

1 Peter Rukin, SBN 178336
2 Valerie Brender, SBN 298224
3 RUKIN HYLAND DORIA & TINDALL LLP
4 100 Pine Street, Suite 2150
5 San Francisco, CA 94111
6 Telephone: (415) 421-1800
7 Facsimile: (415) 421-1700
8 *prukin@rhdtdlaw.com*
9 *vbrender@rhdtdlaw.com*

6 Aaron Kaufmann, SBN 148580
7 Beth Ross, SBN 141337
8 Elizabeth Gropman, SBN 294156
9 LEONARD CARDER, LLP
10 1330 Broadway, Suite 1450
11 Oakland, CA 94612
12 Telephone: (510) 272-0169
13 Facsimile: (510) 272-0174
14 *akaufmann@leonardcarder.com*
15 *bross@leonardcarder.com*
16 *egropman@leonardcarder.com*

Attorneys for PLAINTIFFS

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

14 GIOVANNI MARTINEZ, JOSE
15 ALMENDARIZ, JAMES KING,
16 MARTIN SALAZAR and HUMBERTO
17 LOPEZ,

17 Plaintiffs,

18 v.

19 FLOWERS FOODS, INC, FLOWERS
20 BAKING CO. OF CALIFORNIA,
21 FLOWERS BAKING CO. OF
22 HENDERSON, FLOWERS BAKERIES
23 BRANDS, INC., and DOES 1 through
24 10 inclusive,

25 Defendants.

CASE NO. 2:15-cv-5112

**FIRST AMENDED CLASS ACTION
COMPLAINT (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 (Bus. & Prof. Code §17200 *et seq.*)

DEMAND FOR JURY TRIAL

1 employees for all expenses and losses necessarily incurred in connection with their
2 employment (Cal. Labor Code §2802; IWC wage order No. 1, §§ 8-9); the duty to
3 provide off-duty meal periods (Cal. Labor Code §§ 512, 226.7; IWC wage order No.
4 1, § 11);); the duty to authorize and permit paid rest periods (Cal. Labor Code §§
5 226.7, 1194; IWC wage order No. 1, § 12); and other legal obligations.

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

14 7. PLAINTIFFS bring claims for reimbursement of business expenses and
15 losses, reimbursement of deductions wrongfully taken from wages, meal period pay,
16 rest period pay, unpaid minimum wage (and liquidated damages), statutory and civil
17 penalties, interest, and attorneys’ fees and costs, under Cal. Labor Code §§ 203,
18 218.5, 226.7, 1194, 1194.2, and 2802, and Cal. Code of Civil Procedure § 1021.5.
19 PLAINTIFFS also seek relief, pursuant to Cal. Business and Professions Code §§
20 17200-17208 (also referred to herein as the “UCL”), including restitution and
21 disgorgement of all benefits DEFENDANTS have obtained from the unlawful
22 practices referenced above and detailed below.

23 **IV. PARTIES**

24 **A. Plaintiffs**

25 8. Plaintiff Giovanni Martinez resides in Long Beach, California (Los
26 Angeles County). He has been a full-time Delivery Driver for FLOWERS since
27 approximately April 22, 2013. Throughout his tenure with FLOWERS he has
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1 worked out of FLOWERS' facilities in Carson, California (Los Angeles County).
2 Plaintiff Martinez has driven a box truck to carry out his duties for DEFENDANTS.

3 9. Plaintiff Jose Almendariz resides in Los Angeles, California. He has
4 been a full-time Delivery Driver for FLOWERS since approximately April 15, 2013.
5 Throughout his tenure with FLOWERS he has worked out of FLOWERS' facilities
6 in Inglewood, California (Los Angeles County). Plaintiff Almendariz has driven a
7 box truck to carry out his duties for DEFENDANTS.

8 10. Plaintiff Martin Salazar resides in Los Angeles, California. He has been
9 a full-time Delivery Driver for FLOWERS since approximately April 15, 2013.
10 Throughout his tenure as with FLOWERS he has worked out of FLOWERS'
11 facilities in Santa Fe Springs, California (Los Angeles County). Plaintiff Salazar has
12 driven a box truck to carry out his duties for DEFENDANTS.

13 11. Plaintiff James King resides in Chula Vista, California (San Diego
14 County). He began as a bakery distributor driver for FLOWERS in approximately
15 January 2013 through an employment placement with ABM, Industries, Inc. and was
16 treated as a W-2 employee for tax purposes. On approximately April 15, 2013,
17 Plaintiff King entered into a Distributor Agreement, under which he has continued to
18 serve as a FLOWERS Delivery Driver. Throughout his tenure as a FLOWERS
19 Delivery Driver, Plaintiff King has worked out of FLOWERS' facilities located in
20 Chula Vista, California (San Diego County). Plaintiff King has driven a box truck to
21 carry out his duties for DEFENDANTS.

22 12. Plaintiff Humberto Lopez resides in Tijuana, Mexico. He has been a
23 full-time Delivery Driver for FLOWERS since approximately June 24, 2013.
24 Throughout his tenure as with FLOWERS he has worked out of FLOWERS'
25 facilities in Chula Vista, California (San Diego County). Plaintiff Lopez has driven a
26 box truck to carry out his duties for DEFENDANTS.

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1 **B. Defendants**

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

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

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

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

21 17. The true names and capacities, whether individual, corporate, associate,
22 or otherwise, of defendants sued herein as DOES 1 through 10, inclusive, are
23 currently unknown to PLAINTIFFS, who therefore sue defendants by such fictitious
24 names under Cal. Code of Civil Procedure § 474. PLAINTIFFS are informed and
25 believe, and based thereon allege, that each of the defendants designated herein as a
26 DOE is legally responsible in some manner for the unlawful acts referred to herein.
27 PLAINTIFFS will seek leave of court to amend this Complaint to reflect the true
28 names and capacities of the defendants designated hereinafter as DOES when such

1 identities become known. Hereinafter DEFENDANTS and the DOE defendants
2 shall be referred to collectively as “DEFENDANTS.”

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

8 **v. STATEMENT OF FACTS**

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

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

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

1 order to work their route. The territory typically comprises of a route populated by
2 corporate customers of FLOWERS. The Distributor Agreements uniformly classify
3 the Delivery Drivers as “independent contractors.”

4 22. DEFENDANTS have employed hundreds of Delivery Drivers out of
5 warehouse facilities located in several Southern California locations, including
6 facilities located in the County of Los Angeles.

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

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

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

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

26 27. DEFENDANTS specify when baked goods must be removed from their
27 customers’ shelves. DEFENDANTS will “buy back” a small percentage of the
28 removed baked goods from the PLAINTIFFS. DEFENDANTS impose strict limits

1 on what PLAINTIFFS may do with the remaining baked goods that DEFENDANTS
2 do not buy back.

3 28. PLAINTIFFS' remuneration depends on their ability to drive their
4 vehicles and deliver and stock DEFENDANTS' baked goods.

5 29. When PLAINTIFFS do not follow DEFENDANTS' rules or
6 instructions, they are subject to various types of discipline, including financial
7 penalties.

8 30. PLAINTIFFS have provided services that are an integral part of
9 DEFENDANTS' business enterprise. By providing vehicles, by reliably serving
10 DEFENDANTS' customers, by following DEFENDANTS' controlled delivery
11 routes and stock rotation schedules, and in other material ways, PLAINTIFFS have
12 rendered services to DEFENDANTS that are integral to DEFENDANTS' baked
13 goods distribution system.

14 31. Despite DEFENDANTS' pervasive control over all aspects of its
15 distribution and stocking operations, including over PLAINTIFFS, DEFENDANTS
16 have uniformly classified and treated all Drivers as "independent contractors."

17 32. Although the nature of the work performed by PLAINTIFFS makes
18 detailed control by management unnecessary, DEFENDANTS retain the right to
19 control and exercise extensive control over the work of PLAINTIFFS, and do in fact
20 exercise such control.

21 33. DEFENDANTS' right of control over PLAINTIFFS is retained and/or
22 exercised by DEFENDANTS as demonstrated by DEFENDANTS' written rules and
23 policies and unwritten practices.

24 34. DEFENDANTS' classification and treatment of PLAINTIFFS
25 throughout the period covered by this lawsuit as "independent contractors" rather
26 than as "employees" is and has been unlawful.

27 35. As a result of DEFENDANTS misclassifying PLAINTIFFS as
28 "independent contractors," DEFENDANTS have unlawfully failed to indemnify

1 PLAINTIFFS for employment-related expenses, including the costs of providing
2 their leased or owned vehicles; all operation costs associated with the vehicle,
3 including fuel, maintenance, repair, cleaning, and licensing; liability and other
4 insurance covering work place injuries; cellular telephone and DEFENDANTS’
5 designated text messaging services; uniform laundry fees; and miscellaneous tools,
6 such as dollies and pallet jacks. DEFENDANTS have also failed to indemnify
7 PLAINTIFFS for employment-related losses, such as cargo loss or damage, and
8 bodily and property damage claims. DEFENDANTS have taken deductions from
9 their compensation to cover many of these employment-related expenses.
10 DEFENDANTS have also charged PLAINTIFFS for “distribution rights” in order to
11 work their route. Under the Distribution Agreement, DEFENDANTS reserved the
12 right to and have taken deductions from the compensation of PLAINTIFFS to cover
13 many of these employment-related expenses.

14 36. As a result of DEFENDANTS misclassifying their Delivery Drivers as
15 “independent contractors,” DEFENDANTS have regularly failed to provide a timely
16 30 minute off-duty meal period to PLAINTIFFS when they worked more than five
17 hours in a day.

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

22 38. As a result of DEFENDANTS misclassifying their Delivery Drivers as
23 “independent contractors,” DEFENDANTS have failed to record the actual hours
24 worked by PLAINTIFFS during the Class Period.

25 39. As a result of DEFENDANTS misclassifying their Delivery Drivers as
26 “independent contractors,” DEFENDANTS have failed to itemize the total hours
27 worked on wage statements furnished to PLAINTIFFS.
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- i. Whether Delivery Drivers have served DEFENDANTS as employees rather than independent contractors under California law;
- ii. Whether Delivery Drivers have necessarily incurred employment-related expenses and losses in carrying out their duties for DEFENDANTS;
- iii. Whether DEFENDANTS have failed to indemnify Delivery Drivers for their necessarily incurred employment-related-expenses and losses, in violation of Cal. Labor Code § 2802;
- iv. Whether DEFENDANTS’ failure to indemnify Delivery Drivers for necessarily incurred employment-related expenses and losses constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;
- 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*;

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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*;

xii. Whether DEFENDANTS knowingly and intentionally failed to provide Delivery Drivers with an itemized statement showing total hours worked with each payment of wages, as required by Cal. Labor Code § 226 and IWC wage order No. 1, § 7;

xiii. Whether DEFENDANTS’ failure to provide an itemized statement showing total hours worked with each payment of wages constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal. Business & Professions Code § 17200 *et seq*;

1 xiv. Whether DEFENDANTS’ failure to maintain
2 documentation of the actual hours worked each day by Delivery
3 Drivers constitutes an unlawful, unfair, and/or fraudulent business
4 practice, under Cal. Business & Professions Code § 17200 *et seq*;
5 and

6 xv. What constitutes the proper formula for calculating
7 restitution, damages and other statutory penalties owed to
8 PLAINTIFFS and the class alleged herein.

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

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

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

3 **VII. DAMAGES**

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

11 **VIII. CAUSES OF ACTION**

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

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

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

1 an employer taking or misappropriating employee funds held by the employer in
2 trust.

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

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

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

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

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

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

6 58.

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

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

14 60. PLAINTIFFS and similarly situated Delivery Drivers have regularly
15 worked in excess of five (5) hours a day without being afforded at least a half-hour
16 meal period in which they were relieved of all duties, as required by Cal. Labor Code
17 §§ 226.7 and 512, and IWC wage order No. 1, § 11(A).

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

23 62. By violating Cal Labor Code §§ 226.7 and 512, and IWC wage order
24 No. 1, § 11, DEFENDANTS are also liable for penalties, reasonable attorneys' fees,
25 and costs under Cal. Labor Code §§ 218.5 and 1194.

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

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

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

9 65. IWC Wage Order No. 1, §12(A), provides in pertinent part as follows:
10 “Every employer shall authorize and permit all employees to take rest periods
11 The authorized rest period time shall be based on the total hours worked daily at the
12 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . .
13 Authorized rest period time shall be counted as hours worked for which there shall
14 be no deduction from wages.”

15 66. PLAINTIFFS and similarly situated Delivery Drivers were
16 compensated for delivering baked goods based on DEFENDANTS’ determination of
17 a commission, and PLAINTIFFS and other Delivery Drivers were not separately
18 compensated for taking duty-free rest periods.

19 67. PLAINTIFFS and similarly situated Delivery Drivers were unable to
20 deliver baked goods and/or earn a commission while taking duty-free rest periods,
21 and therefore were precluded from earning compensation during any time during
22 which they managed to take a duty-free rest period.

23 68. DEFENDANTS failed to authorize and permit PLAINTIFFS and
24 similarly situated Delivery Drivers to take a ten-minute paid rest period for each four
25 hours of work or major fraction thereof.

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

1 statements showing the total hours worked, as required by Cal. Labor Code § 226(a)
2 and IWC wage order No. 1, § 7(B). As a result, DEFENDANTS are liable to
3 PLAINTIFFS and to the Class for the amounts provided by Cal. Labor Code §
4 226(b) and for penalties, and attorneys’ fees.

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

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

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

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

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

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

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

26 b. improperly and unlawfully making deductions from
27 PLAINTIFFS’ and similarly situated Delivery Drivers’ compensation because of the
28 return out-of-date product, work-related expenses and losses not attributable to the

1 Delivery Drivers' dishonest or willful act, or to the gross negligence of the
2 PLAINTIFFS, as described above;

3 c. failing and refusing to provide meal periods to PLAINTIFFS and
4 similarly situated Delivery Drivers;

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

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

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

11 i. by intentionally, recklessly and/or negligently misrepresenting to
12 PLAINTIFFS failing and refusing to provide meal periods to PLAINTIFFS and
13 similarly situated Delivery Drivers the true nature of their employment status.

14 j. willfully and unlawfully misclassifying Plaintiffs and similarly
15 situated Delivery Drivers as independent contractors in violation of California Labor
16 Code § 226.8 & and IWC Wage Order No. 1;

17 80. The violations of these laws serve as unlawful, unfair, and/or fraudulent
18 predicate acts and practices for purposes of Cal. Business and Professions Code §
19 17200.

20 81. As a direct and proximate result of DEFENDANTS' unlawful, unfair,
21 and/or fraudulent acts and practices described herein, DEFENDANTS have received
22 and continue to hold ill-gotten gains belonging to PLAINTIFFS and other similarly
23 situated Delivery Drivers. As a direct and proximate result of DEFENDANTS'
24 unlawful business practices, PLAINTIFFS and other Delivery Drivers have suffered
25 economic injuries including, but not limited to out-of-pocket business expenses,
26 unlawful deductions from compensation, compensation for missed meal periods and
27 rest breaks. DEFENDANTS have profited from their unlawful, unfair, and/or
28 fraudulent acts and practices in the amount of those business expenses, improper

1 deductions from compensation, meal and rest period compensation, and interest
2 accrued by PLAINTIFFS and the Class.

3 82. PLAINTIFFS and other similarly situated Delivery Drivers are entitled
4 to restitution pursuant to Cal. Business & Professions Code §§ 17203 and 17208 for
5 all unpaid business expenses, unlawful deductions from compensation, meal and rest
6 period compensation, and interest since January 2012.

7 83. PLAINTIFFS are entitled to enforce all applicable penalty provisions of
8 the Cal. Labor Code pursuant to Cal. Business & Professions Code § 17202.

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

13 85. As a direct and proximate result of the unfair business practices
14 described above, PLAINTIFFS and other similarly situated Delivery Drivers have all
15 suffered significant losses and DEFENDANTS have been unjustly enriched.

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

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

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

27 **IX. REQUEST FOR JURY TRIAL**

28 89. PLAINTIFFS request a trial by jury.

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

10 B. A declaratory judgment that DEFENDANTS' violations as described
11 above were willful;

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

16 D. An award to PLAINTIFFS of statutory penalties because of
17 DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with
18 itemized wage statements that comply with the requirements of Cal. Labor Code §
19 226, subject to proof at trial;

20 E. An order requiring DEFENDANTS to pay restitution of all amounts
21 owed to PLAINTIFFS for DEFENDANTS' failure to pay legally required meal and
22 rest period pay, and interest thereon and DEFENDANTS' failure to repay amounts
23 unlawfully deducted, and interest thereon, in an amount according to proof, pursuant
24 to Business & Professions Code § 17203;

25 F. An award to PLAINTIFFS and the Class of reasonable attorneys' fees
26 and costs, pursuant to Cal. Code of Civil Procedure § 1021.5 and Cal. Labor Code §§
27 218.5, 226, 1194, and 2802 and/or other applicable law; and

28 ///

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

3
4 DATED: November 4, 2015. LEONARD CARDER

5
6 By: /s/ Aaron Kaufmann
7 AARON KAUFMANN
8 Attorneys for PLAINTIFFS

9
10 RUKIN HYLAND DORIA & TINDALL

11 By: /s/ Peter Rukin
12 PETER RUKIN
13 Attorneys for PLAINTIFFS