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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

17 MARK SOARES and BRIAN BOTELHO,

18 Plaintiffs,

19 v.

20 FLOWERS FOODS, INC., FLOWERS
21 BAKING CO. OF CALIFORNIA, FLOWERS
22 BAKING CO. OF MODESTO, FLOWERS
23 BAKERIES BRANDS, INC., and DOES 1
through 10, inclusive,

24 Defendants.

CASE NO.

CLASS ACTION (FRCP 23)

- (1) REIMBURSEMENT OF BUSINESS EXPENSES (Labor Code §2802);
- (2) UNLAWFUL DEDUCTIONS FROM WAGES (Labor Code §§221, 223, 400-410);
- (3) FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§226.7, 512);
- (4) FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS (Labor Code §§226.7, 1194);
- (5) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §§226, 226.3);
- (6) VIOLATIONS OF UCL (Labor Code §17200 *et seq.*)

DEMAND FOR JURY TRIAL

1 1. PLAINTIFFS Mark Soares and Brian Botelho allege the following for their
2 complaint.

3 **I. JURISDICTION**

4 2. This Court has jurisdiction over this putative class action under the Class Action
5 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2), because the amount in controversy exceeds
6 \$5,000,000, there are more than 100 putative class members, and Plaintiffs and Defendants are
7 citizens of different states.

8 **II. VENUE AND INTRADISTRICT ASSIGNMENT**

9 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
10 substantial part of the events or omissions giving rise to PLAINTIFFS’ claims occurred in Santa
11 Clara County, and within the Division and Courthouse in which this action has been commenced.

12 **III. INTRODUCTION**

13 4. This is an action for relief from DEFENDANTS’ misclassification of their
14 California bakery distributor drivers (“Delivery Drivers”) as “independent contractors.”
15 Defendants Flowers Foods, Inc. (“Flowers Foods”), Flowers Baking Co. of California (“Flowers-
16 California”), Flowers Baking Company of Modesto (“Flowers-Modesto”), Flowers Bakeries
17 Brands, Inc. (“Flowers Bakeries”), and their affiliates (collectively “DEFENDANTS” or
18 “FLOWERS”) are in the wholesale bakery business, relying on drivers such as PLAINTIFFS to
19 deliver to and stock baked goods at retail grocery store outlets, restaurants, and other retail store
20 outlets. DEFENDANTS retain and exercise pervasive control over their bakery distribution
21 operations, including by retaining and exercising such control over PLAINTIFFS, such that
22 PLAINTIFFS are in fact DEFENDANTS’ employees under California law.

23 5. By misclassifying PLAINTIFFS and similarly situated Delivery Drivers as
24 independent contractors, DEFENDANTS have sought to avoid various duties and obligations owed
25 to employees under California’s Labor Code and Industrial Welfare Commission (“IWC”) wage
26 orders, including: the duty to indemnify employees for all expenses and losses necessarily incurred
27 in connection with their employment (Cal. Labor Code §2802; IWC wage order No. 1, §§ 8-9); the
28 duty to provide off-duty meal periods (Cal. Labor Code §§ 512, 226.7; IWC wage order No. 1, §

1 11);); the duty to authorize and permit paid rest periods (Cal. Labor Code §§ 226.7, 1194; IWC
2 wage order No. 1, § 12); and other legal obligations.

3 6. PLAINTIFFS challenge DEFENDANTS’ policy of willfully and unlawfully
4 misclassifying their Drivers as “independent contractors” and thereby refusing to indemnify them
5 for employment-related expenses and losses, taking wrongful deductions from their wages,
6 coercing them to purchase necessary services and items, failing to provide off-duty meal periods,
7 failing to authorize and permit paid rest periods, and failing to document actual hours worked on
8 pay statements as required by California law. This misclassification policy has been in effect since
9 at least February 2013.

10 7. PLAINTIFFS bring claims for reimbursement of business expenses and losses,
11 reimbursement of deductions wrongfully taken from wages, meal period pay, rest period pay,
12 unpaid minimum wage (and liquidated damages), statutory and civil penalties, interest, and
13 attorneys’ fees and costs, under Cal. Labor Code §§ 203, 218.5, 226.7, 1194, 1194.2, and 2802, and
14 Cal. Code of Civil Procedure § 1021.5. PLAINTIFFS also seek relief, pursuant to Cal. Business
15 and Professions Code §§ 17200-17208 (also referred to herein as the “UCL”), including restitution
16 and disgorgement of all benefits DEFENDANTS have obtained from the unlawful practices
17 referenced above and detailed below.

18 **IV. PARTIES**

19 **A. Plaintiffs**

20 8. Plaintiff Mark Soares resides in San Jose, California (Santa Clara County). He
21 began as a bakery distributor driver for FLOWERS in approximately July of 2013 through an
22 employment placement with ABM, Industries, Inc. and was treated as a W-2 employee for tax
23 purposes. On approximately October 14, 2013, Plaintiff Soares entered into a Distributor
24 Agreement, under which he has continued to serve as a FLOWERS Delivery Driver. Throughout
25 his tenure as a FLOWERS Delivery Driver, Plaintiff Soares has worked out of FLOWERS’
26 facilities located in San Jose, California (Santa Clara County). Plaintiff Soares has driven a box
27 truck to carry out his duties for DEFENDANTS.

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1 9. Plaintiff Brian Botelho resides in Hollister, California (San Benito County). He
2 began as a bakery distributor driver for FLOWERS in approximately March of 2013 through an
3 employment placement with ABM, Industries, Inc. and was treated as a W-2 employee for tax
4 purposes. On approximately September 23, 2013, Plaintiff Botelho entered into a Distributor
5 Agreement, under which he has continued to serve as a FLOWERS Delivery Driver. Throughout
6 his tenure as a FLOWERS Delivery Driver, Plaintiff Botelho has worked out of FLOWERS'
7 facilities located in San Jose, California (Santa Clara County). Plaintiff Botelho has driven a step
8 van and box truck to carry out his duties for DEFENDANTS.

9 **B. Defendants**

10 10. Defendant Flowers Foods, Inc. is incorporated under the laws of Georgia. And has
11 its principal executive offices in Thomasville, Georgia. Defendant Flowers Foods is and at all
12 relevant times was an employer covered by the Cal. Labor Code and IWC wage order No. 1.

13 11. Defendant Flowers Baking Co. of California, LLC, Inc. is incorporated under the
14 laws of California, and, upon information and belief, is a wholly-owned subsidiary of Flowers
15 Foods. Defendant Flowers-California is, and at all relevant times since approximately January
16 2012, was, an employer covered by the Cal. Labor Code and IWC wage order No.1.

17 12. Defendant Flowers Baking Co. of Modesto, LLC, Inc. is incorporated under the
18 laws of Nevada, and, upon information and belief, is a wholly-owned subsidiary of Flowers Foods.
19 Defendant Flowers-Modesto is, and at all relevant times since approximately January 2012, was, an
20 employer covered by the Cal. Labor Code and IWC wage order No.1.

21 13. Defendant Flowers Bakeries Brands, Inc. is incorporated under the laws of
22 Delaware, and, upon information and belief, is a wholly-owned subsidiary of Flowers Foods.
23 Defendant Flowers Bakeries is, and at all relevant times since approximately January 2012, was, an
24 employer covered by the Cal. Labor Code and IWC wage order No.1.

25 14. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
27 PLAINTIFFS, who therefore sue defendants by such fictitious names under Cal. Code of Civil
28 Procedure § 474. PLAINTIFFS are informed and believe, and based thereon allege, that each of

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

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

10 **V. STATEMENT OF FACTS**

11 16. DEFENDANTS are in the bakery business, baking and distributing brand breads
12 and other baked goods, including brands such as Wonder, Home Pride, TastyTake, Country
13 Kitchen, and Mi Casa. Flowers Foods is a publicly owned corporation, traded on the NYSE.

14 17. FLOWERS entered in the California market in or about the first quarter of 2013
15 when it acquired an existing bakery company that had customers throughout California. Those
16 customers were mostly large corporate companies, including major grocery store chains, “big box”
17 stores, and chains of restaurant. FLOWERS continued to service those accounts and develop new
18 accounts throughout the covered period.

19 18. In California, Flowers Foods has operated in conjunction with Flowers-California
20 and subsequently Flowers-Modesto. When FLOWERS first took over the business in California, it
21 relied on bakery delivery drivers hired and paid through a staffing agency, ABM Industries, Inc.
22 The drivers provided by ABM were treated as W-2 employees for tax purposes. Over the first half
23 of 2013, FLOWERS began entering into “Distributor Agreements” with many of the ABM-
24 supplied drivers, such as Plaintiff Mark Soares and Brian Botelho, and other individuals. By the
25 second half of 2013, most of FLOWERS’ Delivery Drivers operated under a Distributor
26 Agreement. The Distributor Agreements authorize the contracting Delivery Driver to service a
27 designated territory. Delivery Drivers are required to pay thousands of dollars in order to work
28 their route. The territory typically comprises of a route populated by corporate customers of

1 FLOWERS. The Distributor Agreements uniformly classify the Delivery Drivers as “independent
2 contractors.”

3 19. DEFENDANTS have employed hundreds of Delivery Drivers out of warehouse
4 facilities located in several Northern California locations, including facilities located in the County
5 of Santa Clara.

6 20. PLAINTIFFS and the other Delivery Drivers have been integral to the operations of
7 DEFENDANTS’ core business, as they were hired to timely deliver FLOWERS’ baked goods to
8 FLOWERS’ customers.

9 21. DEFENDANTS retain the exclusive right to control the manner and means by
10 which PLAINTIFFS perform their jobs. PLAINTIFFS pick up trays of FLOWERS baked goods
11 from DEFENDANTS’ warehouses. PLAINTIFFS work designated routes delivering to and
12 stocking shelves of customers assigned by DEFENDANTS. DEFENDANTS provide
13 PLAINTIFFS with directions and schematics for how to stock its customers’ shelves.
14 PLAINTIFFS interact with DEFENDANTS’ personnel at the warehouse on a daily basis.

15 22. DEFENDANTS require the PLAINTIFFS to purchase the baked goods from
16 DEFENDANTS to resell to FLOWERS’ customers. DEFENDANTS contract directly with the
17 customers. DEFENDANTS unilaterally determine the amount of baked goods it agrees to deliver
18 to and the prices charged to their customers. PLAINTIFFS have no control over the rates charged
19 to DEFENDANTS’ customers.

20 23. DEFENDANTS require PLAINTIFFS to “rotate” the baked goods stocked in stores
21 per DEFENDANTS’ policy and schedule. DEFENDANTS’ personnel regularly check that
22 PLAINTIFFS have complied with DEFENDANTS’ requirements; failure to comply can result in
23 discipline.

24 24. DEFENDANTS specify when baked goods must be removed from their customers’
25 shelves. DEFENDANTS will “buy back” a small percentage of the removed baked goods from the
26 PLAINTIFFS. DEFENDANTS impose strict limits on what PLAINTIFFS may do with the
27 remaining baked goods that DEFENDANTS do not buy back.

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1 25. PLAINTIFFS’ remuneration depends on their ability to drive their vehicles and
2 deliver and stock DEFENDANTS’ baked goods.

3 26. When PLAINTIFFS do not follow DEFENDANTS’ rules or instructions, they are
4 subject to various types of discipline, including financial penalties.

5 27. PLAINTIFFS have provided services that are an integral part of DEFENDANTS’
6 business enterprise. By providing vehicles, by reliably serving DEFENDANTS’ customers, by
7 following DEFENDANTS’ controlled delivery routes and stock rotation schedules, and in other
8 material ways, PLAINTIFFS have rendered services to DEFENDANTS that are integral to
9 DEFENDANTS’ baked goods distribution system.

10 28. Despite DEFENDANTS’ pervasive control over all aspects of its distribution and
11 stocking operations, including over PLAINTIFFS, DEFENDANTS have uniformly classified and
12 treated all Drivers as “independent contractors.”

13 29. Although the nature of the work performed by PLAINTIFFS makes detailed control
14 by management unnecessary, DEFENDANTS retain the right to control and exercise extensive
15 control over the work of PLAINTIFFS, and do in fact exercise such control.

16 30. DEFENDANTS’ right of control over PLAINTIFFS is retained and/or exercised by
17 DEFENDANTS as demonstrated by DEFENDANTS’ written rules and policies and unwritten
18 practices.

19 31. DEFENDANTS’ classification and treatment of PLAINTIFFS throughout the
20 period covered by this lawsuit as “independent contractors” rather than as “employees” is and has
21 been unlawful.

22 32. As a result of DEFENDANTS misclassifying PLAINTIFFS as “independent
23 contractors,” DEFENDANTS have unlawfully failed to indemnify PLAINTIFFS for employment-
24 related expenses, including the costs of providing their leased or owned vehicles; all operation
25 costs associated with the vehicle, including fuel, maintenance, repair, cleaning, and licensing;
26 liability and other insurance covering work place injuries; cellular telephone and DEFENDANTS’
27 designated text messaging services; uniform laundry fees; and miscellaneous tools, such as dollies
28 and pallet jacks. DEFENDANTS have also failed to indemnify PLAINTIFFS for employment-

1 related losses, such as cargo loss or damage, and bodily and property damage claims.
2 DEFENDANTS have taken deductions from their compensation to cover many of these
3 employment-related expenses. DEFENDANTS have also charged PLAINTIFFS for “distribution
4 rights” in order to work their route. Under the Distribution Agreement, DEFENDANTS reserved
5 the right to and have taken deductions from the compensation of PLAINTIFFS to cover many of
6 these employment-related expenses.

7 33. As a result of DEFENDANTS misclassifying their Delivery Drivers as
8 “independent contractors,” DEFENDANTS have regularly failed to provide a timely 30 minute
9 off-duty meal period to PLAINTIFFS when they worked more than five hours in a day.

10 34. As a result of DEFENDANTS misclassifying their Delivery Drivers as
11 “independent contractors,” DEFENDANTS have regularly failed to provide a second timely 30
12 minute meal period to PLAINTIFFS who worked more than 10 hours in a day.

13 35. As a result of DEFENDANTS misclassifying their Delivery Drivers as
14 “independent contractors,” DEFENDANTS have failed to record the actual hours worked by
15 PLAINTIFFS during the Class Period.

16 36. As a result of DEFENDANTS misclassifying their Delivery Drivers as
17 “independent contractors,” DEFENDANTS have failed to itemize the total hours worked on wage
18 statements furnished to PLAINTIFFS.

19 37. PLAINTIFFS are informed and on that basis allege that, as a result of
20 DEFENDANTS’ misclassifying their Delivery Drivers as “independent contractors,”
21 DEFENDANTS have not properly maintained payroll records showing the actual hours worked
22 and meal periods taken and missed each day by PLAINTIFFS.

23 **VI. CLASS ACTION ALLEGATIONS**

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

27 All persons who are or have operated as bakery goods delivery drivers for
28 DEFENDANTS in Northern California under a “Distributor Agreement” or a
similar written contract that they entered into on behalf of themselves or entities in

1 which they have an ownership interest (referred to as “Delivery Drivers”) during the
2 period commencing February 2013 through trial in this action.

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

6 a. Numerosity: The potential members of the class as defined herein are so
7 numerous that joinder would be impracticable. PLAINTIFFS are informed and believe and on
8 such information and belief allege that DEFENDANTS have employed over 250 Drivers in
9 California during the Class Period. The names and addresses of the Class Members are available
10 from the DEFENDANTS. Notice can be provided to the Class Members via first class mail using
11 techniques and a form of notice similar to those customarily used in class action lawsuits of this
12 nature.

13 b. Commonality and Predominance of Common Questions: Questions of law
14 and fact common to PLAINTIFFS and the class predominate over any questions affecting only
15 individual members of the class. These common questions of law and fact include, without
16 limitation:

- 17 i. Whether Delivery Drivers have served DEFENDANTS as employees
18 rather than independent contractors under California law;
- 19 ii. Whether Delivery Drivers have necessarily incurred employment-
20 related expenses and losses in carrying out their duties for
21 DEFENDANTS;
- 22 iii. Whether DEFENDANTS have failed to indemnify Delivery Drivers
23 for their necessarily incurred employment-related-expenses and
24 losses, in violation of Cal. Labor Code § 2802;
- 25 iv. Whether DEFENDANTS’ failure to indemnify Delivery Drivers for
26 necessarily incurred employment-related expenses and losses
27 constitutes an unlawful, unfair, and/or fraudulent business practice,
28 under Cal. Business & Professions Code § 17200 *et seq*;

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- v. Whether DEFENDANTS have made deductions from the compensation paid to Delivery Drivers in violation of California law;
- vi. Whether DEFENDANTS’ deductions from Delivery Drivers’ compensation constitute an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;
- vii. Whether DEFENDANTS’ coercion or compulsion of Delivery Drivers to patronize DEFENDANTS and/or other companies constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;
- viii. Whether DEFENDANTS have failed to provide Delivery Drivers adequate off-duty meal periods and missed meal period compensation, in violation of Cal. Labor Code §§ 226.7 and 512 and IWC wage order No. 1, § 11;
- ix. Whether DEFENDANTS’ failure to provide Delivery Drivers adequate off-duty meal periods and missed meal period compensation constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;
- x. Whether DEFENDANTS have failed to authorize and permit Delivery Drivers paid rest periods and missed rest period compensation, in violation of Cal. Labor Code §§ 226.7 and 1194 and IWC wage order No. 1, § 12;
- xi. Whether DEFENDANTS’ failure to authorize and permit Delivery Drivers paid rest periods and missed rest period compensation constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;

- 1 xii. Whether DEFENDANTS knowingly and intentionally failed to
2 provide Delivery Drivers with an itemized statement showing total
3 hours worked with each payment of wages, as required by Cal. Labor
4 Code § 226 and IWC wage order No. 1, § 7;
- 5 xiii. Whether DEFENDANTS’ failure to provide an itemized statement
6 showing total hours worked with each payment of wages constitutes
7 an unlawful, unfair, and/or fraudulent business practice, under Cal.
8 Business & Professions Code § 17200 et seq.;
- 9 xiv. Whether DEFENDANTS’ failure to maintain documentation of the
10 actual hours worked each day by Delivery Drivers constitutes an
11 unlawful, unfair, and/or fraudulent business practice, under Cal.
12 Business & Professions Code § 17200 *et seq*; and
- 13 xv. What constitutes the proper formula for calculating restitution,
14 damages and other statutory penalties owed to PLAINTIFFS and the
15 class alleged herein.

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

21 d. Adequacy of Representation: PLAINTIFFS are all members of the class.
22 PLAINTIFFS do not have any conflicts of interest with other class members and will prosecute the
23 case vigorously on behalf of the class. PLAINTIFFS will fairly and adequately represent and
24 protect the interests of the class members. PLAINTIFFS’ counsel are competent and experienced
25 in litigating employment class actions, including independent contractor misclassification class
26 actions.

27 e. Superiority of Class Action: A class action is superior to other available
28 means for the fair and efficient adjudication of this controversy. Because the damages suffered by

1 individual Class Members may be relatively small, albeit significant, the expense and burden of
2 individual litigation make it impractical for most Class Members individually to seek redress for
3 the wrongful conduct alleged. Class action treatment will allow those similarly situated persons to
4 litigate their claims in the manner that is most efficient and economical for the parties and the
5 judicial system.

6 **VII. DAMAGES**

7 39. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct,
8 DEFENDANTS owe PLAINTIFFS and similarly situated Delivery Drivers unreimbursed business
9 expenses plus interest, repayment of unlawfully deducted wages plus interest, missed meal period
10 compensation plus interest, missed paid rest period compensation plus interest, statutory penalties,
11 and attorneys' fees and costs, all in an amount that exceeds \$5,000,000, the precise amount of
12 which will be proven at trial.

13 **VIII. CAUSES OF ACTION**

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

17 40. The allegations in all of the preceding paragraphs are realleged and incorporated
18 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
19 and the above-described class of similarly situated Delivery Drivers employed by DEFENDANTS
20 in California.

21 41. While acting on the direct instruction of DEFENDANTS and discharging their
22 duties for them, PLAINTIFFS and similarly situated Delivery Drivers have incurred work-related
23 expenses. Such expenses include but are not limited to the costs of purchase or lease of vehicles;
24 fuel, maintenance, and other vehicle operating costs; various forms of insurance; communications
25 equipment and handheld device; cellular telephones; warehouse rent; and uniforms and laundry
26 services. PLAINTIFFS were also required to pay thousands of dollars for "distribution rights" in
27 order to work their route. DEFENDANTS have also held Delivery Drivers accountable for losses
28 such as out-of-date bake goods and shrink. PLAINTIFFS and class members necessarily incurred

1 these substantial expenses and losses as a direct result of performing their job duties for
2 DEFENDANTS.

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

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

12 44. PLAINTIFFS, on behalf of themselves and similarly situated Delivery Drivers,
13 request relief as described below.

14 **SECOND CAUSE OF ACTION**
15 **UNLAWFUL DEDUCTIONS FROM WAGES**
(CAL. LABOR CODE §§ 221, 223, 400-410, IWC. WAGE ORDER NO. 1)

16 45. The allegations in all of the preceding paragraphs are realleged and incorporated
17 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
18 and the above-described class of similarly situated Delivery Drivers employed by DEFENDANTS
19 in California.

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

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

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

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

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

12 51. DEFENDANTS have violated Cal. Labor Code §§ 221, 223, and 400-410, and IWC
13 wage order No. 1, § 8 by unlawfully taking deductions from PLAINTIFFS’ and Class Members’
14 compensation to cover certain ordinary business expenses of DEFENDANTS, including but not
15 limited to out-of-date baked goods pulled from customers’ stock, and shrink. DEFENDANTS also
16 deducted from PLAINTIFFS’ wages the cost of “distribution rights,” which DEFENDANTS
17 charged PLAINTIFFS in order to work their routes.

18 52. Because DEFENDANTS took unlawful deductions from Delivery Drivers’
19 compensation, they are liable to PLAINTIFFS and Class Members for the compensation that
20 should have been paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221, 223,
21 and 400-410, and IWC wage order No. 1, § 8.

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

25 54. PLAINTIFFS, on behalf of themselves and similarly situated Delivery Drivers,
26 request relief as described below.

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1 **THIRD CAUSE OF ACTION**
2 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS**
3 **(CAL. LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 1)**

4 55. The allegations in all of the preceding paragraphs are realleged and incorporated
5 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
6 and the above-described class of similarly situated Delivery Drivers employed by DEFENDANTS
7 in California.

8 56. PLAINTIFFS and similarly situated Delivery Drivers have regularly worked in
9 excess of five (5) hours a day without being afforded at least a half-hour meal period in which they
10 were relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC wage order
11 No. 1, § 11(A).

12 57. Because DEFENDANTS failed to afford proper and timely meal periods, they are
13 liable to PLAINTIFFS and similarly situated Delivery Drivers for one hour of additional pay at the
14 regular rate of compensation for each workday that the proper meal periods were not provided,
15 pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 1, § 11(B).

16 58. By violating Cal Labor Code §§ 226.7 and 512, and IWC wage order No. 1, § 11,
17 DEFENDANTS are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor
18 Code §§ 218.5 and 1194.

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

21 **FOURTH CAUSE OF ACTION**
22 **FAILURE TO PAY EMPLOYEES FOR REST BREAKS**
23 **(CAL. LABOR CODE §§ 226.7, 1194 AND 1194.2, IWC WAGE ORDER NO. 1)**

24 60. The allegations in all of the preceding paragraphs are realleged and incorporated
25 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
26 and the above-described class of similarly situated Delivery Drivers employed by DEFENDANTS
27 in California.

28 61. IWC Wage Order No. 1, §12(A), provides in pertinent part as follows: "Every
employer shall authorize and permit all employees to take rest periods The authorized rest

1 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
2 time per four (4) hours or major fraction thereof. . . . Authorized rest period time shall be counted
3 as hours worked for which there shall be no deduction from wages.”

4 62. PLAINTIFFS and similarly situated Delivery Drivers were compensated for
5 delivering baked goods based on DEFENDANTS’ determination of a commission, and
6 PLAINTIFFS and other Delivery Drivers were not separately compensated for taking duty-free rest
7 periods.

8 63. PLAINTIFFS and similarly situated Delivery Drivers were unable to deliver baked
9 goods and/or earn a commission while taking duty-free rest periods, and therefore were precluded
10 from earning compensation during any time during which they managed to take a duty-free rest
11 period.

12 64. DEFENDANTS failed to authorize and permit PLAINTIFFS and similarly situated
13 Delivery Drivers to take a ten-minute paid rest period for each four hours of work or major fraction
14 thereof.

15 65. Thus, PLAINTIFFS and other Delivery Drivers regularly worked in excess of three
16 and a half hours a day without being provided at least one paid 10-minute rest period in which they
17 were relieved of all duties, as required by Labor Code § 226.7, and IWC wage order No. 1, §12(A).

18 66. Thus, PLAINTIFFS and the other Delivery Drivers regularly worked in excess of
19 six hours a day without being provided at least two paid 10-minute rest periods in which they were
20 relieved of all duties, as required by Labor Code § 226.7 and IWC wage order No. 1, §12(A).

21 71. Because DEFENDANTS failed to authorize and permit PLAINTIFFS and similarly
22 situated Delivery Drivers compliant rest periods, they are liable to PLAINTIFFS and other Class
23 Members for one hour of additional pay at the regular rate of compensation for each workday that
24 the compliant rest periods were not provided, attorneys’ fees, penalties, and interest, pursuant to
25 Labor Code §§ 226.7(b), 218.5, and 1194, and IWC wage order No. 1, §12(B).

26 67. PLAINTIFFS, on behalf of themselves and similarly situated Delivery Drivers,
27 request relief as described below.

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FIFTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
(CAL. LABOR CODE §§ 226 & 226.3; IWC WAGE ORDER NO. 1)

68. The allegations in all of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Delivery Drivers employed by DEFENDANTS in California.

69. Cal. Labor Code § 226(a) and IWC wage order No. 1, § 7(B) require employers semi-monthly or at the time of each payment of wages to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee. Cal. Labor Code § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among other things, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

70. DEFENDANTS knowingly and intentionally failed to furnish PLAINTIFFS and similarly situated Delivery Drivers with timely, itemized statements showing the total hours worked, as required by Cal. Labor Code § 226(a) and IWC wage order No. 1, § 7(B). As a result, DEFENDANTS are liable to PLAINTIFFS and to the Class for the amounts provided by Cal. Labor Code § 226(b) and for penalties, and attorneys' fees.

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

SIXTH CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)
(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-09)

72. The allegations in all of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Delivery Drivers employed by DEFENDANTS in California.

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

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

4 75. Beginning at an exact date unknown to PLAINTIFFS, but at least since
5 approximately January 2012, DEFENDANTS have improperly, fraudulently, and unlawfully
6 classified its Delivery Drivers as “independent contractors” and have thereby committed unlawful,
7 unfair, and/or fraudulent business acts and practices as defined by Cal. Business & Professions
8 Code § 17200, by engaging in the following:

9 a. failing to indemnify PLAINTIFFS and similarly situated Delivery Drivers
10 for employment-related business expenses and losses;

11 b. improperly and unlawfully making deductions from PLAINTIFFS’ and
12 similarly situated Delivery Drivers’ compensation because of the return out-of-date product, work-
13 related expenses and losses not attributable to the Delivery Drivers’ dishonest or willful act, or to
14 the gross negligence of the PLAINTIFFS, as described above;

15 c. failing and refusing to provide meal periods to PLAINTIFFS and similarly
16 situated Delivery Drivers;

17 d. failing to authorize and permit paid rest periods to PLAINTIFFS and
18 similarly situated Delivery Drivers;

19 e. unlawfully deducting money from wages owed to PLAINTIFFS and
20 similarly situated Delivery Drivers;

21 f. failing to provide accurate itemized wage statements to PLAINTIFFS and
22 similarly situated Delivery Drivers;

23 g. by intentionally, recklessly and/or negligently misrepresenting to
24 PLAINTIFFS and similarly situated Delivery Drivers the true nature of their employment status.

25 h. willfully and unlawfully misclassifying Plaintiffs and similarly situated
26 Delivery Drivers as independent contractors in violation of California Labor Code § 226.8 & and
27 IWC Wage Order No. 1;

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

3 77. As a direct and proximate result of DEFENDANTS' unlawful, unfair, and/or
4 fraudulent acts and practices described herein, DEFENDANTS have received and continue to hold
5 ill-gotten gains belonging to PLAINTIFFS and other similarly situated Delivery Drivers. As a
6 direct and proximate result of DEFENDANTS' unlawful business practices, PLAINTIFFS and
7 other Delivery Drivers have suffered economic injuries including, but not limited to out-of-pocket
8 business expenses, unlawful deductions from compensation, compensation for missed meal periods
9 and rest breaks. DEFENDANTS have profited from their unlawful, unfair, and/or fraudulent acts
10 and practices in the amount of those business expenses, improper deductions from compensation,
11 meal and rest period compensation, and interest accrued by PLAINTIFFS and the Class.

12 78. PLAINTIFFS and other similarly situated Delivery Drivers are entitled to restitution
13 pursuant to Cal. Business & Professions Code §§ 17203 and 17208 for all unpaid business
14 expenses, unlawful deductions from compensation, meal and rest period compensation, and interest
15 since January 2012.

16 79. PLAINTIFFS are entitled to enforce all applicable penalty provisions of the Cal.
17 Labor Code pursuant to Cal. Business & Professions Code § 17202.

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

21 81. As a direct and proximate result of the unfair business practices described above,
22 PLAINTIFFS and other similarly situated Delivery Drivers have all suffered significant losses and
23 DEFENDANTS have been unjustly enriched.

24 82. Pursuant to Cal. Business & Prof. Code §17203, PLAINTIFFS and other similarly
25 situated Delivery Drivers are entitled to: (a) restitution of money acquired by DEFENDANTS by
26 means of their unfair business practices, in amounts not yet ascertained but to be ascertained at
27 trial; (b) a declaration that DEFENDANTS' business practices are unfair within the meaning of the
28 statute.

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

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

7 **IX. REQUEST FOR JURY TRIAL**

8 85. PLAINTIFFS request a trial by jury.

9 **X. PRAAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFFS request relief as follows:

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

13 1. Cal. Labor Code § 2802 by failing to indemnify PLAINTIFFS and similarly
14 situated Delivery Drivers for all necessarily incurred business expenses and losses;

15 2. Cal. Labor Code §§ 221 and 400-410 and IWC wage order No. 1, by making
16 unlawful deductions from the compensation paid to PLAINTIFFS and similarly situated Delivery
17 Drivers for ordinary business expenses and losses without a showing that the expenses and/or
18 losses were due to PLAINTIFFS' dishonest or willful act, or to their gross negligence;

19 3. Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 1 by failure to
20 provide off-duty meal periods to PLAINTIFFS and similarly situated Delivery Drivers;

21 5. Cal. Labor Code §§ 226.7 and 1194, and IWC wage order No. 1 by failure to
22 authorize and permit paid rest periods to PLAINTIFFS and similarly situated Delivery Drivers;

23 6. Cal. Labor Code § 226 and IWC wage order No. 1, § 7(B), by failing to
24 provide PLAINTIFFS and similarly situated Delivery Drivers with itemized statements of total
25 hours worked with each payment of wages;

26 7. Cal. Business and Professions Code §§ 17200-17208, by failing to reimburse
27 PLAINTIFFS and similarly situated Delivery Drivers for necessarily incurred business expenses,
28 by requiring PLAINTIFFS and similarly situated Delivery Drivers to indemnify DEFENDANTS

1 for ordinary business losses, by failing to provide off-duty meal periods and/or pay meal period
2 compensation to PLAINTIFFS and similarly situated Delivery Drivers, by failing to authorize and
3 permit paid rest breaks and/or missed rest break compensation to PLAINTIFFS and similarly
4 situated Delivery Driver, by failing to provide PLAINTIFFS and similarly situated Delivery
5 Drivers with itemized wage statements showing all hours worked, and by failing to maintain
6 payroll records that document all hours worked by PLAINTIFFS and similarly situated Delivery
7 Drivers;

8 B. A declaratory judgment that DEFENDANTS' violations as described above were
9 willful;

10 C. An award to PLAINTIFFS and the Class of damages in the amount of necessarily
11 incurred business expenses, amounts unlawfully deducted from wages, meal and rest period
12 compensation, and interest thereon, subject to proof at trial;

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

16 E. An order requiring DEFENDANTS to pay restitution of all amounts owed to
17 PLAINTIFFS and the Class Members for DEFENDANTS' failure to reimburse for business
18 expenses, amounts unlawfully deducted from wages, failure to pay legally required meal and rest
19 period pay, and interest thereon, in an amount according to proof, pursuant to Business &
20 Professions Code § 17203;

21 F. An award to PLAINTIFFS and the Class of reasonable attorneys' fees and costs,
22 pursuant to Cal. Code of Civil Procedure § 1021.5 and Cal. Labor Code §§ 218.5, 226, 1194, and
23 2802 and/or other applicable law; and

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1 G. An award to PLAINTIFFS and the Class of such other and further relief as this
2 Court deems just and proper.

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4 DATED: October 26, 2015.

LEONARD CARDER

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