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10 *Attorneys for Plaintiff*  
11 *and others similarly situated*

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 RENEE MORGAN and JEHANZEB  
15 KHAN, on behalf of themselves and others  
similarly situated,

16 Plaintiffs,

17 v.

18 EXPRESS MESSENGER SYSTEMS, INC.,  
19 a Delaware Corporation, inclusive

20 Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages Under Labor Code §§ 226.2, 1194, 1194.2 and 1197;
2. Failure to Pay Overtime Wages Under Labor Code §§ 510, 1194, 1198;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Inaccurate Wage Settlements - Violation of Labor Code §§ 226(a), 226.2;
6. Waiting Time Penalties Under Labor Code §§ 201-03;
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802; and
8. Violation of Business & Professions Code § 17200 *et seq.*
9. Violation of the Fair Labor Standards Act, 29 U.S.C. § 216(b)

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Renee Morgan and Jehanzeb Khan, on behalf of themselves and all other  
2 similarly situated individuals, bring this Class Action Complaint files this complaint against  
3 Defendant Express Messenger Systems, Inc., dba, OnTrac (“Defendant” or “OnTrac”) based on  
4 personal knowledge with respect to their own acts and on information and belief with respect to  
5 all other matter:

6 **I. INTRODUCTION**

7 1. This lawsuit addresses OnTrac’s deliberate scheme to misclassify their delivery  
8 drivers, thereby denying them the fundamental protections due to employees under California law  
9 and federal wage and hour law. OnTrac offers package delivery services to addresses in  
10 California, Arizona, Nevada, Oregon, Washington, Utah, Colorado and Idaho. To do so, OnTrac  
11 does not hire drivers as employees, but independent contractors. These independent contractors  
12 either contract directly with OnTrac or through third-party intermediaries, called Regional  
13 Service Providers. However, Plaintiffs and other Class Members are plainly employees under  
14 California law. OnTrac controls its drivers’ operations, it coordinates with customers in need of  
15 delivery services, negotiates prices, sets delivery windows, and provides the workers,  
16 warehousing, and other infrastructure to support these deliveries. OnTrac retains control over  
17 Plaintiffs’ and Class Members’ assignments, schedules, sets customer service standards, and  
18 provides its own electronic logging devices to complete deliveries.

19 2. To deliver goods from merchants to addresses in its service areas, OnTrac drivers  
20 pick up packages from local OnTrac warehouses and distribute these packages to homes and  
21 business within the immediate area. Drivers have to report to OnTrac warehouse at a set time,  
22 accept all packages assigned to them, load their truck (often time without pay), and deliver such  
23 packages for a set amount of compensation that is divorced from the hours worked. Instead,  
24 drivers are paid per package delivered, a flat day rate, or some combination of both.

25 3. The result of Defendant’s misclassification scheme is that Plaintiffs and other  
26 similarly situated delivery drivers were, and are, routinely denied payment of minimum wages,  
27 overtime and meal/rest period premium wages, repayment of business related expenses, and other  
28 payments provided by California law. Defendant also deprives Plaintiffs and Class Members of

1 the protection of workers' compensation benefits in the event of injury, as well as other benefits to  
2 which they are entitled. Moreover, because of its misclassification, Defendant fail to properly  
3 pay California taxes it owes. These actions illegally reduce Defendant's costs of doing business,  
4 and constitute unlawful and unfair business practices in violation of California's Unfair  
5 Competition Law.

6 **II. JURISDICTION AND VENUE**

7 4. This Court has Subject matter jurisdiction over Plaintiffs' FLSA claim pursuant to  
8 28 U.S.C. § 1331 because Plaintiffs' claim raises a federal question under 29 U.S.C. § 201, *et seq.*

9 5. Additionally, this Court has jurisdiction over Plaintiff's FLSA claim pursuant to  
10 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any  
11 employer . . . in any Federal or State court of competent jurisdiction."

12 6. Moreover, this Court has original jurisdiction over this action pursuant to the Class  
13 Action Fairness Act of 2005, 28 U.S.C. § 1332(d). This is a class action in which the aggregate  
14 claims of the individual Class members exceed the sum value of \$5,000,000 exclusive of interest  
15 and costs, there are believed to be in excess of 100 Class members, and at least some members of  
16 the proposed class have a different citizenship from Defendant.

17 7. Defendant's annual sales exceed \$500,000 and Defendant has more than two  
18 employees, so the FLSA applies in this case on an enterprise basis. Defendant's employees,  
19 including the Plaintiffs in this case, engage in interstate commerce or in the production of goods  
20 for commerce and therefore they are also covered by the FLSA on an individual basis.

21 8. The court has supplemental jurisdiction over Plaintiffs' state law claims pursuant  
22 to 28 U.S.C. §1367 because the state law claims and the federal claim are so closely related that  
23 they form part of the same case or controversy under Article III of the United States Constitution.

24 9. The court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§  
25 2201 and 2202.

26 10. The court has personal jurisdiction over Defendant because Defendant conduct  
27 business within the state of California, employ individuals within the state of California, and are  
28 registered with the California Department of the Secretary of State.

1           11.     Venue as to Defendant OnTrac is also proper in this judicial district because upon  
2 information and belief , the obligations and liabilities giving rise to this lawsuit occurred in part in  
3 the County of Sonoma and Defendant OnTrac operates a facility in Sonoma County and others  
4 throughout California.

5     **III.   PARTIES**

6           12.     Plaintiff Morgan is a resident of California and, during the time period relevant to  
7 this Complaint, was employed by OnTrac, through its Regional Service Provider, as a delivery  
8 driver within the State of California, based out of OnTrac’s warehouse and distribution center in  
9 Sonoma County. As a delivery truck driver employed by Defendant, Plaintiff’s work required the  
10 performance of manual labor consisting of loading Defendant’s trucks and transporting goods  
11 solely within California. She was paid only a flat day rate ranging from \$200 to \$230 per day, not  
12 paid separately for manual labor (as opposed to delivering), and not paid for meal/rest breaks, and  
13 was not provided reimbursement of business related expenses.

14           13.     Plaintiff Khan is a resident of California and, during the time period relevant to  
15 this Complaint, was employed by OnTrac, through its Regional Service Provider, as a delivery  
16 driver within the State of California, based out of OnTrac’s warehouse and distribution center in  
17 San Joaquin County. As a delivery truck driver employed by Defendant, Plaintiff’s work required  
18 the performance of manual labor consisting of loading Defendant’s trucks and transporting goods  
19 solely within California. He was paid only a piece rate of \$1.25 per delivery up to \$3.50 per  
20 delivery (for Sunday deliveries), not paid at all for manual labor, not paid for meal/rest breaks,  
21 and was not provided reimbursement of business related expenses.

22           14.     Defendant Express Messenger Systems, Inc., *dba* OnTrac, the Delaware  
23 Corporation registered and doing business in California, operates warehouses, terminals, and  
24 distribution facilities in California out of which Plaintiffs and the Class were employed, including  
25 in Petaluma, California in Sonoma County. Defendant lists its principal office in Chandler,  
26 Arizona.

27  
28

1 **IV. GENERAL ALLEGATIONS**

2 **A. Plaintiffs and the Class Are Employed by OnTrac**

3 15. OnTrac market itself as an affordable alternative for parcel logistics, working with  
4 business and retailers to ship small-packages to consumers within California. OnTrac moves  
5 packages from its customers to its local warehouses. Once at an OnTrac warehouse, the package  
6 is either moved to a local United States Postal Service office or provided to a local OnTrac driver  
7 for delivery. When OnTrac delivers the package directly to the addressee, OnTrac engages local  
8 delivery drivers as independent contractors, or as independent contractors of its Regional Service  
9 Providers.

10 16. It is this “last mile” portion of the delivery, which is performed by Plaintiffs and  
11 other Class Members, occurs completely within the State of California. Whether Plaintiffs and  
12 other Class Members are paid directly by OnTrac or its Regional Service Providers, they are  
13 employees of OnTrac.

14 17. Delivery drivers for OnTrac drive vehicles weighing less than 10,000 pounds  
15 while carrying out their job duties.

16 1. Plaintiffs and Class Members are employed by OnTrac

17 18. Whether Plaintiffs and Class Members were engaged by OnTrac or a Regional  
18 Service Providers to make the final delivery, they were employed or jointly employed by OnTrac.  
19 Industrial Welfare Commission Wage Order (“IWC Wage Order”) No. 9, subd. 2(G), defines  
20 “employer” as “any person ... who directly or indirectly, or through an agent or any other  
21 person, employs or exercises control over the wages, hours, or working conditions of any  
22 person.”

23 19. “[T]he language of the IWC’s ‘employer’ definition has the obvious utility of  
24 reaching situations in which multiple entities control different aspects of the employment  
25 relationship, as when one entity, which hires and pays workers, places them with other entities  
26 that supervise the work. Consistently with this observation, the IWC has explained its decision to  
27 include the language in one modern wage order as ‘specifically intended to include both  
28 temporary employment agencies and employers who contract with such agencies to obtain

1 employees within the definition of ‘employer.’” *Martinez v. Combs*, 49 Cal. 4th 35, 59, 231 P.3d  
2 259, 274 (2010) (citation omitted).

3 20. Upon information and belief, OnTrac’s Regional Service Providers directly  
4 contract with thousands of delivery drivers in California in the last four years, including Plaintiff,  
5 and assigned or placed them to work for OnTrac, who supervises the Plaintiff’s and other Class  
6 Members’ work. Additionally, OnTrac directly contract with delivery drivers in California.

7 21. OnTrac directly or indirectly, exercises control over their wages, hours, or working  
8 conditions of Plaintiffs and other Class Members, had power to cause Plaintiffs and other Class  
9 Members to work or the power to prevent Plaintiffs and other Class Members from working, and  
10 had the general right to control the relevant day-to-day aspects of the workplace behavior of  
11 Plaintiffs and other Class Members.

12 22. Plaintiffs and other Class Members working under Regional Service Providers  
13 have worked out of OnTrac-owned and managed warehouses throughout the State, where OnTrac  
14 managers, package handlers, and other OnTrac employees oversee and manage the package  
15 delivery operations.

16 23. The services rendered by Plaintiffs and other Class Members working under  
17 Regional Service Providers are an integral part of OnTrac’s business because OnTrac is in the  
18 business of package delivery, and Plaintiffs and other delivery drivers physically deliver packages  
19 to OnTrac’s customers on OnTrac’s behalf.

20 24. OnTrac provides driver applicants to its Regional Service Providers to aid in the  
21 hiring drivers, and sets standards that a driver must meet.

22 25. Plaintiffs and other Class Members, working under Regional Service Providers,  
23 have to perform their delivery work on strict and predictable schedules pursuant to OnTrac’s time  
24 sensitive delivery requirements. The drivers’ schedules are dictated by the volume of packages  
25 that OnTrac requires be delivered each day on their routes. Neither these drivers, nor the  
26 intermediary Regional Service Providers who they work under, have any control over the volume  
27 of package pickup and delivery work that OnTrac assigns the drivers.

28 26. OnTrac micromanages the manner in which Plaintiffs] and other Class Members

1 working under Regional Service Providers perform their work. Some of this micromanaging is  
2 performed directly by OnTrac managers, and some is performed by the Regional Service  
3 Providers, pursuant to standards and requirements established by OnTrac (and enforced by  
4 OnTrac).

5 27. OnTrac requires Plaintiffs and Class Members to wear a uniform bearing OnTrac's  
6 logos and color scheme and to maintain personal appearance standards established by OnTrac.

7 28. The vehicles driven by Plaintiffs and the Class Members bear the OnTrac logo.

8 29. OnTrac requires Plaintiffs and Class Members to transport the freight tendered to  
9 them by OnTrac at an OnTrac warehouse to point of destination within deadlines established  
10 between OnTrac and OnTrac's client.

11 30. OnTrac also requires Plaintiffs and Class Members to make every reasonable  
12 effort to perform freight transportation services in a prompt, competent and diligent manner  
13 consistent with OnTrac's standards of customer service and satisfaction, to conduct all business in  
14 a professional manner with proper decorum at all times, and to cooperate with OnTrac  
15 employees, customers, and other drivers. Further, Plaintiffs and the Class Members are required  
16 to adhere to customer service expectations that must be met in servicing OnTrac's transportation  
17 needs.

18 31. Plaintiffs and Class Members are required to use mobile devices approved by  
19 OnTrac for dispatch and tracking purposes. These mobile devices track every movement on  
20 Plaintiffs' and Class Members' vehicle. OnTrac requires the drivers to scan all assigned packages  
21 with these mobile devices upon loading each morning and upon delivery.

22 32. Customer comments and complaints regarding the Plaintiffs' and Class Members'  
23 job performance are made directly to OnTrac, who uses its own discretion on what action to take.  
24 OnTrac has the authority to require its Regional Service Providers to terminate or reassign drivers  
25 working under them if OnTrac believes they should not represent OnTrac.

26 33. Accordingly, whether a driver works was contracted directly by OnTrac, or by its  
27 Regional Service Providers, their work responsibilities, and procedures they have been required  
28 to follow, have not differed in any material way.

1           2.     Plaintiffs and the Collective were employed by OnTrac

2           34.    In addition to the above facts, Plaintiffs and the putative Collective were also  
3 “employees” under federal labor and state laws.

4           35.    As briefly summarized in paragraphs (a) – (e) below, the economic realities  
5 demonstrate that Plaintiffs and other deliver drivers were employees of Defendant, and not  
6 independent contractors.

7           a.    Defendant closely monitored, directed, and controlled the day-to-day work of  
8 Plaintiffs and other delivery drivers.

9           b.    By virtue of the fact that Plaintiffs and other delivery drivers drove for OnTrac  
10 only, OnTrac controlled their opportunity for profit or loss. Plaintiffs and other  
11 delivery drivers did not exercise managerial duties in performing their job duties.

12          c.    The work performed by Plaintiffs and other delivery drivers did not require  
13 specialized or advanced skills, nor did it require a specialized degree.

14          d.    Plaintiffs and other delivery drivers typically worked full-time and exclusively for  
15 OnTrac as delivery drivers, performing deliveries for OnTrac’s customers while  
16 wearing OnTrac uniforms and driving a vehicle bearing the logo of Ontrac.

17          e.    The services rendered by Plaintiffs and other deliver drivers are an integral part of  
18 Ontrac’s business because Ontrac is in the business of supplying consumers and  
19 businesses with package delivery services.

20          36.    OnTrac delivery drivers regularly work over 40 hours per week and drive routes  
21 assigned to them by OnTrac and deliver packages for OnTrac.

22          37.    The U.S. Department of Labor (DOL) is aware of the problem of misclassification  
23 of workers as independent contractors and has addressed the matter on its website. Specifically,  
24 the DOL has stated “[m]isclassified employees often are denied access to critical benefits and  
25 protections they are entitled to by law, such as minimum wage, overtime compensation, family  
26 and medical leave, unemployment insurance, and safe workplaces. Employee misclassification  
27 generates substantial losses to the federal governments and state governments in the form of  
28 lower tax revenues, as well as to state unemployment insurance and workers’ compensation

1 funds.” See, <https://www.dol.gov/agencies/whd/flsa/misclassification> (last visited Jan. 5, 2020).

2 3. OnTrac misclassifies its delivery drivers

3 38. Plaintiffs and other Class Members are classified as independent contractors by  
4 OnTrac and its Regional Service Providers. Under the Labor Code and applicable IWC Wage  
5 Order, a worker in California cannot be an independent contractor unless the hirer can prove: (A)  
6 that the worker is free from the control and direction of the hirer in connection with the  
7 performance of the work, both under the contract for the performance of such work and in fact;  
8 and, (B) that the worker performs work that is outside the usual course of the hiring entity's  
9 business; and (C) that the worker is customarily engaged in an independently established trade,  
10 occupation, or business of the same nature as the work performed for the hiring entity. OnTrac  
11 cannot meet the above requirements. Therefore, OnTrac misclassifies Plaintiffs and Class  
12 Members as independent contractors instead of employees.

13 39. Similarly, 29 U.S.C. 203(d) defines an employer as “any person acting directly or  
14 indirectly in the interest of an employer in relation to an employee” and 29 U.S.C. 203(e) defines  
15 employee as “any individual employed by an employer.” Furthermore, the statutory definitions  
16 regarding employment status are necessarily broad to effectuate the remedial purpose of the  
17 FLSA. See, *United States v. Rosenwasser*, 323 U.S. 360, 363, 65 S.Ct. 295, 296-97 (1945). The  
18 Supreme Court has long recognized that two or more entities may constitute joint employers for  
19 purposes of the FLSA. *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 724-25 (1947); *Falk v.*  
20 *Brennan*, 414 U.S. 190 (1973)

21 40. In performing these duties, Plaintiffs did not utilize any independent discretion,  
22 judgment, or management decisions with respect to matters of significance. To the contrary,  
23 Plaintiffs as delivery drivers, along with the other similarly situated drivers employed by OnTrac  
24 and Regional Service Providers, was to provide the transportation and delivery of goods in  
25 accordance with the management decisions and business policies established by OnTrac.

26 41. Also noted above, OnTrac retains and exercises significant control over the details  
27 of Plaintiffs and Class Members' schedules, routes, deliveries, the manner and means of how the  
28 delivery work is performed, and all necessary aspects of their working conditions. Among other

1 things, OnTrac holds Plaintiffs and Class Members to strict standards of service pervasive  
2 throughout the entire delivery process and requires them to adhere to all "customer requirements"  
3 and to meet "customer service" standards regarding OnTrac customers.

4 42. The service provided by Plaintiffs and Class Members, delivering packages, is not  
5 an independently established trade such as a plumber or electrician. Rather, they are integral and  
6 central to the operation of OnTrac's core business. OnTrac provides transportation services.  
7 Plaintiffs and Class Members perform these services for OnTrac: they are hired to transport and  
8 deliver packages within California based on times, locations, and for fees determined by OnTrac.

9 43. As a result, Plaintiffs and other Class Members were entitled to be paid wages for  
10 all hours worked, reimbursed for all business related expenses, and to be provided accurate wage  
11 statements and meal and rest periods as required by California law.

12 44. Additionally, Plaintiffs and other Collective members were entitled to overtime  
13 wages under the FLSA.

14 **B. Defendant Failed to Pay Plaintiffs and the Class for All Hours Worked**

15 45. Industrial Welfare Commission Wage Order No. 9-2001 provides: "Every  
16 employer shall pay to each employee, on the established payday for the period involved, not less  
17 than the applicable minimum wage for all hours worked in the payroll period, whether the  
18 remuneration is measured by time, piece, commission, or otherwise." "Hours worked" is defined  
19 under the Wage Orders as "the time during which an employee is subject to the control of an  
20 employer, and includes all the time the employee is suffered or permitted to work, whether or not  
21 required to do so." Plaintiffs and Class Members are entitled to separate hourly compensation for  
22 time spent for performing other non-driving tasks, which were non-productive and directed by  
23 Defendant during their work shifts.

24 46. Plaintiffs and other Class Members were paid by piece-rate and/or a day-rate while  
25 they were employed as delivery drivers for Defendant, without regard to the real-time hours  
26 worked. Those paid on a piece rate basis were not provided, through Defendant's compensation  
27 system, with minimum wages for all their non-production work time when they were not driving  
28 and incurring miles for pay purposes, including for vehicle inspections, loading and unloading,

1 and other non-driving tasks they were required to perform in connection with their various loads  
2 driven. Indeed, Plaintiffs and Class Members often have to spend approximately two hours in the  
3 warehouse, loading their vehicles, before they can deliver any packages.

4 47. Similarly, Defendant failed to provide all the legally required compensation or  
5 minimum wage to the Plaintiffs and other Class Members for each hour worked as required by  
6 the Labor Code. Defendant did not have a system to ensure that those employees paid by a piece-  
7 rate and/or a day-rate received at least minimum wages for all hours worked. Defendant also did  
8 not have a policy or practice to provide minimum wages or compensation for non-production  
9 work time. As a result, Defendant's failure to provide the Plaintiffs and Class Members with all  
10 the legally required compensation and will be evidenced by OnTrac's business records, or lack  
11 thereof.

12 **C. Defendant Failed to Provide Meal and Rest Periods**

13 48. Defendant systematically denies Plaintiffs and Class Members lawful meal periods  
14 for shift that lasted longer than five hours. Additionally, to the extent Plaintiffs and the Class  
15 working a shift that was greater than ten hours, Defendant's uniform policies similarly prevented  
16 Plaintiffs and the Class from taking a second meal break. And even when Plaintiffs and the Class  
17 were able to take a meal period, it was often interrupted by work demands.

18 49. In addition, during the relevant time period, Defendant has consistently failed to  
19 authorize and permit Plaintiffs and Class Members to take paid, off-duty rest breaks of not less  
20 than ten minutes for every work period of four (4) or more consecutive hours (or major factor  
21 thereof).

22 50. Defendant did not pay Plaintiffs and Class Members one hour of premium pay for  
23 each day on which requisite rest and/or meal breaks were not provided or were deficiently  
24 provided. Additionally, Defendant failed to pay Plaintiffs and Class Members for their  
25 nonproductive time during their off-duty rest periods.

26 51. Defendant failed to provide all the legally required unpaid, off-duty meal periods  
27 and all the legally required paid, off-duty rest periods to the Plaintiffs and other Class Members as  
28 required by the applicable Wage Order and Labor Code. OnTrac did not have a policy or practice

1 which provided or recorded all the legally required unpaid, off-duty meal periods and all the  
2 legally required paid, off-duty rest periods to the Plaintiffs and other Class Members. As a result,  
3 Defendant's failure to provide the Plaintiffs and Class Members with all the legally required off-  
4 duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be  
5 evidenced by OnTrac's business records, or lack thereof.

6 **D. Defendant Failed to Pay Plaintiffs and the Class Overtime Payments**

7 52. Plaintiffs and Class Members are non-exempt employees pursuant to the  
8 applicable IWC Wage Order. Plaintiffs and Class Members are not exempt from California's  
9 wage and hour laws as drivers, as they are not involve involved in interstate commerce, and do  
10 not drive trucks that weight over 10,000 pounds. Instead, Plaintiffs and Class Members drove  
11 their own personal, delivery vehicles with an OnTrac logo attached.

12 53. Plaintiffs and Class Members regularly worked over ten-hour days, and over forty  
13 hours a workweek, to deliver the packages and complete the routes assigned to them by  
14 Defendant. Despite this, Plaintiffs and Class Members were not paid overtime premium wages  
15 for any all hours worked in excess of eight up in any workday, and for any work on the seventh  
16 consecutive day of work in a workweek.

17 54. Labor Code section 226.2 expressly states in the opening paragraph that that  
18 piece-rate compensation schemes "shall not be construed to limit or alter minimum wage or  
19 overtime compensation requirements, or the obligation to compensate employees for all hours  
20 worked under any other statute or local ordinance."

21 55. Accordingly, Plaintiffs and Class Members are entitled to an overtime premium as  
22 a multiple of their regular rate of pay. Plaintiffs' and Class Members' regular rate of pay should  
23 be determined by dividing all compensation received in a workweek (including compensation for  
24 rest periods) by the number of hours worked during that workweek.

25 56. Defendant failed to provide all the legally required overtime compensation to the  
26 Plaintiffs and other Class Members as required by the Labor Code. OnTrac did not have a policy  
27 or practice which provided overtime compensation or recorded the overtime hours worked. As a  
28 result, Defendant's failure to provide the Plaintiffs and Class Members with all the legally

1 required overtime compensation and will be evidenced by OnTrac's business records, or lack  
2 thereof.

3 **E. Defendant Failed to Reimburse Business Expenses**

4 57. Furthermore, Defendant has unlawfully failed to indemnify the Plaintiffs and other  
5 Class Members for employment related expenses, including the costs of providing the leased  
6 vehicles; all operation costs associated with the vehicle (including fuel, maintenance, repair,  
7 cleaning, and licensing); liability and other insurance; cellular telephone costs associated with  
8 employment related communications; and miscellaneous employment related equipment, such as  
9 dollies.

10 58. Labor Code, section 2802, requires employers to reimburse employees, "for all  
11 necessary expenditures or losses incurred by the employee" while completing work duties. The  
12 employee must receive full reimbursement for expenses incurred.

13 59. Defendant failed to reimburse Plaintiffs and Class Members for all necessary  
14 employment expenditures or losses as required by the Labor Code. OnTrac did not have a policy  
15 or practice that provided for reimburse of expenditures or losses. As a result, Defendant's failure  
16 to provide the Plaintiffs and Class Members with all the legally required reimbursement and will  
17 be evidenced by OnTrac's business records, or lack thereof.

18 **F. Defendant Failed to Provide Wage Statements**

19 60. During the relevant time period, Defendant has also consistently failed to provide  
20 Plaintiffs and Class Members with timely, accurate, and itemized wage statements, in writing, as  
21 required by the Labor Code, section 226. More specifically, Defendant also failed to provide the  
22 Plaintiffs and Class Members with complete and accurate wage statements, as those provided  
23 failed to show, among other things, the correct hours worked, wages owed for time worked  
24 (including overtime and non-productive work time), or basis for the piece-rate payments.

25 61. Labor Code, section 226, provides that every employer shall furnish each of its  
26 employees with an accurate itemized wage statement in writing showing, among other things,  
27 gross wages earned and all applicable hourly rates in effect during the pay period and the  
28 corresponding amount of time worked at each hourly rate, as well as the number of piece-rate

1 units earned and any applicable piece rate for employees who were paid on a piece-rate basis.

2 62. As a result, Defendant provided Plaintiffs and the other members of the Class with  
3 wage statements that were inaccurate and which systematically violated the Labor Code. This  
4 failure was injurious to Plaintiffs and the Class as Defendant’s employees could not determine the  
5 their wages owed from promptly and easily determine from the wage statement alone.  
6 Accordingly, Defendant fosters an environment where Plaintiffs and Class Members are not being  
7 paid all the wages owed to them because of the difficulty and expense involved in reconstructing  
8 their pay records and forcing Plaintiffs and Class Members to make mathematical computations  
9 to analyze whether the wages paid in fact compensated them for all hours worked.

10 63. OnTrac knew that it was not providing its delivery drivers the information required  
11 by section 226(a). OnTrac did not have a policy or practice to ensure that it was in compliance  
12 with section 226. Accordingly, Plaintiffs and the Class seek penalties and all other relief  
13 available to them and other Class Members under California law.

14 **CLASS ALLEGATIONS**

15 64. Plaintiffs bring this class action on behalf of herself and all others similarly  
16 situated pursuant to Rule 23(a) and (b). Plaintiffs seek to represent a Class (or “the Class” or  
17 “Class Members”) defined as follows:

18 All individuals who delivered packages on behalf of OnTrac, solely within  
19 California, using vehicles under 10,000 pounds during the period of four years  
20 prior to the filing of this lawsuit and ending on a date as determined by the Court.

21 Excluded from the Class are all legal entities, Defendant and any person, firm, trust, corporation,  
22 or other entity related to or affiliated with Defendant, as well as any judge, justice or judicial  
23 officer presiding over this matter and members of their immediate families and judicial staff.

24 65. Plaintiffs reserve the right to amend or modify the class description with greater  
25 particularity. To the extent equitable tolling operates to toll claims by the Class against  
26 Defendant, of example Emergency Rule No. 9, the Class Period should be adjusted accordingly.

27 66. While the exact number of Class members is unknown to Plaintiffs at this time,  
28 and will be ascertained through appropriate discovery, Plaintiffs are informed and believes that

1 there are thousands of similarly situated Class Members in California. The number of individuals  
2 who comprise the Class is so numerous that joinder of all such persons is impracticable and the  
3 disposition of their claims in a class action, rather than in individual actions, will benefit both the  
4 parties and the courts.

5 67. Plaintiff's claims are typical of the claims of the other members of the Class. All  
6 members of the Class have been and/or continue to be similarly affected by Defendant's wrongful  
7 conduct as complained of herein, in violation of California law. Plaintiffs are unaware of any  
8 interests that conflict with or are antagonistic to the interests of the Class.

9 68. Plaintiffs will fairly and adequately protect the Class Members' interests and has  
10 retained counsel competent and experienced in class action lawsuits and complex litigation.  
11 Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously  
12 litigate this class action, and Plaintiffs are aware of her duties and responsibilities to the Class.

13 69. Plaintiffs share the same interests as the other Class members and will be entitled  
14 under the Labor Code to unpaid overtime compensation, attorneys' fees, costs and lost interest  
15 owed to her under nearly identical factual and legal standards as the remainder of the putative  
16 class.

17 70. Defendant, as a matter of company policy, practice and procedure, and in violation  
18 of the applicable Labor Code, IWC Wage Order requirements, and the applicable provisions of  
19 California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendant  
20 failed to correctly calculate compensation for the time worked by the Plaintiffs and the other  
21 members of the Class, even though Defendant enjoyed the benefit of this work, required  
22 employees to perform this work and permitted or suffered to permit this work. OnTrac has  
23 uniformly denied these Class Members wages to which they are entitled, and failed to provide  
24 meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and  
25 unlawfully profit.

26 71. Defendant has acted with respect to the Class in a manner generally applicable to  
27 each Class member. Common questions of law and fact exist as to all Class members and  
28 predominate over any questions wholly affecting individual Class members. There is a well-

1 defined community of interest in the questions of law and fact involved in the action, which affect  
2 all Class members. Among the questions of law and fact common to the Class are:

- 3 a. Whether Defendant engaged in a policy or practice of failing to pay each Class  
4 Member overtime compensation for all overtime hours worked;
- 5 b. Whether Defendant engaged in a policy or practice of failing to pay each Class  
6 member minimum and regular wages for all compensable time;
- 7 c. Whether Defendant violated Labor Code sections 201, 202, and 203 by willfully  
8 failing to pay all wages and compensation due each Class member who resigned or  
9 who was discharged;
- 10 d. Whether Defendant violated Labor Code section 226 by willfully failing to provide  
11 accurate itemized wage statements showing the number of hours worked by each  
12 Class member and the corresponding hourly rate;
- 13 e. Whether Defendant violated Labor Code section 1174 by failing to maintain  
14 accurate records of hours worked and wages paid to Class members;
- 15 f. Whether Defendant failed and/or refused to provide each Class member meal  
16 periods, or one hour's wages in lieu thereof, to which they were entitled pursuant  
17 to the Labor Code and IWC Wage Order;
- 18 g. Whether Defendant failed and/or refused to provide each Class member rest  
19 periods, or one hour's wages in lieu thereof, to which they were entitled pursuant  
20 to the Labor Code and IWC Wage Order;
- 21 h. Whether Defendant was unjustly enriched by the work and services performed by  
22 Class members without appropriate compensation;
- 23 i. Whether Defendant engaged in unfair business practices in violation of Business  
24 and Professions Code section 17200 *et seq.*;
- 25 j. Whether Defendant should be required to pay compensatory damages, attorneys'  
26 fees, penalties, costs, and interest for violating California state law; and
- 27 k. Whether Defendant should be enjoined from continuing their wrongful conduct.

28 72. A class action is superior to all other available methods for the fair and efficient  
adjudication of this controversy since joinder of all Class members is impracticable. Furthermore,  
as the damages suffered by individual Class members may be relatively small, the expense and  
burden of individual litigation make it virtually impossible for Class members to individually  
redress the wrongs done to them. There will be no difficulty in managing this action as a class  
action.

73. Defendant has acted on grounds generally applicable to the entire Class with

1 respect to the matters complained of herein, thereby making appropriate the relief sought herein  
2 with respect to the Class as a whole.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 74. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on behalf  
5 of themselves and on behalf of:

6 *All current and former delivery drivers who worked for OnTrac at*  
7 *any time from January 5, 2018 to a date specified by the Court.*

8 (hereinafter referred to as the “FLSA Collective”). Plaintiffs reserve the right to amend this  
9 definition if necessary.

10 75. OnTrac is liable under the FLSA for, inter alia, failing to properly compensate  
11 Plaintiffs and others similarly situated.

12 76. Excluded from the proposed FLSA Collective are Defendant’s executives,  
13 administrative and professional employees, including computer professionals and outside sales  
14 persons.

15 77. Consistent with Defendant’s policies and practice, Plaintiffs and the proposed  
16 FLSA Collective were not paid for regular wages and all premium overtime compensation when  
17 they worked beyond 40 hours in a workweek.

18 78. All of the work Plaintiffs and the proposed FLSA Collective work performed was  
19 by Defendant, and/or Defendant was aware of all of the work the Plaintiffs and the proposed  
20 FLSA Collective performed.

21 79. As part of their regular business practice, Defendant intentionally, willfully, and  
22 repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to  
23 Plaintiffs and the members of the FLSA Collective. This policy and pattern or practice includes,  
24 but is not limited to:

- 25 a. Willfully failing to pay their employees, including Plaintiffs and the members of  
26 the FLSA Collective, for all premium overtime wages for hours worked in excess  
27 of forty (40) hours per workweek;

- b. Willfully misclassifying their employees, including Plaintiffs and the members of the FLSA Collective, as independent contractors, thereby depriving them of certain employment benefits;
- c. Willfully failing to provide their employees, including Plaintiffs and the FLSA Collective, with rest breaks and meal periods; and
- d. Willfully failing to reasonably reimburse their employees, including Plaintiffs and the FLSA Collective, for reasonably necessary business expenses.

80. Defendant is aware, or should have been aware, that federal law required it to pay Plaintiffs and the proposed FLSA Collective members for all hours work and an overtime premium for all hours worked in excess of forty (40) per workweek.

81. Defendant’s unlawful conduct is widespread, repeated, and consistent.

82. A collective action under the FLSA is appropriate because the employees described above are “similarly situated” to Plaintiffs under 29 U.S.C. § 216(b). The employees on behalf of whom Plaintiffs bring this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are performing the same or similar job duties; (c) they were or are subject to the same or similar unlawful practices, policy, or plan; and (d) their claims are based upon the same factual and legal theories.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 510 -**  
**FAILURE TO PAY MINIMUM WAGES**

83. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

84. Defendant failed to pay Class Members the minimum wages for all hours worked. Defendant had a consistent policy of not maintaining accurate records of all hours worked and of failing to pay Class Members for all hours worked. Plaintiffs and the other Class Members bring a claim for Defendant’s willful and intentional violations of the Labor Code and the Industrial Welfare Commission requirements for Defendant’s failure to accurately calculate and pay minimum wages to Plaintiffs and Class Members.

85. Labor Code, section 1197, states: “[t]he minimum wage for employees fixed by

1 the commission is the minimum wage to be paid to employees, and the payment of a less wage  
2 than the minimum so fixed is unlawful.”

3 86. The minimum wage provisions of Labor Code are enforceable by private civil  
4 action pursuant to Labor Code § 1194(a), which establishes an employee’s right to recover unpaid  
5 wages, including minimum wage compensation and interest thereon, together with the costs of  
6 suit, as follows: “Notwithstanding any agreement to work for a lesser wage, any employee  
7 receiving less than the legal minimum wage or the legal overtime compensation applicable to the  
8 employee is entitled to recover in a civil action the unpaid balance of the full amount of this  
9 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees  
10 and costs of suit.”

11 87. As described in Labor Code §§ 1185 and 1194.2, any action for wages  
12 incorporates the applicable IWC Wage Order.

13 88. Labor Code § 1194.2 also provides for the following remedies: “In any action  
14 under Section 1194 . . . to recover wages because of the payment of a wage less than the  
15 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
16 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

17 89. Additionally, Labor Code § 226.2(a)(1) states that, for “employees compensated  
18 on a piece-rate basis during a pay period, . . . Employees shall be compensated for rest and  
19 recovery periods and all other nonproductive time separate from any piece-rate compensation.”  
20 OnTrac failed to do so for Plaintiffs and the Class Members when they were paid on a piece rate  
21 basis, including by failing to comply with the other provisions of Labor Code § 226.2 addressing  
22 the requirements for compensating employees for rest and recovery periods and other non-  
23 productive time separate from piece rate compensation. Plaintiffs and the Class Members were  
24 paid on a piece rate basis. However, Defendant failed to separately pay Plaintiffs and the Class  
25 Members for their rest periods in violation of Labor Code § 226.2 and California minimum wage  
26 laws, discussed above.

27 90. Defendant’s uniform pattern of unlawful wage and hour practices manifested,  
28 without limitation, applicable to the Class as a whole, as a result of implementing a uniform

1 policy and practice that denied accurate compensation to Plaintiffs and the other members of the  
2 Class in regard to minimum wage pay.

3 91. In committing these violations of the Labor Code, Defendant inaccurately  
4 calculated the correct time worked and consequently underpaid the actual time worked, along  
5 with failing to pay for all piece rate units earned by Plaintiffs and other members of the Class.  
6 Defendant acted in an illegal attempt to avoid the payment of all earned wages, and other benefits  
7 in violation of the Labor Code, the Industrial Welfare Commission requirements and other  
8 applicable laws and regulations. As a result of these violations, Defendant also failed to timely  
9 pay all wages earned in accordance with Labor Code § 1194.

10 92. In addition to restitution for all unpaid wages, pursuant to Labor Code § 1197.1,  
11 Plaintiffs and Class Members are entitled to recover a penalty of \$100.00 for the initial failure to  
12 timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each  
13 employee minimum wages.

14 93. By virtue of Defendant's unlawful failure to accurately pay all earned  
15 compensation to Plaintiffs and the other Members of the Class for the true time they worked and  
16 piece rate units they earned, Plaintiffs and the other members of the Class have suffered and will  
17 continue to suffer an economic injury in amounts which are presently unknown to them and  
18 which will be ascertained according to proof at trial.

19 94. Defendant knew or should have known that Plaintiffs and the other members of the  
20 Class were under-compensated for their time worked and were paid less than all wages they  
21 earned. Defendant systematically elected, either through intentional malfeasance or gross  
22 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
23 and procedure, and Defendant perpetrated this systematic scheme by refusing to pay Plaintiffs  
24 and the other Members of the Class the correct minimum wages for their time worked and for all  
25 piece rate units earned.

26 ///

27 ///

28 ///



1 lawful premium overtime wages, as alleged above, was a willful violation of Labor Code §§ 510,  
2 1198, and IWC Wage Order.

3 102. Plaintiffs demand payment of the unpaid balance of the full amount of wages due  
4 for unpaid time worked, as well as overtime premiums owing, including interest thereon,  
5 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194 and  
6 1194.2 as a result of Defendant's failure to pay overtime premiums for all overtime hours worked,  
7 as is required under California law.

8 **THIRD CAUSE OF ACTION**  
9 **VIOLATION OF CALIFORNIA LABOR CODE § 226.7 AND AND IWC WAGE**  
10 **ORDER- FAILURE TO PROVIDE MEAL PERIOD**

11 103. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
12 full herein.

13 104. Plaintiffs and the Class regularly worked shifts greater than five (5) hours and  
14 greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ an  
15 employee for a shift of more than five (5) hours without providing him or her with a meal period  
16 of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing  
17 him or her with a second meal period of not less than thirty (30) minutes.

18 105. Defendant failed to provide Employees with meal periods as required under the  
19 Labor Code, and Plaintiffs and the Class members consistently worked shifts of over five (5) or  
20 ten (10) hours in duration which entitled them to receive timely and uninterrupted meal period(s)  
21 per work shift. Defendant's uniform policies and practices systematically denied the Class  
22 Members lawful meal periods by failing to relieve them of all work duties, as required under  
23 California law. Additionally, to the extent Plaintiffs and the Class were provided the opportunity  
24 to take a second meal period when working a shift of ten (10) hours, Defendant did not relieve  
25 them of all work duties.

26 106. Labor Code § 226.7 and the applicable IWC Wage Order also provide that, if an  
27 employer fails to provide an employee a meal period, the employer shall pay the employee one  
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal  
period is not provided. Defendant failed to compensate Plaintiffs and Class Members for each

1 meal period not provided or inadequately provided, as required under Labor Code § 226.7.

2 107. Pursuant to Labor Code § 226.7 and the applicable IWC Wage Orders, Plaintiffs  
3 and Class Members are entitled to damages in an amount equal to one (1) hour of wages at their  
4 effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to  
5 be proven at trial, as well as the assessment of any statutory penalties against the OnTrac, and  
6 each of them, in a sum as provided by the Labor Code and other statutes.

7 **FOURTH CAUSE OF ACTION**  
8 **VIOLATION OF CALIFORNIA LABOR CODE § 226.7 AND AND IWC WAGE**  
9 **ORDER- FAILURE TO PROVIDE REST-BREAK**

10 108. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
11 full herein.

12 109. Labor Code §§ 226.7 and the applicable IWC Wage Order provide that employers  
13 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net  
14 rest time per four (4) work hours or major fraction thereof.

15 110. Labor Code §§ 226.7 and the applicable IWC Wage Order provide that if an  
16 employer fails to provide an employee rest period in accordance with this section, the employer  
17 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for  
18 each workday that the rest period is not provided.

19 111. Plaintiffs and Class Members consistently worked consecutive four (4) hour  
20 periods during their work shifts. Pursuant to the Labor Code and the applicable IWC Wage Order.  
21 Defendant failed to provide Employees with timely rest breaks of not less than ten (10) minutes  
22 for each consecutive four (4) hour shift. Defendant failed to implement policies and practices  
23 which accounted for and authorized and permitted Plaintiffs and the Class Members to timely  
24 take all required rest periods under California law. Defendant must pay rest period wages and  
25 penalty premium wages as required under Labor Code § 226.7. Defendant, and each of them,  
26 have therefore intentionally and improperly denied rest periods to Plaintiffs and the Class  
27 Members in violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order.

28 112. Pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage  
Order, the Class Members are entitled to damages in an amount equal to one (1) hour of wages at

1 their effective hourly rates of pay for each day worked without the required rest breaks, a sum to  
2 be proven at trial, as well as the assessment of any statutory penalties against Defendant, and each  
3 of them, in a sum as provided by the Labor Code and/or other statutes.

4 **FIFTH CAUSE OF ACTION**  
5 **VIOLATION OF LABOR CODE §§ 226(a) AND 226.2 -**  
6 **INACCURATE WAGE STATEMENTS**

7 113. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
8 full herein.

9 114. Labor Code § 226(a) requires an employer to furnish each of his or her employees  
10 with an accurate, itemized statement in writing showing the gross and net earnings, total hours  
11 worked, and the corresponding number of hours worked at each hourly rate. These statements  
12 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to  
13 pay the employee's wages. If wages are paid by cash or personal check, these statements may be  
14 given to the employee separately from the payment of wages. In either case, the employer must  
15 give the employee these statements twice a month or each time wages are paid.

16 115. Defendant failed to provide Plaintiffs and Class Members with accurate itemized  
17 wage statements in writing, as required by the Labor Code. Specifically, the wage statements  
18 given to Plaintiffs and Class Members by Defendant failed to accurately account for wages, hours  
19 worked, pieces earned, hourly rates and piece rates, and did not provide pay for non-productive  
20 time and premium pay for deficient meal periods and rest breaks, all of which Defendant knew or  
21 reasonably should have known were owed to Plaintiffs and Class Members, as alleged  
22 hereinabove.

23 116. Labor Code § 226.2(a)(2)(A)-(B) further instructs that: "The itemized statement  
24 required by subdivision (a) of Section 226 shall, in addition to the other items specified in that  
25 subdivision, separately state the following, to which the provisions of Section 226 shall also be  
26 applicable: (A) The total hours of compensable rest and recovery periods, the rate of  
27 compensation, and the gross wages paid for those periods during the pay period. (B) Except for  
28 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

1 compensation, and the gross wages paid for that time during the pay period.” Defendant failed to  
2 issue accurate itemized wage statements to Plaintiffs and Class Members when they were paid on  
3 a piece rate basis because the wage statements failed to comply with the requirements of Labor  
4 Code § 226.2, in addition to Labor Code § 226.

5 117. As a direct and proximate cause of Defendant’s violation of Labor Code § 226(a),  
6 Plaintiffs and Class Members suffered injuries, including among other things confusion over  
7 whether they received all wages owed them, the difficulty and expense involved in reconstructing  
8 pay records, and forcing them to make mathematical computations to analyze whether the wages  
9 paid in fact compensated them correctly for all hours worked and all pieces earned.

10 118. Plaintiffs and the Class Members suffered injury as a result of Defendant’s  
11 knowing and intentional failure to provide them with the wage and hour statements, as required  
12 by law, and are presumed to have suffered injury and entitled to penalties under Labor Code §  
13 226(e). Plaintiffs and the Class Members are entitled to recover the greater of all actual damages  
14 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars  
15 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four  
16 thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys’  
17 fees.

18 **SIXTH CAUSE OF ACTION**  
19 **VIOLATION OF LABOR CODE § 2802 -**  
20 **REIMBURSEMENT OF NECESSARY EXPENDITURES**

21 119. Plaintiffs re-allege and incorporate all preceding paragraphs as though set forth in  
22 full herein.

23 120. Labor Code §§ 201 and 202 require employers to pay their employees all wages  
24 due within the time specified by law. Labor Code § 203 provides that if an employer willfully  
25 fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject  
26 employees’ wages until the back wages are paid in full or an action is commenced, up to a  
27 maximum of 30 days of wages.

28 121. Plaintiffs and Class Members who ceased employment with Defendant are entitled  
to unpaid compensation, but to date have not received such compensation.

1 122. More than 30 days have passed since certain Plaintiffs and Class Members left  
2 Defendant's employ.

3 123. As a consequence of Defendant's willful conduct in not paying regular, minimum  
4 and/or overtime compensation for all hours worked, the Class members whose employment ended  
5 during the class period are entitled to 30 days' wages under Labor Code § 203, together with  
6 interest thereon and attorneys' fees and costs.

7 **SEVENTH CAUSE OF ACTION**  
8 **VIOLATION OF LABOR CODE § 2802 -**  
9 **REIMBURSEMENT OF NECESSARY EXPENDITURES**

10 124. Plaintiffs re-allege and incorporate all preceding paragraphs as though set forth in  
11 full herein.

12 125. Under Labor Code § 2802(a) an employer must indemnify its employees for all  
13 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
14 of his or her duties, or of his or her obedience to the directions of the employer.

15 126. Plaintiffs and Class Members incurred necessary expenditures in the performance  
16 of their job duties for Defendant, namely, the cost of fuel, vehicle maintenance, necessary repairs,  
17 and the cost of cellular telephone service, which Plaintiffs and the Class Members were required  
18 to purchase in order to execute their duties under Defendant's employ. From four (4) years prior  
19 to the original filing of this lawsuit and continuing to the present, Defendant consistently failed to  
20 reimburse Plaintiffs and Class Members for these necessarily incurred business expenses.

21 127. As a result of the unlawful acts of Defendant, Plaintiffs and Class Members have  
22 been deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery  
23 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

24 **EIGHTH CAUSE OF ACTION**  
25 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 –**  
26 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

27 128. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
28 full herein.

129. Plaintiff, on behalf of herself, the Class, and the general public, bring this claim  
pursuant to Business & Professions Code § 17200 *et seq.* The conduct of OnTrac as alleged in

1 this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs and Class  
2 Members and the general public. Plaintiffs seek to enforce important rights affecting the public  
3 interest within the meaning of Code of Civil Procedure § 1021.5.

4 130. Plaintiffs are a “person” within the meaning of Business & Professions Code §  
5 17204, suffered injury, and therefore has standing to bring this cause of action for injunctive  
6 relief, restitution, and other appropriate equitable relief.

7 131. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
8 business practices. By the conduct alleged herein, Defendant’s practices were unfair in that  
9 Defendant’s policy and practice failed to provide the required amount of compensation for missed  
10 meal and rest breaks, and failed to adequately compensate Plaintiffs and Class Members for all  
11 non-production time, due to a systematic business practice that cannot be justified, pursuant to the  
12 applicable Labor Code and Industrial Welfare Commission requirements in violation of  
13 California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue  
14 injunctive and equitable relief, including restitution of wages wrongfully withheld.

15 132. Wage-and-hour laws express fundamental public policies. Paying employees their  
16 wages, providing them with meal periods and rest breaks, etc., are fundamental public policies of  
17 California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce  
18 minimum labor standards, to ensure that employees are not required or permitted to work under  
19 substandard and unlawful conditions, and to protect law-abiding employers and their employees  
20 from competitors who lower costs to themselves by failing to comply with minimum labor  
21 standards.

22 133. Defendant has violated statutes and public policies. Through the conduct alleged in  
23 this Complaint Defendant has acted contrary to these public policies, has violated specific  
24 provisions of the Labor Code, and has engaged in other unlawful and unfair business practices in  
25 violation of Business & Professions Code § 17200 *et seq.*

26 134. By the conduct alleged herein, Defendant has engaged and continues to engage in  
27 a business practice which violates California law, including but not limited to, the applicable IWC  
28 Wage Order and the Labor Code (including sections 203, 204, 226, 226.2, 226.7, 512, 1194,

1 1197, and 1198), for which this Court should issue declaratory and other equitable relief as may  
2 be necessary to prevent and remedy the conduct held to constitute unfair competition, including  
3 restitution of wages wrongfully withheld.

4 **NINTH CAUSE OF ACTION**  
5 **VIOLATION OF LABOR CODE § 2802 -**  
6 **REIMBURSEMENT OF NECESSARY EXPENDITURES**

7 135. Plaintiffs re-allege and incorporate all preceding paragraphs as though set forth in  
8 full herein.

9 136. Plaintiffs and other delivery drivers were “employees” of Defendant within the  
10 meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

11 137. The FLSA requires that employees receive overtime premium compensation “not  
12 less than one and one-half times” their regular pay rate for hours worked over 40 per week. *See*  
13 29 U.S.C. § 207(a)(1).

14 138. Defendant violated the FLSA by failing to pay Plaintiffs and other delivery drivers  
15 overtime premium compensation for all hours worked over 40 per week.

16 139. In violating the FLSA, Defendant acted willfully and with reckless disregard of the  
17 clearly applicable FLSA protections and, as such, willfully violated the FLSA.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment as follows:

- 20 1. For an order certifying this action as a class action;
- 21 2. For an order certifying this action as a collective action;
- 22 3. For compensatory damages in the amount of the unpaid minimum wages for work  
23 performed by the Class;
- 24 4. For liquidated damages in the amount equal to the unpaid minimum wage and  
25 interest thereon;
- 26 5. For liquidated damages in the amount equal to the unpaid overtime wages owed  
27 and interest thereon;
- 28 6. For damages in the amount of the hourly wage made by the Class for each missed  
or deficient meal and/or rest period where no premium pay was paid;



CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RENEE MORGAN and JEHANZEB KHAN

(b) County of Residence of First Listed Plaintiff Sonoma County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Trenton R. Kashima, SOMMERS SCHWARTZ, P.C., 402 West Broadway, Suite 1760, San Diego, California 92101 (619) 762-2125

DEFENDANTS

EXPRESS MESSENGER SYSTEMS, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 201, et seq. Plaintiff brings this action to recovery unpaid wages and other damages under the FLSA and California Labor Code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/08/2021

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: California OnTrac Drivers Misclassified as Independent Contractors, Denied Proper Pay](#)

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