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GANNETT PUBLISHING
SERVICES, LLC
(erroneously sued as Gannett
Co., Inc.)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKY ARONSON, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

GANNETT CO., INC., a Delaware corporation; LDC DISTRIBUTION, LLC, a California limited liability company; LOUIS COX, an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. 5:19-cv-996

DEFENDANT GANNETT PUBLISHING SERVICES, LLC'S NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT

(Riverside County Super. Ct. Case No. RIC1902519)

Complaint Filed: April 22, 2019
Trial Date: None Set

TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF VICKY ARONSON AND HER COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant Gannett Publishing Services, LLC ("Gannett") (erroneously sued as Gannett Co., Inc.) files this Notice of Removal, pursuant to 28 U.S.C. §§ 1331, 1332(d)(2) & (d)(10), 1441(a), 1446, and 1453, to effectuate the removal of the above-captioned action from the Superior Court for the County of Riverside to the United States District Court for the Central District of California. This Court has original jurisdiction under 28 U.S.C. §§ 1332(d)(2) & (d)(10)—the Class Action Fairness Act of 2005 ("CAFA"). Removal is proper for the reasons set forth below.

I. PROCEDURAL BACKGROUND

1. On April 22, 2019, Plaintiff Vicky Aronson filed a class action complaint in the Superior Court of California for the County of Riverside, titled "*VICKY ARONSON, individually and on behalf of all others similarly situated; Plaintiff, v. GANNETT CO, INC., a Delaware corporation with its principal place of business in Virginia; LDC DISTRIBUTION, LLC, a California limited liability company; LOUIS COX, an individual; and DOES 1 to 100, inclusive, Defendants,*" Case No. RIC1902519 ("Complaint").

2. Plaintiff asserts 11 claims in her Complaint against all of the Defendants: (1) "PAGA Penalties For Willful Misclassification (Labor Code Section 226.8, 2698"); (2) "Failure To Pay Separately And Hourly For Time Spent By Newspaper Carriers On Rest Periods And Nonproductive Time (Labor Code §§ 1194, 1194.2)"; (3) "Failure To Provide Paid Rest Breaks And Pay Missed Rest Break Premiums (Labor Code § 226.7; IWC Wage Order No. 9)"; (4) "Failure To Provide Meal Periods And Pay Missed Meal Period Premiums (Labor Code §§ 226.7, 512; IWC Wage Order No. 9)"; (5) Failure To Reimburse Business Expenses (Labor Code § 2802)"; (6) "Unlawful Deductions From Pay (Labor Code §§ 221, 223, 400-410)"; (7) "Failure To Pay All Wages Owed In A

Timely Manner (Labor Code § 204)"; (8) "Failure To Provide Complete Wage Statements (Labor Code § 226 and 226.3)"; (9) "Waiting Time Penalties (Labor Code §§ 201-203)"; (10) UCL Violations (Bus. & Prof. Code §§ 17200-17204)"; and (12) "PAGA And Other Penalties (Labor Code §§ 2698-2699.5)."

3. On April 30, 2019, Gannett's registered agent for service of process in California received, via process server, the following documents: Summons, Complaint, Civil Case Cover Sheet, Notice of Assignment and Case Management Conference. A true and correct copy of the service packet received by Gannett is attached hereto as **Exhibit A**.

4. On May 29, 2019, Gannett filed its Answer to Plaintiff's Complaint in Riverside Superior Court. A true and correct copy of Gannett's Answer filed to Plaintiff's Complaint is attached hereto as **Exhibit B**.

5. A Case Management Conference in the state court action is currently set for June 24, 2019.

6. Other than the documents described as Exhibits A and B, Gannett has not filed or received any other pleadings or papers in this action prior to this Notice of Removal.

II. FACTUAL BACKGROUND

7. Gannett gathers news, creates media content, and publishes newspapers. (Compl., ¶ 10.) Indeed, throughout California, Gannett owns six newspapers. (Compl., ¶ 10.) Those newspapers are distributed to subscribers' homes in various geographic areas (as relevant to this case, in Palm Springs, Salinas, and Visalia) by independent contractors who provide newspaper delivery services (hereinafter, "carriers") (like Plaintiff and the putative class members). (Compl. ¶¶ 10.)

8. Newspapers are typically dropped off at a distribution center, from where carriers pick them up. (Compl., ¶ 22.) Carriers then choose how to prepare the newspapers for delivery, often including by folding and securing them with rubber bands,

placing them in plastic bags, and loading them into their personal vehicles. (Compl., ¶¶ 22, 46.)

9. The newspapers are distributed in a variety of ways. During at least part of the proposed class period, Gannett has contracted directly with carriers, who deliver Gannett's newspapers to subscribers' homes. (Compl., ¶¶ 10, 23-24.) Alternatively, Gannett contracts with independent, separate distribution businesses (like Defendant LDC Distribution, LLC ("LDC"), which is wholly-owned by Defendant Louis Cox) to distribute its newspapers. (Compl., ¶¶ 11-12; Werlinich Decl., ¶ 9.) As relevant to this action, LDC then subcontracted with smaller businesses (independent contractor carriers) to deliver the newspapers. (Compl., ¶ 23; Werlinich Decl., ¶ 9.)

10. On June 2, 2016, Plaintiff contracted with Gannett to ensure delivery of newspapers in the Palm Springs area seven days per week. (Compl., ¶¶ 6, 10, 28; Werlinich Decl., ¶ 10, Exs. A-B.) Her contracts with Gannett were assigned to LDC on January 9, 2017. (Compl., ¶ 23; Werlinich Decl., ¶ 11.) Plaintiff alleges that her contracts with LDC ended in July 2017. (Compl., ¶ 6.)

III. TIMELINESS OF REMOVAL

11. The time for filing a Notice of Removal does not run until a party has been formally served with the summons and complaint under the applicable state law "setting forth the claim for relief upon which such action or proceeding is based" or, if the case stated by the initial pleading is not removable, after receipt of any "other paper from which it may be first ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-348 (1999) ("[A] named Defendant's time to remove is triggered by simultaneous service of the summons and complaint.").

12. The service of process that triggers the 30-day period to remove is governed by state law. *City of Clarksdale v. BellSouth Telecomms., Inc.*, 428 F.3d 206, 210 (5th Cir. 2005) ("Although federal law requires the defendant to file a removal motion within thirty days of service, the term 'service of process' is defined by state law.").

13. The 30-day time limit to remove was triggered by Plaintiff's service of the Summons and Complaint on April 30, 2019. *See Murphy Bros.*, 526 U.S. at 347-348 ("[A] named defendant's time to remove is triggered by simultaneous service of the summons and complaint.").

14. This Notice of Removal is timely because it is filed within 30 days of service of the Summons and Complaint, by personal service on the agents for service of process for Gannett, on April 30, 2019. Cal. Code Civ. Proc. § 415.10 ("A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery."); 28 U.S.C. § 1446(b)(1) ("The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.").

IV. JURISDICTION: CLASS ACTION FAIRNESS ACT ("CAFA") REMOVAL

15. This Court has original jurisdiction of this action under CAFA, codified in pertinent part at 28 U.S.C. Section 1332(d)(2). As set forth below, this action is properly removable, pursuant to 28 U.S.C. Section 1441(a), in that this Court has original jurisdiction over the action, because the aggregate amount in controversy exceeds $5,000,000 (exclusive of interest and costs), and the action is a class action in which at least one putative class member is a citizen of a state different from that of a defendant. 28 U.S.C. §§ 1332(d)(2), (d)(6), & (d)(10). Furthermore, the number of putative class members is greater than 100. 28 U.S.C. § 1332(d)(5)(B).

A. Plaintiff And Defendants Are Minimally Diverse

16. CAFA requires only minimal diversity to establish federal jurisdiction: at least one purported class member must be a citizen of a state different from any named defendant. 28 U.S.C. § 1332(d)(2)(A). In this case, Plaintiff is a citizen of a state

(California) that is different from the states of citizenship of Gannett (which is a citizen of Delaware and Virginia).

1. Plaintiff Is A Citizen Of California

17. For purposes of determining diversity, a person is a "citizen" of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Inc.*, 704 F.2d 1088, 1090 (9th Cir. 1983) ("To show state citizenship for diversity purposes under federal common law a party must . . . be domiciled in the state."). Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) ("[T]he place of residence is prima facie the domicile."). Citizenship is determined by the individual's domicile at the time that the lawsuit is filed. *Armstrong v. Church of Scientology Int'l*, 243 F.3d 546, 546 (9th Cir. 2000) ("For purposes of diversity jurisdiction, an individual is a citizen of his or her state of domicile, which is determined at the time the lawsuit is filed.").

18. Plaintiff alleges that she is "a California resident." (Ex. A, Compl., ¶¶ 6, 8.) Plaintiff further alleges that Defendants "employed [her] as a newspaper carrier in California." (Ex. A, Compl., ¶ 6.) In addition, an Accurint report run on Plaintiff shows that she currently resides in Venice, California, and she has resided uninterrupted in California since at least January 2010. (Leaf Decl., ¶¶ 2-3, Ex. A.) Accordingly, Plaintiff is a citizen of California.

2. Defendant Gannett Is Not A Citizen Of California

19. Under 28 U.S.C. Section 1332(c), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." Gannet is now, and ever since this action commenced, has been, organized under Delaware law. (Compl., ¶ 10 (Gannett "is a Delaware corporation"); Werlinich Decl., ¶ 6.) Thus, for purposes of diversity jurisdiction, Gannett is a citizen of Delaware. Further, as shown below, Gannett's principal place of business is, and has been at all times since this action commenced, located in Virginia. (Compl., ¶

10 (Gannett is "headquartered in Virginia"); (Werlinich Decl., ¶ 7.) Thus, for purposes of diversity jurisdiction, Gannett is also a citizen of Virginia.

20. The United States Supreme Court held that when determining a company's principal place of business for diversity purposes, the appropriate test is the "nerve center" test. *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81, 92-93 (2010). Under that test, the "principal place of business" means the corporate headquarters where a corporation's high-level officers direct, control, and coordinate its activities on a day-to-day basis. *Id.* ("'[P]rincipal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities.").

21. Under the "nerve center" test, Virginia emerges as Gannett's principal place of business. Gannett's corporate headquarters are located in McLean, Virginia, where its high-level officers direct, control, and coordinate Gannett's activities. (Werlinich Decl., ¶ 7.) Gannett's high-level corporate officers maintain offices in Virginia, and many of Gannett's corporate level functions are performed in the Virginia office. (Werlinich Decl., ¶ 7.) Additionally, many of Gannett's executive and administrative functions are directed from the McLean, Virginia headquarters. (Werlinich Decl., ¶ 7.)

22. Therefore, for purposes of diversity of citizenship, Gannett is, and has been at all times since this action commenced, a citizen of the States of Delaware and Virginia. 28 U.S.C. § 1332(d)(10).

23. Because Plaintiff is a citizen of California, and Gannett is a citizen of Delaware and Virginia, minimal diversity exists under CAFA.

3. Doe Defendants' Citizenship Is Disregarded

24. The presence of Doe defendants in this case has no bearing on diversity of citizenship for removal. *See* 28 U.S.C. § 1441(a) ("For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded."). *See also Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) ("[I]f Fristoe's objection can be read as including the failure of the unidentified 'officers' of Reynolds and the unions, as well as the Doe defendants, to join in the removal petition,

their joinder [in the removal] was unnecessary."); *Soliman v. Philip Morris, Inc.*, 311 F. 3d 966, 971 (9th Cir. 2002) ("[C]itizenship of fictitious defendants is disregarded for removal purposes and becomes relevant only if and when the plaintiff seeks leave to substitute a named defendant."). Thus, the existence of Doe defendants 1-100 does not deprive this Court of jurisdiction. *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 679-680 (9th Cir. 2006) (rule applied in CAFA removal).

B. <u>There Are More Than 100 Putative Class Members</u>

25. CAFA requires that the aggregated number of members of all putative classes be at least 100. 28 U.S.C. § 1332(d)(5)(B). Plaintiff alleges a class period of August 24, 2014 to the present.[1] (Compl., ¶ 2.) She brings claims on behalf of two putative classes: (1) all California residents who signed independent contractor agreements with Gannett to provide services as newspaper carriers in California and who were classified as independent contractors during the class period, and (2) all California residents who signed independent contractor agreements with LDC to provide services as newspaper carriers in California and who were classified as independent contractors during the class period. (Compl., ¶ 8.) Plaintiff alleges the putative class size to be "more than 500." (Compl., ¶ 72(a).) From August 24, 2014 through November 28, 2018, Gannett has contracted with approximately 527 newspaper carriers in California, all of whom it classified as independent contractors. (Werlinich Decl., ¶ 13.) This figure is a conservative estimate of the class size because it does not include (1) putative class members with whom Gannett contracted after November 28, 2018, or (2) any putative class members who have contracted with LDC.

C. <u>The Amount In Controversy Exceeds The Statutory Minimum</u>

26. Gannett denies liability in this action. Nevertheless, the amount in controversy as alleged in Plaintiff's Complaint exceeds $5,000,000. All calculations

[1] According to Plaintiff, although she did not file her Complaint until April 22, 2019, the parties' tolling agreement means that the Complaint should be treated as being filed on the effective date of that tolling agreement: August 24, 2018. (Compl., ¶ 2.)

supporting the amount in controversy are based on the Complaint's allegations (along with other information identified herein), assuming the truth of those allegations without any admission of the truth of those purported facts and assuming solely for purposes of this Notice of Removal that liability is established.

1. Legal Standard: Preponderance Of The Evidence

27. CAFA requires that the amount in controversy exceed $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of $5,000,000. 28 U.S.C. § 1332(d)(6). Federal jurisdiction is appropriate under CAFA "if the value of the matter in litigation exceeds $5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief)." Senate Judiciary Committee Report, S. Rep. No. 109-14, at 42 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 40; *see also Pagel v. Dairy Farmers of Am., Inc.*, 986 F. Supp. 2d 1151, 1161 (C.D. Cal. 2013) ("CAFA's rejection of the anti-aggregation rule makes the 'either viewpoint' rule a valid method for assessing the value of the matter in controversy to determine whether jurisdiction lies under [CAFA]."). And any doubts regarding the maintenance of interstate class actions in state or federal court should be resolved in favor of federal jurisdiction. S. Rep. No. 109-14, at 42-43 ("[I]f a federal court is uncertain about whether 'all matters in controversy' in a purposed class action 'do not in the aggregate exceed the sum or value of $5,000,000, the court should err in favor of exercising jurisdiction over the case. . . . Overall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions. Its provision should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant."); *Yeroushalmi v. Blockbuster, Inc.*, 2005 WL 2083008, at *5 (C.D. Cal. July 11, 2005) ("[U]nder CAFA[,] the Court has jurisdiction. This result is further supported by the Senate Judiciary Committee's direction that '[when] a federal court is uncertain about whether

'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of $5,000,000,' the court should err in favor of exercising jurisdiction.").

28. The Complaint does not allege the amount in controversy for the class Plaintiff purports to represent. Where a complaint does not allege a specific amount in damages, the removing defendant bears the burden of proving by a "**preponderance of the evidence**" that the amount in controversy exceeds the statutory minimum. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 977 (9th Cir. 2013) ("[T]he proper burden of proof imposed upon a defendant to establish the amount in controversy is the preponderance of the evidence standard.").

29. In 2011, Congress amended the removal statute to specify that "removal of the action is proper on the basis of an amount in controversy asserted . . . if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a)." Pub. L. 112–63, Dec. 7, 2011, 125 Stat. 758, § 103(b)(3)(C) (codified at 28 U.S.C. § 1446(c)(2)). *Accord Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006) ("Where the complaint does not specify the amount of damages sought, the removing defendant must prove by a preponderance of the evidence that the amount in controversy requirement has been met."); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007) ("[T]he complaint fails to allege a sufficiently specific total amount in controversy . . . . [W]e therefore apply the preponderance of the evidence burden of proof to the removing defendant."). The defendant must show that it is "more likely than not" that the jurisdictional threshold is met. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996) ("[W]here a plaintiff's state court complaint does not specify a particular amount of damages, the removing defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds [the jurisdictional threshold]. Under this burden, the defendant must provide evidence establishing that it is 'more likely than not' that the amount in controversy exceeds that amount."); *Schiller v. David's Bridal, Inc.*, 2010 WL 2793650, at *2 (E.D. Cal. July 14, 2010) (same).

30. To satisfy this standard, the "defendants' notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, — U.S. —, 135 S. Ct. 547, 554 (2014).

31. The burden of establishing the jurisdictional threshold "is not daunting [because] the removing defendant is not obligated to research, state, and prove the plaintiff's claims for damages." *Ko v. Natura Pet Prod., Inc.*, 2009 WL 10695886, at *2 (N.D. Cal. Sept. 28, 2009) (internal quotes omitted); *see also Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204-1205 (E.D. Cal. 2008) (same); *Bryant v. Serv. Corp. Int'l*, 2008 WL 2002515, at *6 (N.D. Cal. May 7, 2008) ("[T]he amount of detail plaintiffs require would render removal under CAFA unworkable in many cases. Plaintiffs would ask that defendants quantify the number of employees who experienced a wage and hour violation during the class period, the type of wage and hour violation each employee experienced, and that specific employee's hourly salary. Plaintiffs, in other words, would ask that defendants conduct a fact-specific inquiry into whether the rights of each and every potential class member were violated. This, however, is the ultimate question the litigation presents, and defendants cannot be expected to try the case themselves for purposes of establishing jurisdiction . . . ."); *Wheatley v. MasterBrand Cabinets, LLC*, 2019 WL 688209, at *4 (C.D. Cal. Feb. 19, 2019) ("[T]he Complaint provides no indication of the violation rate. Plaintiff cannot avoid federal jurisdiction by purposefully opaque pleading. Nor can he rely on the argument that Defendant has failed to prove the violation rate without alleging or offering evidence of a lower violation rate."); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) ("[T]he parties need not predict the trier of fact's eventual award with one hundred percent accuracy.").

32. It is well-settled that "the court must accept as true plaintiff's allegations as pled in the Complaint and assume that plaintiff will prove liability and recover the damages alleged." *Muniz v. Pilot Travel Ctrs. LLC*, 2007 WL 1302504, at *3 (E.D. Cal.

May 1, 2007) (denying motion for remand of a class action for claims under the California Labor Code for missed meal and rest periods, unpaid wages and overtime, inaccurate wage statements, and waiting-time penalties); *see also Ko*, 2009 WL 10695886, at *2 (N.D. Cal. Sept. 28, 2009) ("Allegations made in a complaint are accepted as true for purposes of removal. . . . [Thus, i]n measuring the amount in controversy, a court must assume that the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all claims made . . . .").

2. A 100 Percent Violation Rate May Be Used To Establish The Amount In Controversy

33. If a plaintiff asserts statutory violations, the court must assume that the violation rate is 100 percent, unless the plaintiff specifically alleges otherwise:

> As these allegations reveal, plaintiff includes no fact-specific allegations that would result in a putative class or violation rate that is discernibly smaller than 100%, used by defendant in its calculations. Plaintiff is the "master of [her] claim[s]," and if she wanted to avoid removal, she could have alleged facts specific to her claims which would narrow the scope of the putative class or the damages sought. She did not.

Muniz, 2007 WL 1302504, at *4 (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)); *see also Arreola v. The Finish Line*, 2014 WL 6982571, at *4 (N.D. Cal. Dec. 9, 2014) ("District courts in the Ninth Circuit have permitted a defendant removing an action under CAFA to make assumptions when calculating the amount in controversy—such as assuming a 100 percent violation rate, or assuming that each member of the class will have experienced some type of violation—when those assumptions are reasonable in light of the allegations in the complaint."); *Altamirano v. Shaw Indus., Inc.*, 2013 WL 2950600, at *7 (N.D. Cal. June 14, 2013) ("[M]ost of the cases conducting this analysis appear to allow the defendant to assume a 100% violation rate only where such an assumption is supported directly by, or reasonably inferred from, the allegations in the complaint. . . . [This approach] is more in line with guidance from the Ninth Circuit regarding the burden of proof [on] removal."); *Soratorio v. Tesoro Ref. and Mktg. Co., LLC*, 2017 WL 1520416, at *3 (C.D. Cal. Apr. 26, 2017) ("Plaintiff's Complaint could be

reasonably read to allege a 100% violation rate. The Complaint notes that Defendants 'did not provide' Plaintiff and the other class members 'a thirty minute meal period for every five hours worked,' and that this was Defendants' 'common practice.' It also alleges that Defendants had a practice of 'requiring employees to work for four hours and more without a rest period' and that Defendants had a 'common practice' of failing to provide required breaks."); *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1149 (C.D. Cal. 2010) ("[C]ourts have assumed a 100% violation rate in calculating the amount in controversy when the complaint does not allege a more precise calculation.").

34. The Ninth Circuit thus permits use of a 100 percent violation rate when claims are brought on behalf of a putative class that was allegedly misclassified as independent contractors. *See LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1202 (9th Cir. 2015) (condoning a 100 percent violation rate because the complaint "define[s] the class to include only [a group of workers], all of whom allegedly should have been classified as employees rather than as independent contractors"). *See also Vitale v. Celadon Trucking Servs.*, 2015 WL 5824721, at *3 (C.D. Cal. Oct. 2, 2015) ("Defendant is permitted to rely on the Complaint in estimating damages, and here the Complaint suggests that Defendant misclassified each of the putative class members. Because this is a binary determination, rather than one of degree, Defendant is correct that it may reasonably assume that 100% of the putative class members are theoretically entitled to penalties for misclassification."); *Garay v. Sw. Airlines Co.*, 2019 WL 967121, at *2 (N.D. Cal. Feb. 28, 2019) ("[A] claim that alleges that all putative class members are misclassified (*e.g.*, as independent contractors), alleges a 'universal violation' of the applicable labor laws [that supports use of a 100 percent violation rate]. That is because if the violation is proven as to one class member on that issue, then the violation also occurred as to each other putative class member.").

35. All of Plaintiff's claims are based on the Defendants allegedly misclassifying each putative class member as an independent contractor. (Compl., ¶ 75 ("Defendants intentionally misclassified Plaintiff . . . . This was part of a pattern and

practice of willful misclassification of all . . . of Defendants' newspaper carriers . . . .").) This is why Plaintiff seeks to certify two classes of newspaper carriers "who were classified as independent contractors" by Gannett or LDC during the class period. (Compl., ¶ 8.) Further, Plaintiff explicitly alleges that nearly all of her claims arise "as a result of Defendants' misclassification of Plaintiff [and] the Class Members . . . as independent contractors," or "by virtue of the misclassification of Plaintiff [and] the Class Members . . . as independent contractors." (Compl., ¶¶ 49 (meal and rest break claims), 53 and 96 (meal break claim), 54 and 125 (wage statement claim), 57 and 100 (expense reimbursement claim), 65 (unlawful deduction claims), 67 (failure to compensate time spent on rest breaks and performing non-productive work claim), 69 and 133 (waiting time penalties claim), 139 and 141 (unfair competition claim), and 147 (PAGA claim).)

3. Relevant Time Period For Assessing The Amount In Controversy

36. Plaintiff's tenth claim for unfair competition is based on an alleged violation of California Business and Professions Code Sections 17200, *et seq.* (Compl., ¶¶ 135-145.) The statute of limitations on this claim is four years, and it extends the statute of limitations on other claims brought pursuant to the UCL. *See* Cal. Bus. & Prof. Code § 17208.

37. Plaintiff brings her second through sixth claims pursuant to the UCL. Plaintiff alleges that Defendants' "business practices" have violated Section 17200 by injuring Plaintiff and the other putative class members via "unpaid wages, unpaid meal and rest period premiums, unreimbursed business expenses, [and] unlawful deductions." (Compl., ¶¶ 139-140.) Plaintiff further alleges that "by misclassifying [the putative class members] as independent contractors," Defendants have violated Section 17200 by violating California Labor Code Sections "221, 223, [and] 401-410 [unlawful deductions]," "226.7 [meal and rest breaks]," "1194 [and] and 1194.2 [non-productive time]," and "2802 [expense reimbursements]." (Compl., ¶¶ 141-142.)

38. Plaintiff alleges that "[a]s a direct and proximate result of Defendants' unlawful business practices, [she] and the Class Members have suffered economic injuries" and that "[she] and similarly situated Class Members are entitled to monetary relief . . . from at least four years prior to the filing of this Complaint." (Compl., ¶¶ 139-140.) Accordingly, for purposes of the calculations herein, the relevant time period for the class action claims is August 24, 2014 through the present (based on Plaintiff's allegations regarding the tolling agreement set forth in Paragraph 2 of the Complaint).

4. Data Applicable To All Claims

39. Although the class period extends to the present, Gannett is conservatively assessing the amount in controversy for each claim only through November 28, 2018. (Werlinich Decl., ¶ 13.)

40. During part of the class period identified in the Complaint (August 24, 2014 through November 28, 2018), approximately 527 newspaper carriers contracted with Gannett as independent contractors in California. (Werlinich Decl., ¶ 13.) These 527 carriers contracted to provide newspaper delivery services for a total of approximately 35,146 workweeks through November 28, 2018. (Werlinich Decl., ¶ 13.)

41. During the class period, Gannett has always compensated the putative class members weekly. (Werlinich Decl., ¶ 16.)

42. Plaintiff alleges that the carriers have always been compensated on a piece-rate basis during the class period based on the number of newspapers they deliver. (Compl., ¶ 6.)

43. Plaintiff alleges that all of the putative class members contracted with Gannett and LDC to deliver newspapers seven days per week. (Compl., ¶ 28 (quoting the putative class members' contracts, which require newspaper deliveries **"daily,"** including "**Sunday[s]"**) and ¶ 10 ("To deliver newspapers to its customers, Gannett [contracts with] newspaper carriers, such as the Plaintiff, the Class Members and the Aggrieved Employees, to deliver newspapers to its customers' homes on a **daily basis**.") (emphasis added).)

5. Based On The Amount Plaintiff Sought In Her DLSE Complaint, The Amount In Controversy For Plaintiff's Fifth Claim For Unreimbursed Business Expenses Exceeds $5 Million Based Solely On The Mileage Portion Of That Claim

44. California Labor Code Section 2802 states that employers must "indemnify" an employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

45. Plaintiff asserts a claim for failing to reimburse business expenses under Section 2802. (Compl., ¶¶ 98-102, Prayer for Relief, ¶ 6.) Plaintiff alleges that "**as a result of Defendants' misclassification** of [the putative class members] as independent contractors, Defendants **do not maintain** an expense reimbursement policy and/or practice stating that Defendants will affirmatively reimburse [the putative class members]." (Compl., ¶ 57 (emphasis added).) Plaintiff further alleges that the putative class members "**never** received **any** reimbursement for mileage and other expenses." (Compl. ¶ 24.) Plaintiff alleges that the business expenses "includ[e] cell phone bills, [car] maintenance, payroll taxes, and [car] repairs," plus "gas," "mileage," "insurance coverage," "tablet[s]," the cost of "a bond, or provid[ing] a security deposit to assist in indemnifying the Defendants," "license plate registration and fees." (Compl., ¶¶ 58, 6, 22, 24, 43.)

46. The statute of limitations for recovery of reimbursement pay under California Labor Code Section 2802 is three years. Cal. Code Civ. § Proc. 338. However, Plaintiff alleges a claim for unreimbursed business expenses as part of her unfair competition claim under Business and Professions Code Section 17200, *et seq*. (Compl., ¶ 142.) According to the Complaint, a four-year statute of limitations applies for purposes of removal. Cal. Bus. & Prof. Code § 17208. Thus, for determining the amount in controversy, the four-year statute of limitations applies to this claim, dating back to August 24, 2014, based on Plaintiff's tolling agreement allegations. (Compl., ¶ 2.)

47. Gannett denies that it failed to reimburse the putative class members for any business-related expenses.

48. The Complaint does not identify the amount of any unreimbursed business expenses underlying this claim. But before filing her Complaint, Plaintiff filed an individual claim with the California Division of Labor Standards Enforcement ("DLSE") seeking some of the same unreimbursed business expenses that she seeks in this action. Specifically, in her DLSE claim, Plaintiff sought reimbursement for mileage she allegedly drove as a newspaper carrier while she was contracted with Gannett. (Leaf Decl., ¶ 4, Ex. B.) Plaintiff's DLSE claim reads as follows:

> "From 5/30/2016 through 6/14/2017, Plaintiff claims reimbursable business expenses (see Labor Code Section 2802), which were incurred for the following: 17,066 miles at the Internal Revenue Service mileage rate of $0.54 per mile," for a total of "**$9,215.64**."

(Leaf Decl., Ex. B (emphasis added).) In other words, according to Plaintiff's representations to the DLSE, in the 381-day period between May 30, 2016 and June 14, 2017 while she was allegedly contracted with Gannett, Plaintiff says she drove 17,066 miles delivering newspapers (or 313.55 miles per week), which caused her to incur unreimbursed expenses for mileage in the amount of **$9,215.64**.

49. Plaintiff alleges that "[her] claims are typical of the claims of the Class . . . [and] arising out of and caused by Defendants' common course of conduct in violation of [the] law as alleged herein . . ." (Compl., ¶ 72(c).) Indeed, Plaintiff alleges that all putative class members contracted with Gannett and LDC to deliver newspapers every day of the week. (Compl., ¶¶ 28, 10.) And Plaintiff alleges that all putative class members "were require[d] to use their personal vehicle to deliver newspapers," but they "**never** received **any** reimbursement for [that] mileage." (Compl., ¶ 2 (emphasis added).)

50. **Thus, based solely on Plaintiff's own estimate of her unreimbursed mileage expenses for driving 313.55 miles each week to deliver newspapers under contract with Gannett for a one-year period of time,** the amount in controversy for the putative class is over **$5,950,815** ***just for the fifth claim*** [(35,146 workweeks during part

of the limitations period) x (313.55 average miles driven per week) x (0.54 mileage reimbursement rate)].[2] This figure does not include the interest that Plaintiff seeks on top of her mileage claim in this action (which **exceeds $1.4 million**), nor the alleged unreimbursed expenses Plaintiff seeks for "cell phone bills, [car] maintenance, payroll taxes, and [car] repairs . . . insurance coverage," "tablet[s]," the cost of "a bond, or provid[ing] a security deposit to assist in indemnifying the Defendants," or "license plate registration and fees." (Compl., ¶¶ 58, 6, 22, 24, 43.) Thus, the $5 million amount in controversy is easily met, based solely on Plaintiff's estimated damages for unreimbursed business expenses set forth in her DLSE complaint.

6. The Amount In Controversy For Plaintiff's First Claim For Misclassification Is Between $970,000 And $2,425,000

51. Labor Code Section 226.8(a) bars "any person or employer [from] . . . willful[ly] misclassify[ing] . . . an individual as an independent contractor."

52. Plaintiff alleges that "Defendants intentionally misclassified [the putative class members] as independent contractors in violation of Labor Code Section 226.8(a). This was part of a **pattern [and] practice** of willful misclassification of **all** . . . of Defendants' newspaper carriers." (Compl., ¶ 75 (emphasis added).)

53. Because Plaintiff explicitly alleges that all putative class members suffered the same harm, and the class definitions are limited to newspaper carriers who were classified as independent contractors, it is proper to use a 100 percent violation rate when assessing the amount in controversy for this claim. *See, e.g.*, *LaCross*, 775 F.3d at 1202 (9th Cir. 2015) (condoning a 100 percent violation rate because the complaint "define[s]

[2] The Court may rely on allegations Plaintiff made before a state administrative agency in calculating the amount in controversy. As explained by the Ninth Circuit, "the amount-in-controversy inquiry in the removal context is not confined to the face of the complaint." *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). Indeed, to satisfy CAFA's preponderance of the evidence test, the court may consider "facts presented in the removal petition as well as any summary-judgement-type evidence relevant to the amount in controversy at the time of removal." *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

the class to include only [a group of workers], all of whom allegedly should have been classified as employees rather than as independent contractors"); *Vitale*, 2015 WL 5824721, at *3 (C.D. Cal. Oct. 2, 2015) ("Defendant is permitted to rely on the Complaint in estimating damages, and here the Complaint suggests that Defendant misclassified each of the putative class members. Because this is a binary determination, rather than one of degree, Defendant is correct that it may reasonably assume that 100% of the putative class members are theoretically entitled to penalties for misclassification."); *Garay*, 2019 WL 967121, at *2 (N.D. Cal. Feb. 28, 2019) ("[A] claim that alleges that all putative class members are misclassified (*e.g.*, as independent contractors), alleges a 'universal violation' of the applicable labor laws [that supports use of a 100 percent violation rate]. That is because if the violation is proven as to one class member on that issue, then the violation also occurred as to each other putative class member."); *Torrez v. Freedom Mortg., Corp.*, 2017 WL 2713400, at *3-5 (C.D. Cal. June 22, 2017) (where complaint alleged "FMC engaged in a pattern and practice of wage abuse against its hourly-paid or non-exempt employees within the state of California," the complaint "can reasonably be interpreted to imply nearly 100% violation rates"); *Ritenour v. Carrington Mortg. Servs. LLC*, 228 F. Supp. 3d, 1025 1030 (C.D. Cal. 2017) ("Given the vague language of the Complaint and the broad definition of the class, it is reasonable for Defendants to assume a 100% violation rate—especially since Plaintiffs offer no alternative rate to challenge Defendant's calculations.").

54. For this claim, Plaintiff explicitly seeks the higher penalties available under Labor Code Section 226.8(c), rather than the lower penalties in Section 226.8(b). (Compl. ¶ 75 ("[Defendants'] misclassification of the newspaper carriers] was part of a pattern [and] practice of willful misclassification . . . .") and Prayer For Relief ¶ 2(d) (seeking an order that the putative class members "be awarded penalties, upon a finding of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the [lower] penalties in 226.8(b)").) The higher penalties must therefore be used to assess the amount in controversy for this claim. *See, e.g., Korn v. Polo Ralph Lauren Corp.*, 536 F.

Supp. 2d 1199, 1205-1206 (E.D. Cal. 2008) ("Plaintiff's argument that defendant has not established the requisite jurisdictional amount for purposes of the CAFA because the class plaintiffs could be awarded less than the maximum statutory penalty per violation overlooks the critical distinction between the likely recovery per plaintiff and the actual issue before the court, the amount in controversy in this litigation. The question is not what damages the plaintiff will recover, but what amount is in controversy between the parties. Where a statutory maximum is specified, courts may consider the maximum statutory penalty available in determining whether the jurisdictional amount in controversy requirement is met.") (internal citations and quotations omitted).

55. Labor Code Section 226.8(c) provides the following penalties for this claim: "[If] the . . . employer has engaged in or is engaging in a pattern or practice of these [misclassification] violations, the . . . employer shall be subject to a civil penalty of not less than [$10,000] and not more than [$25,000] for each violation, in addition to any other penalties or fines permitted by law."

56. Assuming a one year statute of limitations for this claim, the relevant period is August 24, 2017 through the present, based on Plaintiff's tolling agreement allegations. (Compl., ¶ 2.)

57. From August 24, 2017 through November 28, 2018, Gannett contracted with 97 newspaper carriers in California, all of whom it classified as independent contractors. (Werlinich Decl., ¶ 14.) Assuming each classification was improper, and using only a $10,000 penalty for each misclassification, the amount in controversy for this claim is **$970,000** [97 carriers x $10,000]. Assuming each classification was improper, but using the $25,000 penalty for each misclassification, the amount in controversy for this claim is **$2,425,000** [97 carriers x $25,000]. The amount in controversy for this claim thus ranges from **$970,000 to $2,425,000**.

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7. The Amount In Controversy For The Second Claim For Failure To Pay Wages For Rest Breaks And Non-Productive Time Is At Least $6,421,013

58. Under California Labor Code Section 226.2, "[f]or employees compensated on a piece-rate basis during a pay period, . . . [those] employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation."

59. According to Plaintiff, the newspaper carriers have always been paid on a piece-rate basis during the class period. (Compl., ¶ 81.) Plaintiff alleges that "during the Class Period, [she] and Class Members engaged in several nonproductive tasks during their shifts. Plaintiff and the members of the Class were paid on a per-newspaper delivered basis, but Defendants **did not separately compensate** newspaper carriers on an hourly basis for their time spent on statutory rest periods or nonproductive tasks." (Compl., ¶ 81 (emphasis added); *see also id.* at ¶ 46 ("due to Defendants' misclassification of [the putative class members' as indepdent contractors, [the putative class members] were **not paid** for non-productive time while employed by Defendants, [so the putative class members] were **denied compensation for all [such] hours** worked") (emphasis added).)

60. Plaintiff charges that the putative class members are entitled to receive "minimum wage for their on-duty time spent taking statutory rest breaks and on nonproductive tasks" because they have been paid **nothing** for those tasks and were thus "**denied compensation for all [such] hours worked.**" (Compl. ¶¶ 82, 46.)

61. Plaintiff asserts a four-year statute of limitations for this claim, stretching back to August 24, 2014, based on her tolling agreement allegations. (Compl. ¶¶ 2, 82, 45.)

62. Plaintiff alleges that she and the putative class members "took **several** statutory rest periods during their routes." (Compl., ¶ 81 (emphasis added).) Conservatively interpreted, the Complaint charges that at least one 10-minute rest break was not paid at the minimum wage every day contracted to provide newspaper delivery

services for each carrier during the entire class period. Using the minimum wages applicable throughout the class period, Plaintiff's theory puts **$398,475** in controversy [(35,146 workweeks) x (7 days) x (1/6 of hourly minimum wage applicable during the period)].[3]

63. Under California Labor Code Section 1194, "any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Moreover, Section 1194.2 provides that "in any action under Section . . . 1194 . . . to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

64. As part of this claim, Plaintiff seeks liquidated damages and interest. (Compl., ¶ 48 ("Since Defendants failed to provide [the putative class members] with compensation for all hours worked, each are entitled to recovered liquidated damages under Labor Code § 1194.2."), ¶ 83 (claiming that the putative class members may recover "minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the Class Period") and ¶ 84 ("Plaintiff and the Class are also entitled to recover interest").) Interest on the above-amount is **$120,336**, and liquidated damages adds **$398,475** to the amount in controversy. Thus, the amount in controversy for the rest break portion of this claim is **$917,286** ($398,475 + $398,475 + $120,336).

65. As part of this claim, Plaintiff also separately alleges that the putative class members received no compensation for any of their non-productive time: "**due to Defendants' misclassification of [all putative class members]** as independent

[3] The required minimum wage in California was $9.00 per hour from August 24, 2014 through December 31, 2015. It was $10.00 per hour from January 1, 2016 to December 31, 2016. From January 1, 2017 to December 31, 2017, the California required minimum wage was $10.50. And since January 1, 2018, it has been $11.00 per hour.

contractors, [they] were **not paid** for non-productive time while employed by Defendants. Instead, they only received compensation based on the total number of newspapers delivered." (Compl., ¶ 46.) According to Plaintiff, nonproductive time includes "time [putative class members] spent loading their personal vehicles [with newspapers], or planning their routes, and all other nonproductive tasks." (Compl., ¶ 46.) Plaintiff alleges that nonproductive time took "**an hour or more**" each day. (Compl., ¶ 46 (emphasis added).)

66. Conservatively interpreted, the Complaint charges that at least one hour of non-productive time was not paid at the minimum wage every day contracted to provide newspaper delivery services for each carrier during the entire class period. Using the minimum wages applicable throughout the class period, Plaintiff's theory puts **$2,390,853** in controversy [(35,146 workweeks) x (7 days) x (hourly minimum wage applicable during the period)].

67. As part of this claim, Plaintiff also seeks liquidated damages and interest pursuant to California Labor Code Sections 1194 and 1194.2. (Compl., ¶¶ 46, 48, and 83-84.) Interest on the above-amount is **$722,021**, and liquidated damages adds **$2,390,853** to the amount in controversy. Added together, the amount in controversy for the non-productive time portion of this claim is **$5,503,727** ($2,390,853 + $2,390,853 + $772,021).

68. Thus, the total amount in controversy for Plaintiff's second claim, including its rest break and non-productive time portions, plus interest and liquidated damages, is at least **$6,421,013** ($5,503,727 + $917,286).

8. The Amount In Controversy For Plaintiff's Third And Fourth Claims For Meal And Rest Period Violations Is Between $2,049,303 And $3,415,505

69. California Labor Code Section 512 provides that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . ." California Labor Code Section 226.7 requires employers to pay an extra hour's pay to employees who are

not provided full or timely meal periods or rest periods. Relevant case law holds that an employee is entitled to an additional hour's wages per day, for both a rest and meal period violation each day. *Lyon v. W.W. Grainger, Inc.*, 2010 WL 1753194, *4 (N.D. Cal. Apr. 29, 2010) (noting that Labor Code Section 226.7 provides recovery for one meal break violation per work day and one rest break violation per work day).

70. Plaintiff alleges that Defendants never provided any putative class member with a single meal or rest break: "**as a result of Defendants' misclassification** of [the putative class members] as independent contractors, Defendants **failed** to adopt meal and rest break policies . . . . **By virtue of misclassifying** [the putative class members] as independent contractors and as a result of their per-delivery compensation system, Defendants **did not maintain a policy** authorizing their newspaper carriers to take paid rest breaks." (Compl., ¶ 49.) Moreover, Plaintiff alleges that "**as a result of the misclassification** of [the putative class members] as independent contractors, Defendants **never** authorized [the putative class members] to take their timely, 30-minute duty-free meal breaks, on or before the fifth hours of time shifts." (Compl., ¶ 53.) Plaintiff further alleges that Defendants "**never**" paid any missed meal or rest break premiums to its newspaper carriers. (Compl., ¶ 53.)

71. Plaintiff thus seeks "one additional hour of pay at [each carrier's] regular rate of compensation" for "each day" in which Defendants failed to provide newspaper carriers with proper meal and/or rest breaks. (Compl. ¶¶ 90 and 97.)

72. The statute of limitations to recover meal or rest period premium pay under California Labor Code Section 226.7 pay is three years. *Murphy v. Kenneth Cole Prods.*, Inc., 40 Cal. 4th 1094, 1099 (2007) ("[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay and is governed by a three-year statute of limitations."). However, Plaintiff alleges a claim for meal and rest break premium pay as part of her unfair competition claim under Business and Professions Code section 17200, *et seq*. (Compl., ¶ 142.) Although Defendant contends that meal and rest break premium pay cannot be recovered under Business and Professions Code Section 17200 (*Pineda v.*

Bank of America, N.A., 50 Cal. 4th 1389, 1401 (2010) ("[P]ermitting recovery of section 203 penalties via the UCL would not restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest. Section 203 is not designed to compensate employees for work performed. Instead, it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so.")), according to the Complaint, the four-year statute of limitations applies for purposes of removal. Cal. Bus. & Prof. Code § 17208. Thus, for determining the amount in controversy, the four-year statute of limitations applies, stretching back to August 24, 2014, based on Plaintiff's tolling agreement allegations. (Compl., ¶ 2.)

73. Plaintiff is silent as to the amount of alleged meal and rest breaks she claims to have been denied, thereby precluding precise estimates of the amount in controversy. However, Plaintiff does allege, in absolute terms, that "as a result of Defendants' misclassification of [the putative class members] as independent contractors, Defendants failed to adopt meal and rest break policies . . . ." (Compl., ¶ 49.) Plaintiff thus charges that the putative class members were never provided with a meal or rest break. And Plaintiff implies that carriers always worked shifts long enough to qualify for meal and rest breaks[4] because she brings meal and rest break claims, and she alleges that carriers worked long enough to qualify for "several statutory rest periods during their routes." (Compl., ¶ 81.) If a carrier worked long enough to qualify for "several" rest periods (more than 6 hours), then he or she necessarily worked long enough to qualify for a meal period (over 5 hours). The Complaint thus contemplates that all putative class members suffered meal and rest period violations on each day contracted to work.

[4] Employees who work between 3.5 and 6 hours are entitled to a rest break. If an employee works more than 6 hours, he or she is entitled to a second rest break. A meal break is triggered if a shift lasts more than five hours. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1037 (2012) ("[A]n employer must 'provid[e] the employee with a meal period of not less than 30 minutes' for workdays lasting more than five hours."); *id.* at 1029 ("Employees are entitled to 10 minutes' rest [a single rest break] for shifts from three and one-half to six hours in length [and] 20 minutes [two rest breaks] for shifts of more than six hours up to 10 hours.").

74. Plaintiff does not allege an hourly rate or regular rate of compensation for the newspaper carriers, who were and are compensated on a piece-rate basis. (Compl., ¶ 45.) As a matter of law, premium pay must amount to at least the minimum wage, no matter what the underlying hourly rate or regular rate of compensation actually are. It is therefore appropriate to use minimum wage as the value of premium pay when determining the amount in controversy.

75. Although Gannett denies that Plaintiff or any putative class member is entitled to any meal or rest period premium payments, assuming **five meal period violations** and **five rest period violations per week** for each putative class member,[5] and using the minimum wages applicable throughout the class period, the amount in controversy would be approximately **$3,415,505** [(35,146 workweeks) x (the minimum wage applicable during the relevant period) x (10 premium payments per week)]. Even assuming only **three meal period violations** and **three rest period violations per week** for each putative class member, the amount in controversy would be approximately **$2,049,303** [(35,146 workweeks) x (the minimum wage applicable during the relevant period) x (6 premium payments per week)]. Accordingly, the amount in controversy on Plaintiff's meal and rest break claims is between approximately **$2,049,303** and **$3,415,505**.

9. The Amount In Controversy On Plaintiff's Seventh Claim For Failure To Pay All Earned Wages Twice Per Month Is Between $697,209 And $756,479

76. California Labor Code Section 204 provides that "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month."

[5] *Wheatley v. Masterbrand Cabinets, LLC*, 2019 WL 688209, at *5-6 (C.D. Cal. Feb. 19, 2019) ("Because Plaintiff alleges a 'policy' of requiring employees to work through their meal and rest break periods, without specifying a violation rate or offering evidence of a rate lower than that assumed by Defendant, the Court finds Defendant's estimate of five meal break violations and three rest break violations per employee per week reasonable.").

77. Plaintiff alleges that "**as a result of Defendants misclassifying** [the putative class members] as independent contractors, failing to pay for [their] nonproductive time, including rest periods, and failing to pay meal period premiums and rest period premiums, Defendants have **failed to pay** [the putative class members] at least twice per month in violation of Labor Code § 204. Defendants **regularly and consistently failed** to pay [the putative class members] for **all** of their hours worked, for rest periods and/or rest period premiums, and meal period premiums." (Compl., ¶ 67 (emphasis added); *see also id.* at ¶ 116 ("[A]s a matter of **established company policy and procedure**, [Defendants] scheduled, required, suffered, and/or permitted [the putative class members] to work during pay periods," but did not "compensate them for [all of] their work within seven days of the close of payroll.").

78. Section 210 states that "[i]n addition to, and entirely independent and apart from, any other penalty provided . . ., every person who fails to pay the wages of each employee as provided in [Section 204] shall be subject to a civil penalty [of]" $100 for "any initial violation" for each failure to pay each employee, and $200 for "each subsequent violation, "plus 25 percent of the amount unlawfully withheld."

79. Assuming a one-year statute of limitations, this claim reaches back to August 24, 2017, based on Plaintiff's tolling agreement allegations. (Compl., ¶ 2.)

80. The "amount unlawfully withheld" is the full amount in controversy since August 24, 2017 for Plaintiff's second through fourth claims (failure to pay any wages for rest breaks and non-productive time, plus failure to provide meal or rest breaks and no attendant premium pay). There is no offset amount because Plaintiff claims that Defendants provided no pay for non-productive time and never offered premium pay. (Compl., ¶¶ 46, 53.)

81. Based on the $100 and $200 penalties provided by Section 210, this claim puts **$487,300** in controversy. This figure is derived from (1) the 32 bi-weekly pay periods at issue between August 24, 2017 and November 28, 2018 (because Plaintiff says that earned wages must be paid at least twice per month (Compl., ¶ 114)); (2) the 97

carriers who contracted with Defendant to ensure delivery services during that period (Werlinich Decl., ¶ 14); (3) accounting for carriers whose contracts with Defendant ended during the limitations period; and (4) applying Plaintiff's theory of liability for this claim, as follows: [($100 for each alleged initial violation x 97 carriers) = $9,700] + [($200 for each of the 2,388 alleged subsequent violations across the carriers' remaining 31 bi-weekly pay periods) = $477,600].

82. The 25 percent of the amount unlawfully withheld portion of this claim places an additional **$209,909[6] to $269,179[7]** in controversy.

83. In total, this claim places **$697,209 to $756,479** in controversy.

10. The Amount In Controversy On Plaintiff's Eighth Claim For Non-Compliant Wage Statements Is $347,950

84. California Labor Code Section 226 requires employers to furnish to their employees "an accurate itemized statement in writing showing" various data points.

85. According to Plaintiff, "**by virtue of the misclassification** of [the putative class members], Defendants **do not** issue adequate wage statements to [their] newspaper carriers." (Compl., ¶ 54.) "Specifically, Defendants **have not and do not** issue wage statements that include newspaper carriers' total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate . . . , including for all time spent on nonproductive times, and time spent on rest periods." (Compl., ¶ 54.)

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[6] Low estimate of $209,909 = [.25 x ($69,134 value of allegedly uncompensated rest breaks during one-year limitations period)] + [.25 x ($414,886 value of allegedly uncompensated non-productive time during one-year limitations period)] + [.25 x ($355,617 value of low rest and meal premium pay estimate during one-year limitations period)]

[7] High estimate of $269,179 = [.25 x ($69,134 value of allegedly uncompensated rest breaks during one-year limitations period)] + [.25 x ($414,886 value of allegedly uncompensated non-productive time during one-year limitations period)] + [.25 x ($592,695 value of high rest and meal premium pay estimate during one-year limitations period)]

86. Section 226(e) provides a minimum of $50 for the initial violation as to each employee, and $100 for each further violation as to each employee, up to a maximum penalty of $4,000 per employee.

87. The statute of limitations is one year, stretching back to August 24, 2017, based on Plaintiff's allegations of a tolling agreement. Cal. Civ. Proc. Code § 340(a); *Morales v. Jerome's Furniture Warehouse*, 2019 WL 1091444, at *5 (S.D. Cal. Mar. 8, 2019) ("A one year statute of limitations applies to this [wage statement] claim."); Compl. ¶ 2.

88. Gannett has always paid the carriers weekly during the class period. (Werlinich Decl., ¶ 16.) Accordingly, there are 52 pay periods per year. (Werlinich Decl., ¶ 16.)

89. During the statute of limitations period set forth by Plaintiff, putative class members did not (according to Plaintiff) receive accurate wage statements. During this period, 97 carriers contracted to provide newspaper delivery services for a total of approximately 5,458 pay periods. (Werlinich Decl., ¶ 14.) And during this period, a carrier could receive $50 for an initial inaccurate wage statement and $100 for each subsequent inaccurate wage statement, up to a maximum of $4,000. These figures put the amount in controversy for Plaintiff's wage statement claim at **$347,950**.

11. The Amount In Controversy On Plaintiff's Ninth Claim For Waiting Time Penalties Is Between $363,060 And $544,590

90. Under California Labor Code Section 201(a), "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

91. Plaintiff alleges that "**[b]y virtue of [their] willful misclassification** of newspaper carriers, Defendants willfully **failed to pay** [the putative class members] . . . who are no longer employed by Defendants for their time spent on statutory rest breaks and the other nonproductive time prior to or upon termination or separation from employment with Defendants as required by [Section] 201." (Compl., ¶ 133 (emphasis

added).) In other words, Plaintiff is alleging a 100% violation rate for any carriers whose contract with Gannett ended during the relevant period.[8]

92. Pursuant to California Labor Code Section 203(a), "[i]f an employer willfully fails to pay . . . in accordance with Section[ ] 201 . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

93. According to Plaintiff, "Defendants are liable to [the putative class members] who are no longer employed by Defendants for waiting time penalties amounting to [30] days wages . . . pursuant to [Section] 203." (Compl., ¶ 134.)

94. Plaintiff does not allege an hourly rate of compensation for the newspaper carriers given that they were and are compensated on a piece-rate basis. But as a matter of law, Section 203 penalties must be paid out at the minimum wage at least. It is therefore appropriate to use the minimum wage as the hourly rate of compensation that underlies Section 203 penalties when determining the amount in controversy.

95. The statute of limitations period for California Labor Code Section 203 penalties extends back three years from the date of filing of the complaint. *See Pineda*, 50 Cal. 4th at 1399 ("[I]f an employer failed to timely pay final wages to an employee who quit or was fired, the employee would have had one year to sue for the section 203 penalties but, under Code of Civil Procedure section 338, subdivision (a) . . ., three years to sue for the unpaid final wages giving rise to the penalty."). However, Plaintiff alleges a claim for waiting time penalties pay as part of her unfair competition claim under Business and Professions Code Section 17200, *et seq*. (Compl., ¶ 142). Although Defendant contends that waiting time penalties cannot be recovered under Business and Professions Code Section 17200 (*Pineda*, 50 Cal. 4th at 1401 ("[P]ermitting recovery of

[8] *Jones v. Tween Brands, Inc.*, 2014 WL 1607636, at *3 (C.D. Cal. Apr. 22, 2014) (using 100 percent violation rate for waiting-time penalties since the complaint did not limit the number or frequency of violations).

section 203 penalties via the UCL would not restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest. Section 203 is not designed to compensate employees for work performed. Instead, it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so.")), according to the Complaint, the four-year statute of limitations applies for purposes of removal. Cal. Bus. & Prof. Code § 17208. Thus, for determining the amount in controversy, the four-year statute of limitations applies, stretching back to August 24, 2014, based on Plaintiff' allegations of a tolling agreement. (Compl., ¶ 2.)

96. During part of the four-year period for waiting time penalties alleged by Plaintiff (from August 24, 2014 to November 28, 2018), there were approximately 527 carriers who contracted with Gannett in California and were classified as independent contractors. (Werlinich Decl., ¶ 13.) And 302 of those individuals' contracts with Gannett ended during that period. (Werlinich Decl., ¶ 13.) Under Plaintiff's theory of liability, each of these putative class members is entitled to penalties for the full 30 days. (Compl., ¶ 70 ("Defendants have failed to pay **all** [putative class members] for all hours worked . . ., rest period premiums, and meal period premiums . . . at the time of termination or within [72] hours of their resignation and have **failed to pay those sums for [30] days** thereafter.") (emphasis added).)

97. Using the minimum wages applicable during the statutory period, and assuming carriers worked six hours each day, the amount in controversy for this claim is **$544,590** [6 hours per day x the applicable minimum wage x 30 days x 302 carriers whose contracts ended]. It is reasonable to calculate this figure based on carriers working 6 hours per day because Plaintiff alleges that the putative class members worked long enough to qualify for "**several** statutory rest periods during their routes." (Compl., ¶ 81 (emphasis added).) A second rest break is not triggered until an employee works more than six hours. But even assuming that carriers worked only 4 hours each day, the amount in controversy for this claim is **$363,060** [4 hours per day x the applicable minimum wage x 30 days x 302 carriers whose contracts ended]. Thus, the amount in

controversy for Plaintiff's waiting time penalties claim ranges from **$363,060 to $544,590**.

12. The Amount In Controversy On Plaintiff's Eleventh Claim For PAGA Penalties Is $8,186,400

98. Plaintiff seeks to stack PAGA penalties on top of the penalties set forth in the underlying statutes discussed above. (Compl., ¶¶ 77, 147-148, 154.) (Defendant denies that this is legally permissible.) Plaintiff requests PAGA penalties (under Section 2699(f)(2)) for violations related to her first through ninth claims. (Compl., ¶¶ 77, 147-148, 154.)

99. PAGA has a one-year statute of limitations. *See Thomas v. Home Depot USA Inc.*, 527 F. Supp. 2d 1003, 1007 (N.D. Cal. 2007). Based on Plaintiff's allegations, the PAGA period covers July 23, 2017 to the present. (Compl., ¶ 2.)

100. Like her underlying claims, Plaintiff's PAGA claim is predicated upon Defendants allegedly misclassifying the putative class members during each pay period covered by PAGA. (Compl., ¶ 7 (defining "Aggrieved Employees" under PAGA as carriers whom Defendants "classified as independent contractors") and ¶ 147 (predicating the PAGA claim on Defendants' "misclassification of Plaintiff and the Aggrieved Employees as independent contractors").) Because Gannett has always classified carriers with whom it contracts in California as independent contractors, Plaintiff's PAGA claim necessarily asserts that all covered carriers suffered a violation during each covered pay period. (Werlinich Decl., ¶ 13.)

101. According to Plaintiff, "for each such violation" related to her first through ninth claims, each putative class member is "entitled to penalties [according to] the following formula: $100 for the initial violation per employee per pay period and $200 for each subsequent violation per employee per pay period." (Compl., ¶ 148 and Prayer For Relief ¶ 12.)[9]

[9] Although a portion of PAGA penalties are distributed to the state, the entire amount of PAGA penalties are included in the jurisdictional calculus. *See, e.g, Mitchell v. Grubhub Inc.*, 2015 WL 5096420, at *5-6 (C.D. Cal. Aug. 28, 2015) (holding that the state's 75%

102. As part of her first claim for misclassification, Plaintiff seeks PAGA penalties under Section 2699(f). (Compl., ¶ 77 ("Plaintiff by this action seeks to recover . . . the civil penalties provided by PAGA, as specified in Labor Code § 2699(f).").) During the PAGA period, Gannett contracted with 100 newspaper carriers in California, all of whom it classified as independent contractors for each weekly pay period. (Werlinich Decl., ¶ 15.) These 100 carriers had 5,896 pay periods during the PAGA period. (Werlinich Decl., ¶ 15.) Assuming all 100 carriers were misclassified as independent contractors, the PAGA penalties for this claim put an additional **$1,169,200** in controversy.

103. Plaintiff also seeks PAGA penalties in connection with her second through ninth claims. (Compl., ¶ 154.) Other than Plaintiff's ninth claim for waiting time penalties, the PAGA penalty calculations and amount in controversy for claims two through eight are the same as set forth above in connection with the misclassification claim. In other words, because Plaintiff alleges that the carriers were always misclassified as independent contractors, they suffered at least one violation every pay period related to Plaintiff's second through eighth claims (for uncompensated rest breaks and non-productive time, improper meal and rest breaks without attendant premium pay, unreimbursed business expenses, unlawful deductions, failure to pay all earned wages twice per month, and inaccurate wage statements). This means that each of claims two through eight put an additional **$1,169,200** in controversy, for a total of **$8,184,400** in PAGA penalties just for these claims. This figure is conservative because it assumes only one violation per pay period for each of the underlying claims, although Plaintiff alleges multiple violations per pay period for some of her claims.

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share can be aggregated with an individual plaintiff for purposes of satisfying the amount in controversy); *Patel v. Nike Retail Servs., Inc.*, 58 F. Supp. 3d 1032 (N.D. Cal. 2014) (same); *Schiller v. David's Bridal, Inc.*, 2010 WL 2793650, at *8 (E.D. Cal. Jul. 14, 2010) ("[I]t makes little difference whether the LWDA shares in this recovery—Plaintiff, by alleging PAGA penalties, has put 100% of the PAGA penalties in controversy.").

104. Plaintiff also seeks PAGA penalties in connection with her ninth claim for waiting time penalties. (Compl., ¶ 154.) As alleged, the amount in controversy calculation for this claim differs, however, because Section 203 penalties apply only to carriers whose contracts with Gannett have ended, and penalties are recoverable only for the first violation. From July 23, 2017 through November 28, 2018, the agreements of 20 carriers who contracted with Gannett to ensure delivery of newspapers in California ended. (Werlinich Decl., ¶ 15.) Thus, the amount in controversy for this portion of the PAGA claim is **$2,000** [20 carriers whose contracts with Gannett ended during the PAGA period x $100].

105. In total, Plaintiffs puts **$8,186,400** in controversy through her PAGA claims related to her underlying first through ninth claims.

13. Using A Conservative 25 Percent Attorneys' Fees Rate, The Amount In Controversy For Attorneys' Fees Ranges From $5,643,346 To $6,021,914

106. Plaintiff also seeks attorneys' fees on her first, second, fifth through eighth, and eleventh claims. (Compl., Prayer for Relief, ¶¶ 2(e), 3(d), 6(b), 7(b), 8(e), 9(b), and 12(e).)

107. Requests for attorneys' fees must be taken into account in ascertaining the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("We hold that where an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy."); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) ("Where the law entitles the prevailing plaintiff to recover reasonable attorney fees, a reasonable estimate of fees likely to be incurred to resolution is part of the benefit permissibly sought by the plaintiff and thus contributes to the amount in controversy."); *Muniz*, 2007 WL 1302504, at *2 ("[A]ttorneys' fees or punitive damages which are plead and which, as set forth below, are also properly considered in ascertaining the amount in controversy.").

108. A reasonable estimate of fees likely to be recovered may be used in calculating the amount in controversy. *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1011 (N.D. Cal. 2002) ("Where the law entitles the prevailing plaintiff to recover reasonable attorney fees, a reasonable estimate of fees likely to be incurred to resolution is part of the benefit permissibly sought by the plaintiff and thus contributes to the amount in controversy."); *Longmire v. HMS Host USA, Inc.*, 2012 WL 5928485, at *9 (S.D. Cal. Nov. 26, 2012) ("[C]ourts may take into account reasonable estimates of attorneys' fees likely to be incurred when analyzing disputes over the amount in controversy under CAFA.").

109. The Ninth Circuit recently held that "a court must include future attorneys' fees recoverable by statute or contract when assessing whether the amount-in-controversy requirement is met." *Fritsch v. Swift Transp. Co. of Ariz., LLC*, --- F.3d ----, 2018 WL 3748667, at *6 (9th Cir. Aug. 8, 2018); *see also Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018) ("[T]he amount in controversy is not limited to damages incurred prior to removal—for example, it is not limited to wages a plaintiff-employee would have earned before removal (as opposed to after removal). Rather, the amount in controversy is determined by the complaint operative at the time of removal and encompasses all relief a court may grant on that complaint if the plaintiff is victorious."). Districts courts within the Ninth Circuit agree. *Cortez v. United Nat. Foods, Inc.*, 2019 WL 955001, at *7 (N.D. Cal. Feb. 27, 2019) ("The Court finds that the Defendants have sufficiently demonstrated that the amount in controversy for future attorneys' fees puts the total amount in controversy over $5,000,000."); *Lucas v. Michael Kors (USA), Inc.*, 2018 WL 2146403 (C.D. Cal. May 9, 2018) (holding that "unaccrued post-removal attorneys' fees can be factored into the amount in controversy" for CAFA jurisdiction).

110. With class actions, courts have found that 25 percent of the aggregate amount in controversy is a benchmark for attorneys' fees awards under the "percentage of fund" calculation, and courts routinely move north of that benchmark. *See Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000) ("We have also established twenty-five

percent of the recovery as a 'benchmark' for attorneys' fees calculations under the percentage-of-recovery approach."); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *29 (N.D. Cal. Apr. 1, 2011) ("[T]here is ample support for adjusting the 25% presumptive benchmark upward to . . . just under 42% of the settlement amount . . . ."); *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at *7 (C.D. Cal. July 27, 2010) ("[A]lthough this [30%] is slightly higher than the 25% benchmark for fees in class action cases, it is consistent with other wage and hour class actions . . . ."); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Cal. 2010) (citing to five wage and hour class actions where federal district courts approved attorney fee awards ranging from 30% to 33%); *Singer v. Becton Dickinson and Co.*, 2010 WL 2196104, * 8 (S.D. Cal. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 30.3% to 40%); *see also In re Quintas Secs. Litig.*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (noting that in the class action settlement context, the benchmark for setting attorneys' fees is 25 percent of the common fund).

111. Under the conservative benchmark of 25 percent of the low recovery for the applicable claims as set forth above, attorneys' fees alone would be upward of **$5,643,346** in this case [$22,573,387[10] x 0.25]. And applying that same percentage of attorneys' fees based on the high recovery for the applicable claims, attorneys' fees alone are **$6,021,914** [$24,087,656[11] x 0.25].

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[10] [(25% of $970,000) = $242,500 in attorneys' fees for misclassification claim] + [(25% of $6,421,013) = $1,605,253 in attorneys' fees for rest period and non-productive time claim] + [(25% of $5,950,815) = $1,487,703 in attorneys' fees for reimbursement claim] + [(25% of $697,209 = $174,302 in attorneys' fees for failure to pay earned wages twice per month] + [(25% of $347,950) = $86,987 in attorneys' fees for wage statement claim] + [(25% of $8,186,400) = $2,046,600 in attorneys' fees for PAGA claim]

[11] [(25% of $2,425,000) = **$606,250** in attorneys' fees for misclassification claim] + [(25% of $6,421,013) = **$1,605,253** in attorneys' fees for rest period and non-productive time claim] + [(25% of $5,950,815) = **$1,487,703** in attorneys' fees for reimbursement claim] + [(25% of $756,479 = **$189,119** in attorneys' fees for failure to pay earned wages

14. Approximate Aggregate Amount In Controversy Ranges From At Least $30,629,096 To $34,069,666

112. Gannett denies Plaintiff's allegations that she or the putative class are entitled to any relief for the above-mentioned claims. But based on the foregoing calculations, which are derived from allegations set forth in the Complaint, the aggregate amount in controversy for the putative class for all asserted claims,[12] including interest, liquidated damages, and attorneys' fees, ranges from approximately $**30,629,096 to $34,069,665**, as set forth below:

LOW	**HIGH**	
$970,000*	**$2,425,000***	Misclassification Claim
$6,421,013*	**$6,421,013***	Failure To Pay Wages For Rest Periods And Non-Productive Time
$2,049,303	**$3,415,505**	Meal And Rest Break Claims
$5,950,815*	**$5,950,815***	Reimbursement Claim
$697,209*	**$756,479***	Failure To Pay All Owed Wages Twice Per Month
$347,950*	**$347,950***	Wage Statement Claim
$363,060	**$544,590**	Waiting Time Penalties Claim

twice per month)] + [(25% of $347,950) = **$86,987** in attorneys' fees for wage statement claim] + [(25% of $8,186,400) = **$2,046,600** in attorneys' fees for PAGA claim]

[12] The amount in controversy does not include Plaintiff's sixth claim for unlawful deductions. Plaintiff does not identify all unlawful deductions underlying her claim. Instead, she lists just one example: fees that she says carriers are charged for improper newspaper deliveries. (Compl., ¶ 109.) Plaintiff does not allege an amount in controversy for this type of deduction. Given the difficultly of calculating the amount in controversy for this claim, Gannett will ignore it and the liquidated damages request tied to it. (Compl., ¶ 111 and Prayer For Relief ¶ 7(b).)

$8,186,400*	**$8,186,400***	PAGA Claim
$5,643,346	**$6,021,914**	Attorneys' Fees (25% of above figures with an * because those are the claims for which Plaintiff seeks attorneys' fees)
$30,629,096	**$34,069,666**	**TOTALS**

113. Although Defendant denies Plaintiff's allegations that she or the putative class are entitled to any relief, based on Plaintiff's allegations and prayer for relief, and a conservative estimate based on those allegations, which does not even place a value on each of Plaintiff's claims, the total amount in controversy exceeds the $5,000,000 threshold set forth under 28 U.S.C. § 1332(d)(2) for removal jurisdiction.

114. Because minimal diversity of citizenship exists, and the amount in controversy exceeds $5,000,000, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2). This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C. § 1441(a).

115. To the extent that Plaintiff has alleged any other claims for relief in the Complaint over which this Court would not have original jurisdiction under 28 U.S.C. § 1332(d), the Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. section 1367(a).

V. VENUE

116. Venue lies in the United States District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1391(a), 1441, and 84(c). This action originally was brought in Riverside County Superior Court of the State of California, which is located within the Central District of California. 28 U.S.C. § 84(c). Therefore, venue is proper because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). A true and correct copy of this Notice of Removal will be promptly served on Plaintiff and filed with the Clerk of the Riverside County Superior Court of the State of California as required under 28 U.S.C. § 1446(d).

VI. CONSENT

117. Under CAFA, Gannett may remove the entire lawsuit without the joinder of any other defendants. *Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 681 (9th Cir. 2006) (any defendant may remove a class action without the consent or joinder of any other defendants); *United Steel, Paper & Forestry, Rubber Manufacturing Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC v. Shell Oil Co.*, 549 F.3d 1204, 1208-1209 (9th Cir. 2008) (under CAFA, one defendant may remove entire case without joinder of other defendants). Nonetheless, Gannett has secured the consent of LDC and Cox to remove this action. (Sotelo Decl., ¶ 3.)

VII. NOTICE TO STATE COURT AND TO PLAINTIFF

118. Gannett will give prompt notice of the filing of this Notice of Removal to Plaintiff and to the Clerk of the Superior Court of the State of California in the County of Riverside. The Notice of Removal is concurrently being served on all parties.

VIII. PRAYER FOR REMOVAL

119. WHEREFORE, Gannett prays that this civil action be removed from Superior Court of the State of California for the County of Riverside to the United States District Court for the Central District of California.

Date: May 30, 2019

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Paul J. Leaf
Camille A. Olson
Richard B. Lapp
Bethany A. Pelliconi
Paul J. Leaf
Attorneys for Defendant
GANNETT CO., INC.

CT Corporation

Service of Process Transmittal
04/30/2019
CT Log Number 535396453

TO: Barbara W. Wall
Gannett Co., Inc.
7950 Jones Branch Drive
Mc Lean, VA 22107-0001

RE: **Process Served in California**

FOR: Gannett Co., Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	VICKY ARONSON, etc., Pltf. vs. Gannett Co., Inc., etc., et al., Dfts.
DOCUMENT(S) SERVED:	SUMMONS, ATTACHMENT(S), COMPLAINT, NOTICE, CERTIFICATE
COURT/AGENCY:	Riverside County - Superior Court, CA Case # RIC1902519
NATURE OF ACTION:	Employee Litigation - Wrongful Termination - 05/01/2017
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 04/30/2019 at 11:53
JURISDICTION SERVED :	California
APPEARANCE OR ANSWER DUE:	Within 30 Calendar days after this summons and legal papers are served on you (Document(s) may contain additional answer dates)
ATTORNEY(S) / SENDER(S):	Mark D. Potter Potter Handy LLP 9845 Emma Road, Suite 300 San Diego, CA 92131 858-375-7385
ACTION ITEMS:	SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780101969929 Image SOP Email Notification, Jennifer Ehlert jehlert@gannett.com Email Notification, Mark Faris mfaris@gannett.com Email Notification, Courtney French cofrench@gannett.com Email Notification, STACEY WHITE swhite@gannett.com
SIGNED:	C T Corporation System
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

Scanned
Emailed
Logged

MAY 0 7 2019

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 22 2019

V. Alvarado

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

GANNETT CO., INC., a Delaware corporation with its principal place of business in Virginia. (SEE ATTACHMENT A)

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

VICKY ARONSON, individually and on behalf of all others similarly situated,

COPY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. *¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside Historic Courthouse
4050 Main Street
Riverside, CA 92501

CASE NUMBER:
(Número del Caso): RIC 1902519

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James M. Treglio; Potter Handy, LLP; 9845 Erma Rd., Suite 300; San Diego, CA 92131 (858) 375-7385

DATE: *(Fecha)* APR 22 2019 Clerk, by *(Secretario)* V. ALVARADO , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☒ on behalf of *(specify)*: GANNETT CO., INC.
   under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☒ by personal delivery on *(date)*: 4/30/2019

FAXED

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Aronson vs. Gannett Co., Inc., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

LDC DISTRIBUTION, LLC, a California limited liability company

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Aronson vs. Gannett Co., Inc., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

LOUIS COX, an individual

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Aronson vs. Gannett Co., Inc., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

DOES 1 to 100, inclusive

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

POTTER HANDY LLP
Mark D. Potter (SBN 166317)
mark@potterhandy.com
James M. Treglio (SBN 228077)
jimt@potterhandy.com
9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385
Fax: (888) 422-5191

Attorneys for Plaintiff, the Aggrieved Employees, and the Putative Class

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VICKY ARONSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

GANNETT CO., INC., a Delaware corporation with its principal place of business in Virginia, LDC DISTRIBUTION, LLC, a California limited liability company, LOUIS COX, an individual, and DOES 1 to 100, inclusive

Defendants.

CASE NO: RIC 1902519

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR

(1) PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION (LABOR CODE SECTION 226.8, 2698, *ET SEQ.*);
(2) FAILURE TO PAY SEPARATELY AND HOURLY FOR TIME SPENT BY NEWSPAPER CARRIERS ON REST PERIODS AND NONPRODUCTIVE TIME (LABOR CODE §§ 1194, 1194.2);
(3) FAILURE TO PROVIDE PAID REST BREAKS AND PAY MISSED REST BREAK PREMIUMS (LABOR CODE §§ 226.7; IWC WAGE ORDER NO. 9);
(4) FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9);
(5) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
(6) UNLAWFUL DEDUCTIONS FROM PAY (LABOR CODE §§ 221, 223, 400-410);
(7) FAILURE TO PAY ALL WAGES OWED IN A TIMELY MANNER (LABOR CODE §204);
(8) FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS (LABOR CODE § 226 AND 226.3);
(9) WAITING TIME PENALTIES (LABOR

CODE § 201 – 203);
(10) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); AND
(11) PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5);

DEMAND FOR JURY TRIAL

Plaintiff Vicky Aronson ("Plaintiff"), on behalf of herself, the State of California, and all others similarly situated (hereinafter "Class Members") complains and alleges as follows:

OVERVIEW OF CLAIMS

1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the California general public, against Defendants Gannett Co., Inc. ("Gannett"), LDC Distribution LLC ("LDC"), Louis Cox ("LC"), and DOES 1 to 100 (collectively "Defendants") for their (1) willful misclassification of Plaintiff and her fellow newspaper carriers as independent contractors; (2) failure to pay Plaintiff and her fellow newspaper carriers in California separately and on an hourly basis for their time spent taking their statutory rest periods and their other non-productive time; (3) failure to provide Plaintiff and her fellow newspaper carriers paid rest breaks and pay rest break premiums; (4) failure to provide Plaintiff and her fellow newspaper carriers meal periods and pay missed meal period premiums; (5) failure to reimburse Plaintiff and her fellow newspaper carriers business expenses including gas mileage, insurance coverage, and personal cell phone expenses, incurred; (6) unlawful deductions from pay; (7) failure to pay all wages owed in a timely manner; (8) failure to provide complete wage statements to Plaintiff and her fellow newspaper carriers within the one year prior to the filing of this Complaint; (9) failure to pay all wages due to former employees based on the foregoing; (10) unfair business practices based on the foregoing; and (11) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendants have violated California statutory laws as described below.

2. In accordance with the Tolling Agreement signed by the Parties, the "Class Period" is designated as the period from August 24, 2014 through the trial date. The "PAGA Period" is designated as the period from one year prior to the sending of the PAGA letter to the LWDA (*i.e.*, on or around July 23, 2018) through the present and on-going. Defendants' violations of California's wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period and the PAGA Period.

VENUE

3. Venue is proper in this county under section 395.5 of the California Code of Civil Procedure. Many, if not all, of the putative Class Members were employed and/or performed work during the Class Period by Defendants in Riverside County. Many of the acts alleged herein including Defendant's willful misclassification of its newspaper carriers as independent contractors, failure to pay separately and hourly for non-productive tasks, unlawful deductions from pay, failure to provide Labor Code complaint paid meal and rest periods and pay missed meal period and rest break premiums, and failure to reimburse newspaper carriers for their business expenses, occurred in Riverside County. Venue is therefore proper in Riverside County.

JURISDICTION

4. Defendants are within the jurisdiction of this Court. Defendants transact millions of dollars by business by publishing and distributing newspapers throughout the State of California, including in the County of Riverside. Thus, Defendants have obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising from, California law. The claims of the Class and the claims of the aggrieved employees are also based solely on California law described herein.

5. Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C. §1332, as (1) more than two-thirds of the members of the Class as defined below are citizens of the state of California,(2) three of the defendants from whom significant relief is sought (The Desert Sun Publishing Co., LDC Distribution LLC and Louis Cox), whose alleged conduct forms a significant basis for the claims asserted by the Class, are California citizens, (3) the principal injuries resulting from the conduct alleged herein incurred in the state of California, and (4) during the three-year period preceding the filing of the class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons.

THE PARTIES

A. The Plaintiff

6. Plaintiff is a California resident and, from June of 2016 through July of 2017, was misclassified as an independent contractor but was actually employed by Defendants as a newspaper carrier in California. At all relevant times, Plaintiff was delivered newspapers to the homes of Defendants' customers, and was paid on a piece-rate basis. From at August 24, 2014 through the present, and on-going, Defendants' newspaper carriers, including Plaintiff during her and their employment, were willfully misclassified as independent contractors; were not paid by Defendants for their time spent on statutory rest periods and the other non-productive tasks; did not receive premium payments for having been provided only unpaid rest periods; were not provided timely duty free meal breaks or paid missed meal break premiums; had unlawful deductions made to their compensation; were not provided accurate and/or complete wage statements; were not reimbursed for all gas mileage expenses, insurance coverage, personal cell phone expenses for work purposes, and other business expenses; were not paid all wages owed within seven days of the close of payroll; and, did not receive all of their wages due upon termination of employment.

7. Plaintiff represents the state of California and a group of aggrieved employees defined as:

> (a) all individuals who were employed by Gannett and/or its predecessor or merged entities in California who worked as newspaper carriers or in any similar capacity, who signed independent contractor agreements with Gannett, and who were classified as independent contractors from July 23, 2017 and continuing into the present (hereinafter referred to as "Gannett Aggrieved Employees");
>
> (b) all individuals who were employed by LDC and/or its predecessor or merged entities in California, who worked as newspaper carriers or in any similar capacity, who signed independent contractor agreements with LDC, and who were classified as independent contractors from July 23, 2017 and continuing into the present (hereinafter referred to as "LDC Aggrieved Employees");
>
> (Hereinafter, "Aggrieved Employees").

8. By way of this action, Plaintiff also seeks to represent the following Classes:

(a) Plaintiff and all other California residents who are or have been employed by Gannett and/or its predecessor or merged entities in California who worked as newspaper carriers or in any similar capacity, who signed independent contractor agreements with Gannett, and who were classified as independent contractors during the Class Period (hereinafter referred to as "Gannett Class");

(b) Plaintiff and all other California residents who are or were employed by LDC and/or its predecessor or merged entities in California, who worked as newspaper carriers or in any similar capacity, who signed independent contractor agreements with LDC, and who were classified as independent contractors during the Class Period (hereinafter referred to as "LDC Class");

9. Collectively, the Gannett Class, and the LDC Class are referred to as the "Class", and the members are referred to herein as the "Class Members." Plaintiff is informed and believes that the Gannett, the Desert Sun, LDC and LC all jointly and severably employed Plaintiff, the Aggrieved Employees, and the Class Members.

B. The Defendants

10. Defendant Gannett Co., Inc., is a Delaware corporation headquartered in Virginia. According to its website, https://www.gannett.com/who-we-are/, "Gannett is a leading media and marketing company with unparalleled local-to-national reach, successfully connecting consumers, communities and businesses. With the iconic USA TODAY, 109 strong local media organizations in 34 states and Guam, more than 160 local news brands online in the U.K., and ReachLocal, a digital marketing company, we provide rich content through hundreds of outstanding affiliated digital, mobile and print products. Each month more than 110 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category. U.S. local newspapers add an additional audience of 6 million readers every weekday, and USA TODAY adds 2.4 million daily." Currently, Gannett owns and operates USA Today, along with six newspapers in the state of California that operate in at least Palm Springs, Redding, Salinas, Tulare, Ventura County, and Visalia. To deliver newspapers to its customers, Gannett employs newspaper carriers, such as the Plaintiff, the Class Members and the Aggrieved Employees, to deliver newspapers to its customers' homes on a daily basis.

11. Defendant LDC Distribution, LLC, is a limited liability company organized under the laws of the State of Colorado, but whose principal place of business is located at 42120 Lima Hall Road, Bermuda Dunes, CA 92203. On or about May 1, 2017, Defendant LDC took over the duties of distributing Gannett's newspapers in the County of Riverside.

12. Defendant Louis Cox is a resident of the State of California, who shares the same address as LDC. Defendant Louis Cox is the chief executive officer, president and member of LDC, as well as its agent for service of process. Defendant Louis Cox is named as a Defendant in his capacity as the owner of LDC, pursuant to Labor Code §§ 558 and 558.1.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

15. California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person,

may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558 and 558.1.

16. California law also permits and recognizes the piercing of a corporate veil between sister companies and under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule applies where "there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it." *Hasso* 227 Cal. App. 4th at 155; *Greenspan*, 191 Cal. App. 4th at 512.

17. At all times relevant hereto, Defendants have operated as a single entity that jointly employed Plaintiff, the Class Members and all Aggrieved Employees. Many, if not all of Defendants pay stubs, marketing materials, bills and invoices provided to customers, and corporate documents indicate that Plaintiff was employed by Gannett. When Plaintiff was asked to sign an agreement with LDC in May of 2017, the only thing that changed was the name of the entity on the checks Plaintiff received. The form contract she and the other, the Class Members, and the Aggrieved Employees signed contained the same terms, often verbatim from the previous agreement signed with Gannett.

18. Moreover, at all times throughout their employment, Plaintiff, the Class Members, and all Aggrieved Employees were regularly and consistently subject to the common policies, control, and compensation policies utilized by all Defendants.

19. Accordingly, all Defendants engaged, suffered and permitted Plaintiff, the Class Members and all Aggrieved Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff, the Class Members and all Aggrieved Employees at all relevant times herein, so as to be considered the joint employers of all of the Class Members and Aggrieved Employees. By reason of their status as joint employers, they are each liable for civil penalties for violation of the California Labor Code as to Plaintiff, the Class Members, and all Aggrieved Employees as set forth herein.

FACTUAL ALLEGATIONS

20. According to its website, https://www.gannett.com/who-we-are/, "Gannett is a leading media and marketing company with unparalleled local-to-national reach, successfully connecting consumers, communities and businesses. With the iconic USA TODAY, 109 strong local media organizations in 34 states and Guam, more than 160 local news brands online in the U.K., and ReachLocal, a digital marketing company, we provide rich content through hundreds of outstanding affiliated digital, mobile and print products. Each month more than 110 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category. U.S. local newspapers add an additional audience of 6 million readers every weekday, and USA TODAY adds 2.4 million daily." Currently, Gannett owns and operates USA Today, along with six newspapers in the state of California that operate in at least Palm Springs, Redding, Salinas, Tulare, Ventura County, and Visalia. To deliver newspapers to its customers, Gannett employs newspaper carriers, such as the Plaintiff and the Aggrieved Employees, to deliver newspapers to its customers' homes on a daily basis.

21. One of the newspapers owned and operated by Gannett is the Desert Sun, which provides newspapers to the residents of Riverside County, including the Palm Springs area of California. Like all newspapers owned by Gannett, the Desert Sun is part of the "USA Today Network." Gannett and the Desert Sun share the same website, the same address, and the same registered agent for service of process. While the Desert Sun is separate legal entity, it is otherwise a wholly owned and operated subsidiary of Gannett, and Gannett controls all aspects of the Desert Sun's operations, including who it hires, and the employment policies, practices, and procedures of the Desert Sun. Plaintiff is informed and believes that the Desert Sun's policies, practices, and procedures with regard to the Aggrieved Employees are identical to and shared by those of its corporate parent.

22. Plaintiff began her employment with Gannett in 2016, when she, like the other Aggrieved Employees was hired as a newspaper carrier, in which she, and the other Aggrieved

Employees were tasked with delivering newspapers to Gannett's customers. As newspaper carriers, Plaintiff and the aggrieved employees would drive to Gannett's distribution center where they would collect the newspapers they were tasked with delivering, and provided with a distribution sheet which would dictate which customers they were supposed to deliver newspapers to, the route they should take, and the time in which they were required to deliver the newspapers to Gannett's customers. If Plaintiff and the aggrieved employees failed to deliver newspapers within the timeframe allotted, their pay would be docked in accordance with Gannett's policies. Plaintiff and the aggrieved employees were provided with information regarding their deliveries via a tablet, which they were required to purchase from Gannett. For each newspaper they delivered, Plaintiff and the aggrieved employees were paid a specific amount depending on the newspaper.

23. In 2017, Plaintiff and some of the Aggrieved Employees were asked to sign an agreement with LDC, a single person company owned and operated by Louis Cox, stating that they were now independent contractors of LDC. However, their job duties did not change, and indeed many of the terms of the contract between Plaintiff, the Aggrieved Employees, and LDC are carbon copies of the earlier agreement with Gannett. Plaintiff is informed and believes that Gannett paid LDC and Louis Cox to act as a payrolling entity for its newspaper carriers.

24. In both agreements, Plaintiff and the aggrieved employees were classified as independent contractors, paid on a piece-rate basis. Although they were require to use their personal vehicle to deliver newspapers on behalf of Defendants, Plaintiff and the aggrieved employees never received any reimbursement for mileage, or other expenses, but rather were explicitly told in their form contracts that Plaintiff and the Aggrieved Employees would not be reimbursed for any business expenses. Further, they were forced to purchase a bond, or provide a security deposit to assist in indemnifying the Defendants.

25. Recently, the California Supreme Court in *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-958, set forth the standard for determining whether an individual is performing work as an independent contractor or as an employee, as follows:

> We find merit in the concerns noted above regarding the disadvantages, particularly in the wage and hour context, inherent in relying upon a multifactor, all the circumstances standard for distinguishing between employees and independent contractors. As a consequence, we conclude it is appropriate, and most consistent with the history and purpose of the suffer or permit to work standard in California's wage orders, to interpret that standard as: (1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three factors embodied in the ABC test — namely (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (B) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. [Citations]

26. The standard is commonly referred to as the "ABC test." Under the ABC Test, Defendants have the burden of establishing that Plaintiff, the Class Members, and the Aggrieved Employees are independent contractors and not intended to be included within the wage order's coverage. Further, Defendants must establish that Plaintiff, the Class Members, and the Aggrieved Employees meet all three factors of the ABC Test, which as discussed below, they cannot meet.

27. Plaintiff, the Class Members, and the Aggrieved Employees Were Subject to Defendants' Direction and Control: Defendants cannot demonstrate that Plaintiff, the Class Members, and the Aggrieved Employees were free from the direction and control of the Defendants. At all times, Defendants retained and retains the right to control the method and manner of how Plaintiff and Aggrieved Employees perform their job duties and retained and retains all necessary control over Plaintiff, the Class Members, and the Aggrieved Employees during their employment. Among other things, Plaintiff and Aggrieved Employees are required to follow detailed requirements imposed on them by Defendants governing their interaction with customers.

28. Beyond the individual experience of the Plaintiff described above, this level of control is made clear in the form contracts Plaintiff, the Class Members, and the Aggrieved Employees signed with the Defendants. Plaintiff, the Class Members, and the Aggrieved Employees were required to:

> [D]eliver copies of publications, including all parts, sections, inserts, pre-prints, supplements, samples, or other items ("Publications") furnished or authorized by Company under this Agreement no later than 6 a.m daily and 7:30 a.m. Sunday in consideration of its perishable nature and in dry, readable condition to each home delivery location or other delivery location in the Delivery Area as agreed under this Agreement ("Location"), pursuant to the Delivery List provided in accordance with paragraph 2(c) below, and to the satisfaction of the subscriber or other individual accepting delivery of the copies of Publications at each Location. Contractor agrees to accept increases or decreases in the number of copies of a given issue due to news or other events and to distribute the new number of copies to Locations.

29. Failure to deliver the newspapers to customers within the time allotted opens Plaintiff, the Class Members, and the Aggrieved Employees to "liquidated damages" under the terms of the contract:

> In addition to any other rights [Defendants] ha[ve] under this Agreement, should [Defendants] have to distribute any copy of Publications or provide a credit to a subscriber or Location, because of Contractor's failure to perform Contractor agrees to be charged by Company, as liquidated damages and not as a penalty, at the rate of [$1 or $2] per copy of Publications distributed by Company (or its designee).

30. Thus, Defendants informed Plaintiff, the Class Members, and the Aggrieved Employees which publications to deliver, where to deliver those publications, set forth the specific time by which the publications had to be delivered, and set forth how those publications must be delivered. Failure to comply with the Defendants' policies would result in liquidated damages of $1 or $2 per copy, which is well in excess of the pay per copy for a successful delivery.

31. Plaintiff was therefore misclassified as an independent contractor. In fact, as the California Unemployment Insurance Appeals Board held with regard to Plaintiff:

> In *California Employment Commission v. Los Angeles Downtown Shopping News* (1944) 24 Cal.2d 421 and *California Employment Commission v. Bates* (1944) 24 Cal. 2d 432, newspaper carriers were held to be employees, where the carriers were terminable at will, supervised by district managers and inspectors, and given instructions on delivery. Although the carriers were given freedom to cover their routes, the publishers were considered to have reserved the right to direct the carriers' work.
>
> In *Max Grant v. Director of Benefit Payments* (1977) 71 Cal.App.3d 647, the petitioner required his carriers to deliver papers only to particular subscribers and at a specific time, handled the complaints, advised the carriers on methods of operation, required subscriber lists to be maintained by the carriers, and retained the right to terminate carriers. Noting that "a certain amount of employee freedom is inherent in the work" of delivering newspapers, the Court of Appeal held that the carriers were employees.

> Based upon the case law cited above it is concluded the claimant was an employee. The claimant was required to deliver papers to a certain route which was provided by the employer. The claimant had to deliver newspapers by a certain time. The claimant was free to cover her route how she wanted but the employer here was considered to have reserved the right to correct the courier's work.
>
> There is a certain amount of employee freedom inherent in the work delivering newspaper. However, based upon the evidence presented and the authority cited it is concluded that the claimant was an employee.
>
> While not completely on point the case of *Antelope Valley Press v. Poizner*, 59 Cal 4th 552 (2008) [sic], also supports the claimant's position that she was an employee. In that case the court determined that the newspaper couriers were employees for purposes of workers' compensation insurance.
>
> A review of the case law shows that the claimant engaged in newspaper delivery activities that were similar, and exactly the same as to some tasks, as those activities cited in the above cases that concluded the newspaper delivery person was an employee.

32. Thus, in the view of the California Unemployment Insurance Appeals Board, based on the contracts signed by Plaintiff, the Class Members, and the Aggrieved Employees, Defendants exercised control over Plaintiff, the Class Members, and the Aggrieved Employees. Indeed, the California Supreme Court in *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. 4th 522, which also dealt with newspaper carriers held that the existence of a contract, held that the existence of a contract, and its relevant terms was key to determining control.

> The trial court here afforded only cursory attention to the parties' written contract, instead concentrating on the particulars of the parties' many declarations and detailing a dozen or so ways in which delivery practices, or Antelope Valley's exercise of control over those practices, varied from carrier to carrier—e.g., whether carriers were instructed on how to fold papers, whether they bagged or "rubber banded" papers, and whether they followed the delivery order on their route lists. In so doing, the court focused on the wrong legal question—whether and to what extent Antelope Valley exercised control over delivery. But what matters is whether a hirer has the "*legal right* to control the activities of the alleged agent" (*Malloy v. Fong, supra,* 37 Cal.2d at p. 370, 232 P.2d 241, italics added) and, more specifically, whether the extent of such legal right is commonly provable. In cases where there is a written contract, to answer that question without full examination of the contract will be virtually impossible. (See *Tieberg v. Unemployment Ins.App. Bd., supra,* 2 Cal.3d at p. 952, 88 Cal.Rptr. 175, 471 P.2d 975 [written agreements are a "significant factor" in assessing the right to control]; *Grant v. Woods, supra,* 71 Cal.App.3d at p. 653, 139 Cal.Rptr. 533 [**"Written agreements are of probative significance"** in evaluating the extent of a hirer's right to control].) Evidence of variations in how work is done may indicate a hirer has not exercised control over those aspects of a task, but they cannot alone differentiate between cases where the omission arises because the hirer concludes control is

> unnecessary and those where the omission is due to the hirer's lack of the retained right. That a hirer chooses not to wield power does not prove it lacks power. (*Malloy*, at p. 370, 232 P.2d 241 ["It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the right of control and supervision establishes the existence of an agency relationship."]; *Robinson v. George* (1940) 16 Cal.2d 238, 244, 105 P.2d 914 [absence of evidence a hirer "exercised any particular control over the details" of the work does not show the hirer lacked the right to do so].) One must consider the contract as well.

Id. at 534–35. (Emphasis not added).

33. Thus, as clearly stated in the contracts, Defendants retained and retains the right to control the method and manner of how Plaintiff, the Class Members, and Aggrieved Employees performed their job duties and retained and retains all necessary control over Plaintiff, the Class Members, and the Aggrieved Employees during their employment. Among other things, Plaintiff, the Class Members and the Aggrieved Employees are required to follow detailed requirements imposed on them by Defendants governing their interaction with customers. For instance, Plaintiff, the Class Members, and the Aggrieved Employees were provided with a list of customers to deliver newspapers to each and every day of their employment and if they failed to deliver the newspapers to the right customer within the allotted time period, they would be subject to discipline. Further, Defendants set their compensation. As a result, under applicable law, Plaintiff, the Class Members, and the Aggrieved Employees were employees of Defendants. *See, e.g. Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. 4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d 1093 (9th Cir. 2014) (employer's right to control detail of newspaper carriers' work support finding of employer employee relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d 381 (9th Cir. 2014) (driver were employees as a matter of law where FedEx controlled times newspaper carriers worked and controlled aspects of when packages would be delivered); *See, also, Taylor v. Shippers Transport Express, Inc.*, 2014 W.L. 7499046 (C.D. Cal. 2014) (finding employee status for newspaper carriers as a matter of law); and *Villapando v. Excel Direct, Inc.*, 2015 W.L. 15179486 (N.D. Cal. 2015) (granting summary judgment to Plaintiffs on Defendant's defense that the newspaper carriers at issue were independent contractors).

34. Similarly, Defendants retained all necessary control over Plaintiff, the Class Members and the other Aggrieved Employees' work. Plaintiff, the Class Members, and the Aggrieved Employees do not and did not operate distinct businesses, but were integrated into Defendants' business; Defendants closely monitored the work of their newspaper carriers; their jobs did not require substantial skill; Defendants provided the distribution center, newspapers, and documents which had the Gannett logo on it, representing all of their tools of work; although Defendants pay Plaintiff, the Class Members, and the Aggrieved Employees piece rate compensation, in fact this payment plan resembles a pay arrangement similar to an employee's pay arrangement; and newspaper carriers often stay with Defendants for years. Under applicable standards of law, Plaintiff, the Class Members, and the Aggrieved Employees are, or were during their employment by Defendants, were employees and not independent contractors.

35. As such, Defendants kept and maintained control over Plaintiff, the Class Members, and the Aggrieved Employees throughout their employment, and thus, Defendants cannot meet their burden of proving that Plaintiff, the Class Members, and the Aggrieved Employees are properly classifieds independent contractors for this reason alone. But as seen below, Defendants cannot meet the other two factors either.

36. Plaintiff, the Class Members, and the Aggrieved Employees Performed Work Within the Usual Course of the Defendants' Business: As described by the Court in *Dynamex*, the work performed within the course of the defendants business is described thusly, "Workers whose roles are most clearly comparable to those of employees include individuals whose services are provided within the usual course of the business of the entity for which the work is performed and thus who would ordinarily be viewed by others as working in the hiring entity's business and not as working, instead, in the worker's own independent business." *Dynamex Operations West v. Superior Court*, *supra*, 4 Cal. 5th at 959. By way of example, the Supreme Court held that:

> Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical line, the services of the plumber or electrician are not part of the store's usual course of business and the store would not reasonably be seen as having suffered or permitted the plumber or electrician to provide services to it as an employee. [citations] On the other hand, when a clothing manufacturing company hires work-at-home seamstresses to

> make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company [citations], or when a bakery hires cake decorators to work on a regular basis on its custom-designed cakes (*cf., e.g., Dole v. Snell* (10th Cir. 1989) 875 F.2d 802, 811), the workers are part of the hiring entity's usual business operation and the hiring business can reasonably be viewed as having suffered or permitted the workers to provide services as employees. In the latter settings, the workers' role within the hiring entity's usual business operations is more like that of an employee than that of an independent contractor.

Id. at 959-960.

37. Here Defendants cannot establish that Plaintiff, the Class Members, and the Aggrieved Employees perform work outside the Defendants' normal course of business. Plaintiff, the Class Members, and the Aggrieved Employees were not performing work outside the Defendants' normal course of business, as the Defendants are in the selling and distributing newspapers to customers, and Plaintiff, the Class Members, and the Aggrieved Employees distributed those newspapers to Defendants' customers.

38. Indeed, newspaper carriers, like Plaintiff, the Class Members, and the Aggrieved Employees, have been traditionally considered employees of publishing and distribution companies such as the Defendants for a long time. See *California Employment Commission v. Los Angeles Downtown Shopping News* (1944) 24 Cal. 2d 421; *California Employment Commission v. Bates* (1944) 24 Cal. 2d 432; *Max Grant v. Director of Benefit Payments* (1977) 71 Cal.App.3d 647; *Antelope Valley Press v. Poizner* (2008) 59 Cal 4th 552. For this reason alone, Defendants misclassified Plaintiff, the Class Members, and the Aggrieved Employees.

39. The Plaintiff, the Class Members, and the Aggrieved Employees Were Not Customarily Engaged in an Independently Established Trade, Occupation, Or Business of the Same Nature as the Work Performed: As with the A and B of the ABC Test, Defendants cannot establish that Plaintiff, the Class Members, and the Aggrieved Employees are employees customarily engaged in an independent occupation, or business. As the Supreme Court in *Dynamex* held:

> As a matter of common usage, the term "independent contractor," when applied to an individual worker, ordinarily has been understood to refer to an individual who *independently* has made the decision to go into business for himself or herself. [citations] Such an individual generally takes the usual steps to establish and promote

> his or her independent business—for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like. When a worker has not independently decided to engage in an independently established business but instead is simply designated an independent contractor by the unilateral action of a hiring entity, there is a substantial risk that the hiring business is attempting to evade the demands of an applicable wage order through misclassification. A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order. The fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself or herself.

Dynamex Operations W. v. Superior Court, supra, 4 Cal. 5th at 962.

40. Here, there newspaper carriers, such as Plaintiff, the Class Members, and the Aggrieved Employees are not customarily considered part of an independently established business. Indeed, as seen above, newspaper carriers have been consistently held to be employees of publishing companies. See *California Employment Commission v. Los Angeles Downtown Shopping News* (1944) 24 Cal. 2d 421; *California Employment Commission v. Bates* (1944) 24 Cal. 2d 432; *Max Grant v. Director of Benefit Payments* (1977) 71 Cal.App.3d 647; *Antelope Valley Press v. Poizner* (2008) 59 Cal 4th 552. And although these professions are typically part-time, rarely would newspaper carriers put themselves out to the public to offer their services – after all, they deliver publications during the early morning hours, a task which is only of benefit to a publisher like Gannett.

41. Thus, under the standards of the ABC test, Plaintiff, the Class Members, and the Aggrieved Employees are clearly "employees" and not "independent contractors." *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-958; *See, e.g. Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. App. 4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d 1093 (9th Cir. 2014) (employer's right to control detail of newspaper carriers' work support finding of employer-employee relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d 381 (9th Cir. 2014) (driver were employees as a matter of law where FedEx controlled times newspaper carriers worked and controlled aspects of when packages would be

delivered); *See, also, Taylor v. Shippers Transport Express, Inc.*, 2014 W.L. 7499046 (C.D. Cal. 2014) (finding employee status for newspaper carriers as a matter of law); and *Villapando v. Excel Direct, Inc.*, 2015 W.L. 15179486 (N.D. Cal. 2015) (granting summary judgment to Plaintiffs on Defendant's defense that the newspaper carriers at issue were independent contractors).

42. And because Defendants could not meet any part of the ABC test, it is clear that Defendants intentionally and willfully misclassified Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors in violation of Labor Code § 226.8(a).

43. Further, since the start of the Class Period and the PAGA Period, Plaintiff, the Aggrieved Employees, and the Class Members, as employees of the Defendants who were misclassified as independent contractors, were subject to self-employment taxes, wherein they were required to pay the Defendants' share of the state and federal payroll taxes. These payroll taxes also represent reasonable and necessary business expenses that Plaintiff, the Class Members, and the Aggrieved Employees incurred as a necessary part of their employment with the Defendants.

44. California Labor Code §226.2 governs compensation paid to piece-rate employees, like Plaintiff, the Class Members, and the Aggrieved Employees. It states, in the relevant part:

> This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.
>
> (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
>
> (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
>
> (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:
>
> (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

> (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

45. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta v. Osmose, Inc.* (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a piece-rate basis, such as Plaintiff and the Aggrieved Employees, must be compensated for all the hours that they work, including non-productive time.

46. However, and due to Defendants' misclassification of Plaintiff, the Class Members and the Aggrieved Employees as independent contractors, Plaintiff, the Class Members and the Aggrieved Employees were not paid for non-productive time while employed by the Defendants. Instead, they only received compensation based on the total number of newspapers delivered. Thus, time spent loading their personal vehicles, or planning their routes, and all other nonproductive tasks typically taking up to an hour or more, was not compensated. As a result, Plaintiff, the Class Members, and the Aggrieved Employees were denied compensation for all hours worked, in violation of Cal. Labor Code §1194, and were denied compensation at the minimum wage in violation of Cal. Labor Code §§1197 and 1199.

47. Further, Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated ... any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." Plaintiff and the other Aggrieved Employees are entitled to recover penalties and wages under Labor Code § 558. *See Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal. App. 4th 1112.

48. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the Class Members, and the Aggrieved Employees are not paid for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-2 1.) Since Defendants failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with compensation for all hours worked, each are entitled to recover liquidated damages under Labor Code § 1194.2.

49. Throughout the Class Period, including through the PAGA period, and as a result of Defendants' misclassification of Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, Defendants failed to adopt meal and rest break policies consistent with California law applicable to Class Members and the Aggrieved Employees on their California routes. By virtue of misclassifying Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors and as a result of their per-delivery compensation system, Defendants did not maintain a policy authorizing their newspaper carriers to take paid rest breaks amounting to 10 minutes of time for each four hours of work or major fraction thereof on their shifts in California.

50. Under California law, Defendants are and were obligated to pay newspaper carriers, including Plaintiff, the Class Members and the Aggrieved Employees, separately and hourly for their rest break time in California. *See Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law."); *Shook v. Indian Transport Co.*, 2014 WL 7178199 (E.D.Cal. Dec. 15, 2014) (adopting *Bluford* and noting that, "IRT has not identified any split in the California appellate courts that would indicate that there is any disagreement over whether piece-rate workers must be separately compensated for

breaks"); *Cardenas v. McLane FoodServices, Inc.* (C.D.Cal.2011) 796 F.Supp.2d 1246, 1252 (piece-rate pay system that did not separately pay truck drivers for rest periods and other nonproductive times violates California law requiring compensation for each hour worked); and, *Gonzalez v. Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36, 49 (favorably citing and adopting *Cardenas*).

51. Furthermore, by virtue of the fact that Defendants provided only unpaid rest breaks to newspaper carriers, Defendants fail and failed to provide compliant rest breaks to Plaintiff, the Class Members, and the Aggrieved Employees, in accordance with Section 12 of IWC Wage Order No. 9 and applicable law.

52. Under California Labor Code Section 512 and IWC Wage Order No. 9, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period. Finally, an employer may not employ an employee for a work period of more than ten (10) hours a day without providing the employee with another meal period of not less than thirty (30) minutes.

53. Under California Labor Code Section 226.7, if the employer does not provide an employee a meal period in accordance with these requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Here, as a result of the misclassification of Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, Defendants never authorized Plaintiff, the Aggrieved Employees and the Class Members to take their timely 30-minute duty-free meal breaks, on or before the fifth hours of time shifts, and Defendants never paid any missed meal break premiums to its newspaper carriers, including the Plaintiff, the Class Members, and the

Aggrieved Employees.

54. Furthermore, by virtue of the misclassification of Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, Defendants do not issue adequate wage statements to its newspaper carriers in California, under Labor Code Sections 226(a) and 226.2. Specifically, Defendants have not and do not issue wage statements that include newspaper carriers' total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code Section 226(a), including for all time spent on Nonproductive times, and time spent on rest periods. *See,* Labor Code § 226.2.

55. Courts in California have held, in the summary judgment context, even before the passage of Labor Code Section 226.2, that newspaper carriers' hours must be reported on their paystubs, even in cases where newspaper carriers are paid on a piece-rate basis. *See, Cicairos v. Summit Logistics* (2005) 133 Cal.App.4th 949, 960-961 ("The "Driver Trip Summary—Report of Earnings" statements, which newspaper carriers received with their earnings statements, did not remedy the deficiencies in the earnings statements. The trip summaries showed a time the driver was dispatched, which was one or more times on a working day. After the dispatch time were columns for how many miles traveled, stops, delay minutes, and other categories. The summaries did not, however, show how many hours the driver worked each day or during the pay period. Thus, the defendant failed to provide the Plaintiff with itemized wage statements that meet the requirements of Labor Code section 226"); *McKenzie v. Federal Express Corp.*, 765 F.Supp.2d 1222, 1229 (C.D.Cal. 2011) ("[T]he Court finds that FedEx violated Section 226(a)(2) by failing to state the "total hours worked by [an] employee" in its wage statements"); *Cornn v. United Parcel Service, Inc.*, 2006 W.L. 449138, *2-3 (N.D.Cal. 2006) (denying defendant's motion for summary judgment on Section 226 claim and noting, "[i]nstead, the Court holds that if UPS failed to report the actual number of hours worked on Plaintiff's wage statements, then the company violated section 226."). This is also now clear from Labor Code Section 226.2(a)(1)-(2).

56. Furthermore, for purposes of establishing a claim for PAGA penalties based on

Labor Code Section 226, Plaintiff need not establish any "injury" other than showing that the paystubs lacked the hours worked required by Labor Code section 226(a)(2). *See, McKenzie v. Fed. Express Corp.*, 765 F.Supp.2d 1222 (C.D. 2011) (holding that newspaper carriers' wage statements were deficient as a matter of because, *inter alia*, the statements lacked newspaper carriers' total hours worked, and also determining that to recover PAGA penalties based on a deficient wage statement, a Plaintiff need not prove an "injury", and could move for summary judgment on behalf of other Class Members).

57. Additionally, as a result of Defendants' misclassification of Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, Defendants do not maintain an expense reimbursement policy and/or practice stating that Defendants will affirmatively reimburse Plaintiff, the Class Members, or the Aggrieved Employees for a reasonable portion of their monthly personal cell phone bills and other expenses, including payroll taxes paid on Defendants' behalf, necessarily incurred in their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs' motion for partial summary judgment on the plaintiffs' cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

58. By virtue of its willful misclassification of the Class, Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff, the Class Members, and the Aggrieved Employees, for their business-related expenses including cell phones bills, maintenance, payroll taxes, and repairs. As a result, Plaintiff, the Class Members, and the Aggrieved Employees spent hundreds of

dollars each month on non-reimbursed business-related expenses that should have been paid for by the Defendants. Specifically, by virtue of its willful misclassification of the Class, Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff, the Class Members and the Aggrieved Employees for their business-related expenses including gas expenses incurred, license plate registration and fees, state and federal payroll taxes, insurance expenses for operating their vehicles and costs of maintenance and repairs.

59. Further, Plaintiff, the Class Members, and the Aggrieved Employees were all subjected to deductions to their pay by Defendants, for failing to deliver newspapers within an allotted time to Defendants' customers.

60. As a result, Defendants have uniformly violated Cal. Labor Code § 221, by requiring Plaintiff, the Class Members, and the Aggrieved Employees to pay for incidentals associated with the performance of their duties. Section 221 states, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The California Supreme Court, in *Kerr's Catering Service v. Department of Industrial Relations* (1962) 57 Cal. 2d 319, was faced with an employee compensation plan that deducted cash shortages from commissions. In *Kerr,* the Court interpreted this statute to mean that an employee cannot insure the losses of his employer which did not result from the employee's own malfeasance. *Id.* at 327-328. Per the Court:

> But some cash shortages, breakage and loss of equipment are inevitable in almost any business operation. It does not seem unjust to require the employer to bear such losses as expenses of management when it is presently the unchallenged practice to require him to bear, as a business expense, the cost of tools and equipment, protective garments and uniforms furnished to the employee by prohibiting in section 9, subdivisions (a), (b) and (c) of Order 5-57, deductions for these costs.
>
> Furthermore, the employer may, and usually does, either pass these costs on to the consumer in the form of higher prices or lower his employees' wages proportionately, thus distributing the losses among a wide group. In addition, the employer is free to discharge any employee whose carelessness causes the losses, and he is not prohibited from deducting for cash shortages caused by the "dishonest or willful act, or by the culpable negligence of the employee."

See also, *Quillian v. Lion Oil Co.*, (1979) 96 Cal. App. 3d 156. *Id.* at 329.

61. Here, the deductions made to the pay of Plaintiff, the Class Members, and the Aggrieved Employees were all, in fact, designed to insure Defendants from the losses resulting from the employment of Plaintiff, the Class Members, and the Aggrieved Employees. In fact, Plaintiff, the Class Members, and the Aggrieved Employees were required to provide the Defendants with a commercial bond or security deposit to insure Defendants from losses, and were subject to liquidated damages when they delivered newspapers that were subsequently damaged. And, Plaintiff, the Class Members, and the Aggrieved Employees were required to indemnify the Defendants for any losses associated with their employment. These deductions termed "liquidated damages" were not due to any dishonest or willful act of Plaintiff, the Class Members, or the Aggrieved Employees, but rather, were the result of Plaintiff, the Class Members, and the Aggrieved Employees performing their job duties as required.

62. Additionally, Labor Code § 223 provides: "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

63. Labor Code §§ 400 - 410 ("Employee Bond Law") provides the limited circumstances under which an employer can exact a cash bond from its employees. These provisions are designed to protect employees against the very real danger of an employer taking or misappropriating employee funds held by the employer in trust. IWC Wage Order Nos. 1-2001 and 9-2001 Section 8, provides that the only circumstance under which an employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence, or dishonest or willful act.

64. These and related statutes, along with California's fundamental public policy protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated or unpredicted reductions in their wages; making employees the insurers of their employer's business losses; otherwise passing the ordinary business losses of the employer onto the employee; taking deductions from wages for business losses unless the employer can establish that the loss

was caused by a dishonest or willful act, or gross negligence of the employee; or taking other unpredictable deductions that may impose a special hardship on employees.

65. As a result of classifying Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, and through their form contracts with Plaintiff, the Class Members, and the Aggrieved Employees, Defendants have violated Cal. Labor Code §§ 221, 223, 400 - 410, and IWC Wage Order Nos. 1-2001 and 9-2001, Section 8 by unlawfully taking deductions from Plaintiff and Class Members' pay. As a result of Defendants unlawful deductions from Plaintiff, the Class Members, and the Aggrieved Employees' Compensation, they have violated Labor Code §§ 218.5, 221, 223, and 400 – 410, 1194 as well as IWC Wage Order No. 9-2001, Section 8.

66. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

67. As discussed in detail above, and as a result of Defendants classifying Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, failing to pay for non-productive time, including rest periods, and failing to pay meal period premiums and rest period premiums, Defendants failed to pay Plaintiff, the Class Members, and the other Aggrieved Employees at least twice per month in violation of Labor Code § 204. Defendants regularly and consistently failed to pay Plaintiff, the Class Members, and the Aggrieved Employees for all of their hours worked, for rest periods and/or rest period premiums, and meal period premiums.

68. Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) for each

subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff, the Class Members, and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

69. As a result of Defendants' misclassification of Plaintiff, the Class Members, and the Aggrieved Employees as independent contractors, and as a result of their failure to pay Plaintiff and all Aggrieved Employees for all hours worked, including non-productive time, and meal/rest period premiums, Defendants violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

70. Due to Defendants faulty policies described above, Plaintiff, the Class Members, and all Aggrieved Employees whose employment with Defendant concluded were not compensated for each and every hour worked or at the appropriate rate. Additionally, Defendants have failed to pay all Aggrieved Employees for all hours worked (including at the proper rates), rest period premiums, and meal period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

CLASS ACTION ALLEGATIONS

71. Plaintiff bring this action, on behalf of herself and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed of and defined as:

> (a) Plaintiff and all other California residents who are or have been employed by Gannett and/or its predecessor or merged entities in California who worked as newspaper carriers or in any similar capacity, who signed independent contractor agreements with Gannett, and who were classified as independent contractors during the Class Period (hereinafter referred to as "Gannett Class");
>
> (b) Plaintiff and all other California residents who are or were employed by LDC and/or its predecessor or merged entities in California, who worked as newspaper

carriers or in any similar capacity, who signed independent contractor agreements with LDC, and who were classified as independent contractors during the Class Period (hereinafter referred to as "LDC Class");

72. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants have, on average, during the Class Period employed over 200 Class Members as newspaper carriers in California who were subject to Defendants' unlawful misclassification. Due to turnover, the total number of Class Members, including Class Members who are no associated with Defendants, are estimated to be more than 500. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

i. Whether Defendants violated Section 226.8 of the Labor Code by willfully misclassifying Plaintiff and Class Members as independent contractors;

ii. Whether Defendants engaged in a pattern or practice of willful misclassification of Plaintiff and Class Members as independent contractors;

iii. Whether Defendants violated sections 1194, 1194.2, and 226.2 of the Labor Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for their time spent on their statutory rest breaks and other nonproductive tasks engaged in by members of the Class on a daily basis during the Class Period;

iv. Whether Defendants violated Section 12 of IWC Wage Order No. 9 by failing to provide paid rest periods to Plaintiff and the members of the Class in California during

the Class Period;

v. Whether Defendants violated Labor Code section 226.7 by failing to provide one hour of premium pay to each member of the Class for each day that a paid rest period was not provided in California during the Class Period;

vi. Whether Defendants violated Labor Code sections 512 and 226.7, and section 11 of IWC Wage Order No. 9 by failing to pay one hour of premium pay to each member of the Class for each day that an unpaid meal break was not provided during the Class Period;

vii. Whether Defendants violated 2802 of the Labor Code and section 17203 of the California Business and Professions Code during the Class Period by failing to reimburse Plaintiff and the Class Members for their work-related expenses including personal cell phone expenses, payroll taxes, gasoline charges, insurance costs, and other expenses;

viii. Whether Defendants violated Labor Code sections 221, 400-410, and Wage Order no. 9, section 8, by deducting liquidated damages from the pay of Plaintiff and the Class Members for failing to deliver newspapers in accordance with Defendants' policies;

ix. Whether Defendants violated Labor Code sections 204 and 210 by failing to pay Plaintiff and the Class Members all wages owed with seven days of the close of payroll;

x. Whether Defendants violated Section 203 of the Labor Code by failing to pay members of the Waiting Time Penalty Subclass (those class members who have terminated their employment with the Defendants) for all wages due to them (including their pay due for unpaid rest breaks and the other Nonproductive times) upon their separation of employment from Defendant;

xi. Whether Defendants failed to provide Plaintiff and the members of the Wage Statement and Penalty Subclass (those Class Members who performed work for Defendants as newspaper carriers from one year prior to the filing of this Complaint to through trial) complete wage statements in violation of Labor Code Section 226(a) and 226.2;

xii. Whether Defendants engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for their time spent on statutory rest breaks and other

Nonproductive times and by failing to reimburse them for fair business-related expenses including phone expenses and payroll taxes, during the Class Period;

xiii. Whether Defendants engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide paid rest breaks to members of the Class in violation of Labor Code section 226.7 and Section 12 of IWC Wage Order No. 9;

xiv. Whether Defendants engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide off-duty meal breaks to members of the Class in violation of Labor Code sections 512, 226.7 and Section 11 of IWC Wage Order No. 9;

xv. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code § 17200;

xvi. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members;

xvii. The nature and extent of class-wide damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour class actions, and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class

Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful compensation and non-reimbursement policies and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendants, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF DEFENDANT'S NEWSPAPER CARRIERS
[Cal. Labor Code §§ 2698 *et seq.* and 226.8(a)(1) and 226.8(b) and/or 226.8(c)]
On behalf of Plaintiff and the Aggrieved Employees Against All Defendants

73. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

74. Plaintiff and similarly situated employees are "Aggrieved Employees" under the PAGA as they were employed by Defendants during the applicable statutory period and suffered the Labor Code violation alleged herein. At all times relevant hereto, Plaintiff and Aggrieved Employees were employees for purposes of the California Labor Code, although they were willfully misclassified as independent contractors.

75. In violation of the Labor Code provisions cited herein and in willful violation of California law and public policy, Defendants intentionally misclassified Plaintiff and Aggrieved Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a

pattern as practice of willful misclassification of all, or virtually all, of Defendant's newspaper carriers thereby triggering heightened penalties under sections 226.8(b) and (c).

76. The administrative prerequisites of PAGA have been satisfied. Pursuant to PAGA, Plaintiff on July 25, 2018 submitted her PAGA notification to the LWDA electronically. She further submitted her PAGA notification to Defendants via registered mail on that date. In accordance with a tolling agreement signed by all Parties, the actionable period is one year prior to the sending of the LWDA letter through the present. Plaintiff has paid the $75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA, as amended.

77. Plaintiff by this action seeks to recover, on behalf of herself and all other current and former Aggrieved Employees of Defendants, the civil penalties provided by PAGA, as specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

SECOND CAUSE OF ACTION
FAILURE TO PAY SEPARATELY AND HOURLY FOR TIME SPENT BY NEWSPAPER CARRIERS ON NONPRODUCTIVE TIMES IN CALIFORNIA
[Cal. Labor Code §§ 1194; 1194.2, and 226.2]
On behalf of Plaintiff and the Class Against All Defendants

78. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

79. Section 1194 of the Labor Code provides, in relevant part:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit.

80. Section 1194.2 of the Labor Code provides, in relevant part:

> In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

81. As set forth above, during the Class Period, although Plaintiff and the Class Members were misclassified as independent contractors by the Defendants, they were, in reality, employees of Defendants. Moreover, during the Class Period, Plaintiff and Class Members took several statutory rest periods during their routes. Further, as set forth above, during the Class Period, Plaintiff and Class Members engaged in several nonproductive tasks during their shifts. Plaintiff and the members of the Class were paid on a per-newspaper delivered basis, but Defendants did not separately compensate newspaper carriers on an hourly basis for their time spent on statutory rest periods or nonproductive tasks in violation of Labor Code § 1194.

82. Accordingly, during the Class Period, Plaintiff and the members of the Class did not receive minimum wage for their on-duty time spent taking statutory rest breaks and on nonproductive tasks.

83. In failing to pay newspaper carriers for their time spent on rest periods and the nonproductive tasks separately particularly after the issue of *Gonzalez* and *Bluford* in 2013, and certainly for any violations after January 1, 2016, when Section 226.2 became effective, Defendants operated in bad faith given the cases and the state of the law set forth above. Accordingly, pursuant to sections 1194, 1194.2, and 226.2 of the California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the Class Period for newspaper carriers' rest period time.

84. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE PAID REST PERIODS TO NEWSPAPER CARRIERS AND PAY MISSED REST BREAK PREMIUMS
[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 9]
On behalf of Plaintiff and the Class Against All Defendants

85. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

86. Section 12 of IWC Wage Order No. 9 provides: "(A) Every employer shall

authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.*" (Emphasis added).

87. California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

88. Courts have interpreted Section 12 of the applicable Wage Order to mean that employees paid on a piece-rate must receive separate and hourly pay for their time spent on rest breaks. *See, e.g., Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law.").

89. As alleged herein, although misclassified, Plaintiff and the Class were employees of Defendants. By failing to provide its newspaper carriers paid rest periods of 10 minutes for each 4 hours of work, Defendants violated California Labor Code § 226.7, and are liable to Plaintiff and the Class.

90. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not provided paid rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide newspaper carriers with paid rest periods as required by California law.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE TO PAY MISSED MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7, 512]
On behalf of Plaintiff and the Class Against All Defendants

91. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

in the preceding paragraphs.

92. California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

93. Section 11(A) and (B) of IWC Wage Order No. 9 provide that:

> "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

94. Section 11(C) of IWC Wage Order No. 9 provides that

> Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an on-duty meal period and counted as time worked. An on-duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

95. Finally, Section 11(D) of IWC Wage Order No. 9 provides that

> If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

96. As alleged herein by virtue of the misclassification of Defendants' newspaper carriers, and by failing to provide its newspaper carriers with duty-free timely 30-minute meal breaks, on their California routes greater than 5 hours in length, Defendants violated California Labor Code § 226.7 and IWC Wage Order No. 9, and are liable to Plaintiff and the Class.

97. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the amount of one additional hour of pay at the employee's regular rate of compensation for

each work period greater than 5 hours in California during each day in which Defendants failed to provide newspaper carriers with timely duty-free meal periods as required by California law.

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiff and the Class Against All Defendants

98. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

99. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

100. By virtue of its misclassification of Plaintiff and the Class as independent contractors when they were, in reality, employees, Defendants failed to reimburse Plaintiff and the Class for their business-related expenses that were necessary to perform their jobs, including gas expenses incurred, cell phones bills, license plate registration and fees, insurance expenses for operating their vehicles, state and federal payroll taxes, and costs of maintenance and repairs.

101. As a result, throughout the Class Period, Plaintiff and the Class incurred hundreds of dollars per month in unreimbursed expense for which they are entitled to be reimbursed, plus interest.

102. Defendants' failure to pay for or reimburse the work-related business expenses of Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members by Labor Code § 2802. *See* Labor Code §2804. Plaintiff and similarly situated Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802(c).

SIXTH CAUSE OF ACTION
UNLAWFUL DEDUCTIONS FROM PAY
[Cal. Labor Code §§ 221, 223, 400-410 and Wage Order No. 1, Section 8]
On Behalf of Plaintiff and the Class Against All Defendants

103. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

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

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

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

107. IWC wage order No.9, § 8 provides that the only circumstance under which an employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

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

109. Defendants have violated and continue to violate Cal. Labor Code §§ 221, 223, and 400-410, and IWC wage order No.9, § 8 by unlawfully taking deductions from Plaintiff's and Class Members' compensation to cover certain ordinary business expenses of Defendants, including but not limited to providing refunds to customers who complain about their newspapers not being delivered appropriately. Defendants' further violated and continue to violate Cal. Labor

Code §§ 221, 223, and 400-410, and IWC wage order No.9, § 8 through their policy of liquidated damages for failing to comply with Defendants' policies regarding the delivery of newspapers.

110. Because Defendants took unlawful deductions from the compensation of Plaintiff and the Class, they are liable to Plaintiff and Class Members for the compensation that should have been paid but for the unlawful deductions, pursuant to Cal. Labor Code§§ 221, 223, and 400-410, and IWC wage order No.9, § 8.

111. By unlawfully deducting wages and failing to pay Plaintiff and other similarly situated Class Members,, Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Labor Code §§ 218.5 and 1194.

SEVENTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER
[Cal. Labor Code §§ 204]
On behalf of Plaintiff, and the Class Against All Defendants

112. Plaintiff incorporates by this reference, as though fully set forth herein, the preceding paragraphs of this Complaint.

113. Cal. Lab. Code §200 provides that "'wages' include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation."

114. Cal. Labor Code §204 states that all wages earned by any person in any employment are payable twice during the calendar month, and must be paid not more than seven days following the close of the period when the wages were earned.

115. Cal. Lab. Code §216 establishes that it is a misdemeanor for any person, with regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

116. Defendants, as a matter of established company policy and procedure, in the State of California, scheduled, required, suffered, and/or permitted Plaintiff and other members of the Class, to work during payperiods, and not compensate them for their work within seven days of the

close of payroll.

117. In addition, Defendants, as a matter of established company policy and procedure in the State of California, scheduled, required, suffered and/or permitted Plaintiff and the members of the Class, to work without compensation, work without legally compliant off-duty meal periods and rest periods, and failed to pay Plaintiff and the members of the Class, for their hours worked, meal period premiums, and rest period premiums within seven days of the close of payroll, as required by law.

118. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff and the Class Members.

119. Defendants' pattern, practice and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and members of the Class, to recover, pursuant to Cal. Lab. Code §218, the unpaid balance of the compensation owed to them in a civil action.

120. Pursuant to Cal. Lab. Code §218.6 and to Cal. Civ. Code §§3287 (b) and 3289, Plaintiff and members of the Class, seek to recover pre-judgment interest on all amounts recovered herein.

121. Pursuant to Cal. Lab. Code §218.5, Plaintiff and members of the Class, request that the Court award them reasonable attorneys' fees and the costs incurred by them in this action, as well as any statutory penalties Defendants' may owe under the California Labor Code and/or any other statute.

EIGHTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]
On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against All Defendants

122. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

123. The actionable period for this cause of action is one year prior to the filing of this

Complaint through the present, and on-going until the violations are corrected or the subclass is certified.

124. Section 226(a) of the California Labor Code provides, in relevant part:

> Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all -deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

125. As set forth above, during the Class Period, due to misclassification, Defendants failed to issue wage statements to its newspaper carriers in California, including Plaintiff, that complied with Labor Code Section 226(a). Moreover, Labor Code Section 226.2(a)(2)(A) provides that, for piece-rate workers, "The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following to which Section 226 shall also be applicable: (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period." The total amount of non-productive working time (i.e., non-driving time) must also appear on the wage statement. *See,* Labor Code Section 226.2(a)(2)(B).

126. Defendants' "wage statements" failed to comply with either section 226 or 226.2. First, Defendants failed to identify themselves as the employer. Second, Defendants' "wage statements" also did not include total hours worked, the total amount of time spent on rest periods & other nonproductive tasks, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections 226(a) and 226.2.

127. Defendants failure to comply with section 226(a) of the Labor Code was knowing and intentional, particularly following the issuance of *McKenzie v. Federal Express Corp.*, 765 F.Supp.2d 1222, 1229 (C.D.Cal. 2011) and/or the passage of Section 226.2.

128. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class who were employed by Defendants during the actionable period for this cause of action) in violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to recover an initial penalty of $50, and subsequent penalties of $100, up to an amount not exceeding an aggregate penalty of $4,000 per Plaintiff and per every member of the Class from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

NINTH CAUSE OF ACTION
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES DUE ON TERMINATION
[Cal. Labor Code §§ 201-203]
On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against All Defendants

129. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

130. The actionable period for this cause of action is three years prior to the filing of the Complaint through the present, and on-going until the violations are corrected, or the subclass is certified.

131. Sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to former newspaper carriers in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

132. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

133. By virtue of its willful misclassification of newspaper carriers, Defendants willfully

failed to pay Plaintiff and other members of the Waiting Time Penalty Subclass (i.e., those members of the Class whose employment with Defendants ended the actionable period for this cause of action) who are no longer employed by Defendants for their time spent on statutory rest breaks and the other Nonproductive times prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

134. As a result, Defendants are liable to Plaintiff and other members of the waiting time penalty subclass who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

TENTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiff and the Class Against All Defendants

135. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

136. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

137. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the Class is certified.

138. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to

comply with minimum labor standards.

139. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and practices.

140. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, unpaid meal and rest period premiums, unreimbursed business expenses, unlawful deductions, due and interest thereon, from at least four years prior to the filing of this complaint through to the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

141. Through its actions alleged herein, Defendants have engaged in unfair competition within the meaning of section 17200 of the California Business & Professions Code, because Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by misclassifying them as independent contractors, wrongfully denying them wages due for their time spent on rest periods and other Nonproductive times, wrongfully denying them reimbursement for business expenses, wrongfully denying them missed meal and rest period premiums, and wrongfully deducting "liquidated damages" from their pay, and therefore was substantially injurious to Plaintiff and the Class Members.

142. Defendants engaged in unfair competition in violation of sections 17200 et seq. of the California Business & Professions Code by violating Sections §§, 221, 222, 223, 226.7, 401-410, 512, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1199.5, 2802of the California Labor Code, and Sections 3, 4, 8, 9, 11, 12 of the IWC Wage Order No. 9.

143. Defendants' course of conduct, act and practice in violation of the California laws mentioned above constitute independent violations of sections 17200 et seq. of the California Business and Professions Code.

144. Plaintiff and similarly situated Class Members are entitled to enforce all applicable

penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

145. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code § 1194.

ELEVENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN MISCLASSIFICATION
(Labor Code §§ 2698-2699.5; 558)
On Behalf of Plaintiff and the Aggrieved Employees Against All Defendants

146. Plaintiff, on behalf of herself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

147. In addition to the allegations above for misclassification of Plaintiff and the Aggrieved Employees as independent contractors, in violation of Labor Code § 226.8, and based on the above allegations incorporated by reference, Defendants violated Labor Code §§ §§ 201, 202, 203, 204, 210, 221, 222, 223, 226(a) and (e), 226.2, 226.3, 226.7, 401-410, 512, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198,[1] 1199, 1199.5, 2802, as well as IWC Wage Order 9-2001.

148. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

$100 for the initial violation per employee per pay period; and

$200 for each subsequent violation per employee per pay period.

[1] All alleged violations of IWC Wage Orders 1-2001 or 9-2001 are also deemed to be alleged violations of Labor Code § 1198.

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

149. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." As a result of the faulty compensation, overtime, meal period, and rest period policies and practices described in detail in the paragraphs above, Plaintiff and the other aggrieved employees are entitled to recover penalties and wages under Labor Code § 558. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112 (2012).

150. As a result, Plaintiff, as an Aggrieved Employee, may seek, in addition to any civil penalty allowable under the law, unpaid wages for nonproductive times, including overtime, meal period premiums, and rest period premiums, in violation of Labor Code sections 226.2, 226.7, 512, 1194, 1194.2, and IWC Wage Order No. 9-2001.

151. In addition, as set forth above, Defendants failed to provide Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

152. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing,

intentional, or willful. *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788, (2017), ("Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)."); *see Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").[2]

153. Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

[2] *See* also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab. Code § 226(a) because "the presence or absence of injury is irrelevant to the standing inquiry under PAGA.") *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268 ("[T]he Court rejects CPS's argument that plaintiff 'lacks any PAGA injury.' Pursuant to Cal. Labor Code § 2699, 'any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.' Sections 2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of § 226(a) . . ."); *accord Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal., July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-6 ("It is undisputed that GAT's paychecks do not indicate the applicable hourly rate of pay for the employee's regular rate, overtime rate, or double-time rate of pay...The failure to provide this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section 2699(f) penalties are available.").

154. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code §§ Labor Code §§ §§ 201, 202, 203, 204, 210, 221, 222, 223, 226(a) and (e), 226.2, 226.3, 226.7, 401-410, 512, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198,[3] 1199, 1199.5, 2802, as well as IWC Wage Order 9-2001.

JURY DEMAND

155. Plaintiff hereby demands trial by jury of her and the Class's claims against Defendants.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the members of the Class, pray for judgment against Defendants as follows:

1. An Order than this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. That the Court find that Defendants violated California Labor Code §§ 226.8(a)(1) by willfully misclassifying Plaintiff and Aggrieved Employees as independent contractors.

b. That Plaintiff and other Aggrieved Employees be awarded penalties, at a minimum, as specified in Labor Code §226.8(b).

c. That the Court find, additionally, the Defendants engaged in a pattern or practice of willful misclassification of Plaintiff and the Aggrieved Employees.

d. That Plaintiff and other Aggrieved Employees be awarded penalties, upon a finding of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in 226.8(b).

e. That the Court award attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

3. On the Second Cause of Action:

a. A declaratory judgment that Defendants violated sections 1194, 1194.2, and 226.2 of the California Labor Code by failing to pay Plaintiff and other members of the Class

[3] All alleged violations of IWC Wage Orders 1-2001 or 9-2001 are also deemed to be alleged violations of Labor Code § 1198.

hourly and separately for their time spent on statutory rest periods and the Nonproductive times during the class period;

b. An award to Plaintiff and other members of the Class in the amount of their unpaid wages owed to them for their time spent on statutory rest periods, plus interest and/or liquidated damages during the class period;

c. An award to Plaintiff and the other members of the Class in the amount of their unpaid wages owed to them for their time spent on the other non-productive tasks during the class period, plus interest; and/or liquidated damages;

d. An award to Plaintiff and the Class Members of their attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the California Labor Code and section 1021.5 of the California Code of Civil Procedure;

4. On the Third Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code § 226.7, and Section 12 of IWC Wage Order No. 9-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members for an hour of pay for each day that a paid rest period was not provided during the Class Period;

5. On the Fourth Cause of Action

a. A declaratory judgment that Defendants violated California Labor Code §§ 226.7 and 512, and Section 11 of IWC Wage Order No. 9-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members for an hour of pay for each day that an off-duty meal period was not provided during the Class Period;

6. On the Fifth Cause of Action

a. A declaratory judgement that Defendants violated Labor Code § 2802;

b. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business related expenses including gas expenses incurred, cell phones bills, license plate registration and

fees, insurance expenses for operating their vehicles, payroll taxes paid to state and federal authorities as a result of their misclassification as independent contractors, and costs of maintenance and repairs incurred by Plaintiff and the Class, plus interest and attorney's fees.

7. On the Sixth Cause of Action:

a. A declaratory judgment that Defendants violated Labor Code § 221, 223, 400-410, as well as Wage Order 9, Section 8;

b. Damages in the amount of all wages wrongfully withheld from the pay of Plaintiff and the Members of Class plus interest, liquidated damages, and attorneys' fees and costs;

8. On the Seventh Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §204 by paying Plaintiff, and the Class more than seven days after the close of payroll.

b. For compensatory damages, including lost wages, bonuses, and other losses, according to proof,

c. For general damages, according to proof;

d. For an award of interest, including prejudgment interest at the legal rate;

e. For statutory damages, including reasonable attorneys' fees and costs of suit.

9. On the Eighth Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §226 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to Plaintiff and the wage statement and penalty subclass members;

b. An award to Plaintiff and Class Members of $50 for each initial pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226 occurred and $100 for each subsequent pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed

$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

10. On the Ninth Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §§ 201 through 203;

b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and the Waiting Time Penalty Subclass members for waiting time penalties in the amount of 30 days' wages per waiting time penalty subclass Class Member.

11. On the Tenth Cause of Action:

a. That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by misclassifying Plaintiff and Class Members, by failing to pay Plaintiff and Class Members on a separate and hourly basis for their rest break time and time spent on nonproductive times, by failing to pay missed meal and rest break premiums, making unlawful deductions from pay, and by failing to reimburse Plaintiff and the Class for all their personal cell phone and car related business-related expenses;

b. Restitution, including, but not limited to, the relief permitted by sections 1194, 221, 223, 400-410, 226.2, 226.7, and 2802 of the California Labor Code (i.e., pay as specified for time spent on the nonproductive times, pay wrongfully deducted, and time spent on rest periods and reimbursement of all business-related expenses by Plaintiff and the members of the Class during the Class Period), as well as a disgorgement of all profits associated with Defendants' intentional misclassification of Plaintiff and the Class Members as independent contractors;

12. On the Eleventh Cause of Action:

a. A civil penalty against Defendants in the amount of $100 for the initial violation and $200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and for the Aggrieved Employees during all of the pay periods in the PAGA Period;

b. A civil penalty against Defendants in the amount of $100 for the initial violation and $200 for each subsequent violation as specified in sections 210 and 2699(f)(2) and of the California Labor Code for Plaintiff and for the Aggrieved Employees during all of the pay periods in the PAGA Period;

c. All penalties available under Section 226.3 of the California Labor Code and the Labor Code Private Attorneys General Act of 2004;

d. All penalties available under Section 558 of the California Labor Code and the Labor Code Private Attorneys General Act of 2004;

e. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

f. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and aggrieved employees' PAGA claim, as provided for in Labor Code § 2699(g)(1);

13. All other relief as this Court deems proper.

Dated: April 19, 2019

Respectfully,

POTTER HANDY LLP.

By: James M. Treglio
Counsel for Plaintiff, the Aggrieved Employees and the Putative Class

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
James M. Treglio (SBN 228077)
Potter Handy, LLP
9845 Erma Road, Suite 300
San Diego, CA 92131
TELEPHONE NO: (858) 375-7385 FAX NO: (888) 422-5191
ATTORNEY FOR (Name): Plaintiff Vicky Aronson

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 22 2019
V. Alvarado

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside
STREET ADDRESS: 4050 Main Street
MAILING ADDRESS:
CITY AND ZIP CODE: Riverside, CA 92501
BRANCH NAME: Riverside Historict Courthouse

CASE NAME:
Vicky Aronson, et al., v. Gannett, Inc.

CIVIL CASE COVER SHEET
[✓] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: RIC 1902519
JUDGE:
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [✓] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02).
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [✓] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [✓] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [✓] monetary b. [✓] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action *(specify)*: 11 - Misclassification, unpaid wages, missed breaks, UCL, PAGA, e
5. This case [✓] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: April 19, 2019
James M. Treglio
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3 220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

☐ BANNING 311 E. Ramsey St., Banning, CA 92220
☐ BLYTHE 265 N. Broadway, Blythe, CA 92225
☐ CORONA 505 S. Buena Vista, Rm. 201, Corona, CA 92882
☐ HEMET 880 N. State St., Hemet, CA 92543
☐ MORENO VALLEY 13800 Heacock St., Ste. D201, Moreno Valley, CA 92553
☐ MURRIETA 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563
☐ PALM SPRINGS 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262
☒ RIVERSIDE 4050 Main St., Riverside, CA 92501
☐ TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591

RI-CI032

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address): James M. Treglio (SBN 228077), Potter Handy, LLP, 9845 Erma Road, Suite 300, San Diego, CA 92131	FOR COURT USE ONLY: FILED, SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE, APR 22 2019, V. Alvarado
TELEPHONE NO: (858) 375-7385 FAX NO (Optional): (888) 422-5191 E-MAIL ADDRESS (Optional): jtreglio@potterhandy.com ATTORNEY FOR (Name): Plaintiff, Vicky Aronson	
PLAINTIFF/PETITIONER: VICKY ARONSON DEFENDANT/RESPONDENT: GANNETT, INC., et al.	CASE NUMBER: RIC 1902519

COPY

CERTIFICATE OF COUNSEL

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

☒ The action arose in the zip code of: 92203, 92211, 92255, 92260, 92261

☐ The action concerns real property located in the zip code of: _____

☒ The Defendant resides in the zip code of: 92203

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 1.0015 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date April 19, 2019

James M. Treglio
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)

▶ _____
(SIGNATURE)

Approved for Mandatory Use
Riverside Superior Court
RI-CI032 (Rev. 05/15/13)
(Reformatted 01/07/19)

CERTIFICATE OF COUNSEL

Local Rule 1.0015
riverside.courts.ca.gov/localrms/localrms.shtml

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF ASSIGNMENT TO DEPARTMENT
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

ARONSON VS GANNETT CO. I

CASE NO. RIC1902519

This case is assigned to the Honorable Judge Craig G. Riemer in Department 05 for all purposes.
Effective May 1, 2019 this case will be re-assigned to the honorable Sunshine Sykes in Department 06.

The Case Management Conference is scheduled for 06/24/19 at 8:30 in Department 05.

Department 5 are located at 4050 Main St, Riverside, CA 92501.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Date: 04/22/19

by: _____
VANESSA ALVARADO, Deputy Clerk

ccadoc
4/8/19

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Attorneys for Defendant
GANNET CO., INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

VICKY ARONSON, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

GANNET CO., INC., a Delaware corporation; LDC DISTRIBUTION, LLC, a California limited liability company; LOUIS COX, an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. RIC1902519

DEFENDANT GANNETT CO., INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED CLASS AND REPRESENTATIVE ACTION COMPLAINT

Complaint Filed: April 22, 2019
Trial Date: None Set

Defendant Gannett Co., Inc. ("Defendant") hereby answers the unverified Class and Representative Action Complaint ("Complaint") filed by Plaintiff Vicky Aronson ("Plaintiff"), as set forth below:

GENERAL DENIAL

Pursuant to the provisions of California Code of Civil Procedure § 431.30, Defendant denies, generally and specifically, each and every allegation, statement, matter and each purported cause of action contained in Plaintiff's unverified Complaint, and without limiting the generality of the foregoing, denies that Plaintiff and the putative class members have been damaged in the manner or sums alleged, or in any way at all, by reason of any acts or omissions of Defendant. Defendant further denies, generally and specifically, that Plaintiff and the putative class members suffered any loss of wages, overtime, penalties, compensation, benefits or restitution, or any other legal or equitable relief within the jurisdiction of this Court.

DEFENSES

In further answer to the Class and Representative Action Complaint, Defendant alleges the following additional defenses. In asserting these defenses, Defendant does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

FIRST DEFENSE

(Failure To State A Cause Of Action Or Claim For Relief - All Causes of Action)

1. Neither the Complaint as a whole, nor any purported cause of action alleged therein, states facts sufficient to constitute a cause of action or claim for relief against Defendant.

SECOND DEFENSE

(Statute Of Limitations - All Causes of Action)

2. The alleged claims are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to, California Labor Code §§ 201, 202, 203, 221, 223, 224, 226, 226.3, 226.7, 226.8, 400, *et seq*., 510, 512, 1194, 1194.2 1197, 1198, 2698, *et seq*., 2802; California Code of Civil Procedure §§ 312, 338(a), 340, 343, and California Business and Professions Code § 17200 *et seq*.

THIRD DEFENSE

(Laches - All Causes of Action)

3. The alleged claims are barred, in whole or in part, by the doctrine of laches because Plaintiff unreasonably delayed in filing the Complaint.

FOURTH DEFENSE

(Waiver - All Causes of Action)

4. The alleged claims are barred, in whole or in part, by the doctrine of waiver. Plaintiff and the putative class members have waived their right to assert the purported causes of action contained in the Complaint and each purported cause of action therein against Defendant. Plaintiff and the putative class members, by their own conduct and actions, have waived the right, if any, to assert the claims in the Complaint.

FIFTH DEFENSE

(Estoppel - All Causes of Action)

5. Because of Plaintiff's and/or the putative class members' own acts or omissions, Plaintiff and the putative class members are barred by the equitable doctrine of estoppel from maintaining this action or pursuing any cause of action alleged in the Complaint against Defendant.

SIXTH DEFENSE

(No Equitable Tolling - All Causes of Action)

6. To the extent that Plaintiff and the putative class members seek to pursue claims beyond the applicable statute of limitations, the alleged claims are not entitled to equitable tolling.

SEVENTH DEFENSE

(Reasonable, Good Faith Belief in Actions Taken - All Causes of Action)

7. The Complaint, and each alleged cause of action, are barred by the fact that any decisions made by Defendant with respect to Plaintiff's and/or the putative class members' employment were reasonably based on the facts as Defendant understood them in good faith. To the extent a court holds that Plaintiff and the putative class members are entitled to damages or penalties, which are specifically denied, Defendant acted, at all relevant times, on the basis of a good faith and reasonable belief that it

had complied fully with California wage and hours laws. Consequently, any alleged unlawful conduct was not intentional, knowing or willful within the meaning of the California Labor Code.

EIGHTH DEFENSE

(Failure To Inform Employer Of Alleged Violations - All Causes of Action)

8. The Complaint, and each cause of action contained therein, is barred because Plaintiff and/or the putative class members did not inform Defendant of any alleged unlawful conduct, any misclassification, any alleged meal or rest period violations, any alleged failure to pay wages or premium wages, any alleged inaccuracies regarding their pay stubs, or any unreimbursed business expenses prior to filing a lawsuit. Thus, Plaintiff did not provide Defendant with an opportunity to correct any alleged violations and provide the appropriate remedy, if any, to Plaintiff prior to the filing of the lawsuit.

NINTH DEFENSE

(*De Minimis* Doctrine - All Causes of Action)

9. The Complaint, and each cause of action alleged therein, fails to the extent that, even if Plaintiff and the putative class members were not paid for all work performed, such work is not compensable pursuant to the *de minimis* doctrine. Pursuant to the *de minimis* doctrine, an employer is not required to pay for insubstantial or insignificant periods of purported off-the-clock work.

TENTH DEFENSE

(Good Faith Dispute And Waiting Time Penalties - Second, Sixth, Seventh, and Ninth Causes of Action)

10. Plaintiff is not entitled to any penalty because, at all times relevant and material herein, Defendant did not intentionally, knowingly or willfully fail to comply with any provisions of the California Labor Code or applicable wage orders, but rather acted in good faith and had reasonable grounds for believing that it did not violate the California Labor Code or the applicable wage order.

ELEVENTH DEFENSE

(Lack Of Standing - All Causes of Action)

11. The Complaint, and each purported cause of action alleged therein, is barred for lack of subject matter jurisdiction to the extent Plaintiff lacks standing to assert any of the causes of action contained in the Complaint because Plaintiff has not suffered any injury.

TWELFTH DEFENSE

(Accord and Satisfaction - All Causes of Action)

12. The alleged claims are barred by the doctrine of accord and satisfaction. Specifically, Plaintiff and the putative class members were properly and fully compensated for all work performed, and their acceptance of these payments constituted an accord and satisfaction for all debts, if any, owed by Defendant to Plaintiff and/or the putative class members.

THIRTEENTH DEFENSE

(Release - All Causes of Action)

13. To the extent Plaintiff and/or the putative class members have executed a release encompassing claims alleged in the Complaint, their claims are barred by that release.

FOURTEENTH DEFENSE

(Offset - All Causes of Action)

14. The Complaint, and each cause of action contained therein, fails to the extent that Defendant is entitled to an off-set for any overpayments of wages provided for work never actually performed, any damages incurred by Plaintiff or any putative class member's act or omissions or inadvertent overpayment for hours worked.

FIFTEENTH DEFENSE

(Res Judicata And Collateral Estoppel - All Causes of Action)

15. The Complaint, and each purported cause of action alleged therein, is barred by the doctrines of res judicata and/or collateral estoppel.

SIXTEENTH DEFENSE

(Arbitration - All Causes of Action)

16. To the extent Plaintiff and/or the putative class members have agreed to arbitrate claims alleged in the Complaint on an individual basis only, their claims are barred by their contractual agreement to arbitrate their individual claims only and may not participate in this lawsuit.

SEVENTEENTH DEFENSE

(Unjust, Arbitrary, And Oppressive, Or Confiscatory Penalties - First, Second, Sixth, Seventh, Eighth, Ninth and Eleventh Causes of Action)

17. Plaintiff is not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary, and oppressive, or confiscatory.

EIGHTEENTH DEFENSE

(Excessive Penalties - First, Second, Sixth, Seventh, Eighth, Ninth and Eleventh Causes of Action)

18. Plaintiff and/or the putative class members are not entitled to recover any statutory and/or civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary, and oppressive, or confiscatory or disproportionate to any damage or loss incurred as a result of Defendant's conduct and therefore unconstitutional under numerous provisions of the United States Constitution and the California Constitution, including the excessive fines clause of the Eighth Amendment, the due process clauses of the Fifth Amendment and Section 1 of the Fourteenth Amendment, the self-incrimination clause of the Fifth Amendment, and other provisions of the United States Constitution, and the excessive fines clause of Section 17 of Article I, the due process clause of Section 7 of Article I, the self-incrimination clause of Section 15 of Article I, and other provisions of the California Constitution.

NINETEENTH DEFENSE

(Duplicate Damages Or Double Recovery - All Causes of Action)

19. To the extent Plaintiff and/or the putative class members have received other benefits and/or awards attributable to an injury for which they seek compensation in this case, such benefits and/or awards should offset, in whole or in part, any award they receive here for the same injury.

TWENTIETH DEFENSE

(Unavailable Remedies Under The UCL - Tenth Cause of Action)

20. The Complaint fails to the extent that it seeks anything but restitution for alleged violations of the Labor Code that form the basis of the claims under the UCL.

TWENTY-FIRST DEFENSE

(Action Unconstitutional - Tenth Cause of Action)

21. Prosecuting a class action and certification of the alleged class as representative of the general public under California Business and Professions Code § 17200 is barred, under the facts and circumstances of this case, because provisions of § 17200 violate the provisions of the United States and California Constitutions, including but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

TWENTY-SECOND DEFENSE

(Lack of Standing Under Business and Professions Code Section 17200 - Tenth Cause of Action)

22. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff, or any person upon whose behalf Plaintiff purports to act, lacks the requisite standing to sue under Proposition 64, enacted on November 2, 2004, as California Business and Professions Code § 17204. Under Proposition 64, any plaintiff suing for an alleged violation of the California Unfair Competition Law (the "UCL"), California Business and Professions Code § 17200, *et seq.*, must show that he or she has suffered an injury in fact, in addition to simply alleging a loss of money or property. Since Plaintiff, or any other person on whose behalf Plaintiff purports to act, cannot allege the requisite injury in fact, in addition to the requisite loss of money or property, Plaintiff lacks standing to sue under the UCL.

TWENTY-THIRD DEFENSE

(Lack Of Standing For Injunctive Relief - Tenth Cause of Action)

23. The claims of Plaintiff and/or the putative class members for injunctive and other equitable relief are barred because they are not entitled to the equitable relief sought insofar as they have an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief in a labor dispute.

TWENTY-FOURTH DEFENSE

(No Unfair Business Practice - Tenth Cause of Action)

24. Without admitting the allegations of the Complaint, Defendant alleges that Plaintiff's Complaint, and each purported cause of action alleged therein, fails because the alleged practices of Defendant is not unfair, unlawful or fraudulent, the public is not likely to be deceived by any alleged practices, Defendant gained no competitive advantage by such practices, and the benefits of the alleged practices outweigh any harm or other impact they may cause.

TWENTY-FIFTH DEFENSE

(Failure to Allege Facts To Support Restitution - Tenth Cause of Action)

25. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff cannot show a specific and individualized amount of property claimed by Plaintiff or any putative class members, as required for a remedy of restitution under the UCL.

TWENTY-SIXTH DEFENSE

(Inability To Pursue Attorneys' Fees Under UCL - Tenth Cause of Action)

26. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff seeks attorneys' fees and costs because claimed by Plaintiff and/or any putative class members cannot show the enforcement of an important right affecting the public interest.

TWENTY-SEVENTH DEFENSE

(Adequate Remedy At Law - Tenth Cause of Action)

27. Plaintiff is not entitled to the equitable relief sought insofar as she has an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief.

TWENTY-EIGHTH DEFENSE

(Substantial Compliance - All Causes of Action)

28. The Complaint, and each purported cause of action alleged therein, is barred in whole or in part because Defendant complied with the statutory obligations, and to the extent it is determined that there was a technical non-compliance, Defendant substantially complied with the obligations and cannot be liable in whole or in part for the claims.

TWENTY-NINTH DEFENSE

(Not Appropriate For Class Action - All Causes of Action)

29. The lawsuit cannot proceed on a class action basis because Plaintiff cannot allege facts sufficient to warrant certification or an award of class-wide damages, pursuant to California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil Procedure. The Complaint, and each purported cause of action alleged therein, is not proper for treatment as a class action because, among other reasons: (a) Plaintiff is an inadequate representative of the purported class; (b) Plaintiff cannot establish commonality of claims; (c) Plaintiff cannot establish typicality of claims; and (d) the individualized nature of Plaintiff's claims predominate and thus makes class treatment inappropriate. Also, the Complaint does not allege a viable theory for class-wide recovery to show that a class action trial is manageable.

THIRTIETH DEFENSE

(Failure to State Facts Warranting Class Certification and Class Damages - All Causes of Action)

30. Plaintiff's allegations that this action should be certified as a class action or representative action fail as a matter of law because Plaintiff cannot allege facts sufficient to warrant class certification or an award of class damages, pursuant to California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil Procedure.

THIRTY-FIRST DEFENSE

(Failure to State Facts Warranting Class Certification and Class Damages - All Causes of Action)

31. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff cannot allege predominant questions of fact and law, as required under California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil Procedure.

THIRTY-SECOND DEFENSE

(Inadequate Class Representative - All Causes of Action)

32. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff is not an adequate representative of alleged class that she purports to represent. Defendant alleges that Plaintiff does not have claims typical of the alleged class, if any, and that

Plaintiff's interests are antagonistic to the alleged class she purports to represent. As such, the class action claims and allegations fail as a matter of law.

THIRTY-THIRD DEFENSE

(Class Action Not Superior Method Of Adjudication - All Causes of Action)

33. Plaintiff's Complaint, and each purported cause of action alleged therein, are barred, in whole or in part, as a class action, because a class action is not the superior method of adjudicating this dispute.

THIRTY-FOURTH DEFENSE

(No Knowledge Of Reasonable And Necessary Business Expenses - Fifth Cause of Action)

34. The Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff, and/or some or all of the purported class they seek to represent, did not inform Defendant of or seek indemnification for reasonably and necessarily incurred business expenses. An employer cannot be held liable for failing to indemnify an employee's necessary expenses if it does not know or have reason to know that the employee has incurred the expense.

THIRTY-FIFTH DEFENSE

(No Liquidated Damages - Second Cause of Action)

35. Plaintiff and the putative class members are not entitled to liquidated damages because any acts or omissions giving rise to the alleged claims were undertaken or made in good faith, and the Defendant had reasonable grounds for believing that the actions or omissions did not violate the law.

THIRTY-SIXTH DEFENSE

(Plaintiffs' Failure to Exhaust Administrative Remedies - First and Eleventh Causes of Action)

36. Plaintiff and the putative class members' claims are barred, in whole or in part, to the extent they failed to exhaust required administrative or statutory procedures or remedies or otherwise failed to complete, in a timely manner, those steps that are a necessary prerequisite to the filing of the Complaint. To the extent that Plaintiff and the putative class members were required to exhaust any administrative remedies provided by various sections of PAGA, including Labor Section 2699.3, they failed to do so, and thus, lack standing to sue under PAGA.

THIRTY-SEVENTH DEFENSE

(PAGA Violates Due Process - First and Eleventh Causes of Action)

37. Plaintiff's Complaint is barred because, based upon the facts and circumstances of this case, allowing Plaintiff and the putative class members to bring a representative action under PAGA violates Defendant's rights contained in the United States and California Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

THIRTY-EIGHTH DEFENSE

(Unlawful Delegation of Executive Authority - First and Eleventh Causes of Action)

38. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

THIRTY-NINTH DEFENSE

(Independent Contractor and Exempt Status - All Causes of Action)

39. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent Plaintiff assumes Plaintiff was Defendant's employee. Plaintiff was an independent contractor and never Defendant's employee.

FORTIETH DEFENSE

(Failure to Show Adequate Damages - All Causes of Action)

40. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff cannot show a specific or reliable measure of alleged damages owed to Plaintiff and/or the putative class members.

FORTY-FIRST DEFENSE

(PAGA Is Unmanageable - First and Eleventh Causes of Action)

41. Plaintiff's Complaint, and each purported cause of action alleged therein, cannot proceed as a representative action because it is unmanageable due to individualized issues.

FORTY-SECOND DEFENSE

(Inability To Pursue Penalties Under California Labor Code Section 2698 *et seq.* - First and Eleventh Causes of Action)

42. Plaintiff's Complaint is barred to the extent that Plaintiff seeks civil penalties for alleged violations of the Labor Code that already contain a statutory or other civil penalty.

FORTY-THIRD DEFENSE

(Not "Aggrieved Employees"- First and Eleventh Causes of Action)

43. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred because Plaintiff is not an aggrieved employee and is not entitled to any relief under Labor Code § 2698 *et seq*. Plaintiff's Complaint, and each purported cause of action alleged therein, is further barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

FORTY-FOURTH DEFENSE

(No Penalties Beyond "Initial" Violation - First and Eleventh Causes of Action)

44. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, seeks penalties beyond the "initial" violation as described in California Labor Code § 2699(f)(2).

FORTY-FIFTH DEFENSE

(Avoidable Consequences - All Causes of Action)

45. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of avoidable consequences.

FORTY-SIXTH DEFENSE

(Enforceable Contract - All Causes of Action)

46. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that there is any enforceable contract with Plaintiff that provides that Defendant's conduct is lawful, pursuant to California Labor Code § 2750 or federal law requiring collective bargaining of terms and conditions of certain employment.

FORTY-SEVENTH DEFENSE

(Reimbursement Obligation Satisfied - Fifth Cause of Action)

47. The fifth cause of action in the Complaint fails to the extent that Defendant has satisfied any expense reimbursement obligation under California Labor Code section 2802 and/or Plaintiff and

the putative class members have failed to request reimbursement for reasonable and necessary business expenses reimbursable under Labor Code section 2802.

FORTY-EIGHTH DEFENSE

(Unreasonable and Unnecessary Expenses - Fifth Cause of Action)

48. The fifth cause of action in the Complaint fails to the extent that Plaintiff and the putative class members seek reimbursement for expenses that were not incurred in the direct consequence of the discharge of their duties or were not necessary and reasonable.

RESERVATION OF RIGHTS

Defendant does not presently know all of the facts and circumstances regarding the claims alleged in the Class and Representative Action Complaint. Defendant has not knowingly or intentionally waived any applicable defenses and reserves the right to assert and rely on such other applicable defenses as may later become available or apparent. Defendant further reserves the right to amend the answer or defenses accordingly and/or to delete defenses that it determines are not applicable during the course of discovery.

PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff and the putative class members take nothing by their Complaint;

2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;

3. That Defendant be awarded reasonable attorneys' fees according to proof;

4. That Defendant be awarded the costs of suit incurred herein; and

5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

DATED: May 29, 2019

Respectfully submitted,

SEYFARTH SHAW LLP

By: 

Camille A. Olson
Richard B. Lapp
Bethany A. Pelliconi
Paul J. Leaf
Attorneys for Defendant
GANNETT CO., INC.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On May 29, 2019, I served the within document(s):

DEFENDANT GANNETT CO., INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED CLASS AND REPRESENTATIVE ACTION COMPLAINT

☐ I sent such document from facsimile machines (310) 201-5219 on May 29, 2019. I certify that said transmission was completed and that all pages were received and that a report was generated by said facsimile machine which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed envelope or package provided by an overnight delivery carrier with postage paid on account and deposited for collection with the overnight carrier at Los Angeles, California, addressed as set forth below.

☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

☐ electronically by using the Court's ECF/CM System.

Mark D. Potter,
James M. Treglio
Potter Handy LLP
9845 Erma Road, Suite 300
San Diego, CA 92131
Phone: 858-375-7385
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Email: mark@potterhandy.com
jimt@potterhandy.com

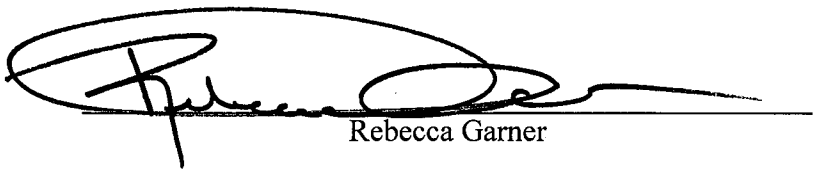
Attorneys for Plaintiff
Vicky Aronson

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with

postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 29, 2019, at Los Angeles, California.



Rebecca Garner