

MARLIN & SALTZMAN
[LEAD COUNSEL FOR DEDICATED/INTERMODAL DRIVERS]

Stanley D. Saltzman (SBN 90058)
Louis M. Marlin (SBN 54053)
Marcus J. Bradley (SBN 174156)
Christina A. Humphrey (SBN 226326)
29229 Canwood St., Ste. 208
Agoura Hills, CA 91301
Tel.: (818) 991-8080
Fax: (818) 991-8081
ssaltzman@marlinsaltzman.com
louis.marlin@marlinsaltzman.com
mbradley@marlinsaltzman.com
chumphrey@marlinsaltzman.com

HAGENS BERMAN SOBOL SHAPIRO LLP
[LEAD COUNSEL FOR REGIONAL DRIVERS]

STEVE W. BERMAN (*pro hac vice*)
LEE M. GORDON (SBN 174168)
700 South Flower St., Ste. 2940
Los Angeles, CA 90017-4101
Tel.: (213) 330-7150
Fax: (213) 330-7152
lee@hbsslaw.com

Attorneys for Plaintiffs and the Putative Class
(Additional counsel listed after caption pages)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MORRIS BICKLEY, MICHAEL D. PATTON,)
RAYMOND GREWE, DENNIS VANHORN,)
and DOUGLAS PUMROY, individually and on)
behalf of all others similarly situated,)

Plaintiffs,)

v.)

SCHNEIDER NATIONAL CARRIERS, INC.,)
a Nevada corporation, and DOES 1 to 10,)
inclusive,)

Defendant.)

Case No. **3:8-cv-05806-JSW**

CLASS ACTION (FRCP 23)

**CONSOLIDATED FOURTH
AMENDED COMPLAINT:**

- 1. RECOVERY OF UNPAID
MINIMUM WAGES (DEDICATED/
INTERMODAL);**
- 2. RECOVERY OF UNPAID
MINIMUM WAGES (REGIONAL);**
- 3. RECOVERY OF UNPAID WAGES
FOR ACTUAL MILES DRIVEN;**
- 4. RECOVERY OF UNPAID WAGES
FOR ACTUAL MILES DRIVEN**

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- (REGIONAL);
- 5. RECOVERY OF UNPAID WAGES AT THE AGREED RATE (DEDICATED/ INTERMODAL);
- 6. RECOVERY OF UNPAID WAGES AT THE AGREED RATE (REGIONAL);
- 7. WAGES BELOW DESIGNATED RATE FOR ACTUAL MILES DRIVEN (DEDICATED/ INTERMODAL);
- 8. WAGES BELOW DESIGNATED RATE FOR ACTUAL MILES DRIVEN (REGIONAL);
- 9. QUANTUM MERUIT (DEDICATED/ INTERMODAL);
- 10. QUANTUM MERUIT(REGIONAL);
- 11. FAILURE TO PROVIDE MEAL PERIODS (DEDICATED/ INTERMODAL);
- 12. FAILURE TO PROVIDE MEAL PERIODS (REGIONAL);
- 13. FAILURE TO PROVIDE REST PERIODS (DEDICATED/INTERMODAL);
- 14. FAILURE TO PROVIDE REST PERIODS (REGIONAL);
- 15. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (DEDICATED/ INTERMODAL);
- 16. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (REGIONAL);
- 17. NONPAYMENT OF ACCRUED VACATION WAGES (DEDICATED/INTERMODAL);
- 18. NONPAYMENT OF ACCRUED VACATION WAGES (REGIONAL);
- 19. VIOLATIONS OF LC § 203 (DEDICATED/INTERMODAL);

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**20. VIOLATIONS OF LC § 203
(REGIONAL);**

**21. DECLARATORY RELIEF
(DEDICATED/ INTERMODAL);**

**22. DECLARATORY RELIEF
(REGIONAL)**

**23. UNFAIR BUSINESS PRACTICES
(DEDICATED/ INTERMODAL);**

**24. UNFAIR BUSINESS PRACTICES
(REGIONAL)**

JURY TRIAL DEMANDED

Complaint Filed: 11/25/08

Trial Date: To Be Set

1 **Additional Plaintiffs' Counsel**

2 THE CULLEN LAW FIRM, APC
3 Paul T. Cullen (SBN 193575)
4 29229 Canwood St., Ste. 208
5 Agoura Hills, CA 91301-1555
6 Tel.: (626) 744-9125
7 Fax: (626) 744-9436
8 paul@cullenlegal.com
9 pat@cullenlegal.com

6 LAW OFFICES OF PETER M. HART
7 Peter M. Hart (SBN 198691)
8 13952 Bora Bora Way, F-320
9 Marina Del Rey, CA 90292
10 Tel.: (310) 478-5789
11 Fax: (509) 561-6441
12 hartpeter@msn.com

10 LAW OFFICES OF KENNETH H. YOON
11 Kenneth H. Yoon (SBN 198443)
12 One Wilshire Blvd., Ste. 2200
13 Los Angeles, CA 90017
14 Tel.: (213) 612-0988
15 Fax: (213) 947-1211
16 kyoonyoon@yoonyoon-law.com

14 LAW OFFICE OF ERIC HONIG
15 Eric Honig (SBN 140765)
16 P.O. Box 10327
17 Marina Del Rey, CA 90295
18 Tel.: (310) 314-2603
19 Fax: (310) 314-2793
20 erichonig@aol.com

18 HAGENS BERMAN SOBOL SHAPIRO
19 Steve W. Berman
20 1918 Eighth Ave., Ste. 3300
21 Seattle, WA 98101
22 Tel.: (206) 623-7292
23 Steve@hbsslaw.com

22 REHWALD GLASNER & CHALEFF
23 Daniel Chaleff (SBN 173028)
24 5855 Topanga Canyon Blvd., Ste. 400
25 Woodland Hills, CA 91367
26 Tel.: (818) 703-7500
27 DChaleff@rehwaldlaw.com

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1 Plaintiffs MORRIS BICKLEY, MICHAEL D. PATTON, RAYMOND GREWE,
2 DENNIS VANHORN, and DOUGLAS PUMROY, on behalf of themselves and all others similarly
3 situated (hereinafter “Plaintiffs”), hereby file this Consolidated Fourth Amended Complaint against
4 Defendant SCHNEIDER NATIONAL CARRIERS, INC., a Nevada corporation (“Schneider” or
5 “Defendant”), and DOES 1 to 10, inclusive (hereinafter collectively referred to as “Defendants”).
6 Plaintiffs are informed and believe, and on the basis of that information and belief allege, as
7 follows:

8 **I. NATURE OF THE CASE**

9 1. This Complaint asserts claims against Defendant for violations of California *Labor*
10 *Code* §§ 201, 203, 221, 223, 226, 226.7, 227.3, 512, 1182.12, 1194, 1194.2, 1197, 1198, *Bus. &*
11 *Prof Code* § 17200, *et seq.*, and the applicable wage order issued by the Industrial Welfare
12 Commission for the Transportation Industry (“IWC Wage Order”), and for breach of contract law
13 and other equitable principles.

14 2. On or about November 25, 2008, Plaintiff Morris Bickley filed the first of the above
15 consolidated actions generally on behalf of drivers who are or were employed by Schneider in
16 California (the “First-Filed Complaint”).

17 3. This action is brought as a class action on behalf of all drivers who are or were
18 employed by Schneider in California during the relevant time period, in one of the following three
19 types of positions: (a) Intermodal truck drivers (“Intermodal Drivers”), (b) Dedicated truck drivers
20 (“Dedicated Drivers”), or (c) Regional truck drivers (“Regional Drivers”) (collectively, “Drivers”).
21 Within each work group, Drivers perform substantially similar job duties, and are paid under
22 substantially similar compensation schemes.

23 4. A four (4) year statute of limitations applies to the Unfair Competition Law claim;
24 shorter periods may apply to other claims.

25 5. California’s overtime provisions set forth in IWC Wage Order No. 9-2001 (§3) do not
26 apply to Drivers. But for all other purposes, Drivers are non-exempt employees under California
27 law entitled to the other protections afforded to non-exempt employees under the California *Labor*
28 *Code*.

1 6. Plaintiffs are informed and believe that Defendant Schneider is a major provider of
2 transportation, logistics, and related services. Schneider reports serving more than 80% of the
3 Fortune 500 companies, offering a broad portfolio of services. Schneider owns a fleet of more than
4 10,000 trucks, and employs more than 10,000 company drivers nationwide. Schneider operates its
5 trucking business throughout California.

6 7. At all relevant times herein, and with certain defined exceptions, Defendant's
7 compensation schemes did not fairly compensate Drivers for all hours worked. The non-salaried
8 compensation schemes included mileage-based pay packages and activity-based pay packages.

9 8. Defendant paid Drivers for driving time through "Mileage Pay" (also called "Linehaul")
10 as a piece-rate amount per mile driven.

11 9. Intermodal Drivers also received "Load Pay," which involved a piece rate for
12 completing a freight delivery (e.g., \$36 per delivered load).

13 10. Defendant also paid for certain defined activities, for example, through "Accessorial
14 Pay," which included supplemental payments for specific activities such as: (a) Detention Time
15 (e.g., waiting for customers, but only after 2 hours of waiting without pay); (b) Loading/Unloading
16 Premiums (e.g., physical handling of freight for customer); and (c) Stop-Offs (extra stops in route
17 after making an initial customer delivery).

18 11. Defendant did not, however, compensate Drivers for all remaining hours worked each
19 day. Most significantly, Defendant did not compensate Drivers for the majority of their time spent:
20 (i) waiting on customers (e.g., the first 2 hours of Detention Time) (all such waiting time may be
21 referred to herein as "Customer Waiting Time"); or (ii) waiting on dispatch (e.g., waiting for
22 instructions between assignments) (all such waiting time may be referred to herein as "Dispatch
23 Waiting Time"). Customer Waiting Time and Dispatch Waiting Time are collectively referred to in
24 this Complaint as "Waiting Time."

25 12. Moreover, with limited defined exceptions, Defendant did not compensate Drivers for
26 other routine non-driving work tasks, including, without limitation, inspecting vehicles, fueling
27 vehicles, and completing daily paperwork (collectively referred to herein as "Common Unpaid
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1 Tasks”). Other examples of Common Unpaid Tasks include looking for empty trailers and/or
2 hooking/unhooking trailers.

3 13. In addition, Dedicated Drivers and Regional Drivers did not receive Load Pay.

4 14. Furthermore, as a matter of policy and/or practice, Defendant did not pay Drivers at
5 least minimum wages for actual miles driven in excess of pre-determined average mileage
6 estimates on select routes. Defendant’s average mileage estimates systematically denied these
7 Drivers compensation for actual miles driven on Company recommended routes above the
8 abbreviated mileage estimates. Moreover, Defendant permitted Drivers to take alternative routes
9 on behalf of the Company and its customers, but regardless, Defendant did not compensate for
10 additional miles driven on alternative routes (including, without limitation, bobtail miles to a base
11 operating center at the end of a shift).

12 15. The failure to pay minimum wages to Drivers for hours worked violated *Labor Code*
13 §§ 1182.12, 1194, 1197, IWC Wage Order No. 9-2001 (§ 4), and California’s Unfair Competition
14 Laws, *Bus. & Prof. Code § 17200 et seq.* (the “UCL”).

15 16. Likewise, the failure to pay Drivers for each and every hour worked at rates
16 designated by statute and contract violated *Labor Code* §§ 221 and 223, IWC Wage Order No.9-
17 2001, and the UCL.

18 17. The failure to pay at least minimum wages to Drivers for each and every hour worked,
19 and the failure to pay for time spent driving in excess of mileage estimates in accordance with the
20 designated rates, warrants liquidated damages under *Labor Code* § 1194.2.

21 18. As a matter of policy and/or practice, Defendant also failed to accurately report on
22 employee’s itemized statements the correct gross wages, the total hours worked, the proper hourly
23 rates, and/or the corresponding number of hours worked at each hourly rate, and Defendant failed
24 to keep adequate records of meal break and rest break periods, all in violation of the California
25 *Labor Code* §§ 226, IWC Wage Order No. 9-2001 (§ 7), and the UCL.

26 19. The failure to provide accurate itemized wage statements warrants statutory penalties
27 under *Labor Code* § 226(e).

28 20. As a matter of policy and/or practice:

1 (a) Defendant declined to provide Drivers with a first meal period of not less than
2 thirty (30) minutes during which they are relieved of all duty before working
3 more than five (5) hours;

4 (b) Defendant declined to provide Drivers with a second meal period of not less
5 than 30 minutes during which they are relieved of all duty before working more
6 than 10 hours per day; and

7 (c) Defendant failed to pay Drivers one hour of pay at their regular rate of
8 compensation for each workday that a meal period was not provided.

9 21. As a matter of policy and/or practice:

10 (a) Defendant denied paid rest periods of 10 minutes during which employees are
11 relieved of all duty for each four (4) hours of work; and

12 (b) Defendant failed to pay Drivers one hour of pay at their regular rate of
13 compensation for each workday that a rest period was not permitted.

14 22. The failure to permit and provide meal periods and rest periods as described herein
15 violates California *Labor Code* §§ 226.7 and 512, IWC Wage Order 9-2001 (§§ 11 and 12), and the
16 UCL.

17 23. As a matter of policy and/or practice, Defendant refused to pay all accrued wages to
18 employees upon termination.

19 24. The failure to pay all accrued vacation wages as described herein violates California
20 *Labor Code* § 227.3 and the UCL.

21 25. Defendant also willfully failed and refused to timely pay all compensation due and
22 owing to Drivers whose employment terminated during the Class period, as required by *Labor*
23 *Code* §§ 201 and 202. As a result, Defendant is liable for accrued wages due upon termination,
24 and waiting time penalties owed in accordance with *Labor Code* § 203.

25 26. In this putative Class action, Plaintiffs seek for themselves, and all others similarly
26 situated, seek damages and penalties for violations of the California Labor Code and applicable
27 IWC Wage Order, and seek payment of restitution of all sums wrongfully obtained by Defendant in
28 violation of the UCL.

1 **Private Attorneys General Act of 2004**

2 27. Plaintiffs are informed and believe that-pursuant to the California *Labor Code* Private
3 Attorneys General Act of 2004 (“PAGA”), *Labor Code* §§ 2698, *et seq.* the Labor Workforce and
4 Development Agency (“LWDA”) received notice of Defendant’s violations of the California *Labor*
5 *Code* (including penalties due under §§ 225.5 and 558) and violations of IWC Wage Order No. 9-
6 2001 in conjunction with the Bickley Action and/or Patton Action. In or before July 2009, the
7 LWDA sent a letter confirming that it will not be investigating the alleged violations.

8 28. In addition, on or about May 21, 2010, Plaintiffs in the Grewe action also gave notice
9 to the LWDA with respect to the *Labor Code* violations set forth herein. On or about July 8, 2010,
10 the LWDA sent a letter confirming that it will not be investigating the alleged violations.

11 29. The failure to pay at least minimum wages to Drivers for each and every hour worked,
12 and the failure to pay for time spent driving in excess of mileage estimates in accordance with the
13 designated rates, will warrant civil penalties under *Labor Code* §§ 225.5, 558, and 1197.1. The
14 failure to provide accurate itemized wage statements, and the failure to maintain adequate wage
15 records, will warrant civil penalties under *Labor Code* § 226.3. The failure to pay meal period and
16 rest period wages to Drivers will warrant civil penalties under *Labor Code* § 558.

17 **II. JURISDICTION AND VENUE**

18 30. The United States District Court for the Northern District of California has jurisdiction
19 over this case by virtue of the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and
20 1711-1715, in as much as there is diversity between the Parties herein and Plaintiff believes that
21 more than \$5,000,000 is at issue.

22 31. Venue is proper in the United States District Court for the Northern District of
23 California, pursuant to 28 U.S.C. §§ 1391(b) and (c), because a substantial part of the events or
24 omissions giving rise to the claims occurred and had their primary effect in this judicial district,
25 and Defendants have consented to this court’s venue by virtue of having removed this case to this
26 court. Thus, venue remains proper for the United States District Court for the Northern District of
27 California under the Federal Rules of Civil Procedure.

28

III. PARTIES

NAMED PLAINTIFFS

32. Plaintiff MICHAEL D. PATTON (“Patton”) is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Schneider employed Patton as a Dedicated Driver in California during the Relevant Time Period.

33. Plaintiff MORRIS BICKLEY (“Bickley”) is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Schneider employed Bickley as a Dedicated Driver in California during the Relevant Time Period.

34. Plaintiff RAYMOND GREWE (“Grew”) is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Schneider employed Grew as an Intermodal Driver in California during the Relevant Time Period.

35. Plaintiff DENNIS VANHORN (“VanHorn”) is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Schneider employed VanHorn as a Regional Driver in California during the Relevant Time Period.

36. Plaintiff DOUGLAS PUMROY (“Pumroy”) is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Schneider employed Pumroy as a Regional Driver in California during the Relevant Time Period.

37. Plaintiffs seek damages including, but not limited to, restitution for unpaid wages, penalties and other compensation, from Defendants for the Relevant Time Period, because Defendants have:

- a. Failed to timely pay Plaintiffs minimum wages or agreed rates for all hours worked and/or miles driven;

- b. Failed to provide Plaintiffs proper meal and rest periods or premium wages therefore in lieu of the same;
- c. Failed to furnish Plaintiffs accurate itemized wage statements;
- d. Failed to pay all accrued vacation wages upon termination;
- e. Failed to timely pay Plaintiffs all wages due them at the time of their termination from employment; and/or,
- f. Subjected Plaintiffs to unfair business practices within the meaning of *Bus. & Prof. Code* §§ 17200, *et seq.*

DEFENDANT SCHNEIDER NATIONAL CARRIERS, INC.

38. Plaintiffs are informed and believe, and based thereon allege, that Defendant SCHNEIDER NATIONAL CARRIERS, INC. was Plaintiffs' employer (or co-employer as the case may be) and was, for purposes of jurisdiction, domiciled at all times during the Relevant Time Period in the State of Wisconsin, and not California, as Wisconsin is its principal place of business. Accordingly, there is diversity of citizenship between the Named Plaintiffs and this Defendant, as required by 28 U.S.C. § 1332(d)(2)(A).

DEFENDANTS DOES 1 TO 10, INCLUSIVE

39. DOES 1 to 10, inclusive are now, and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 10, inclusive and for that reason, DOES 1 to 10 are sued under such fictitious names pursuant to California *Code of Civil Procedure* ("CCP") § 474. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 5 are believed to be business entities who were also co-employers of the Plaintiffs and the putative Class herein.

ALL DEFENDANTS

40. Plaintiffs are informed and believe, and based upon such information and belief allege, that the Defendants, and each of them, are now and/or at all times mentioned in this Complaint

1 were in some manner legally responsible for the events, happenings and circumstances alleged in
2 this Complaint.

3 41. Plaintiffs are further informed and believe, and based upon such information and belief
4 allege, that at all times herein mentioned, all Defendants, and each of them, were and are the
5 agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and
6 were, at all such times, acting within the course and scope of said employment and/or agency;
7 furthermore, that each and every Defendant herein, while acting as a high corporate officer,
8 director and/or managing agent, principal and/or employer, expressly directed, consented to,
9 approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein
10 alleged and was responsible in whole or in part for the matters referred to herein.

11 42. Plaintiffs are further informed and believe, and based upon such information and belief
12 allege, that at all times herein mentioned, Defendants, and each of them, proximately caused
13 Plaintiffs, all others similarly situated and the general public to be subjected to the unlawful
14 practices, wrongs, complaints, injuries and/or damages alleged in this amended Complaint.

15 43. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
16 were members of and/or engaged in a joint venture, partnership and common enterprise, and were
17 acting within the course and scope of, and in pursuit of said joint venture, partnership and common
18 enterprise and, as such were co-employers of the Plaintiffs and the putative Class herein.

19 44. Defendants, and each of them, at all times mentioned in this Complaint, concurred
20 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the
21 various acts and omissions of each and every one of the other Defendants in proximately causing
22 the injuries and/or damages alleged in this Complaint.

23 **IV. BACKGROUND**

24 **Employment at Defendant Schneider National Carriers, Inc.**

25 45. Schneider provides transportation services throughout California. Defendant owns a
26 fleet of trucks and employs thousands of drivers throughout this State.

27 46. Drivers at Schneider are generally responsible for driving trucks and delivering freight
28 from one point to another. Their work tasks may include (among others): locating, inspecting,

1 fueling, and maintaining vehicles, hooking/unhooking trailers, verifying loads, planning routes and
2 trips, completing daily logs and shipping documents, completing other paperwork, using the
3 onboard computer system, waiting for customers, and waiting for dispatch.

4 47. Schneider's Intermodal Drivers perform substantially similar job duties. The
5 Intermodal Drivers are generally assigned to pick up and transport freight to and from railways.
6 Their work tasks may include (among others): inspecting, fueling, and maintaining tractors/trailers,
7 locating trailer loads at rail yards, verifying loads, planning routes and trips, delivering shipments,
8 completing daily logs and shipping documents, using the onboard computer system, waiting on
9 shipping/receiving personnel, and waiting for dispatch.

10 48. Schneider's Dedicated Drivers perform substantially similar job duties. Schneider's
11 Dedicated Drivers are assigned to make shipments for a single shipper like Wal-Mart. Their work
12 tasks may include (among others): inspecting, fueling, and maintaining tractors/trailers, locating
13 tractors/trailers at operating centers and distribution centers, hooking/unhooking trailers, verifying
14 loads, planning routes and trips, delivering shipments, completing daily logs and shipping
15 documents, using the onboard computer system, waiting for customers, and waiting for dispatch.

16 49. Schneider's Regional Drivers perform substantially similar job duties. Schneider's
17 Regional Drivers are assigned to make shipments for a variety of shippers operating within defined
18 networks in a defined region (in this case, the West region). Regional Drivers are not assigned to a
19 single shipper. Their work tasks may include (among others): inspecting, fueling, and maintaining
20 tractors/trailers, locating tractors/trailers at operating centers and distribution centers,
21 hooking/unhooking trailers, verifying loads, planning routes and trips, delivering shipments,
22 completing daily logs and shipping documents, using the onboard computer system, waiting for
23 customers, and waiting for dispatch.

24 50. Plaintiff Grewe worked as an Intermodal Driver. He was not compensated for all
25 hours worked performing Common Unpaid Tasks or Waiting Time. In addition, he drove actual
26 miles for Defendant for which he did not receive compensation.

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1 51. Plaintiffs Bickley and Patton worked as a Dedicated Drivers. They were not
2 compensated for all hours worked performing Common Unpaid Tasks or Waiting Time. In
3 addition, they drove actual miles for Defendant for which they did not receive compensation.

4 52. Plaintiffs VanHorn and Pumroy worked for Schneider as Regional Drivers, making
5 deliveries for various shippers in Schneider’s Western Region. As California-based employees,
6 VanHorn and Pumroy spent part of their time working in California. They were not compensated
7 for all hours worked performing Common Unpaid Tasks or Waiting Time. In addition, they drove
8 actual miles for Defendant for which they did not receive compensation.

9
10 **Defendant’s Failure to Pay Minimum Wages and Designated Rates**

11 53. IWC Wage Order No. 9-2001 defines “hours worked” to mean “the time during which
12 an employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so.”

14 54. Defendant suffered or permitted Drivers to work portions of the day for which
15 Defendant failed to compensate them. Drivers were subject to Defendant’s control during this
16 time.

17 55. *Labor Code* § 1182.12 and IWC Wage Order No. 9-2001 (§ 4) provide that on and
18 after January 1, 2008, the minimum wage shall be not less than eight dollars (\$8.00) per hour.

19 56. *Labor Code* § 1194(a) provides in relevant part: “Notwithstanding any agreement to
20 work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to
21 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
22 interest thereon, reasonable attorney’s fees, and costs of suit.”

23 57. *Labor Code* § 1194.2(a) provides in relevant part: “In any action under Section 1193.6
24 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage
25 fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
26 in an amount equal to the wages unlawfully unpaid and interest thereon.”

1 58. *Labor Code* § 1197 provides: “The minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.”

4 59. Plaintiffs are informed and believe and therefore allege that Defendant’s compensation
5 schemes did not fairly compensate Drivers for all hours spent performing the Common Unpaid
6 Tasks and for Waiting Time.

7 60. Among other things, Schneider exercises considerable control over employees during
8 Waiting Time. For example, during Customer Waiting Time, Drivers may wait at or near customer
9 facilities in advance of an appointment for delivery or pickup, and/or they may wait at or near
10 designated facilities for shipping or receiving personnel to accept and/or provide paperwork, and/or
11 they may wait for a customer to commence loading or unloading a shipment. During Dispatch
12 Waiting Time, Drivers may wait for their dispatchers to provide in-vehicle instructions regarding a
13 work assignment, and/or they may wait on-call between assignments for dispatch to provide further
14 directions while they are on the road, and/or they may wait while monitoring the onboard computer
15 system, while staying near their tractors/trailers, while being available to promptly accept re-
16 assignment, and without using the tractors/trailers for personal errands. Schneider regularly
17 monitors the tractors/trailers through its GPS monitors.

18 61. Furthermore, as a matter of policy and/or practice, Defendant only paid Drivers for
19 driving time based on computerized estimates of the shortest mileage on select routes (i.e., based
20 on the Household Movers Guide, or “HHMG”), without compensating Drivers for the time spent
21 driving in excess of the pre-determined mileage estimates. Defendant’s mileage estimates based on
22 the HHMG shortest routes (“HHMG Shortest Route Estimates”) were routinely less than the actual
23 miles driven by the Company’s employees in route, and less than the practical miles warranted to
24 make deliveries for Schneider customers. In any event, Defendant’s Mileage Pay scheme simply
25 did not compensate Drivers for all of the actual miles driven (i.e., miles that Defendant calls “out-
26 of-route”, or bobtail miles to home operating centers at the end of shifts). As a result, Defendant
27 systematically failed to pay Drivers for hours spent driving in excess of the pre-determined mileage
28 estimates.

1 62. The failure to pay at least minimum wages to Drivers for each and every hour worked
2 violated *Labor Code* §§ 1182.11, 1182.12, 1194, 1194.2, 1197, IWC Wage Order No. 9-2001 (§
3 4), and the UCL.

4 63. The failure to compensate for the Common Unpaid Tasks, for Waiting Time, and for
5 time spent driving in excess of mileage estimates according to rates designated by statute and/or
6 contract violated *Labor Code* §§ 221 and 223, IWC Wage Order No. 9-2001, and the UCL.

7 64. In California, a contract of employment is a contract by which one, who is called the
8 employer, engages another, who is called the employee, to do something for the benefit of the
9 employer or a third person. See California *Labor Code* § 2850. Schneider, as employer, engaged
10 the Drivers, as employees, to drive trucks and make deliveries for the benefit of Schneider and its
11 customers. The failure by Schneider to compensate for all miles actually driven by the Drivers,
12 and the failure to pay for all practical miles warranted by the actual deliveries, violated the contract
13 of employment and the implied covenant of good faith and fair dealing.

14 **Defendant's Failure to Maintain Adequate Employment Records and Failure to Provide**
15 **Accurate Itemized Wage Statements**

16 65. At all times relevant hereto, *Labor Code* § 226 and IWC Wage Order No. 9-2001
17 required employers to maintain adequate employment records and provide employees with
18 accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly
19 rates worked during each pay period, the corresponding number of hours worked at each hourly
20 rate, and meal breaks taken.

21 66. Defendant's itemized wage statements do not show all wages earned, all hours worked,
22 or all applicable rates, in violation of the California *Labor Code* § 226, the applicable IWC Wage
23 Order, and the UCL.

24 67. Moreover, Defendant did not maintain adequate records of all wages earned, hours
25 worked, applicable rates, and meal breaks taken.

26 **Defendant's Failure to Provide Meal Periods**

27 68. At all times relevant hereto, *Labor Code* §§ 226.7 and 512 and IWC Wage Order No.
28 9-2001 (§ 11) required employers to provide employees with a first meal period of not less than

1 thirty (30) minutes during which they are relieved of all duty before working more than five (5)
2 hours and a second meal period of not less than 30 minutes during which they are relieved of all
3 duty before working more than 10 hours per day.

4 69. *Labor Code* § 226.7(b) and the applicable IWC Wage Order require employers to pay
5 one hour of additional pay at the regular rate of compensation for each employee and each workday
6 that a proper meal period is not provided.

7 70. Plaintiffs are informed and believe and therefore allege that Defendant did not
8 effectively communicate California meal period requirements to its Drivers, ignored reports
9 confirming that Drivers were not receiving meal periods in accordance with California law, failed
10 to implement scheduling accommodations to enable Drivers to take proper meal periods, and
11 adopted compensation plans that discouraged Drivers from taking proper meal periods.

12 71. Defendant also had a computerized system on each truck that keeps track of various
13 aspects of the Drivers' activities. Drivers also had to input trip information into the onboard
14 computer system. Nevertheless, Defendant did not schedule meal periods, or include an activity
15 code for meal periods, or monitor compliance with California meal period requirements.

16 **Defendant's Failure to Permit Rest Periods**

17 72. At all times relevant hereto, *Labor Code* §§ 226.7 and IWC Wage Order No. 9-2001 (§
18 12) required employers to authorize, permit, and provide a ten (10) minute paid rest for each four
19 (4) hours of work, during which employees are relieved of all duty.

20 73. *Labor Code* § 226.7(b) and the applicable IWC Wage Order require employers to pay
21 one hour of additional pay at the regular rate of compensation for each employee and each workday
22 that a proper rest period is not provided.

23 74. As a matter of policy and/or practice, Defendant did not authorize, permit and provide
24 a paid duty-free 10-minute rest for each 4 hours of work.

25 75. Plaintiffs are informed and believe and therefore allege that Defendant did not
26 effectively communicate the California rest period requirements to all Drivers, and did not
27 implement a compensation plan mechanism or scheduling accommodations to enable paid rest
28 periods to be taken by all Drivers in accordance with California law.

1 76. In addition, Defendant did not schedule rest periods, include an activity code for rest
2 periods in the on-board computer system, or provide a means for compensating for rest periods.

3 **Defendant's Failure to Pay Vacation Wages**

4 77. At all times relevant hereto, *Labor Code* §§ 227.3 requires an employer to payout all
5 vested unused and/or unpaid vacation wages at an employee's final rate of pay in accordance with
6 his or her contract of employment upon termination of employment.

7 78. As a matter of policy and/or practice, Defendant engaged in a uniform corporate
8 practice of failing to pay accrued vacation wages to all terminated Drivers at the Driver's final rate
9 of pay.

10 **Defendant's Failure to Pay Wages Due on Termination**

11 79. *Labor Code* § 201 requires an employer that discharges an employee to pay
12 compensation due and owing to said employee immediately upon discharge. *Labor Code* § 202
13 requires an employer to pay an employee who quits any compensation due and owing to said
14 employee within seventy-two (72) hours of an employee's resignation. *Labor Code* § 203 provides
15 that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as
16 required under §§ 201 and 202, then the employer is liable for waiting time penalties in the form of
17 continued compensation for up to thirty (30) work days.

18 80. Defendant willfully failed to timely pay all compensation owed to Drivers upon
19 termination, including wages owed to Plaintiffs for performing the Common Unpaid Tasks
20 performed herein, for Waiting Time, and for driving actual but unpaid miles. As a result,
21 Defendant is liable both for accrued wages due at termination and for waiting time penalties.

22 **V. CLASS ACTION ALLEGATIONS**

23 81. Pursuant to Fed.R.Civ.P. Rule 23(a)(1)-(4), 23(b)(2), and 23(b)(3), this action is
24 brought and may be properly maintained as a class action. This action satisfies the ascertainability,
25 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of
26 those provisions.

27 82. Plaintiffs bring this suit as a class action pursuant to Fed.R.Civ.P. Rule 23, on behalf of
28 the Class of individuals which are defined as follows:

1 All current and former California-based employees of Schneider
2 National Carriers, Inc., at any time from November 25, 2004 to the
3 present (the “Class Period”), employed in one of the following three
4 types of truck driver positions: (a) Intermodal Drivers; (b) Dedicated
5 Drivers; or (c) Regional Drivers.

6 83. “California-based” refers to employees:

7 (i) who had a residential address in California at any time during the Class
8 Period; *and/or*

9 (ii) who were assigned to or associated with an operating center or operating
10 point located in California at any time during the Class Period.

11 84. The phrase “assigned to or associated with an operating center or operating point”
12 includes any and all employees listed in Schneider’s databases in connection with an operating
13 center or operating point.

14 85. Plaintiffs further seek to establish the following Subclasses:

15 a. The Dedicated Subclass, which is defined as all Defendants’ current and
16 former California-based, local and regional Dedicated Drivers (*i.e.* the
17 Dedicated Subclass);

18 b. The Former Dedicated Subclass, which is defined as all Dedicated Drivers
19 who are no longer employed by Defendants herein;

20 c. The Intermodal Subclass, which is defined as Defendants current and
21 former California-based, local and regional Intermodal Drivers (*i.e.* the
22 Intermodal Subclass);

23 d. The Former Intermodal Subclass, which is defined as all Dedicated
24 Drivers who are no longer employed by Defendants herein;

25 e. The Regional Subclass, which is defined as all Defendants’ current and
26 former California-based Regional Drivers (*i.e.* the Regional Subclass), and

27 f. The Former Regional Subclass, which is defined as all Regional Drivers
28 who are no longer employed by Defendants herein.

1 g. Plaintiffs may also seek to establish Subclasses for certain claims (e.g.,
2 minimum wage claims) based on salaried vs. non-salaried work.

3 86. The Regional Subclass and Former Regional Subclass are further limited to truck
4 drivers:

5 (i) who had a residential address in California at any time during the Class
6 Period; *and*

7 (ii) who worked in Schneider's Van/Truckload division; *and*

8 (iii) who worked in Schneider's western regional services group (i.e., drivers
9 in Schneider's "W1" work configuration); *and*

10 (iv) who were assigned to or associated with Schneider's French Camp
11 operating center or Schneider's Fontana operating center.

12 87. Numerosity: Plaintiffs are informed and believe, and based on such information and
13 belief allege, that in conformity with Rule 23(a)(1), the potential membership in each of the classes
14 is so numerous that joinder of all members is impractical. While the exact number of members in
15 each of the classes is presently unknown to Plaintiffs, Plaintiffs estimate membership in the Class
16 to exceed 1,000 and the Subclasses to exceed 500. The exact number and specific identities of the
17 members of the Class, including the Former Employee Subclass, may be readily ascertained
18 through inspection of Defendants' business records.

19 88. Questions of Law or Fact Common to the Class: Plaintiffs are informed and believe,
20 and based on such information and belief allege, that numerous questions of law and/or fact are
21 common to all members of the Class and Subclasses (and that these common questions
22 predominate over any individual issues), including, without limitation:

23 a. Whether Defendant's compensation schemes compensated Drivers for all
24 hours worked performing the Common Unpaid Tasks;

25 b. Whether Defendant's compensation schemes compensated Drivers for all
26 Customer Waiting Time;

27 c. Whether Defendant's compensation schemes compensated Drivers for all
28 Dispatch Waiting Time;

- d. Whether Defendant's mileage payments based on the HHMG Shortest Route Estimates fully and fairly compensated for all miles actually driven, and whether Defendant's mileage payments otherwise shorted Drivers on compensation for miles actually driven;
- e. Whether Defendant failed to pay minimum wages due to each Class member for each hour worked in violation of *Labor Code* §§ 1182.11, 1182.12, 1194, 1194.2, 1197, IWC Wage Order No. 9-2001 (§ 4);
- f. Whether Defendant failed to pay wages due to each Class member for each hour worked at the rate designated by statute and/or contract in violation of *Labor Code* §§ 221 and 223, and IWC Wage Order No. 9-2001;
- g. Whether Defendant failed to provide legally required meal periods due to each class member in violation of *Labor Code* §§ 226.7 and 512, and IWC Wage Order No. 9-2001 (§ 11);
- h. Whether Defendant failed to authorize, permit and provide rest periods due to each class member in violation of *Labor Code* § 226.7 and IWC Wage Order No. 9-2001 (§ 12);
- i. Whether Defendant failed to maintain adequate and accurate records of work performed by members of the Class;
- j. Whether Defendant failed to provide accurate itemized wage statements to each Class member in violation of *Labor Code* § 226 and the applicable IWC Wage Order;
- k. Whether Defendant failed to pay all accrued unused and/or unpaid vacation wages to members of the class upon termination of employment at the Driver's final rate of pay;
1. Whether Defendant violated *Labor Code* §§ 201-202 by failing to pay each former employee member of the Class all wages due on termination of employment;

- 1 m. Whether Defendant's conduct constitutes unfair and/or unlawful business
2 practices under the UCL;
- 3 n. Whether Class members are entitled to compensatory damages requiring
4 Defendant to pay Class members for unpaid minimum wages or wages at
5 the designated rates;
- 6 o. Whether Class members are entitled to liquidated damages from
7 Defendant for unpaid minimum wages under *Labor Code* § 1194.2;
- 8 p. Whether Class members are entitled to restitution of minimum wages, or
9 wages at less than the designated rates, withheld by Defendant;
- 10 q. Whether Class members are entitled to restitution of meal period wages;
- 11 r. Whether Class members are entitled to restitution forest period wages;
- 12 s. Whether Defendant is liable for pre-judgment interest;
- 13 t. Whether Defendant is liable for attorneys' fees and costs; and
- 14 u. Whether Defendant is liable to Class members for statutory penalties for
15 unpaid wages (*e.g.*, under *Labor Code* § 203, § 226(e)).

16 89. Typicality: Plaintiffs are informed and believe, and based on such information and
17 belief allege, that Plaintiffs' claims are typical of the claims of all members of the Class whom they
18 seek to represent. Defendants treated both Plaintiffs and all members of the Class in a virtually
19 identical manner with respect to the violations of law asserted herein. These violations of law arise
20 out of Defendants' common course of conduct in *inter alia* (a) requiring members of the Class to
21 work hours for which they were not properly compensated (in terms of basic minimum wages
22 and/or agreed rates); (b) forego duty free meal breaks and paid rest periods to which they were
23 entitled; (c) receive inaccurate wage statements; and (d) endure unfair business practices within the
24 meaning of *B&PC* § 17200, *et seq.*

25 90. Adequacy: Plaintiffs are informed and believe, and based on such information and
26 belief allege, that Plaintiffs will fairly and adequately protect the interests of the members of the
27 Class they seek to represent. Plaintiffs are adequate representatives of the Class because they are
28 members of the Class, because each Plaintiff is also a member of one or more of the Subclasses,

1 and because Plaintiffs' interests do not conflict with the interests of the members of the Class and
2 Subclasses they seek to represent. Plaintiffs have retained counsel competent and experienced in
3 the prosecution of complex class actions, and Plaintiffs and their counsel intend to prosecute this
4 action vigorously for the benefit of the Class. Plaintiffs and their counsel will fairly and adequately
5 protect the interests of the Class members.

6 91. Superiority: Plaintiffs are informed and believe, and based on such information and
7 belief allege, that this action is properly brought as a class action, not only because the
8 prerequisites of Rule 23 and common law related thereto are satisfied (as outlined above), but also
9 because of the following:

- 10 a. The prosecution of separate actions by or against individual members of the
11 Class would create risk of inconsistent or varying adjudications with respect to
12 individual members of the Class which would establish incompatible standards
13 of conduct for the party opposing the Class;
- 14 b. Adjudications with respect to individuals members of the Class would, as a
15 practical matter, be dispositive of the interests of the other members not
16 Pursuant to California *Labor Code* §§ 1182.12, 1194, 1197, and the applicable
17 parties to the adjudications or substantially impair or impede their ability to
18 protect their interests;
- 19 c. Defendants have acted or refused to act on grounds generally applicable to all
20 members of the Class, making declaratory relief appropriate with respect to all
21 of the Class;
- 22 d. Questions of law or fact common to the members of the Class predominate over
23 any questions affecting only individual members; and
- 24 e. Class action treatment is superior to other available methods for the fair and
25 efficient adjudication of the controversy.

26 ///

27 ///

28 ///

1 **VI. INDIVIDUAL CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

3 **(Failure to Pay Minimum Wages for All Hours Worked)**

4 **(On Behalf of the Dedicated and Intermodal Subclasses)**

5 92. Pursuant to California *Labor Code* §§ 1182.12, 1194, 1197, and the applicable IWC
6 Wage Order, Plaintiffs may bring a civil action for unpaid minimum wages directly against the
7 employer.

8 93. At all relevant times herein, the applicable *Labor Code* and IWC Wage Order
9 referenced herein applied to Plaintiffs and Class members employed with Defendant.

10 94. At all relevant times herein, §§ 1182.12, 1194, 1197, and the applicable IWC Wage
11 Order, provided for payment of state-law minimum wages at the rate described therein.

12 95. Defendant's compensation schemes did not fairly compensate Drivers for Waiting
13 Time or other hours worked performing Common Unpaid Tasks. As a result, Defendant suffered
14 or permitted Class members to perform work without compensation, while subject to the
15 Defendant's control.

16 96. Defendant has intentionally and improperly failed to make payment of minimum wages
17 and other benefits to Plaintiffs and Class members, in violation of the *Labor Code*, applicable
18 regulations, and the IWC Wage Orders.

19 97. Defendant owes Plaintiffs and each Dedicated and Intermodal Subclass member
20 minimum wages and liquidated damages pursuant to *Labor Code* §§ 1182.12, 1194, 1194.2, 1197,
21 and the applicable IWC Wage Order, according to proof at trial of the hours worked during the
22 three (3) years prior to the filing of the First-Filed Complaint up to and including the present.

23 98. Plaintiffs and the other Dedicated and Intermodal Subclass members request payment
24 of unpaid minimum wages according to proof, interest, attorneys' fees and costs, against Defendant
25 in a sum as provided by the *Labor Code* and/or other statutes.

26 99. Plaintiffs and the other Dedicated and Intermodal Subclass members also request relief
27 as described below.

28

1 **SECOND CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

2 **(Failure to Pay Minimum Wages for All Hours Worked)**

3 **(On Behalf of the Regional Subclass)**

4 100. The preceding paragraphs of this Complaint are realleged and incorporated by
5 reference hereto as though fully set forth herein.

6 101. Pursuant to California *Labor Code* §§ 1182.12, 1194, 1197, and the applicable IWC
7 Wage Order, Plaintiffs may bring a civil action for unpaid minimum wages directly against the
8 employer.

9 102. At all relevant times herein, the applicable *Labor Code* and IWC Wage Order
10 referenced herein applied to Plaintiffs and Class members employed with Defendant.

11 103. At all relevant times herein, §§ 1182.12, 1194, 1197, and the applicable IWC
12 Wage Order, provided for payment of state-law minimum wages at the rate described therein.

13 104. Defendant's compensation schemes did not fairly compensate Drivers for Waiting
14 Time or other hours worked performing Common Unpaid Tasks. Moreover, Defendant's
15 compensation schemes failed to provide Load Pay for delivering shipments. As a result, Defendant
16 suffered or permitted Class members to perform work without compensation, while subject to the
17 Defendant's control.

18 105. Defendant has intentionally and improperly failed to make payment of minimum
19 wages and other benefits to Plaintiffs and Regional Subclass members, in violation of the *Labor*
20 *Code*, applicable regulations, and the IWC Wage Orders.

21 106. Defendant owes Plaintiffs and each Regional Subclass member minimum wages and
22 liquidated damages pursuant to *Labor Code* §§ 1182.12, 1194, 1194.2, 1197, and the applicable
23 IWC Wage Order, according to proof at trial of the hours worked during the three (3) years prior to
24 the filing of the First-Filed Complaint up to and including the present.

25 107. Plaintiffs and the other Regional Subclass members request payment of unpaid
26 minimum wages according to proof, interest, attorneys' fees and costs, against Defendant in a sum
27 as provided by the *Labor Code* and/or other statutes.

28

1 108. Plaintiffs and the other Regional Subclass members also request relief as described
2 below.

3 **THIRD CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

4 **(Failure To Pay Minimum Wages for Actual Miles Driven)**

5 **(On Behalf of the Dedicated and Intermodal Subclasses)**

6 109. The preceding paragraphs of this Complaint are realleged and incorporated by
7 reference hereto as though fully set forth herein.

8 110. Pursuant to California *Labor Code* §§ 1182.12, 1194, 1197, and the applicable IWC
9 Wage Order, Plaintiffs may bring a civil action for unpaid minimum wages directly against the
10 employer.

11 111. At all relevant times herein, the applicable *Labor Code* and IWC Wage Orders
12 referenced herein applied to Plaintiffs and Class members' employed with Defendant.

13 112. At all relevant times herein, §§ 1182.12, 1194, 1197, and the applicable IWC Wage
14 Order, provided for payment of state-law minimum wages.

15 113. Defendant engaged Class members to drive trucks in the course and scope of
16 employment. Defendant agreed to compensate for driving work through mileage-based
17 compensation. However, Defendant's compensation schemes only covered wages for a portion of
18 the miles actually driven in route based on the HHMG Shortest Route Estimates. The actual
19 mileage routinely exceeded the HHMG Shortest Route Estimates. Consequently, Defendant failed
20 to pay wages to Class members for the time they actually spent driving the extra miles.

21 114. With respect to all extra miles actually driven, Defendant has intentionally and
22 improperly failed to make payment of minimum wages and other benefits to Plaintiffs and Class
23 members, in violation of the *Labor Code*, applicable regulations, and the IWC Wage Orders.

24 115. Defendant owes Plaintiffs and each Dedicated and Intermodal Subclass member
25 minimum wages and liquidated damages pursuant to *Labor Code* §§ 1182.12, 1194, 1194.2, 1197,
26 and the applicable IWC Wage Order, according to proof at trial of the hours worked during the
27 three (3) years prior to the filing of the First-Filed Complaint up to and including the present.
28

1 116. Plaintiffs and the other Dedicated and Intermodal Subclass members request payment
2 of unpaid minimum wages according to proof, interest, attorneys' fees and costs, against Defendant
3 in a sum as provided by the Labor Code and/or other statutes.

4 117. Plaintiffs and the other Dedicated and Intermodal Subclass members also request
5 relief as described below.

6 **FOURTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

7 **(Failure To Pay Minimum Wages for Actual Miles Driven)**

8 **(On Behalf of the Regional Subclass)**

9 118. The preceding paragraphs of this Complaint are realleged and incorporated by
10 reference hereto as though fully set forth herein.

11 119. Pursuant to California *Labor Code* §§ 1182.12, 1194, 1197, and the applicable IWC
12 Wage Order, Plaintiffs may bring a civil action for unpaid minimum wages directly against the
13 employer.

14 120. At all relevant times herein, the applicable *Labor Code* and IWC Wage Orders
15 referenced herein applied to Plaintiffs and Class members' employed with Defendant.

16 121. At all relevant times herein, §§ 1182.12, 1194, 1197, and the applicable IWC Wage
17 Order, provided for payment of state-law minimum wages.

18 122. Defendant engaged Class members to drive trucks in the course and scope of
19 employment. Defendant agreed to compensate for driving work through mileage-based
20 compensation. However, Defendant's compensation schemes only covered wages for a portion of
21 the miles actually driven in route based on the HHMG Shortest Route Estimates. The actual
22 mileage routinely exceeded the HHMG Shortest Route Estimates. Consequently, Defendant failed
23 to pay wages to Class members for the time they actually spent driving the extra miles.

24 123. With respect to all extra miles actually driven, Defendant has intentionally and
25 improperly failed to make payment of minimum wages and other benefits to Plaintiffs and
26 Regional Subclass members, in violation of the *Labor Code*, applicable regulations, and the IWC
27 Wage Orders.
28

1 124. Defendant owes Plaintiffs and each Regional Subclass member minimum wages and
2 liquidated damages pursuant to *Labor Code* §§ 1182.12, 1194, 1194.2, 1197, and the applicable
3 IWC Wage Order, according to proof at trial of the hours worked during the relevant time period.

4 125. Plaintiffs and the other Regional Subclass members request payment of unpaid
5 minimum wages according to proof, interest, attorneys' fees and costs, against Defendant in a sum
6 as provided by the Labor Code and/or other statutes.

7 126. Plaintiffs and the other Regional Subclass members also request relief as described
8 below.

9 **FIFTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

10 **(Payment of Wage Below Designated Rate for All Hours Worked)**

11 **(On Behalf of the Dedicated and Intermodal Subclasses)**

12 127. The preceding paragraphs of this Complaint are realleged and incorporated by
13 reference hereto as though fully set forth herein.

14 128. At all relevant times herein, the applicable *Labor Code* and IWC Wage Order
15 referenced herein applied to Drivers employed with Defendant.

16 129. At all relevant times herein, *Labor Code* § 223 provided: "Where any statute or
17 contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly
18 pay a lower wage while purporting to pay the wage designated by statute or by contract."

19 130. Defendant's compensation scheme purported to compensate Drivers for all hours
20 worked. In reality, Defendant suffered or permitted Class members to work portions of their day
21 without compensation, all while subject to the Defendant's control.

22 131. California law requires employers to pay wages in accordance with a designated wage
23 scale. Nevertheless, Defendant paid less than minimum wages and less than agreed-upon
24 compensation owed to Plaintiffs and Dedicated and Intermodal Subclass members, while
25 purporting to pay the wages designated under California's minimum wage scale and Defendant's
26 employment relationship. As a result, Defendant's conduct violates *Labor Code* §§ 221 and 223,
27 and the applicable IWC Wage Order.
28

1 132. Defendant owed and still owes Plaintiffs and each Dedicated and Intermodal Subclass
2 member wages pursuant to the Labor Code and IWC Wage Order according to proof at trial of the
3 hours worked during the relevant time period.

4 133. Plaintiffs and the other Dedicated and Intermodal Subclass members request payment
5 of unpaid wages below the designated rate and according to proof, plus interest, attorneys' fees and
6 costs, against Defendant in a sum as provided by the *Labor Code* and/or other statutes.

7 134. Plaintiffs and the other Dedicated and Intermodal Subclass members also request
8 relief as described below.

9 **SIXTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

10 **(Payment of Wage Below Designated Rate for All Hours Worked)**

11 **(On Behalf of the Regional Subclass)**

12 135. The preceding paragraphs of this Complaint are realleged and incorporated by
13 reference hereto as though fully set forth herein.

14 136. At all relevant times herein, the applicable *Labor Code* and IWC Wage Order
15 referenced herein applied to Drivers employed with Defendant.

16 137. At all relevant times herein, *Labor Code* § 223 provided: "Where any statute or
17 contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly
18 pay a lower wage while purporting to pay the wage designated by statute or by contract."

19 138. Defendant's compensation scheme purported to compensate Drivers for all hours
20 worked. In reality, Defendant suffered or permitted Class members to work portions of their day
21 without compensation, all while subject to the Defendant's control.

22 139. California law requires employers to pay wages in accordance with a designated wage
23 scale. Nevertheless, Defendant paid less than minimum wages and less than agreed-upon
24 compensation owed to Plaintiffs and Regional Subclass members, while purporting to pay the
25 wages designated under California's minimum wage scale and Defendant's employment
26 relationship. As a result, Defendant's conduct violates *Labor Code* §§ 221 and 223, and the
27 applicable IWC Wage Order.
28

1 140. Defendant owed and still owes Plaintiffs and each Regional Subclass member wages
2 pursuant to the Labor Code and IWC Wage Order according to proof at trial of the hours worked
3 during the relevant time period..

4 141. Plaintiffs and the other Regional Subclass members request payment of unpaid, wages
5 below the designated rate and according to proof, plus interest, attorneys' fees and costs, against
6 Defendant in a sum as provided by the *Labor Code* and/or other statutes.

7 142. Plaintiffs and the other Regional Subclass members also request relief as described
8 below.

9 **SEVENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

10 **(Payment of Wage Below Designated Rate for Actual Miles Driven)**

11 **(On Behalf of the Dedicated and Intermodal Subclasses)**

12 143. The preceding paragraphs of this Complaint are realleged and incorporated by
13 reference hereto as though fully set forth herein.

14 144. At all relevant times herein, the applicable *Labor Code* and IWC Wage Order
15 referenced herein applied to Drivers employed with Defendant.

16 145. Pursuant to *Labor Code* § 223, it is unlawful for Defendant to purport to pay the wage
17 designated by statute or by contract while actually paying a lower wage to the employees.

18 146. Defendant engaged Class members to drive trucks in the course and scope of
19 employment. Defendant agreed to compensate for driving work through mileage-based
20 compensation. However, instead of compensating for all miles actually driven, Defendant only
21 paid wages based on the HHMG Shortest Route Estimates. The actual mileage routinely exceeded
22 the HHMG Shortest Route Estimates. Consequently, Defendant failed to pay Plaintiffs and
23 Dedicated and Intermodal Subclass members wages for the time spent actually driving the extra
24 miles.

25 147. With respect to all extra miles actually driven, Defendant has intentionally and
26 improperly failed to make payment of wages to Plaintiffs and Dedicated and Intermodal Subclass
27 members in accordance with rates designated by statute and contract. Defendant's conduct violates
28 *Labor Code* §§ 221 and/or 223, and IWC Wage Order No. 9-2001.

1 148. Defendant owes Plaintiffs and each Dedicated and Intermodal Subclass member
2 wages pursuant to the *Labor Code* and the applicable IWC Wage Order according to proof at trial
3 of the hours worked during the relevant time period.

4 149. Plaintiffs and the other Dedicated and Intermodal Subclass members request payment
5 of unpaid wages below the designated rate and according to proof, plus interest, attorneys' fees and
6 costs, against Defendant in a sum as provided by the Labor Code and/or other statutes.

7 150. Plaintiffs and the other Dedicated and Intermodal Subclass members also request
8 relief as described below.

9 **EIGHTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

10 **(Payment of Wage Below Designated Rate for Actual Miles Driven)**

11 **(On Behalf of the Regional Subclass)**

12 151. The preceding paragraphs of this Complaint are realleged and incorporated by
13 reference hereto as though fully set forth herein.

14 152. At all relevant times herein, the applicable *Labor Code* and IWC Wage Order
15 referenced herein applied to Drivers employed with Defendant.

16 153. Pursuant to *Labor Code* § 223, it is unlawful for Defendant to purport to pay the wage
17 designated by statute or by contract while actually paying a lower wage to the employees.

18 154. Defendant engaged Class members to drive trucks in the course and scope of
19 employment. Defendant agreed to compensate for driving work through mileage-based
20 compensation. However, instead of compensating for all miles actually driven, Defendant only
21 paid wages based on the HHMG Shortest Route Estimates. The actual mileage routinely exceeded
22 the HHMG Shortest Route Estimates. Consequently, Defendant failed to pay Plaintiffs and the
23 Regional Subclass members' wages for the time spent actually driving the extra miles.

24 155. With respect to all extra miles actually driven, Defendant has intentionally and
25 improperly failed to make payment of wages to Plaintiffs and Regional Subclass members in
26 accordance with rates designated by statute and contract. Defendant's conduct violates *Labor*
27 *Code* §§ 221 and/or 223, and IWC Wage Order No. 9-2001.

28

1 156. Defendant owes Plaintiffs and each Regional Subclass member wages pursuant to the
2 *Labor Code* and the applicable IWC Wage Order according to proof at trial of the hours worked
3 during the relevant time period.

4 157. Plaintiffs and the other Regional Subclass members request payment of unpaid wages
5 below the designated rate and according to proof, plus interest, attorneys' fees and costs, against
6 Defendant in a sum as provided by the Labor Code and/or other statutes.

7 158. Plaintiffs and the other Regional Subclass members also request relief as described
8 below.

9 **NINTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

10 **(Quantum Meruit/Unjust Enrichment)**

11 **(On Behalf of the Dedicated and Intermodal Subclasses)**

12 159. The preceding paragraphs of this Complaint are realleged and incorporated by
13 reference hereto as though fully set forth herein.

14 160. Plaintiffs conferred a benefit upon Defendants by working on their behalf without
15 compensation, including, but not limited to, driving miles for which they were not compensated,
16 working hours for which they were not compensated such as "waiting time," and working through
17 meals and breaks and completing loads without proper compensation, and other activities which
18 may come to light during the discovery process.

19 161. Defendant had an appreciation or knowledge of the benefit conferred by Plaintiffs.

20 162. Defendant accepted and retained the benefit under such circumstances as to make it
21 inequitable for Defendant to retain the benefit without payment of its value.

22 **TENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

23 **(Quantum Meruit/Unjust Enrichment)**

24 **(On Behalf of the Regional Subclass)**

25 163. The preceding paragraphs of this Complaint are realleged and incorporated by
26 reference hereto as though fully set forth herein;

27 164. Plaintiffs conferred a benefit upon Defendants by working on their behalf without
28 compensation, including, but not limited to, driving miles for which they were not compensated,

1 working hours for which they were not compensated such as “waiting time,” and working through
2 meals and breaks and completing loads without proper compensation, and other activities which
3 may come to light during the discovery process.

4 165. Defendant had an appreciation or knowledge of the benefit conferred by Plaintiffs.

5 166. Defendant accepted and retained the benefit under such circumstances as to make it
6 inequitable for Defendant to retain the benefit without payment of its value.

7 **ELEVENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

8 **(Failure to Provide Meal Periods)**

9 **On Behalf of the Dedicated and Intermodal Subclasses)**

10 167. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
11 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

12 168. Plaintiffs are informed and believe and thereon allege that all members of the
13 Dedicated and Intermodal Subclasses regularly worked more than five (5) hours per shift; thus,
14 they were entitled to a meal period of not less than thirty (30) minutes without duty. Plaintiffs are
15 further informed and believe and thereon allege that Dedicated and Intermodal Subclass members
16 often worked more than ten (10) hours per shift, for which they were entitled to a second meal
17 period of not less than thirty (30) minutes without duty.

18 169. Nevertheless, Plaintiffs are informed and believe and thereon allege that Defendants
19 routinely failed to timely provide members of the Dedicated and Intermodal
20 Subclasses with such meal periods without duty, notwithstanding the fact that members of said
21 subclasses had not waived their right to the same. This is to say that Defendants failed to provide
22 Dedicated and Intermodal Subclass members with the meal periods required by *Labor Code* §§
23 226.7, 512, 516 and Section 11 of the IWC Wage Order(s), and categorically failed to pay any and
24 all meal period wages due.

25 170. Plaintiffs and Dedicated and Intermodal Subclass members seek damages (in terms of
26 premium pay) pursuant to Section 11(D) of the IWC Wage Order(s) and *Labor Code* § 226.7(b), in
27 the amount of one (1) additional hour of pay at the employee’s regular rate of compensation for
28

1 each work day that the meal period is/was not provided to any member of the Dedicated and
2 Intermodal Subclasses, the cumulative sum of which is to be proved at time of trial.

3 171. Plaintiffs and Dedicated and Intermodal Subclass members further seek penalties
4 pursuant to *Labor Code* § 558(a) for Defendants' failure to provide such meal periods.

5 172. Plaintiffs and Dedicated and Intermodal Subclass members seek pre-judgment interest
6 on all amounts 'recovered herein pursuant to *Labor Code* §§ 218.6, 1194(a) and *Civil Code* §§
7 3287(b) and 3289.

8 173. Plaintiffs and Dedicated and Intermodal Subclass members further seek reasonable
9 attorneys' fees and costs pursuant to *Labor Code* § 1194.

10 **TWELFTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

11 **(Failure to Provide Meal Periods)**

12 **(On Behalf of the Regional Subclass)**

13 174. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
14 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

15 175. Plaintiffs are informed and believe and thereon allege that all members of the
16 Regional Subclass regularly worked more than five (5) hours per shift; thus, they were entitled to a
17 meal period of not less than thirty (30) minutes without duty. Plaintiffs are further informed and
18 believe and thereon allege that Regional Subclass members often worked more than ten (10) hours
19 per shift, for which they were entitled to a second meal period of not less than thirty (30) minutes
20 without duty.

21 176. Nevertheless, Plaintiffs are informed and believe and thereon allege that Defendants
22 routinely failed to timely provide members of the Regional Subclass with such meal periods
23 without duty, notwithstanding the fact that members of said Subclass had not waived their right to
24 the same. This is to say that Defendants failed to provide Regional Subclass members with the
25 meal periods required by *Labor Code* §§ 226.7, 512, 516 and Section 11 of the IWC Wage
26 Order(s), and categorically failed to pay any and all meal period wages due.

27 177. Plaintiffs and Regional Subclass members seek damages (in terms of premium pay)
28 pursuant to Section II(D) of the IWC Wage Order(s) and *Labor Code* § 226.7(b), in the amount of

1 one (1) additional hour of pay at the employee's regular rate of compensation for each work day
2 that the meal period is/was not provided to any member of the Regional Subclass, the cumulative
3 sum of which is to be proved at time of trial.

4 178. Plaintiffs and Regional Subclass members further seek penalties pursuant to *Labor*
5 *Code* § 558(a) for Defendants' failure to provide .such meal periods.

6 179. Plaintiffs and Regional Subclass members seek pre-judgment interest on all amounts
7 recovered herein pursuant to *Labor Code* §§ 218.6, 1194(a) and *Civil Code* §§ 3287(b) and 3289.

8 180. Plaintiffs and Regional Subclass members further seek reasonable attorneys' fees and
9 costs pursuant to *Labor Code* § 1194.

10 **THIRTEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

11 **(Failure to Provide Rest Periods)**

12 **(On Behalf of the Dedicated and Intermodal Subclasses)**

13 181. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
14 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

15 182. Plaintiffs are informed and believe and thereon allege that Dedicated and Intermodal
16 Subclass members were entitled to a paid rest period of not less than ten (10) minutes without duty
17 for each and every four (4) hour work period during the workday, which rest periods insofar as
18 practicable were to be in the middle of each 4-hour work period.

19 183. Nevertheless, Plaintiffs are informed and believe and thereon allege that Defendants
20 routinely failed to timely provide members of the Dedicated and Intermodal Subclasses with such
21 paid rest periods without duty, notwithstanding the fact that members of said subclasses had not
22 waived their right to the same. This is to say that Defendants failed to provide Dedicated and
23 Intermodal Subclass members with the rest periods required by *Labor Code* §§ 226.7, 512, 516 and
24 Section 12 of the IWC Wage Order(s), and categorically failed to pay any and all rest period wages
25 due.

26 184. Plaintiffs and Dedicated and Intermodal Subclass members seek damages (in terms of
27 premium pay) pursuant to Section 12(B) of the IWC Wage Order(s) and *Labor Code* § 226.7(b), in
28 the amount of one (1) additional hour of pay at the employee's regular rate of compensation for

1 each work day that the rest period is/was not provided to any member of the Dedicated and
2 Intermodal Subclasses, the cumulative sum of which is to be proved at time of trial.

3 185. Plaintiffs and Dedicated and Intermodal Subclass members further seek penalties
4 pursuant to *Labor Code* § 558(a) for Defendants' failure to provide such rest periods.

5 186. Plaintiffs and Dedicated and Intermodal Subclass members seek pre-judgment interest
6 on all amounts recovered herein pursuant to *Labor Code* §§ 218.6, 1194(a) and *Civil Code* §§
7 3287(b) and 3289.

8 187. Plaintiffs and Dedicated and Intermodal Subclass members further seek reasonable
9 attorneys' fees and costs pursuant to *Labor Code* § 1194.

10 **FOURTEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

11 **(Failure to Provide Rest Periods)**

12 **(On Behalf of the Regional Subclass)**

13 188. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
14 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

15 189. Plaintiffs are informed and believe and thereon allege that Regional Subclass
16 members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
17 and every four (4) hour work period during the workday, which rest periods insofar as practicable
18 were to be in the middle of each 4-hour work period.

19 190. Nevertheless, Plaintiffs are informed and believe and thereon allege that Defendants
20 routinely failed to timely provide members of the Regional Subclass with such paid rest periods
21 without duty, notwithstanding the fact that Regional Subclass members had not waived their right
22 to the same. This is to say that Defendants failed to provide Regional Subclass members with the
23 rest periods required by *Labor Code* §§ 226.7, 512, 516 and Section 12 of the IWC Wage Order(s),
24 and categorically failed to pay any and all rest period wages due.

25 191. Plaintiffs and Regional Subclass members seek damages (in terms of premium pay)
26 pursuant to Section 12(B) of the IWC Wage Order(s) and *Labor Code* § 226.7(b), in the amount of
27 one (1) additional hour of pay at the employee's regular rate of compensation for each work day
28

1 that the rest period is/was not provided to any member of the Regional Subclass, the cumulative
2 sum of which is to be proved at time of trial.

3 192. Plaintiffs and Regional Subclass members further seek penalties pursuant to *Labor*
4 *Code* § 558(a) for Defendants' failure to provide such rest periods.

5 193. Plaintiffs and Regional Subclass members seek pre-judgment interest on all amounts
6 recovered herein pursuant to *Labor Code* §§ 218.6, 1194(a) and *Civil Code* §§ 3287(b) and 3289.

7 194. Plaintiffs and Regional Subclass members further seek reasonable attorneys' fees and
8 costs pursuant to *Labor Code* § 1194.

9 **FIFTEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

10 **(Failure to Timely Furnish Accurate Itemized Wage Statements)**

11 **(On Behalf of the Dedicated and Intermodal Subclasses)**

12 195. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
13 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

14 196. Defendants paid the Class on a piece-rate basis, typically on a cents per mile basis and
15 activity basis, with some variations thereon. However, as noted above, Defendants failed to pay
16 the Class minimum wages for all hours worked and actual miles driven by Class Members during
17 the Relevant Time Period.

18 197. Plaintiffs are informed and believe and thereon allege that Defendants, in violation of
19 *Labor Code* § 226(a), engaged in a consistent practice with respect to the Class of regularly failing
20 to furnish each of the members of the Class with accurate itemized statements in writing showing
21 (1) gross wages actually earned, (2) total hours worked by the employee, (3) all deductions, (4) net
22 wages actually earned and/or (5) all applicable hourly rates in effect during each respective pay
23 period and the corresponding number of hours worked at each hourly rate by each respective
24 individual.

25 198. Plaintiffs are further informed and believe and thereon allege that Defendants did not
26 maintain accurate business records pertaining to the total hours worked for Defendants by the
27 members of the Class. For example, as a matter of policy and practice, among the violations of
28 *Labor Code* § 226, Defendants failed to keep accurate records of Plaintiffs' and the Class

1 members' hours worked, rates of pay, rates of overtime pay, net wages earned, daily or weekly
2 overtime pay, and/or minimum wages earned.

3 199. As a result of not having kept accurate records, Plaintiffs suffered injuries in the form
4 of confusion over whether they received all wages owed to them, difficulty and expense in
5 reconstructing pay records, the possibility of not being paid overtime, and forcing employees to
6 make mathematical computations to analyze whether the wages paid in fact compensated them for
7 all hours worked, in addition to other injuries which may come to light during the discovery
8 process.

9 200. Plaintiffs and the Dedicated and Intermodal Subclass members herein seek damages
10 and penalties pursuant to *Labor Code* § 226(e) for each violation by Defendants of *Labor Code* §
11 226(a).

12 201. Plaintiffs and the Dedicated and Intermodal Subclass members further seek
13 preliminary and permanent injunctive relief pursuant to *Labor Code* § 226(g).

14 202. Plaintiffs and the Dedicated and Intermodal Subclass members seek an award of
15 reasonable attorneys' fees and costs pursuant to *Labor Code* § 226(g).

16 **SIXTEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

17 **(Failure to Timely Furnish Accurate, Itemized Wage Statements)**

18 **(On Behalf of the Regional Subclass)**

19 203. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
20 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

21 204. Defendants paid the Class on a piece-rate basis, typically on a cents per mile basis and
22 activity basis, with some variations thereon. However, as noted above, Defendants failed to pay
23 the Class minimum wages for all hours worked by Class Members during the Relevant Time
24 Period.

25 205. Plaintiffs are informed and believe and thereon allege that Defendants, in violation of
26 *Labor Code* § 226(a), engaged in a consistent practice with respect to the Class of regularly failing
27 to furnish each of the members of the Class with accurate itemized statements in writing showing
28 (1) gross wages actually earned, (2) total hours worked by the employee, (3) all deductions, (4) net

1 wages actually earned and/or (5) all applicable hourly rates in effect during each respective pay
2 period and the corresponding number of hours worked at each hourly rate by each respective
3 individual.

4 206. Plaintiffs are further informed and believe and thereon allege that Defendants did not
5 maintain accurate business records pertaining to the total hours worked for Defendants by the
6 members of the Class. For example, as a matter of policy and practice, among the violations of
7 *Labor Code* § 226, Defendants failed to keep accurate records of Plaintiffs' and the Class
8 members' hours worked, rates of pay, rates- of overtime pay, net wages earned, daily or weekly
9 overtime pay, and/or minimum wages earned.

10 207. As a result of not having kept accurate records, Plaintiffs suffered injuries in the form
11 of confusion over whether they received all wages owed to them, difficulty and expense in
12 reconstructing pay records, the possibility of not being paid overtime, and forcing employees to
13 make mathematical computations to analyze whether the wages paid in fact compensated them for
14 all hours worked, in addition to other injuries which may come to light during the discovery
15 process.

16 208. Plaintiffs and the Regional Subclass members herein seek damages and penalties
17 pursuant to *Labor Code* § 226(e) for each violation by Defendants of *Labor Code* § 226(a).

18 209. Plaintiffs and the Regional Subclass members further seek preliminary and permanent
19 injunctive relief pursuant to *Labor Code* § 226(g).

20 210. Plaintiffs and the Regional Subclass members seek an award of reasonable attorneys'
21 fees and costs pursuant to *Labor Code* § 226(g).

22 **SEVENTEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

23 **(Nonpayment of Accrued Vacation Wages)**

24 **(On Behalf of the Former Dedicated and Intermodal Subclasses)**

25 211. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
26 contained in the preceding paragraphs of this. Complaint as though fully set forth herein.

27
28

1 212. Upon the termination of Plaintiffs' employment, Plaintiffs are informed and believe
2 that Defendants failed to pay the named Plaintiffs all accrued vacation time due them along with
3 their final paychecks.

4 213. Said failure violates, inter alia, *Labor Code* § 227.3.

5 214. Plaintiffs are informed and believe and thereon allege that Defendants during the
6 Relevant Time Period have engaged in an uniform corporate practice of failing to pay accrued
7 vacation wages to all Plaintiffs who are members of the Former Dedicated Subclass or Former
8 Intermodal Subclass.

9 215. Plaintiffs seek payment on behalf of themselves and the Former Dedicated and
10 Intermodal Subclasses for the following:

- 11 a. Damages for such accrued, but unpaid vacation wages;
- 12 b. Interest pursuant to *Labor Code* § 218.6; and,
- 13 c. Pre-judgment interest on all amounts recovered herein pursuant to *Labor Code* §§
14 218.6, 1194(a) and *Civil Code* §§ 3287(b) and 3289.

15 **EIGHTEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**
16 **(Nonpayment of Accrued Vacation Wages)**
17 **(On Behalf of the Former Regional Subclass)**

18 216. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
19 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

20 217. Upon the termination of Plaintiffs' employment, Plaintiffs are informed and believe
21 that Defendants failed to pay the named Plaintiffs all accrued vacation time due them along with
22 their final paychecks.

23 218. Said failure violates, inter alia, *Labor Code* § 227.3.

24 219. Plaintiffs are informed and believe and thereon allege that Defendants during the
25 Relevant Time Period have engaged in an uniform corporate practice of failing to pay accrued
26 vacation wages to all Plaintiffs who are members of the Former Regional Subclass.

27 220. Plaintiffs seek payment on behalf of themselves and the Former Regional Subclass for
28 the following:

- 1 a. Damages for such accrued, but unpaid vacation wages;
- 2 b. Interest pursuant to *Labor Code* § 218.6; and,
- 3 c. Pre-judgment interest on all amounts recovered herein pursuant to *Labor Code* §§
- 4 218.6, 1194(a) and *Civil Code* §§ 3287(b) and 3289.

5 **NINETEENTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

6 **(Violations of Labor Code §203)**

7 **(On Behalf of the Former Intermodal and Dedicated Subclasses)**

8 221. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
9 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

10 222. Plaintiffs are informed and believe and thereon allege that Defendants, in violation of
11 *Labor Code* § 203, consistently and willfully failed to timely pay not only them, but all members of
12 the Former Dedicated and Intermodal Subclasses, all wages due and owing to said Subclass
13 members at the time of termination of employment, including basic minimum wages, vacation pay
14 (including floating holidays, personal days, and other paid time off benefits), and premium pay due
15 for meal period and rest period wages as set forth hereinabove.

16 223. Plaintiffs seek on behalf of Former Dedicated and Intermodal Subclasses the penalties
17 to which they are entitled pursuant to *Labor Code* § 203, in the amount of each Former Dedicated
18 and Intermodal Subclasses members' daily wage multiplied by thirty (30) days, the exact amount
19 of which is to be determined at trial.

20 **TWENTIETH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

21 **(Violations of Labor Code §203)**

22 **(On Behalf of the Former Regional Driver Subclass)**

23 224. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
24 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

25 225. Plaintiffs are informed and believe and thereon allege that Defendants, in violation of
26 *Labor Code* § 203, consistently and willfully failed to timely pay not only them, but all members of
27 the Former Regional Subclass, all wages due and owing to said Subclass members at the time of
28 termination of employment, including basic minimum wages, vacation pay (including floating

1 holidays, personal days, and other paid time off benefits), and premium pay due for meal period
2 and rest period wages as set forth hereinabove.

3 226. Plaintiffs seek on behalf of Former Regional Subclass the penalties to which they are
4 entitled pursuant to *Labor Code* § 203, in the amount of each Former Regional Subclass member's
5 daily wage multiplied by thirty (30) days, the exact amount of which is to be determined at trial.

6 **TWENTY-FIRST CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

7 **(Declaratory Relief)**

8 **(On Behalf of the Dedicated and Intermodal Subclasses)**

9 227. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
10 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

11 228. An actual controversy has arisen between the Plaintiffs and the plaintiff Class, on one
12 hand, and the Defendants, on the other hand, relating to the following matters:

- 13 a. Whether Defendants permit or have permitted the named Plaintiffs and the
14 Dedicated and Intermodal Subclasses to work without appropriate minimum
15 wages and/or agreed wages therefor in violation of the law as set forth
16 hereinabove;
- 17 b. Whether Defendants pay or have paid the Plaintiffs and, the Dedicated and
18 Intermodal Subclasses a secret lower wage in violation of the law as set forth
19 hereinabove;
- 20 c. Whether Defendants permit or require, or have permitted or required, the named
21 Plaintiffs and the Dedicated and Intermodal Subclasses to work without any or all
22 appropriate meal periods, rest periods, meal period wages, and/or rest period
23 wages;
- 24 d. Whether Defendants provide or have provided the named Plaintiffs and the
25 Dedicated and Intermodal Subclasses with inaccurate wage statements.

26 229. Plaintiffs and the Dedicated and Intermodal Subclasses further seek entry of a
27 declaratory judgment against all Defendants herein and in Plaintiffs' favor, which declares
28 Defendants' practices to be unlawful, and which provides for recovery of all sums determined by

1 this Court to be owed by Defendants, and each of them, to the named Plaintiffs and the Dedicated
2 and Intermodal Subclasses,

3 **TWENTY-SECOND CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

4 **(Declaratory Relief)**

5 **(On Behalf of the Regional Subclass)**

6 230. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
7 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

8 231. An actual controversy has arisen between the Plaintiffs and the plaintiff Class, on

9 a. Whether Defendants permit or have permitted the named Plaintiffs and the

10 Regional Subclass to work without appropriate minimum wages and/or agreed

11 wages, therefor in violation of the law as set forth hereinabove;

12 b. Whether Defendants pay or have paid the Plaintiffs and the Regional Subclass a

13 secret lower wage in violation of the law as set forth hereinabove;

14 c. Whether Defendants permit or require, or have permitted or required, the named

15 Plaintiffs and the Regional Subclass to work without any or all appropriate mal

16 periods, rest periods, mal period wages, and/or rest period wages;

17 d. Whether Defendants provide or have provided the named Plaintiffs and the

18 Regional Subclass with inaccurate wage statements.

19 232. Plaintiffs and the Regional Subclass further seek entry of a declaratory judgment
20 against all Defendants herein and in Plaintiffs' favor, which declares Defendants' practices to be
21 unlawful, and which provides for recovery of all sums determined by this Court to be owed by
22 Defendants, and each of them, to the named Plaintiffs and the Regional Subclass.

23 **TWENTY-THIRD CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

24 **(Unfair Business Practices--*Bus. & Prof. Code §§ 17200, et seq.*)**

25 **(On Behalf of the Dedicated and Intermodal Subclasses)**

26 233. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
27 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

28

1 234. Defendants, and each of them, have engaged in unfair business practices in California
2 by utilizing and engaging in an unlawful pattern and practice of failing to properly pay employee
3 compensation as described hereinabove, specifically, by requiring the plaintiff classes to perform
4 the work without minimum wages, without payment of agreed wages, without payment of accrued
5 vacation wages, without proper meal and rest periods, without payment of meal period and rest
6 period wages, without proper recordation of the hours worked, and without proper wage
7 statements.

8 235. Defendants' use of such practices is unlawful and constitutes unfair business practices
9 to Plaintiffs and the Dedicated and Intermodal Subclasses, and provides an unfair advantage over
10 Defendants' competitors.

11 236. Plaintiffs and other similarly situated members of the Dedicated and Intermodal
12 Subclasses seek full restitution on account of the economic injuries they have suffered along with
13 disgorgement of ill-gotten gains from the Defendants as necessary and according to proof, to
14 restore any and all monies withheld, acquired and/or converted by Defendants by means of the
15 unlawful and unfair business practices complained of herein.

16 237. Plaintiffs seek on their own behalf and on behalf of the Dedicated and Intermodal
17 Subclasses, the appointment of a receiver, as necessary, to oversee said restitution, including all
18 wages earned and unpaid, including interest thereon.

19 238. The acts complained of herein occurred, at least in part, within the four (4) years
20 preceding the First-Filed Complaint.

21 239. Further, if Defendants are not enjoined from the unlawful conduct described above,
22 Defendants will continue unabated in their unlawful conduct, which will continue to result in
23 irreparable injury to members of the general public, including, but not limited to all members of the
24 Class who are current employees of the Defendants, and for which there is no adequate remedy at
25 law. Thus, Plaintiffs request that the Court issue a preliminary and permanent injunction
26 prohibiting Defendants from engaging in the foregoing conduct.

27 240. Plaintiffs, on behalf of themselves and the Dedicated and Intermodal Subclasses, seek
28 full restitution from Defendants, as necessary and according to proof, to restore all monies

1 withheld, acquired and/or converted by Defendants by means of the unlawful and unfair practices
2 complained of herein.

3 **TWENTY-FOURTH CAUSE OF ACTION UNDER CALIFORNIA STATE LAW**

4 **(Unfair Business Practices--*Bus. & Prof. Code §§ 17200, et seq.*)**

5 **(On Behalf of the Regional Subclass)**

6 241. Plaintiffs incorporate by reference and re-allege each and every one of the allegations
7 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

8 242. Defendants, and each of them, have engaged in unfair business practices in California
9 by utilizing and engaging in an unlawful pattern and practice of failing to properly pay employee
10 compensation as described hereinabove, specifically, by requiring the plaintiff classes to perform
11 the work without minimum wages, without payment of agreed wages, without payment of accrued
12 vacation wages, without proper meal and rest periods, without payment of meal period and rest
13 period wages, without payment of accrued vacation wages, without timely meal periods free of
14 duty, without proper recordation of the hours worked, and without proper wage statements.

15 243. Defendants' use of such practices is unlawful and constitutes unfair business practices
16 to Plaintiffs and the Regional Subclass, an unfair business practice, unfair competition, and
17 provides an unfair advantage over Defendants' competitors.

18 244. Plaintiffs and other similarly situated members of the Regional Subclass seek full
19 restitution on account of the economic injuries they have suffered along with disgorgement of ill-
20 gotten gains from the Defendants as necessary and according to proof, to restore any and all
21 monies withheld, acquired and/or converted by Defendants by means of the unlawful and unfair
22 business practices complained of herein.

23 245. Plaintiffs seek on their own behalf and on behalf of the Regional Subclass, the
24 appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and
25 unpaid, including interest thereon.

26 246. The acts complained of herein occurred, at least in part, within the four (4) years
27 preceding the First-Filed Complaint.

28

1 247. Further, if Defendants are not enjoined from the unlawful conduct described above,
 2 Defendants will continue unabated in their unlawful conduct, which will continue to result in
 3 irreparable injury to members of the general public, including, but not limited to all members of the
 4 Class who are current employees of the Defendants, and for which there is no adequate remedy at
 5 law. Thus, Plaintiffs request that the Court issue a preliminary and permanent injunction
 6 prohibiting Defendants from engaging in the foregoing conduct.

7 248. Plaintiffs, on behalf of the Regional Subclass, seek full restitution from Defendants, as
 8 necessary and according to proof, to restore all monies withheld, acquired and/or converted by
 9 Defendants by means of the unlawful and unfair practices complained of herein.

10
 11 **PRAAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays:

- 13 a. That the Court issue an Order certifying the classes herein, appointing the named
 14 Plaintiff as the class representative of all others similarly situated, appointing the law
 15 firms representing the named Plaintiffs as counsel for the members of the Classes
 16 and Subclasses, and appointing interim lead counsel as lead Class counsel.
- 17 b. As to the First Second, Third, and Fourth Causes of Action:
- 18 1. For recovery of the unpaid balance of the full amount of the minimum wages
 19 due and owing, according to proof;
- 20 2. For liquidated damages on the straight-time portion of uncompensated hours
 21 of work (not including the overtime portion thereof), pursuant to, *inter alia*,
 22 *Labor Code* § 1194.2(a);
- 23 3. For pre-judgment interest pursuant to, *inter alia*, *Labor Code* §§ 218.6 and
 24 1194(a), *Civil Code* §§ 3287(b) and 3289;
- 25 4. For compensation pursuant to *Labor Code* § 558;
- 26 5. For an accounting, under administration of Plaintiffs and/or the receiver and
 27 subject to Court review, to determine the amount to be returned by
 28

1 Defendants, and the amounts to be refunded to members of the Subclasses
2 who are owed monies by Defendants;

- 3 6. For an Order for a preliminary and/or permanent injunction prohibiting
4 Defendants from engaging in the acts complained of herein;
5 7. For all other appropriate injunctive, declaratory and equitable relief;
6 8. For interest to the extent permitted by law; and
7 9. For an award of reasonable attorneys' fees and costs incurred in the
8 investigation, filing and prosecution of this action pursuant to *Labor Code*
9 § 1194(a) and/or any other applicable provision of law.

10 c. As to the Fifth, Sixth, Seventh and Eighth Causes of Action for Payment of
11 Wages Below Designated Rate for All Hours Worked:

- 12 1. For the recovery of all unpaid wages due and owing, according to proof;
13 2. For pre-judgment interest pursuant to, *inter alia*, *Labor Code* § 218.6, *Civil*
14 *Code* §§ 3287(b) and 3289;
15 3. For compensation pursuant to *Labor Code* § 558;
16 4. For an accounting, under administration of Plaintiff and/or the receiver and
17 subject to Court review, to determine the amount to be returned by
18 Defendants, and the amounts to be refunded to members of the Subclasses
19 who are owed monies by Defendants;
20 5. For an Order for a preliminary and/or permanent injunction prohibiting
21 Defendants from engaging in the acts complained of herein;
22 6. For all other appropriate injunctive, declaratory and equitable relief;
23 7. For interest to the extent permitted by law;
24 8. For penalties pursuant to *Labor Code* § 225.5; and
25 9. For an award of reasonable attorneys' fees and costs incurred in the
26 investigation, filing and prosecution of this action pursuant to *Labor Code* §
27 1194(a) or any applicable provision of law.
28

1 d. As to the Ninth and Tenth Causes of Action for Breach of Contract of
2 Employment:

- 3 1. For the recovery of all unpaid wages due and owing, according to proof;
4 2. For an accounting, under administration of Plaintiff and/or the receiver and
5 subject to Court review, to determine the amount to be returned by
6 Defendants, and the amounts to be refunded to members of the Subclasses
7 who are owed monies by Defendants;
8 3. For interest, attorneys' fees, and costs to the extent permitted by law.

9 e. As to the Eleventh, Twelfth, Thirteenth, and Fourteenth Causes of Action for
10 Failure to Provide Meal and Rest Periods:

- 11 1. For one (1) hour of premium pay at each employee's regular rate of
12 compensation for each workday that a meal period was not provided;
13 2. For one (1) hour of premium pay at each employee's regular rate of
14 compensation for each workday that a rest period was not provided;
15 3. For compensation pursuant to *Labor Code* § 558;
16 4. For pre-judgment interest pursuant to *Labor Code* §§ 218.6 and 1194(a) and
17 *Civil Code* §§ 3287(b) and 3289; and,
18 5. For an award of reasonable attorneys' fees and costs pursuant to *Labor Code*
19 § 1194.

20 f. As to the Fifteenth and Sixteenth Causes of Action for Failure to Timely
21 Furnish Accurate Itemized Wage Statements:

- 22 1. For penalties as authorized by *Labor Code* § 226(e);
23 2. For injunctive relief pursuant to *Labor Code* § 226(g); and,
24 3. For an award of costs and reasonable attorneys' fees pursuant to *Labor Code*
25 § 226(g).

26 g. As to the Seventeenth and Eighteenth Causes of Action for Nonpayment of
27 Accrued Vacation Wages:

28

- 1 1. Damages for such accrued, but unpaid vacation wages at each Driver's final
- 2 rate of pay; Interest pursuant to *Labor Code* § 218.6;
- 3 2. Interest pursuant to *Labor Code* § 218.6; and,
- 4 3 Pre-judgment interest on all amounts recovered herein pursuant to *Labor*
- 5 *Code* §§ 218.6, 1194(a) and *Civil Code* §§ 3287(b) and 3289.

6 h. As to the Nineteenth and Twentieth Causes of Action for Violations of *Labor*
7 *Code* § 203

- 8 1. For penalties as authorized by *Labor Code* § 203.

9 i. As to the Twenty-First and Twenty-Second Causes of Action for Declaratory
10 Relief:

- 11 1. For declaratory relief as sought herein.

12 j. As to the Twenty-Third and Twenty-Fourth Causes of Action for Unfair
13 Business Practices (*Cal. Bus. & Prof Code* §17200, *et seq.*):

- 14 1. For an accounting, under administration of Plaintiff and/or the receiver and
- 15 subject to Court review, to determine the amount to be returned by
- 16 Defendants, and the amounts to be refunded to members of the Subclasses
- 17 who are owed monies by Defendants;
- 18 2. For an Order requiring Defendants to make full restitution and payment
- 19 pursuant to California law;
- 20 3. For an Order for a preliminary and/or permanent injunction prohibiting
- 21 Defendants from engaging in the acts complained of herein;
- 22 4. For all other appropriate injunctive, declaratory and equitable relief;
- 23 5. For interest to the extent permitted by law; and
- 24 6. For an award of reasonable attorneys' fees and costs incurred in the
- 25 investigation, filing and prosecution of this action pursuant to *Code Civ.*
- 26 *Proc.* § 1021.5, *Bus. & Prof Code* § 17200, *et seq.*, *Labor Code* § 1194
- 27 and/or any other applicable provision of law.

28 k. As to all causes of action:

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1. General, compensatory and nominal damages, as applicable;
2. Penalties pursuant to, *inter alia*, *Labor Code* §§ 203, 210, 225.5, 226, 2263, 226.7, 558, and 2699;
3. Attorneys' Fees pursuant to *Labor Code* § 2699; and,
4. All such further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their and the Class' claim, including the Subclass' claims,
by jury to the extent authorized by law.

DATED: May 18, 2011

**MARLIN & SALTZMAN
THE CULLEN LAW FIRM
LAW OFFICES OF PETER M. HART
LAW OFFICES OF KENNETH H. YOON
LAW OFFICE OF ERIC HONIG**

By: /s/ Christina A. Humphrey
Christina A. Humphrey, Esq.
of Marlin & Saltzman
Attorneys for Plaintiffs and
Lead Counsel for Dedicated and
Intermodal Subclasses

DATED: May 18, 2011

**HAGENS BERMAN SOBOL SHAPIRO LLP
REHWALD GLASNER & CHALEFF**

By: /s/ Lee M. Gordon
Lee M. Gordon, Esq.
of Hagens Berman Sobol Shapiro LLP
Attorneys for Plaintiffs and
Lead Counsel for Regional Subclass

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2011, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List. I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Lee M. Gordon
LEE M. GORDON

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