEFENDANTS)**

20 66. Plaintiffs incorporate by reference in this cause of action each allegation of the  
21 preceding paragraphs as though fully set forth herein.

22 67. At all times relevant to this complaint, the provisions of Oakland, California Code  
23 of Ordinances section 5.92.010, *et seq.*, were in full force and effect and required that Defendants'  
24 nonexempt employees receive the City-specific minimum wage for all hours worked: at the rate  
25 of \$12.25 per hour commencing May 2, 2015; at the rate of \$12.55 per hour commencing January  
26 1, 2016; at the rate of \$12.86 per hour commencing January 1, 2017; at the rate of \$13.23 per  
27 hour commencing January 1, 2018; and at a rate of \$13.80 per hour commencing January 1, 2019.  
28 The Oakland minimum wage applies to any person who performs at least two hours of work in a  
week for an employer within the geographic boundaries of the city of Oakland.

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68. Defendants directed Plaintiffs and members of the Oakland Subclass to pick up customers within, drop off customers within, wait for customers within, and drive through the geographical limits the city of Oakland. Plaintiffs and members of the Oakland Subclass frequently performed these tasks for two hours each week, although some weeks they spent far longer in Oakland.

69. Plaintiffs and Class Members routinely performed work off-the-clock. As alleged above, Defendants prohibited Plaintiffs and Class Members from clocking in or clocking out despite controlling Plaintiffs and Class Members' activities outside of the time periods officially logged.

70. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs and Class Members were deprived of minimum wages due in amounts to be determined at trial, in addition to liquidated damages pursuant to Oakland, California Code of Ordinances section 5.92.050(8).

71. By violating the above-referenced municipal wage provisions, Defendants are also liable for reasonably attorneys' fees and costs under Oakland, California Code of Ordinances section 5.92.050(8).

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PAY MINIMUM WAGE**  
**(San Jose, Cal. Code of Ordinances §§ 4.100.010, et seq.)**  
**(ON BEHALF OF PLAINTIFFS AND THE SAN JOSE SUBCLASS AGAINST**  
**DEFENDANTS)**

72. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

73. At all times relevant to this complaint, San Jose, California Code of Ordinances section 4.100.010, *et seq.*, were in full force and effect and required that Defendants' nonexempt employees receive the City-specific minimum wage for all hours worked: at the rate of \$10.30 per hour commencing January 1, 2015; at a rate of \$10.50 per hour commencing January 6, 2017; at a rate of \$12.00 per hour commencing July 1, 2017; and at a rate of \$13.50 per hour commencing January 1, 2018. The minimum wage in the city of San Jose is \$15.00 as of January

1, 2019. The San Jose minimum wage applies to any person who performs at least two hours of work in a week for an employer within the geographic boundaries of the city of San Jose. San Jose, California Code of Ordinances section 4.100.030(C).

74. Defendants directed Plaintiffs and members of the San Jose Subclass to pick up customers within, drop off customers within, wait for customers within, and drive through the geographical limits the city of San Jose. Plaintiffs and members of the San Jose subclass frequently performed these tasks for at least two hours each week, although some weeks they spent far longer in San Jose.

75. Plaintiffs and Class Members routinely performed work off-the-clock. As alleged above, Defendants prohibited Plaintiffs and Class Members from clocking in or clocking out despite controlling Plaintiffs and Class Members' activities outside of the time periods officially logged.

76. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs and Class Members were deprived of minimum wages due in amounts to be determined at trial, in addition to liquidated damages pursuant to San Jose, California Code section 4.100.090(B).

77. By violating the above-referenced municipal wage provisions, Defendants are also liable for reasonably attorneys' fees and costs under San Jose, California Code section 4.100.090(B).

**FIFTH CAUSE OF ACTION**  
**FAILURE TO PAY FOR ALL HOURS WORKED**  
**(California Labor Code § 223, and IWC Wage Order No. 9-2001)**  
**(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS AGAINST DEFENDANTS)**

78. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

79. Plaintiffs and Class Members worked off-the-clock, without being compensated including but not limited to time spent driving to pick up customers, and time spent driving after dropping off the final customer of the shift, and waiting between rides.



1 are entitled to recovery of such amounts, plus interest thereon, under California Labor Code  
2 section 218.6 and 1194.

3 89. By violating California Labor Code sections 510 and 1198, Defendants are liable  
4 for civil penalties and attorneys' fees and costs under California Labor Code sections 558, 1194,  
5 and 1197.1, and CCP section 1021.5.

6 **SEVENTH CAUSE OF ACTION**  
7 **FAILURE TO COMPENSATE FOR SPLIT SHIFTS**  
8 **(IWC Wage Order No. 9)**  
9 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS AGAINST DEFENDANTS)**

10 90. IWC Wage Order No. 9, Paragraph 4(C) provides: "When an employee works a  
11 split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum  
12 wage for that workday, except when the employee resides at the place of employment." Pursuant  
13 to IWC Wage Order No. 9, Paragraph 2(N), a split shift is "a work schedule, which is interrupted  
14 by non-paid non-working periods established by the employer, other than bona fide rest or meal  
15 periods."

16 91. Plaintiffs and Class Members worked split shifts at Defendants' direction. As  
17 alleged above, Plaintiffs and Class Members were assigned to transport customers to and from  
18 meetings, conventions, or other events, then wait off-the-clock for the event to end before  
19 transporting the customer to their next destination. Defendants did not compensate Plaintiffs or  
20 Class Members for this time, nor did Defendants pay Plaintiffs or Class Members split shift  
21 premiums.

22 92. By violating IWC Wage Order No. 9, Defendants are liable to Plaintiffs, on behalf  
23 of themselves and on behalf of the Class, in the amount of an unpaid split shift premium of one  
24 hour at the applicable minimum wage for each occurrence, plus interest and costs as allowed by  
25 law, pursuant to IWC Wage Order No. 9, and such other legal and equitable relief as the Court  
26 deems just and proper.

27 93. Defendants also liable for reasonable attorneys' fees and costs for enforcing the  
28 public interest underpinning IWC Wage Order No. 9, under and CCP section 1021.5.

1 **EIGHTH CAUSE OF ACTION**  
2 **FAILURE TO PROVIDE REIMBURSEMENT OF BUSINESS EXPENSES**  
3 **(California Labor Code § 2802)**  
4 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS AGAINST DEFENDANTS)**

5 94. Plaintiffs incorporate by reference in this cause of action each allegation of the  
6 preceding paragraphs as though fully set forth herein.

7 95. While acting on the direct instruction of Defendants and discharging their duties  
8 for them, Plaintiffs and similarly situated Class Members incurred work-related expenses. Such  
9 expenses include, but are not limited to, cell phones and cell phone plans. Plaintiffs and Class  
10 Members incurred these expenses and losses as a direct result of performing their job duties for  
11 Defendants.

12 96. Defendants failed to indemnify or in any manner reimburse Plaintiffs and similarly  
13 situated Class Members for these expenditures and losses. By requiring those employees to pay  
14 expenses and cover losses that they incurred in direct consequence of the discharge of their duties  
15 for Defendants and/or in obedience of Defendants' direction, Defendants violated California  
16 Labor Code section 2802.

17 97. By unlawfully failing to indemnify or in any manner reimburse Plaintiffs and other  
18 similarly situated Class Members, Defendants are also liable for reasonable attorneys' fees and  
19 costs under California Labor Code sections 2802(c) and 218.5.

20 98. As a direct and proximate result of Defendants' conduct, Plaintiffs and similarly  
21 situated Class Members suffered substantial losses according to proof, as well as pre-judgment  
22 interest, costs, and attorneys' fees for the prosecution of this action.

23 **NINTH CAUSE OF ACTION**  
24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
25 **(California Labor Code §§ 226, 226.3, and 1174; IWC Wage Order No. 9-2001)**  
26 **(ON BEHALF OF PLAINTIFFS AND THE WAGE STATEMENT SUBCLASS**  
27 **AGAINST DEFENDANTS)**

28 99. Plaintiffs incorporate by reference in this cause of action each allegation of the  
preceding paragraphs as though fully set forth herein.

100. California Labor Code section 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 California

1 employee with a statement itemizing, among other things, tips earned, all hours actually worked,  
2 and all wages actually earned. California Labor Code section 226(b) provides that if an employer  
3 knowingly and intentionally fails to provide a statement itemizing, among other things, tips  
4 earned, all hours actually worked, and all wages actually earned, the employee is entitled to  
5 recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one  
6 hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

7 101. California Labor Code section 1174.5 subjects employers who willfully fail to  
8 maintain the records required by subdivision (c) of section 1174 or accurate and complete records  
9 required by subdivision (d) of California Labor Code section 1174, to a civil penalty of five  
10 hundred dollars (\$500).

11 102. Defendants knowingly and intentionally failed to furnish Plaintiffs and Class  
12 Members with timely and accurate, itemized statements showing gross wages earned, total hours  
13 worked, all deductions made including from tips, net wages earned, the name and address of the  
14 legal entity employing them, and all applicable hourly rates in effect during each pay period and  
15 the corresponding number of hours worked at each hourly rate, as required by California Labor  
16 Code section 226(a) and IWC Wage Order No. 9, § 7(B). As a result, Defendants are liable to  
17 Plaintiffs and Class Members for the amounts provided by California Labor Code section 226(b).

18 103. By altering Plaintiffs' and Class Members' time entries, and forcing Class  
19 Members to work off-the-clock, Defendants made it difficult to calculate the wages due to  
20 Plaintiffs and Class Members.

21 104. Plaintiffs, on behalf of themselves, and similarly situated Class Members, request  
22 relief for the amounts provided by California Labor Code § 226(b). Based on Defendants' conduct  
23 as alleged herein, Defendants are liable for damages and statutory penalties pursuant to California  
24 Labor Code sections 1174 and 1174.5.

25 105. By violating California Labor Code §§ 226 and 1174 and IWC Wage Order No. 9,  
26 § 7, Defendants are also liable for reasonable attorneys' fees and costs for enforcing the public  
27 interest underpinning the aforementioned California Labor Code provisions, and under CCP  
28



1 section 1021.5.

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3 **TENTH CAUSE OF ACTION**  
4 **FAILURE TO PAY EARNED WAGES UPON DISCHARGE, WAITING TIME**  
5 **PENALTIES**  
6 **(California Labor Code §§ 201, 202, 203)**  
7 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS AGAINST DEFENDANTS)**

8 106. Plaintiffs incorporate by reference in this cause of action each allegation of the  
9 preceding paragraphs as though fully set forth herein.

10 107. California Labor Code § 201 requires an employer who discharges a California  
11 employee to pay all compensation due and owing to that employee immediately upon discharge.

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

16 109. California Labor Code § 203 provides that if an employer willfully fails to pay  
17 compensation promptly upon discharge, as required by § 201 or § 202, then the employer is liable  
18 for waiting time penalties in the form of continued compensation for 30 workdays.

19 110. Plaintiffs were terminated on around September 24, 2019.

20 111. Defendants willfully failed and refused to timely pay compensation and wages,  
21 including unpaid minimum wage pay, unpaid overtime pay, business expenses incurred without  
22 reimbursement, unpaid split shift premiums, and unpaid off-the-clock time to Plaintiffs, and  
23 similarly situated Class Members whose employment terminated. As a result, Defendants are  
24 liable to Plaintiffs and similarly situated Class Members for waiting time penalties, together with  
25 interest thereon and reasonable attorneys' fees and costs, under California Labor Code §§ 203  
26 and 256.

27 **ELEVENTH CAUSE OF ACTION**  
28 **VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")**  
29 **(California Business & Professions Code §§ 17200-17209)**  
30 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS AGAINST DEFENDANTS)**

31 112. Plaintiffs incorporate by reference in this cause of action each allegation of the  
32 preceding paragraphs as though fully set forth herein.

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113. Defendants' violations of California law constitute unfair business practices in violation of California Business & Professions Code Section 17200, *et seq.* because the violations were done repeatedly, over a significant period of time, and in a systematic manner to the detriment of Plaintiffs and Class Members. These violations include: failing to indemnify or in any manner reimburse Plaintiffs and similarly situated Class Members for employment-related business expenses; failing to pay minimum wage and overtime compensation to Plaintiffs and similarly situated Class Members; failing to pay Plaintiffs and Class Members split shift premiums; failing to provide accurate itemized wage statements to Plaintiffs and similarly situated Wage Statement Subclass Members; failing to compensate Plaintiffs and Class Members for all hours worked; and failing to pay all earned wages upon discharge.

114. Additionally, Defendants failed to pay Plaintiffs and Class Members all tips earned in violation of California Labor Code section 351, which is an unfair business practice under California Business & Professions Code Section 17200, *et seq.*

115. Defendants clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to Plaintiffs and Class Members herein alleged, as incidental to its business operations, rather than accept the alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible competitors and as set forth in legislation and the judicial record.

116. Plaintiffs and Class Members lost money and property as a result of Defendants' unlawful business practices described above.

117. Pursuant to the UCL, Plaintiffs and Class Members are entitled to restitution of money or property acquired by Defendants by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

118. Plaintiffs have no plain, speedy, and adequate remedy at law. Defendants, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of Plaintiffs and Class Members and of the general public.

1 119. Plaintiffs' success in this action will result in the enforcement of important rights  
2 affecting the public interest by conferring a significant benefit upon the general public.

3 120. Defendants' numerous violations of local and California law, as well as the other  
4 statutory and regulatory violations alleged herein, constitute unlawful business actions and  
5 practices in violation of Business and Professions Code section 17200, *et seq.*

6 121. Pursuant to Business and Professions Code section 17200, *et seq.*, Plaintiffs and  
7 the Class Members are entitled to restitution for all unpaid business expenses, unlawful  
8 withholding of tips earned, unpaid hours worked, minimum wages, straight time, overtime, and  
9 interest that were withheld and retained by Defendants during a period that commences four years  
10 prior to the filing of this action and a declaration that Defendants' business practices are unfair  
11 within the meaning of the statute, in addition to an award of attorneys' fees and costs pursuant to  
12 CCP section 1021.5 and other applicable law, and costs.

13 **TWELFTH CAUSE OF ACTION**  
14 **CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL**  
15 **ACT OF 2004**  
16 **(California Labor Code § 2698, *et seq.*)**  
17 **(ON BEHALF OF PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST**  
18 **DEFENDANTS)**

19 122. Plaintiffs allege and incorporate by reference the allegations in the preceding  
20 paragraphs.

21 123. The Private Attorneys General Act of 2004 ("PAGA"), California Labor Code  
22 section 2698, *et seq.*, enables courts to award civil penalties for violations of the Labor Code that,  
23 prior to PAGA's enactment, only the California Labor & Workforce Development Agency  
24 ("LWDA") could have assessed and collected.

25 124. Plaintiffs have provided notice under California Labor Code section 2699.3, and  
26 on June 28, 2019, asked the LWDA if it intended to investigate the alleged Labor Code violations  
27 set forth in the letter.

28 125. More than Sixty-five days have passed since the postmark date of Plaintiffs'  
original PAGA Notice, and the LWDA has not provided notice to Plaintiffs regarding its intention

1 to investigate the alleged violations. Under California Labor Code section 2699.3(a)(2)(A),  
2 Plaintiffs have exhausted the PAGA notice requirement and seek civil penalties under California  
3 Labor Code section 2698, *et seq.*

4 126. On behalf of themselves and all other aggrieved employees who worked for  
5 Defendants at any time since one year prior to June 28, 2019 through the trial in this action  
6 Plaintiffs allege that Defendants violated California Labor Code sections 201-204, 221, 223, 226,  
7 226.3, 226.7, 351, 510, 512, 1174, 1194, 1197.1, 1198, and 2802 as follows:

8 127. Under California Labor Code section 2699(a) any provision of the Labor Code  
9 that provides a penalty to be assessed and collected by the LWDA may be recovered through a  
10 civil action. For violations of Labor Code section 1194 related to minimum wages, and Labor  
11 Code section 1197, Defendants are subject to a civil penalty of: (1) one-hundred dollars (\$100)  
12 for each Plaintiff and aggrieved employee per pay period for the initial violation, for failure to  
13 pay the California minimum wage, as alleged in the First Cause of Action; (2) two-hundred-fifty  
14 dollars (\$250) for each Plaintiff and aggrieved employee per pay period for each subsequent  
15 violation, as alleged in the First Cause of Action; and (3) an amount sufficient to recover such  
16 unpaid wages. The penalty amounts are established by Labor Code section 1197.1(a).

17 128. California Labor Code section 558 imposes civil penalties, in addition to any other  
18 civil or criminal penalty or penalties provided by law, upon any employer or other person acting  
19 on behalf of an employer who violates a section of Division 2, Part 2, Chapter 1 of the Labor  
20 Code or any provision regulating hours and days of work in any Industrial Welfare Commission  
21 Wage Order. Under Labor Code section 558, Defendants are subject to a civil penalty of: (1) for  
22 an initial violation, fifty dollars (\$50) for each Plaintiff and each aggrieved employee for each  
23 pay period for which the employee was not paid for all hours worked under California Labor  
24 Code section 223, as alleged in the Fifth Cause of Action, in addition to an amount sufficient to  
25 recover unpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each  
26 Plaintiff and each aggrieved employee for each pay period for which the employee was not paid  
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1 for all hours worked under California Labor Code section 223, as alleged in the Fifth Cause of  
2 Action; and (3) an amount sufficient to recover such unpaid wages.

3 129. Under California Labor Code section 2699(f)(2), described above, Defendants are  
4 subject to a civil penalty of: (1) one hundred dollars (\$100) for each Plaintiff and aggrieved  
5 employee per pay period for the initial violation of Labor Code section 1194 failure to pay all  
6 overtime due to Plaintiffs and aggrieved employees, as alleged in the Sixth Cause of Action; (2)  
7 two hundred dollars (\$200) for each Plaintiff and aggrieved employee per pay period for failure  
8 to pay all overtime due to Plaintiffs and aggrieved employees, as alleged in the Sixth Cause of  
9 Action.

10 130. Under California Labor Code section 558, described above, Defendants are  
11 subject to a civil penalty of: (1) for an initial violation, fifty dollars (\$50) for each Plaintiff and  
12 each aggrieved employee for each pay period for which the employee was not paid appropriate  
13 overtime premiums under California Labor Code section 510, as alleged in the Sixth Cause of  
14 Action; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid Plaintiff  
15 and each underpaid aggrieved employee for each pay period for which the employee was  
16 underpaid under California Labor Code section 510, as alleged in the Sixth Cause of Action; and  
17 (3) an amount sufficient to recover such unpaid wages.

18 131. Under California Labor Code section 558, described above, Defendants are  
19 subject to a civil penalty of: (1) for an initial violation, fifty dollars (\$50) for each Plaintiff and  
20 each aggrieved employee for each pay period for which the employee was not paid split shift  
21 premiums or otherwise compensated for split shifts worked under IWC Wage Order No. 9, 9, as  
22 alleged in the Seventh Cause of Action; (2) for each subsequent violation, one hundred dollars  
23 (\$100) for each Plaintiff and each aggrieved employee for each pay period for which the  
24 employee was not paid split shift premiums or otherwise compensated for split shifts worked  
25 under IWC Wage Order No. 9, as alleged in the Seventh Cause of Action; and (3) an amount  
26 sufficient to recover such split shift premiums.  
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132. Under California Labor Code section 2699(f)(2), described above, Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for each Plaintiff and aggrieved employee per pay period for the initial violation of Labor Code section 2802 for failing to indemnify Plaintiffs and aggrieved employees for necessary expenditures or losses incurred in direct consequence of the discharge of their duties, as alleged in the Eighth Cause of Action; (2) two hundred dollars (\$200) for each Plaintiff and aggrieved employee per pay period for each subsequent violation of Labor Code section 2802 for failing to indemnify Plaintiffs and aggrieved employees for necessary expenditures or losses incurred in direct consequence of the discharge of their duties, as alleged in the Eighth Cause of Action; and (3) an amount sufficient to recover reimbursement of such expenditures.

133. Pursuant to California Labor Code section 2699(a), under Labor Code section 226.3, which provides for civil penalties for violations of California Labor Code section 226(a) in addition to any other penalty provided by law, Defendants are subject to a civil penalty of: (1) two hundred and fifty dollars (\$250) for each Plaintiff and each aggrieved employee for the first violation of California labor Code section 226(a), for failure to provide timely, accurate, itemized wage statements, as alleged in the Ninth Cause of Action; and (2) one thousand dollars (\$1,000) for each Plaintiff and each aggrieved employee for each subsequent violation of California Labor Code section 226(a) for failure to provide timely, accurate, itemized wage statements, as alleged in the Ninth Cause of Action. The penalty amounts are established by Labor Code section 226.3.

134. Under California Labor Code section 2699(f)(2), described above, Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for each Plaintiff and aggrieved employee per pay period for the initial violation of California Labor Code section 351 for collecting patron gratuities or portions thereof from Plaintiffs and aggrieved employees; (2) two hundred dollars (\$200) for each Plaintiff and aggrieved employee per pay period for each subsequent violation of California Labor Code section 351 for collecting patron gratuities or portions thereof from Plaintiffs and aggrieved employee; and (3) an amount sufficient to recover such gratuities or portions thereof.

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135. Pursuant to California Labor Code section 2699(a), for violations of California Labor Code sections 200-204, of the California Labor Code, Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for each Plaintiff and aggrieved employee per pay period for the initial violation by failing to pay the employee's wages timely; and (2) two hundred dollars (\$200) for each Plaintiff and aggrieved employee per pay period for each subsequent violation for failing to pay the employee's wages timely, plus 25 percent of the amount unlawfully withheld. The penalty amounts are established by California Labor Code section 210.

136. Under California Labor Code section 2699(f)(2), described above, for violations of Labor Code section 201, Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for each aggrieved employee per pay period for the initial failure to timely pay wages owed at separation of employment; (2) two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and (3) any unpaid wages owed.

137. Under California Labor Code section 2699(f)(2), described above, for violations of Labor Code section 202, Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for each aggrieved employee per pay period for the initial failure to timely pay wages owed at separation of employment; (2) two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and (3) any unpaid wages owed.

138. Under California Labor Code section 2699(f)(2), described above, for violations of Labor Code section 203, Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for each aggrieved employee per pay period for the initial failure to pay waiting time penalties for wages owed at separation; (2) two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and (3) any unpaid wages owed.

139. Under California Labor Code section 2699(g)(1), Defendants are liable for attorneys' fees and costs with respect to these alleged violations.

**THIRTEENTH**  
**FAILURE TO PAY MINIMUM WAGE OR OVERTIME**  
**(Fair Labor Standards Act Sections 206-207;)**  
**(ON BEHALF OF PLAINTIFFS AND COLLECTIVE ACTION MEMBERS AGAINST DEFENDANTS)**

1           140. Plaintiffs incorporate by reference in this cause of action each allegation of the  
2 preceding paragraphs as though fully set forth herein.

3           141. At all relevant times, each Defendant has been, and continues to be, an “employer”  
4 engaged in interstate commerce and/or the production of goods for commerce, within the meaning  
5 of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants employed employees, including  
6 Plaintiffs and members of the Collective. At all relevant times, upon information and belief, each  
7 Defendant has had gross operating revenues in excess of \$500,000.

8           142. The FLSA requires each covered employer, such as Defendants, to compensate all  
9 non-exempt employees at the designated minimum wage rate for all hours worked.

10           143. During Plaintiffs’ employment with Defendants, within the applicable statute of  
11 limitations, Plaintiffs and members of the Collective worked hours for which they were not  
12 compensated at the federal minimum wage rate, including some hours for which they were not  
13 compensated at all. Despite the hours worked by Plaintiffs and members of the Collective,  
14 Defendants willfully, in bad faith, and in knowing violation of the FLSA, failed and refused to  
15 pay them the appropriate minimum wage compensation for all hours worked.

16           144. The FLSA requires each covered employer, such as Defendants, to compensate all  
17 non-exempt employees at a rate of not less than one-and-one-half times the regular rate of pay  
18 for work performed in excess of 40 hours per work week.

19           145. During Plaintiffs’ employment with Defendants, within the applicable statute of  
20 limitations, Plaintiffs and members of the Collective worked in excess of 40 hours per workweek.  
21 Despite the hours worked by Plaintiffs and members of the Collective, Defendants willfully, in  
22 bad faith, and in knowing violation of the FLSA, failed and refused to pay them the appropriate  
23 overtime compensation for all the hours worked in excess of 40.

24           146. The foregoing conduct, as alleged, constitutes willful violations of the FLSA,  
25 within the meaning of 29 U.S.C. § 255(a).

26           147. Plaintiffs, on behalf of themselves and the Collective, seek damages in the amount  
27 of their respective unpaid overtime compensation, liquidated damages from three years  
28



1 immediately preceding the filing of this action, plus interests and costs as allowed by law,  
2 pursuant to 29 U.S.C. §§ 216(b), 255(a), and 260, and such other legal and equitable relief as the  
3 Court deems just and proper.

4 148. Plaintiffs, on behalf of themselves and the Collective, seek recovery of attorneys'  
5 fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

6 **PRAYER FOR RELIEF**

7 149. WHEREFORE, Plaintiffs, on behalf of themselves and the Proposed Class,  
8 request judgment and the following specific relief against Defendants as follows:  
9

10 A. That the Court determine that this action may be maintained as a class action under  
11 CCP § 382;

12 B. Designation of Plaintiffs as representative of the class and subclasses and their  
13 counsel as counsel for the class and subclasses;

14 C. That the Court determine that this action may proceed as a collective action under  
15 29 U.S.C. § 216(b) of the FLSA;

16 D. That Defendants are found to have violated the minimum wage provisions of the  
17 FLSA as to Plaintiffs and the Collective;

18 E. That Defendants are found to have violated the overtime provisions of the FLSA  
19 as to Plaintiffs and the Collective;

20 F. That the Court issue declaratory relief that Defendants' challenged policies were  
21 unlawful;

22 G. A declaratory judgment that Defendants knowingly and intentionally violated the  
23 following provisions of the California Labor Code and/or IWC Wage Order 9-2001 as to  
24 Plaintiffs and Class Members:

25 1. California Labor Code sections 223, 1194, 1197, IWC Wage Order No. 9,  
26 and Minimum Wage Order MW-2019, and the municipal codes of San Francisco, Oakland, and  
27 San Jose by failing to pay minimum wages to Plaintiffs and Class Members;  
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1                   2.       California Labor Code section 223 and IWC Wage Order No. 9 for failing  
2 to pay all hours worked to Plaintiffs and Class Members;

3                   3.       California Labor Code sections 510, 1194 *et seq.*, 1197.1, 1198 and IWC  
4 Wage Order No. 9 by failing to pay overtime compensation to Plaintiffs and Class Members;

5                   4.       California Labor Code section 2802 by failing to indemnify or reimburse  
6 Plaintiffs and Class Members for all necessary business expenses and losses;

7                   5.       California Labor Code sections 226, 1174 and IWC Wage Order No. 9, by  
8 failing to provide Plaintiffs and Class Members with itemized statements of all hours actually  
9 worked, and all wages actually earned with each payment of wages, and for failure to keep  
10 accurate payroll records;

11                  6.       California Labor Code sections 201-203 by failing to pay earned wages  
12 upon discharge; and

13                  7.       California Business & Professions Code section 17200 *et seq.*, by failing  
14 to indemnify or in any manner reimburse Plaintiffs and Class Members for employment-related  
15 business expenses, failing to pay minimum wage, straight time, and overtime compensation to  
16 Plaintiffs and Class Members, failing to indemnify or reimburse Plaintiffs and Class Members  
17 for business related expenses;

18                  H.       That Defendants' actions are found to be willful and/or in bad faith to the extent  
19 necessary under section 226 of the California Labor Code for willful failure to provide the  
20 required accurate and itemized wage statements to Plaintiffs and the Class Members;

21                  I.       That Defendants' actions are found to be willful and/or in bad faith to the extent  
22 necessary under 29 U.S.C. §§ 216(b), 255(a), and 260;

23                  J.       An award to Plaintiffs and the Class Members of damages in the amount of  
24 necessary business expenses, unpaid minimum wage, straight time, and overtime, and amounts  
25 unlawfully deducted from wages, including interest thereon, subject to proof at trial;

26                  K.       An award to Plaintiffs and Wage Statement Subclass Members of statutory  
27 penalties because of Defendants' failure to provide Plaintiffs and Class Members with itemized  
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1 wage statements that comply with the requirements of California Labor Code section 226, subject  
2 to proof at trial;

3 L. An award to Plaintiffs, Class Members, and members of the Collective of  
4 liquidated damages under California Labor Code sections 1194.2 and 1197.1 and 29 U.S.C. §  
5 216(b) because of Defendants' failure to pay Plaintiffs, Class Members, and members of the  
6 Collective the minimum wage;

7 M. An award to Plaintiffs and members of the Collective of liquidated damages under  
8 29 U.S.C. § 216(b) because of Defendants' failure to pay Plaintiffs and members of the Collective  
9 overtime wages;

10 N. An award of civil penalties under the Labor Code Private Attorneys General Act  
11 of 2004, pursuant to California Labor Code section 2698, *et seq.*;

12 O. An award to Plaintiffs and the San Francisco Class Members of liquidated  
13 damages under San Francisco Admin. Code section 12R.7(d);

14 P. An award to Plaintiffs and the San Francisco Class Members of liquidated  
15 damages under Oakland, California Code of Ordinances section 5.92.050(8);

16 Q. An award to Plaintiffs and the San Francisco Class Members of liquidated  
17 damages under San Jose, California Code of Ordinances section 4.100.090(B);

18 R. An award of waiting time penalties;

19 S. That Defendants be ordered to pay restitution to Plaintiffs and the Class for  
20 amounts acquired through Defendants' unlawful activities pursuant to California Business &  
21 Professions Code section 17200 *et. seq.*;

22 150. An award to Plaintiffs and the Class Members of reasonable attorneys' fees and  
23 costs, pursuant to CCP section 1021.5 and California Labor Code sections 218.5, 226, 1194,  
24 2699(g)(1), and 2802, San Francisco Admin. Code section 12R.7(d), Oakland, California Code  
25 of Ordinances section 5.92.050(8), San Jose, California Code section 4.100.090(B), 29 U.S.C.  
26 § 216(b), and/or other applicable law;

27 T. For pre-judgment and post-judgment interest as provided by law; and  
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U. An award to Plaintiffs and Class Members of such other and further relief, in law or equity, as this Court deems appropriate and just.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all issues and causes of action.

Dated: May 4, 2020

Respectfully submitted,

**BRYAN SCHWARTZ LAW**

By: /s/ Bryan J. Schwartz  
Bryan J. Schwartz  
Samuel L. Goldsmith  
*Attorneys for Plaintiffs and the Putative Class*