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8 Attorneys for Defendant
 UNITED PARCEL SERVICE, INC., an Ohio
 9 corporation, incorrectly sued herein as "United Parcel
 Service, Inc., a Delaware corporation" and "UPS"

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 THOMAS SIMS II on behalf of himself and
 14 others similarly situated,

15 Plaintiff,

16 vs.

17 UNITED PARCEL SERVICE, INC., a
 Delaware corporation; UPS, a business entity
 18 unknown; and DOES 1 to 100, Inclusive,

19 Defendants.

Case No.

**DEFENDANT UNITED PARCEL
 SERVICE, INC.'S NOTICE OF
 REMOVAL OF CIVIL ACTION TO
 FEDERAL COURT**

(Alameda Superior Court Case No.
 RG19035659)

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF THOMAS SIMS II AND HIS
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant United Parcel Service, Inc., an Ohio Corporation, (“UPS” or “Defendant”), erroneously named as “United Parcel Service, Inc., a Delaware corporation” and “UPS, a business entity unknown,” hereby removes this action from the Superior Court of the State of California for the County of Alameda to the United States District Court for the Northern District of California. Defendant removes this action pursuant to 28 U.S.C. §§ 1332 (as amended by the Class Action Fairness Act of 2005, Pub. L. 109-2, § 4(a)) and 1441(a) and (b), for the following reasons:

1. On or about September 16, 2019, Plaintiff Thomas Sims II filed a Complaint in the Superior Court of the State of California for the County of Alameda (“Superior Court”) entitled “*Thomas Sims II on behalf of himself and others similarly situated v. United Parcel Service, Inc., a Delaware corporation; UPS, a business entity unknown; and DOES 1 through 100, Inclusive,*” designated as Case No. RG19035659 (the “Action”). A true and correct copy of Plaintiff’s Complaint in the Action is attached to the Declaration of Jennifer Svanfeldt in Support of Defendant’s Notice of Removal of Civil Action to Federal Court (“Svanfeldt Decl.”) as Exhibit A.¹

2. The Complaint contains the following purported causes of action: (a) failure to pay minimum wage or overtime in violation of California Labor Code §§ 510, 1194, 1197, 1198 and the Wage Orders (First Cause of Action); (b) failure to provide meal periods in violation of California Labor Code §§ 226.7, 512, 1198 and the Wage Orders (Second Cause of Action); (c) failure to provide rest breaks in violation of California Labor Code §§ 226.7, 1198 and the Wage Orders (Third Cause of Action); (d) failure to provide complete and accurate wage statements in violation of California Labor Code § 226 (Fourth Cause of Action); and (e) unfair business

¹ In accordance with 28 U.S.C. § 1446(a), the Complaint and all other publicly-available process, pleadings or orders that were served on UPS in this action also are attached to this filing as Exhibit A.

1 practices in violation of California’s Unfair Competition Act (“UCL”), Bus. & Prof. Code §17200
2 *et seq.* (Fifth Cause of Action). Svanfeldt Decl.; Ex. A.

3 3. On October 16, 2019, Plaintiff effected personal service of the Complaint on
4 Defendant’s agent for service of process. *See* Svanfeldt Decl. ¶ 4, Ex. B.

5 4. Plaintiff alleges that defendant “UPS” is a “business entity unknown.” Compl. ¶ 5.
6 However, “UPS” is simply the initials of the Defendant and a commonly used acronym. It is not
7 a separate related entity. Plaintiff was employed by United Parcel Service, Inc., an Ohio
8 corporation, (also known as “UPS”), not a separate legal entity called “UPS.” *See* Declaration of
9 Ryan Swift in Support of Defendant United Parcel Service, Inc.’s Notice of Removal of Civil
10 Action to Federal Court (“Swift Decl.”) ¶ 2.

11 5. United Parcel Service, Inc., a Delaware corporation, is a holding company that is
12 incorporated in the State of Delaware with its principal place of business in Atlanta, Georgia.
13 Swift Decl. ¶ 6. It has no employees in California and did not employ the Plaintiff. *Id.* Plaintiff
14 was employed by United Parcel Service, Inc., an Ohio corporation.² Swift Decl. ¶ 2.

15 6. Defendants Does 1 through 100 are unnamed and unknown, and therefore have not
16 been served with the Complaint. *See* Compl. ¶ 8.

17 7. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies that a
18 copy of this Notice of Removal and all supporting papers will be promptly served on Plaintiff’s
19 counsel and filed with the Clerk of the Alameda County Superior Court. True and correct copies
20 of the Notice to Superior Court of Removal to Federal Court and Notice to Adverse Parties of
21 Removal to Federal Court are attached to the Svanfeldt Declaration as Exhibits D and E,
22 respectively. Therefore, all procedural requirements under 28 U.S.C. § 1446 have been satisfied.

23 8. This Notice of Removal is timely. It is filed within thirty (30) days of service of
24 the Complaint, making this matter removable pursuant to 28 U.S.C. § 1446(b).

25 9. Venue is set in this District pursuant to 28 U.S.C. § 1441(a) because the Superior
26 Court where the removed case was pending is located within this District.

27 _____
28 ² To the extent they are deemed separate entities, all named Defendants consent to removal of this
action to federal court.

1 10. This Action is one over which this Court has original jurisdiction under the
2 provisions of 28 U.S.C. § 1332, and may be removed to this Court pursuant to 28 U.S.C.
3 § 1441(a) on the following grounds.

4 **REMOVAL BASED ON CLASS ACTION FAIRNESS ACT OF 2005 (28 U.S.C. § 1332(d))**

5 1. This Action is properly removed to this Court under the rules for diversity of
6 citizenship jurisdiction under the Class Action Fairness Act of 2005, Pub. L. 109-2, §4(a), 119
7 Stat. 9.

8 2. The Class Action Fairness Act of 2005 amended 28 U.S.C. § 1332 to provide that
9 a putative class action is removable to federal court if: (1) the proposed class members number at
10 least 100; (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and
11 (c) any member of a class of plaintiffs is a citizen of a state different from that of any defendant.

12 3. Plaintiff’s Complaint is pled as a putative class action by which Plaintiff seeks to
13 represent “current, former and/or future employees of DEFENDANTS who worked, work, or will
14 work for DEFENDANTS as non-exempt hourly employees in California” from September 16,
15 2019 to the present.³ Compl. ¶ 3; *see also* Compl. ¶ 25 (“All current and former non-exempt
16 warehouse employees employed in California at any time within the four years prior to the filing
17 of the initial complaint in this action”). At this time, there are at least 81,000 individuals who
18 were employed in non-exempt hourly inside warehouse positions by UPS in California between
19 September 16, 2015 and October 1, 2019 alone. Declaration of John Shipley in Support of
20 Defendant United Parcel Service, Inc.’s Notice of Removal of Civil Action to Federal Court
21 (“Shipley Decl.”) ¶ 3; *see also* Compl. ¶ 3 (as noted above, the Complaint defines the class period
22 as “four years prior to the filing of the complaint.”). Therefore, the requirement that the proposed
23 class consist of at least 100 members is satisfied.

24 4. UPS may properly remove this Action on the basis of diversity of citizenship
25 jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because:

26 _____
27 ³ For purposes of this Notice of Removal, UPS considers the relevant time period to be four years
28 prior to the date of the filing of the Complaint, September 16, 2019, to the date of the filing of this
Notice of Removal. *See* Bus. & Prof. Code §17208.

- 1 a. Plaintiff Sims is now, and was at the time the Action was commenced, a
2 citizen of the State of California within the meaning of 28 U.S.C. § 1332.
3 See Compl. ¶ 3 (“At all times mentioned herein, the currently named
4 Plaintiff is and was domiciled and a resident and citizen of California”).
- 5 b. Plaintiff’s Complaint alleges that he has been employed by UPS in
6 California as non-exempt employee. See Compl. ¶ 3.
- 7 c. At least one currently-employed non-exempt hourly employee in California
8 lists California as his state of residence. See Shipley Decl. ¶ 3.
- 9 d. UPS is now, and was at the time this Action was commenced, a citizen of a
10 state other than California within the meaning of 28 U.S.C. § 1332(c)(1)
11 because UPS is now, and was at the time this Action was commenced, a
12 corporation organized under the laws of the State of Ohio with its principal
13 place of business in the State of Georgia. See Declaration of Ryan Swift in
14 Support of Defendant United Parcel Service, Inc.’s Notice of Removal of
15 Civil Action to Federal Court ¶¶ 2-5.
- 16 e. The presence of Doe defendants has no bearing on diversity with respect to
17 removal. See 28 U.S.C. § 1441(b) (“[T]he citizenship of defendants sued
18 under fictitious names shall be disregarded.”).
- 19 f. The presence of a defendant called “UPS a business entity unknown” has
20 no bearing on diversity with respect to removal. “UPS” is the initials of the
21 Defendant, not a separate company.⁴ Swift Decl. ¶ 2.

22 5. Without admitting that Plaintiff and/or the purported classes could recover any
23 damages, the amount in controversy placed by Plaintiff in this Action, in which Plaintiff asserts a
24 maximum four-year liability period, exceeds \$5,000,000, exclusive of interest and costs, based on
25 the following:

- 26 a. Under the removal statute, “[i]n any class action, the claims of the

27 ⁴ Even if a company called “UPS a business entity unknown” existed, it would not be a citizen of
28 California. Swift Decl., ¶ 2.

1 individual class members shall be aggregated to determine whether the
2 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
3 interest and costs.” 28 U.S.C. § 1332(d)(6).

4 b. Between September 16, 2015 and October 1, 2019, there were at least
5 81,000 individuals employed by UPS in California in non-exempt hourly
6 inside positions. *See* Shipley Decl. ¶ 3. Thus, there are at least 81,000
7 individuals who fall within the scope of Plaintiff’s alleged class definition
8 and are alleged to be the Putative Class Members in this Action.

9 c. The average hourly wage rate of individuals holding a non-exempt hourly
10 position in California between September 16, 2015 and October 1, 2019
11 was approximately \$14.00. *See id.* ¶ 4.

12 d. In the Complaint, Plaintiff alleges that UPS failed to pay minimum wage,
13 and overtime, failed to provide meal periods, failed to provide rest breaks,
14 failed to provide accurate wage statements, and violated the UCL. *See*
15 Compl., *passim*. Plaintiff, on behalf of himself and those individuals he
16 alleges are similarly situated, seeks to recover unpaid wages and overtime,
17 penalties, restitution, and attorneys’ fees against UPS for the four-year
18 period preceding the filing of the Complaint, continuing through the date of
19 final judgment. *Id.* Based on these allegations, the amount Plaintiff has
20 placed in controversy exceeds \$5,000,000, as summarized and explained
21 below.⁵

22 i. Meal Period Compensation: In the Complaint, Plaintiff alleges that
23 UPS “failed to provide Plaintiff and other current and former
24 warehouse employees with all meal periods.” *See* Compl. ¶ 15.

25
26 _____
27 ⁵ UPS discusses below the allegations in Plaintiff’s Complaint that are the subject of this matter
28 solely to demonstrate that the amount in controversy in this matter exceeds \$5,000,000. In doing
so, UPS does not admit that Plaintiff and/or the purported classes he seeks to represent are
entitled to any damages or that Plaintiff will be able to recover on any of his theories of liability.

1 Plaintiff further alleges that UPS “failed to pay employees one hour
2 of pay at their regular rate of pay for each workday Plaintiff and
3 similarly situated employees did not receive all legally required and
4 legally compliant meal periods.” Compl. ¶ 16. Under the
5 California Labor Code, “[i]f an employer fails to provide an
6 employee a meal period or rest period . . . , the employer shall pay
7 the employee one additional hour of pay at the employee’s regular
8 rate of compensation for each work day that the meal or rest period
9 is not provided.” Cal. Lab. Code § 226.7(c). Because these
10 payments are deemed to be wages, not penalties, the one-year
11 statute of limitations applicable to penalties does not apply. *See*
12 *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1114
13 (2007) (“[W]e hold that the Court of Appeal erred in construing
14 section 226.7 as a penalty and applying a one-year statute of
15 limitations. The statute’s plain language, the administrative and
16 legislative history, and the compensatory purpose of the remedy
17 compel the conclusion that the ‘additional hour of pay’ [citation] is
18 a premium wage intended to compensate employees, not a
19 penalty.”). Thus, Plaintiff and the Putative Class Members may
20 potentially collect meal period compensation for the entire four-
21 year liability period specified in the Complaint. As discussed
22 above, Plaintiff alleges that UPS failed to provide meal periods.
23 Assuming that Plaintiff and the Putative Class Members each
24 missed just five meal periods *during the entire liability period*, the
25 amount in controversy as to Plaintiff’s meal break claims would be
26 at least \$5,670,000 (5 meal period premiums x \$14.00 per hour x
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81,000 Putative Class Members).⁶

ii. Rest Period Compensation: In the Complaint, Plaintiff also claims that UPS failed to provide rest breaks to him and other warehouse employees. Compl. ¶ 19. Assuming that Plaintiff and the Putative Class Members each missed just five rest breaks *during the entire liability period*, the amount in controversy as to Plaintiff’s rest break claims would be at least \$5,670,000 (5 rest break premiums x \$14.00 per hour x 81,000 Putative Class Members).

6. Accordingly, because proposed class members number at least 100, because there is diversity of citizenship jurisdiction under the Class Action Fairness Act of 2005, and because the amount in controversy is met, UPS has satisfied the requirements for removal under 28 U.S.C. § 1332(d).

WHEREFORE, UPS hereby removes the above action now pending before the Superior Court for the State of California for the County of Alameda to this Court.

DATED: November 15, 2019

GBG LLP

BY: /s/ Jennifer Svanfeldt
 JENNIFER SVANFELDT

Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

⁶ By estimating the amounts in controversy, UPS does not concede that Plaintiff or the purported classes he seeks to represent will prevail on any of the claims or that, if Plaintiff prevails, he and the purported classes he seeks to represent are entitled to damages in any particular amount or at all. UPS reserves the full right to dispute Plaintiff’s claims with respect to both liability and damages.

Exhibit A

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: UNITED PARCEL SERVICE, INC., a Delaware
(AVISO AL DEMANDADO):** corporation; UPS, a business entity unknown; and
DOES 1 to 100, Inclusive

FOR COURT USE ONLY
SOLO PARA USO DE LA CORTE
FILED
ALAMEDA COUNTY
SEP 18 2019
CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

YOU ARE BEING SUED BY PLAINTIFF: THOMAS SIMS II on behalf of
(LO ESTÁ DEMANDANDO EL DEMANDANTE): himself and others similarly
situated

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.

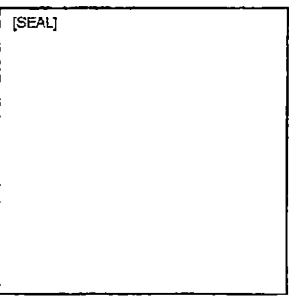
The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Alameda
1225 Fallon St.
Oakland, California 94612

CASE NUMBER:
(Número del Caso): **RG19035659**

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):

LAVI & EBRAHIMIAN LLP
8889 W. OLYMPIC BLVD., SUITE 200, BEVERLY HILLS, CALIFORNIA 90212 (310) 432-0000
DATE: **SEP 18 2019** CHAD FINKE JENNIFER CHANG by *[Signature]*, Deputy
(Fecha) EXECUTIVE OFFICER CLERK (Secretario) (Adjunto)

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



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of *(specify):*
 - on behalf of *(specify):* UNITED PARCEL SERVICE, INC., a Delaware corporation
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):*
 - by personal delivery on *(date):* 10.16.2019

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: UNITED PARCEL SERVICE, INC., a Delaware (AVISO AL DEMANDADO): corporation; UPS, a business entity unknown; and DOES 1 to 100, Inclusive

~~NOT FOR FILING~~
FILED
ALAMEDA COUNTY
SEP 18 2019
CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

YOU ARE BEING SUED BY PLAINTIFF: THOMAS SIMS II on behalf of **(LO ESTÁ DEMANDANDO EL DEMANDANTE):** himself and others similarly situated

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.

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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.

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The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Alameda
1225 Fallon St.
Oakland, California 94612

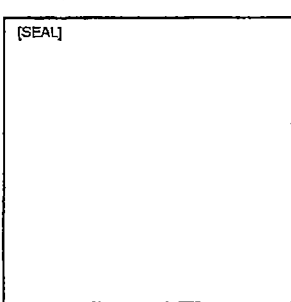
CASE NUMBER:
(Número del Caso): **RG19035659**

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):

LAVI & EBRAHIMIAN LLP
8889 W. OLYMPIC BLVD., SUITE 200, BEVERLY HILLS, CALIFORNIA 90212 (310) 432-0000

DATE: **SEP 18 2019** CHAD FINKE by Erica Baker, Deputy
(Fecha) EXECUTIVE OFFICER/CIERRA (Secretario) (Adjunto)

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



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): **UPS, a business entity unknown**
 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): **form unknown**
4. by personal delivery on (date): **10.16.2019**

ENDORSED
FILED
ALAMEDA COUNTY

SEP 16 2019

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

1 Joseph Lavi, Esq. (State Bar No. 209776)
jlavi@lelawfirm.com
2 Jordan D. Bello, Esq. (State Bar No. 243190)
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8889 W. Olympic Blvd., Suite 200
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5 Facsimile: (310) 432-0001

6 Sahag Majarian II, Esq. (State Bar No. 146621)
sahagii@aol.com
7 **Law Offices of Sahag Majarian II**
18250 Ventura Boulevard
8 Tarzana, California 91356
Telephone: (818) 609-0807
9 Facsimile: (818) 609-0892

10 Attorneys for PLAINTIFF
THOMAS SIMS II on behalf of himself and others
11 similarly situated.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 THOMAS SIMS II on behalf of himself and
15 others similarly situated.

16 **PLAINTIFF,**

17 vs.

18 **UNITED PARCEL SERVICE, INC.,** a Delaware
19 corporation; **UPS,** a business entity unknown; and
DOES 1 to 100, Inclusive.

20 **DEFENDANTS.**

Case No.:

RG19035659

CLASS ACTION

**PLAINTIFF THOMAS SIMS II'S
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR:**

1. **FAILURE TO PAY MINIMUM WAGE OR OVERTIME WAGES FOR ALL HOURS WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1197, 1198, AND THE WAGE ORDERS**
2. **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 226.7, 512, 1198, AND THE WAGE ORDERS**
3. **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7,**

FAX FILE

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1198, AND THE WAGE ORDERS

- 4. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
- 5. UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff THOMAS SIMS II (“Plaintiff”), who alleges and complains against defendants UNITED PARCEL SERVICE, INC., UPS., and DOES 1 to 50, inclusive, (hereinafter, collectively referred to as “Defendants” or “DEFENDANTS”), and DOES 51 to 100 as follows:

I. INTRODUCTION

1. This is a wage and hour class action lawsuit on behalf of Plaintiff and other current and former non-exempt employees of DEFENDANTS in California seeking within the applicable statute of limitations periods (taking into account any tolling, if applicable): unpaid minimum wage, liquidated damages, and overtime premium for hours worked which were not compensated with wages, unpaid meal and rest period premium wages for Defendant’s failure to provide all legally required and legally compliant meal and rest periods, statutory penalties for failure to provide accurate and complete wage statements; injunctive relief and other equitable relief, reasonable attorney’s fees pursuant to Labor Code sections 226(e), 1194, costs, and interest, if applicable, brought on behalf of Plaintiff and others similarly situated.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff and the Class Members’ claims because Plaintiff’s lawsuit seeks permanent injunction, damages, and restitution for himself and the class in excess of \$25,000 and DEFENDANTS employed class members and injuries occurred in locations throughout California including in Alameda County at its warehouse location at 8400 Pardee Drive, Oakland California 94621.

III. PARTIES

1 3. Plaintiff brings this action on behalf of himself and other members of the general
2 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is
3 filed are current, former and/or future employees of DEFENDANTS who worked, work, or will work
4 for DEFENDANTS as non-exempt hourly employees in California. At all times mentioned herein,
5 the currently named Plaintiff is and was domiciled and a resident and citizen of California and was
6 employed by DEFENDANTS in a non-exempt position within the 4 years prior to the filing of the
7 complaint.

8 4. Plaintiff is informed and believes and thereon alleges that Defendant UNITED
9 PARCEL SERVICE, INC. is a foreign entity incorporated in Ohio with its principal place of business
10 in Atlanta, is authorized to do business within the State of California, and is doing business in the
11 State of California and/or that Defendants DOES 51-75 are, and at all times relevant hereto were
12 persons acting on behalf of UNITED PARCEL SERVICE, INC. who violated or caused to be violated
13 provisions of the Labor Code and/or the Industrial Welfare Commission's wage orders regulating
14 hours and days of work. Plaintiff is informed and believes and thereon alleges that UNITED PARCEL
15 SERVICE, INC. was Plaintiff's employer and suffered and permitted Plaintiff and similarly situated
16 non-exempt employees to work and exercised control over the wages, hours and working conditions
17 of employment of Plaintiff and similarly situated non-exempt employees.

18 5. Plaintiff is informed and believes and thereon alleges that Defendant UPS is a business
19 entity unknown authorized to do business within the State of California, and is doing business in the
20 State of California and/or that Defendants DOES 76-100 are, and at all times relevant hereto were
21 persons acting on behalf of UPS who violated or caused to be violated provisions of the Labor Code
22 and/or the Industrial Welfare Commission's wage orders regulating hours and days of work. Plaintiff
23 is informed and believes and thereon alleges that UPS was Plaintiff's employer and suffered and
24 permitted Plaintiff and similarly situated non-exempt employees to work and exercised control over
25 the wages, hours and working conditions of employment of Plaintiff and similarly situated non-
26 exempt employees.

27 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1 through
28 50 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff

1 that employed PLAINTIFF and the similarly situated California non-exempt employees, permitted
2 Plaintiff and similarly situated non-exempt employees to work, and exercised control over the wages,
3 hours and working conditions of employment of Plaintiff and similarly situated non-exempt
4 employees.

5 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
6 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
7 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
8 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
9 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the
10 Industrial Welfare Commission's wage orders regulating hours and days of work.

11 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
12 sues said defendants by said fictitious names, and will amend this complaint when the true names and
13 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by
14 law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants
15 is in some manner responsible for the events and allegations set forth in this complaint.

16 9. Plaintiff makes the allegations in this complaint without any admission that, as to any
17 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
18 reserves all of Plaintiff's right to plead in the alternative.

19 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

20 10. **Failure to pay minimum wage, or overtime wages if applicable, for all hours**
21 **worked to non-exempt employees:** In California, an employer is required to pay an employee for
22 all "hours worked" which includes all time that an employee is under control of the employer and
23 including all time that the employee is suffered and permitted to work whether or not the employee
24 is required to work. This includes time an employee is required to be present at a certain location
25 whether or not the employee is working, including meal times. (*Mendiola v. CPS Security Solutions,*
26 *Inc.* (2015) 60 Cal.4th 833, 840-842, *Morillion vs. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.)
27 Labor Code sections 1194, 1197 and the Wage Orders require that an employer compensate
28 employees for "hours worked" at least at a minimum wage rate of pay as established by the wage

1 orders. Labor Code sections 510, 1194 and the Wage Orders require that an employer compensate
2 employees for “hours worked” at a higher rate of pay when an employee works over a certain number
3 of hours: 1.5 times the regular rate of pay for hours worked over 8 hours up to 12 hours in a workday,
4 over 40 hours in a workweek, or up to 8 hours on a seventh day of work in a workweek or 2 times the
5 regular rate of pay for hours worked over 12 hours in a workday.

6 11. At times during the four years prior to the filing of the Complaint, DEFENDANTS
7 used policies and procedures which failed to provide warehouse employees with wages at the
8 applicable minimum wage rate and/or overtime rate for all the time they actually worked.
9 DEFENDANTS operate warehouse locations in California, including but not limited to locations in
10 the cities of Oakland and Ontario. At times during the four years prior to the filing of the Complaint,
11 DEFENDANTS required Plaintiff and other warehouse employees to go through security screening
12 at the beginning of their shift, any time they left the premises during meal or rest breaks or returned
13 from leaving the premises during meal or rest breaks, and at the end of their shift. This time spent
14 going through the security check included time that Plaintiff and other warehouse employees had to
15 wait while other employees were also lined up to go through security screening and walking from the
16 security screening location to the time clock or walking from the time clock to the security screening
17 location. Even though the security screening was a requirement by DEFENDANTS, DEFENDANTS
18 did not pay wages to Plaintiff or other warehouse employees for the time they waited in line or went
19 through security screening at the beginning of their shift, any time they left the premises during meal
20 breaks or returned from leaving the premises during meal breaks, at the end of their shift, or time
21 spent walking from the security screening location to the time clock or walking from the time clock
22 to the security screening location. The security screening occurred outside of the Plaintiff and other
23 warehouse employees’ recorded work time (i.e., outside of the time employees were “clocked in”)
24 and DEFENDANTS did not pay any additional wages to Plaintiff or other warehouse employees for
25 this time. In addition, at times Plaintiff and other warehouse employees worked “overtime” consisting
26 of hours worked in excess of 8 up to 12 hours in a workday, over 40 hours in a workweek, up to 8
27 hours on any seventh consecutive day in a workweek, hours worked in excess of 12 hours in a
28 workday, or over 8 hours on any seventh consecutive day in a workweek. To the extent the time spent

1 waiting in line or passing through security checks was during these overtime hours, DEFENDANTS
2 did not pay additional wages at an overtime rate (i.e., 1.5 times the employees' regular rate of pay for
3 hours in excess of 8 up to 12 hours in a workday, over 40 hours in a workweek, up to 8 hours on any
4 seventh consecutive day in a workweek and 2 times the employees' regular rate of pay for hours in
5 excess of 12 hours in a workday or over 8 hours on any seventh consecutive day in a workweek) to
6 the employees.

7 12. As a result of these policies, DEFENDANTS failed to compensate these employees
8 with wages at least at a minimum wage rate for all time worked and at an overtime rate for all overtime
9 hours worked when the employees had already worked in excess of 8 up to 12 hours in a workday,
10 over 40 hours in a workweek, up to 8 hours on any seventh consecutive day in a workweek, hours
11 worked in excess of 12 hours in a workday, or over 8 hours on any seventh consecutive day in a
12 workweek.

13 13. DEFENDANTS' policies and procedures were applied to all non-exempt warehouse
14 employees in California at times during the four years prior to the filing of the Complaint and resulted
15 in non-exempt warehouse employees working time which was not compensated any wages in
16 violation of Labor Code sections 510, 1194, 1197, 1198 and the Wage Orders. DEFENDANTS owe
17 wages at a minimum wage rate, or overtime rate if applicable, for unpaid time to each of their
18 California non-exempt warehouse employees who did not receive wages for all hours worked based
19 on DEFENDANTS' failure to pay wages for mandatory security screening and related activities (e.g.,
20 waiting in line and walking between time clock and screening location).

21 14. **Failure to pay premium wages to non-exempt warehouse employees to**
22 **compensate them for workdays Defendants failed to provide all legally required and/or legally**
23 **compliant meal breaks:** California law requires employers to provide employees with a 30-minute
24 uninterrupted meal period for each five hours of work before the end of each five hour period of work
25 during which time the employee is relieved of all duties and employer control. (Wage Orders, subd.
26 11; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1039, 1041.) If the employee is not
27 relieved of all duties during a 30 minute meal period, the meal period is considered "on duty" and the
28 entire meal period is counted as time worked. (Wage Orders, subd. 11.) The employer satisfies this

1 obligation if it relieves its employees of all duty, relinquishes control over their activities and permits
2 them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or
3 discourage them from doing so. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
4 1040.) If an employee is not free to leave the work place during a meal period, the employee is not
5 relieved of all duties during the meal period and is subject to the control of the employer and does not
6 comply with the requirement of an employee being relieved of all duties during their meal. (*Bono*
7 *Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.) Further, an employer cannot impede
8 or discourage an employee from taking a meal period off premises and which they are relieved of all
9 duties and control of the employer. (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1039.) If an
10 employer fails to provide an employee a meal period in accordance with the law, the employer must
11 pay the employee one hour of pay at the employee's regular rate of compensation for each work day
12 that a legally required meal period was not provided or was not duty free. (*Id.*)

13 15. DEFENDANTS implemented policies and and/or implanted policies which failed to
14 provide Plaintiff and other current and former warehouse employees with all meal periods as required
15 by and in compliance with the law, including full duty free and timely meal periods. Warehouse
16 employees were required to only take a thirty minute meal break but were also required to pass
17 through security checks and/or wait in line for employees passing through security checks and
18 walking between time clocks and security locations during their meal period time if leaving/entering
19 the premises during meal periods resulting in DEFENDANTS providing less than a 30 minute meal
20 break. In addition, DEFENDANTS discouraged employees from taking a meal period off-premises
21 by limiting an employees' ability to take a full 30 minute meal period off-premises by requiring the
22 employees to pass through security checks during their meal period time if leaving/entering the
23 premises during meal periods while continuing to limit their meal periods to only thirty minutes.

24 16. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of
25 pay for each workday Plaintiff and similarly situated employees did not receive all legally required
26 and legally compliant meal periods.

27 17. This practice resulted in Plaintiff and all other similarly situated employees working
28 at warehouses not receiving wages to compensate them for workdays which DEFENDANTS did not

1 provide them with all legally required and legally compliant meal periods in compliance with
2 California law.

3 **18. Failure to pay premium wages to non-exempt warehouse employees to**
4 **compensate them for workdays Defendants failed to provide all legally required and/or legally**
5 **compliant rest breaks:** California law states that “[e]very employer shall authorize and permit all
6 employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
7 The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
8 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
9 an employee a rest period in accordance with the applicable provisions of this order, the employer
10 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
11 workday that the rest period is not provided.” (Wage Orders, subd. 12; see Lab. Code § 226.7.) Under
12 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six
13 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
14 more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
15 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work
16 period. (Wage Orders, subd. 12.) In addition, if an employer requires employees to stay on the
17 premises during the rest period, they are under control of the employer and they are not relieved of
18 all duties in violation of California law. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
19 257, 271.) If an employer fails to provide an employee a timely and legally compliant rest period, the
20 employer must pay the employee one hour of pay at the employee’s regular rate of compensation for
21 each work day that a legally required meal period was not provided or was not duty free. (Wage
22 Orders, subd. 12.)

23 **19.** At times, DEFENDANTS employed policies and procedures which failed to provide
24 Plaintiff and other warehouse employees with uninterrupted duty free 10 minute rest periods for each
25 four hours or major fraction thereof worked. As noted above, DEFENDANTS required Plaintiff and
26 other warehouse employees to go through security screening at the beginning of their shift, any time
27 they left the premises during meal or rest breaks or returned from leaving the premises during meal
28 or rest breaks, and at the end of their shift. This time spent passing through security checks and/or

1 waiting in line for employees passing through security checks was uncompensated time which caused
2 portions of Plaintiff's and other employees' rest period to be not relieved of all duties and employer
3 control and/or less than a 10 minute rest breaks being given for each 4 hours or major fraction thereof
4 worked. Plaintiff and other warehouse employees were required to only take a ten minute break but
5 were also required to pass through security checks and/or wait in line for employees passing through
6 security checks during their rest period time if leaving/entering when leaving the premises for a rest
7 period resulting in less than a 10 minute rest break being provided, limiting an employees' ability to
8 take a full 10 minute rest period off-premises, and/or discouraging employees from taking a rest
9 period off-premises.

10 20. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of
11 pay for each workday Plaintiff and employees did not receive all timely and legally compliant rest
12 periods.

13 21. This practice resulted in Plaintiff and all other similarly situated California non-
14 exempt employees not receiving wages to compensate them for workdays which DEFENDANTS did
15 not provide them with all legally required and/or legally compliant rest periods in compliance with
16 California law.

17 22. **Pay Stub Violations:** California Labor Code section 226(a) provides (inter alia) that,
18 upon paying an employee his or her wages, the employer must "furnish each of his or her employees
19 ... an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the
20 employee, except for any employee whose compensation is solely based on a salary and who is
21 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece
23 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions
24 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
25 earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the
26 employee and his or her social security number, (8) the name and address of the legal entity that is
27 the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee."

1 23. At times during the one year prior to the filing of the Complaint, DEFENDANTS
2 failed to provide accurate and complete wage statements to Plaintiff and other non-exempt employees.
3 At times during the one year prior to the filing of the Complaint, DEFENDANTS provided itemized
4 wage statements which did not state the name and address of the legal entity that is the employer.
5 Instead, the wage statements only stated “UPS”. In addition, at times during the one year prior to the
6 filing of the Complaint, DEFENDANTS provided itemized wage statements which failed to accurately
7 state the hourly rates and number of hours at each hourly rate in relation to meal period premium
8 wages earned. The wage statements stated a lump sum of the wages paid for the pay period without
9 indicating the number of meal period hours being compensated or the rate for the meal period hours.
10 In addition, DEFENDANTS did not accurately state Plaintiff and other warehouse employees’ gross
11 wages earned, total hours worked, net wage earned, and number of hours worked at each hourly rate
12 by the employees. DEFENDANTS inaccurately set forth this information because DEFENDANTS
13 failed to account for the hours worked and wages earned by employees during the time they were
14 required to wait in line for and go through mandatory security checks at the beginning of their shift
15 and walk between time clocks and security, any time they left the premises during meal breaks or
16 returned from leaving the premises during meal breaks, and at the end of their shift, as also described
17 above. DEFENDANTS also failed to account for and pay for meal and rest period premium wages
18 for its failure to provide legally compliant and all legally required meal and rest periods due to its
19 requirement that employees pass through and wait in line for mandatory security checks during meal
20 and rest breaks, as described above in more detail. Thus, the wage statements provided to employees
21 were inaccurate because they did not include the hours worked and wages earned by employees during
22 security screening time and/or meal and rest period premiums that should have been paid.

23 24. At times during the one year prior to the filing of the Complaint, DEFENDANTS
24 applied these policies and procedures to Plaintiff and other non-exempt employees in California
25 which resulted in DEFENDANTS failing to provide complete and accurate wage statements to non-
26 exempt employees in compliance with Labor Code section 226, subdivision (a).

27 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

28 25. Plaintiff brings this action on behalf of himself, on behalf of all others similarly

1 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

2 A. **Minimum Wage Class:** All current and former non-exempt warehouse
3 employees employed in California at any time within the four years prior to the filing of the initial
4 complaint in this action and through the date notice is mailed to a certified class, who were not paid
5 wages at the legal minimum wage rate for all hours worked.

6 B. **Overtime Class:** All current and former non-exempt warehouse employees in
7 California at any time within the four years prior to the filing of the initial complaint in this action
8 and through the date notice is mailed to a certified class, who were not paid overtime wages for all
9 overtime hours worked during time periods he or she had already worked in excess of 8 hours in a
10 day, 40 hours in a week, or were working on a seventh consecutive day of work.

11 C. **Meal Period Class:** All current and former non-exempt warehouse employees
12 in California at any time within the four years prior to the filing of the initial complaint in this action
13 and through the date notice is mailed to a certified class who worked more than 5 hours in a shift and
14 did not receive meal periods during which they were relieved of all duties and control of Defendants
15 for 30 minutes for each five hours of worked provided prior to the end of each work period of five
16 hours.

17 D. **Rest Period Class:** All current and former non-exempt warehouse employees
18 Defendants employed in California at any time within the four years prior to the filing of the initial
19 complaint in this action and through the date notice is mailed to a certified class who worked more
20 than 3.5 hours in a shift and did not receive wages to compensate employees for workdays Defendants
21 failed to provide rest periods that the employees were relieved of all duties and control by Defendants.

22 E. **Wage Statement Class:** All current and former non-exempt warehouse
23 employees employed by Defendants in California at any time within the one year prior to the filing
24 of the initial complaint in this action and through the date notice is mailed to a certified class who
25 received inaccurate or incomplete wage statements.

26 F. **California Class:** All aforementioned classes are here collectively referred to
27 as the "California Class".

28 26. There is a well-defined community of interest in the litigation and the classes are

1 ascertainable:

2 A. **Numerosity:** While the exact number of class members in each class is
3 unknown to plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
4 all members is impractical under the circumstances of this case.

5 B. **Common Questions Predominate:** Common questions of law and fact exist
6 as to all members of the Plaintiff classes and predominate over any questions that affect only
7 individual members of each class. The common questions of law and fact include, but are not limited
8 to:

9 i. Whether Defendants failed to pay wages for all hours worked to the
10 Minimum Wage Class and Overtime Class;

11 ii. Whether Defendants failed to provide legally required and legally
12 compliant meal breaks or owed meal period premiums to the Meal Period Class;

13 iii. Whether Defendants failed to provide all legally required and legally
14 compliant rest breaks or owed rest period premiums to the Rest Period Class;

15 iv. Whether Defendants failed to provide the Wage Statement Class
16 Members with accurate and complete itemized wage statements;

17 v. Whether Defendants committed unlawful business acts or practices
18 within the meaning of Business and Professions Code section 17200 *et seq.*;

19 vi. Whether Class Members are entitled to unpaid wages, penalties,
20 interest, fees and other relief in conjunction with his claims; and

21 vii. Whether, as a consequence of Defendant's unlawful conduct, the Class
22 Members are entitled to restitution, and/or equitable relief;

23 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in
24 each of the classes. Plaintiff and members of the Minimum Wage Class and/or Overtime Class
25 sustained damages and/or loss of vested wages based on Defendants' failure to pay wages for all
26 hours worked by not compensating mandatory security screening time. Plaintiff and members of the
27 Meal Period and Rest Period Classes sustained damages and/or loss of vested wages based on
28 Defendants' failure to provide wages for workdays Defendants failed to provide all legally compliant

1 meal periods and rest periods. Plaintiff and the members of the Wage Statement Class sustained
2 damages arising out of Defendants' failure to furnish them with accurate and/or complete itemized
3 wage statements in compliance with Labor Code section 226.

4 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
5 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
6 other class members. Plaintiff's Counsel is qualified to conduct the litigation.

7 E. **Superiority:** A class action is superior to other available means for the fair and
8 efficient adjudication of this controversy. Because individual joinder of all members of each class is
9 impractical, class action treatment will permit a large number of similarly situated persons to
10 prosecute their common claims in a single forum simultaneously, efficiently, and without the
11 unnecessary duplication of effort and expense that numerous individual actions would engender. The
12 expenses and burdens of individual litigation would make it difficult or impossible for individual
13 members of each class to redress the wrongs done to them, while important public interests will be
14 served by addressing the matter as a class action. The cost to and burden on the court system of
15 adjudication of individualized litigation would be substantial, and substantially more than the costs
16 and burdens of a class action. Individualized litigation would also present the potential for inconsistent
17 or contradictory judgments.

18 F. **Public Policy Consideration:** Employers throughout the state violate wage
19 and hour laws. Current employees are often afraid to assert their rights out of fear of direct or indirect
20 retaliation. Former employees are fearful of bringing actions because they perceive their former
21 employers can blacklist them in their future endeavors through negative references and by other
22 means. Class actions provide the class members who are not named in the complaint with a type of
23 anonymity that allows for vindication of their rights.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGE OR OVERTIME WAGES FOR ALL HOURS**
26 **WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1197, 1198, AND**
27 **THE WAGE ORDERS**

28 **(Against DEFENDANTS UNITED PARCEL SERVICE, INC., UPS., and DOES 1 to 50 by the**

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Minimum Wage Class and Overtime Class)

27. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

28. At all times relevant to this Complaint, Plaintiff and the members of the Minimum Wage Class and Overtime Class were non-exempt employees of DEFENDANTS in California and covered by California Labor Code sections 510, 1194, 1197, 1198 and the Wage Orders.

29. In California, an employer is required to pay an employee for all “hours worked” which includes all time that an employee is under control of the employer and including all time that the employee is suffered and permitted to work whether or not the employee is required to work. This includes time an employee is required to be present at a certain location whether or not the employee is working, including meal times. (*Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 840-842, *Morillion vs. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.) Labor Code sections 1194, 1197 and the Wage Orders require that an employer compensate employees for “hours worked” at least at a minimum wage rate of pay as established by the wage orders. Labor Code sections 510, 1194 and the Wage Orders require that an employer compensate employees for “hours worked” at a higher rate of pay when an employee works over a certain number of hours: 1.5 times the regular rate of pay for hours worked over 8 hours up to 12 hours in a workday, over 40 hours in a workweek, or up to 8 hours on a seventh day of work in a workweek or 2 times the regular rate of pay for hours worked over 12 hours in a workday.

30. At times during the four years prior to the filing of the Complaint, DEFENDANTS used policies and procedures which failed to provide warehouse employees with wages at the applicable minimum wage rate and/or overtime rate for all the time they actually worked. DEFENDANTS operate warehouse locations in California, including but not limited to locations in the cities of Oakland and Ontario. At times during the four years prior to the filing of the Complaint, DEFENDANTS required Plaintiff and other warehouse employees to go through security screening at the beginning of their shift, any time they left the premises during meal breaks or returned from leaving the premises during meal breaks, and at the end of their shift. This time spent going through the security check included time that Plaintiff and other warehouse employees had to wait while other

1 employees were also lined up to go through security screening and/or time spent walking between the
2 time clocks and security screening locations. Even though the security screening was a requirement
3 by DEFENDANTS, DEFENDANTS did not pay wages to Plaintiff or other warehouse employees
4 for the time they waited in line or went through security screening at the beginning of their shift, any
5 time they left the premises during meal breaks or returned from leaving the premises during meal
6 breaks, and at the end of their shift. The security screening occurred outside of the Plaintiff and other
7 warehouse employees' recorded work time (i.e., outside of the time employees were "clocked in")
8 and DEFENDANTS did not pay any additional wages to Plaintiff or other warehouse employees for
9 this time. In addition, at times Plaintiff and other warehouse employees worked overtime consisting
10 of hours worked in excess of 8 up to 12 hours in a workday, over 40 hours in a workweek, up to 8
11 hours on any seventh consecutive day in a workweek, hours worked in excess of 12 hours in a
12 workday, or over 8 hours on any seventh consecutive day in a workweek. To the extent the time spent
13 waiting in line or passing through security checks or walking between time clock and screening
14 location was during these overtime hours, DEFENDANTS did not pay additional wages at an
15 overtime rate to the employees.

16 31. DEFENDANTS' policies and procedures were applied to all non-exempt employees
17 in California at times during the four years prior to the filing of the Complaint and resulted in non-
18 exempt employees working time which was not compensated any wages in violation of Labor Code
19 sections 510, 1194, 1197, 1198, and the Wage Orders.

20 32. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum
21 Wage Class and Overtime Class have suffered damages in an amount subject to proof, to the extent
22 that they were not paid minimum wage for all hours worked or overtime wages for all overtime hours
23 worked.

24 33. Pursuant to California Labor Code sections 510, 1194, 1197, 1198 and the Wage
25 Orders, Plaintiff and the Minimum Wage Class and Overtime Class are entitled to recover unpaid
26 wages at the applicable minimum wage rate plus liquidated damages, applicable overtime rate,
27 interest thereon, and attorneys' fees and costs.

28 **SECOND CAUSE OF ACTION**

1 **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT**
2 **MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 226.7, 512, 1198 AND**
3 **THE WAGE ORDERS**

4 **(Against DEFENDANTS UNITED PARCEL SERVICE, INC., UPS, and DOES 1 to 50 by the**
5 **Meal Period Class)**

6 34. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein
7 by reference.

8 35. At all times relevant to this Complaint, Plaintiff and the members of the Meal Period
9 Class were non-exempt employees of Defendants in warehouses in California and covered by
10 California Labor Code sections 226.7, 512, 1198, and the Wage Orders. California law requires an
11 employer to provide an employee an uninterrupted meal period of no less than 30-minutes before the
12 end of a 5 hour work period during which employees are relieved of all duties. (Lab. Code §§226.7,
13 512, 1198; Wage Orders, subd. 11.) If the employee is not relieved of all duties during a 30 minute
14 meal period, the meal period is considered "on duty" and the entire meal period is counted as time
15 worked. (Wage Orders, subd. 11.) If an employee is not free to leave the work place during a meal
16 period, the employee is not relieved of all duties during the meal period and is subject to the control
17 of the employer and does not comply with the requirement of an employee being relieved of all duties
18 during their meal. (*Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.) Further,
19 an employer cannot impede or discourage an employee from taking a meal period off premises and
20 which they are relieved of all duties and control of the employer. (*Brinker v. Superior Court* (2012)
21 53 Cal.4th 1004, 1039.) If an employer fails to provide an employee a meal period in accordance with
22 the law, the employer must pay the employee one hour of pay at the employee's regular rate of
23 compensation for each work day that a legally required meal period was not provided or was not duty
24 free. (*Id.*)

25 36. DEFENDANTS implemented policies and and/or implanted policies which failed to
26 provide Plaintiff and other current and former warehouse employees with all meal periods as required
27 by and in compliance with the law, including full duty free and timely meal periods. Warehouse
28 employees were required to only take a thirty minute meal break but were also required to pass

1 through security checks and/or wait in line for employees passing through security checks and/or
2 walk between time clocks and security screening locations during their meal period time if
3 leaving/entering the premises during meal periods resulting in DEFENDANTS providing less than a
4 thirty minute meal break. In addition, DEFENDANTS discouraged employees from taking a meal
5 period off-premises by limiting an employees' ability to take a full 30 minute meal period off-
6 premises by requiring the employees to pass through security checks during their meal period time if
7 leaving/entering the premises during meal periods while continuing to limit their meal periods to only
8 thirty minutes.

9 37. Defendants also failed to pay Plaintiff and similarly situated employees one hour of
10 pay at their regular rate of pay for each workday Plaintiff and employees did not receive all legally
11 required and legally compliant meal periods.

12 38. Because Defendants failed to afford employees meal periods in compliance with the
13 law, Defendants are liable to Plaintiff and the Meal Period Class for one hour of additional pay at the
14 regular rate of compensation for each workday that Defendants did not provide all meal periods in
15 compliance with the law.

16 39. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages and all other
17 relief allowable including a missed meal break wage for each workday the employees were not
18 provided with all legally required meal periods in compliance with the law.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT**
21 **REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7, 1198, AND THE**
22 **WAGE ORDERS**

23 **(Against DEFENDANTS UNITED PARCEL SERVICE, INC., UPS, and DOES 1 to 50 by the**
24 **Rest Period Class)**

25 40. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein
26 by reference.

27 41. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period
28 Class were non-exempt employees of DEFENDANTS in California and covered by California Labor

1 Code section 226.7 and the Wage Orders.

2 42. California law states that “[e]very employer shall authorize and permit all employees
3 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
4 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
5 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
6 an employee a rest period in accordance with the applicable provisions of this order, the employer
7 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
8 workday that the rest period is not provided.” (Wage Orders, subd. 12; see Lab. Code § 226.7.) Under
9 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six
10 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
11 more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
12 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work
13 period. (Wage Orders, subd. 12.) In addition, if an employer requires employees to stay on the
14 premises during the rest period, they are under control of the employer and they are not relieved of
15 all duties in violation of California law. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
16 257, 271.) If an employer fails to provide an employee a timely and legally compliant rest period, the
17 employer must pay the employee one hour of pay at the employee’s regular rate of compensation for
18 each work day that a legally required meal period was not provided or was not duty free. (Wage
19 Orders, subd. 12.)

20 43. At times, DEFENDANTS employed policies and procedures which failed to provide
21 Plaintiff and other warehouse employees with uninterrupted duty free 10 minute rest periods for each
22 four hours or major fraction thereof worked. As noted above, DEFENDANTS required Plaintiff and
23 other warehouse employees to go through security screening at the beginning of their shift, any time
24 they left the premises during meal or rest breaks or returned from leaving the premises during meal
25 or rest breaks, and at the end of their shift. This time spent passing through security checks and/or
26 waiting in line for employees passing through security checks was uncompensated time which caused
27 portions of Plaintiff’s and other employees’ rest period to be not relieved of all duties and employer
28 control and/or less than a 10 minute rest breaks being given for each 4 hours or major fraction thereof

1 worked. Plaintiff and other warehouse employees were required to only take a ten minute break but
2 were also required to pass through security checks and/or wait in line for employees passing through
3 security checks during their rest period time if leaving/entering when leaving the premises for a rest
4 period resulting in less than a 10 minute rest break being provided, limiting an employees' ability to
5 take a full 10 minute rest period off-premises, and/or discouraging employees from taking a rest
6 period off-premises.

7 44. DEFENDANTS also failed to pay Plaintiff and similarly situated employees one hour
8 of pay at their regular rate of pay for each workday Plaintiff and employees did not receive all timely
9 and legally compliant rest periods.

10 45. Because DEFENDANTS failed to afford employees rest periods in compliance with
11 the law, DEFENDANTS are liable to Plaintiff and the Rest Period Class for one hour of additional
12 pay at the regular rate of compensation for each workday that Defendants did not provide all rest
13 periods in compliance with the law.

14 46. Plaintiff, on behalf of himself and the Rest Period Class, seeks damages and all other
15 relief allowable including a premium rest break wage for each workday the employees were not
16 provided with all rest periods in compliance with the law.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN**
19 **VIOLATION OF LABOR CODE SECTION 226**

20 **(Against DEFENDANTS UNITED PARCEL SERVICE, INC., UPS, and DOES 1 to 50 by the**
21 **Wage Statement Class)**

22 47. Plaintiff incorporates by reference all paragraphs above as if fully alleged herein.

23 48. At all relevant times, Plaintiff and the other members of the Wage Statement Class
24 were non-exempt employees of DEFENDANTS and covered by Labor Code Section 226.

25 49. Pursuant to Labor Code Section 226, subdivision (a), Plaintiff and the other members
26 of the class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
27 wage statement accurately stating the following:
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(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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (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.

50. At times during the one year prior to the filing of the Complaint, DEFENDANTS failed to provide accurate and complete wage statements to Plaintiff and other non-exempt warehouse employees. At times during the one year prior to the filing of the Complaint, DEFENDANTS provided itemized wage statements which did not state the name and address of the legal entity that is the employer. Instead, the wage statements only stated "UPS". In addition, at times during the one year prior to the filing of the Complaint, DEFENDANTS provided itemized wage statements which failed to accurately state the hourly rates and number of hours at each hourly rate in relation to meal period premium wages earned. The wage statements stated a lump sum of the wages paid for the pay period without indicating the number of meal period hours being compensated or the rate for the meal period hours. In addition, DEFENDANTS did not accurately state Plaintiff and other warehouse employees' gross wages earned, total hours worked, net wage earned, and number of hours worked at each hourly rate by the employees. DEFENDANTS inaccurately set forth this information because DEFENDANTS failed to account for the hours worked and wages earned by employees during the time they were required to wait in line for and go through mandatory security checks at the beginning of their shift and walk between time clocks and security, any time they left the premises during meal breaks or returned from leaving the premises during meal breaks, and at the end of their shift, as also described above. DEFENDANTS also failed to account for and pay for meal and rest period premium wages for its failure to provide legally compliant and all legally required meal and rest periods due to

1 its requirement that employees pass through and wait in line for mandatory security checks during
2 meal and rest breaks, as described above in more detail. Thus, the wage statements provided to
3 employees were inaccurate because they did not include the hours worked and wages earned by
4 employees during security screening time and/or meal and rest period premiums that should have
5 been paid.

6 51. DEFENDANTS' failure to provide Plaintiff and members of the Wage Statement Class
7 with accurate and complete wage statements was knowing and intentional. DEFENDANTS
8 knowingly and intentionally put in place practices which deprived employees of wages, i.e., failed to
9 provide the name and address of the employer, failed to provide hours and hourly rate for meal
10 premiums, and failed to pay for security screening time, and resulted in DEFENDANTS' knowing
11 and intentional providing of inaccurate wage statements.

12 52. As a derivative result of the failure to pay wages and as a pattern and practice in
13 violation of Labor Code section 226, subdivision (a) and the IWC Wage Orders §7(A),
14 DEFENDANTS did not and do not maintain accurate records pertaining to the total hours worked for
15 DEFENDANTS by the members of the Wage Statement Class, including but not limited to, the
16 periods of time spent waiting for and in security screenings, overtime premiums paid, meal and rest
17 period premium wages paid, total daily hours worked, total hours worked per pay period, and the total
18 hours worked at each hourly rate of pay.

19 53. As a result of DEFENDANTS unlawful conduct, Plaintiff and members of the Class
20 have suffered injury in that the wage statements inaccurately stated and/or failed to state the
21 aforementioned items of information and Plaintiff and the members of the class could not promptly
22 and easily determine from the wage statement alone an accurate statement of: the gross wages earned,
23 the total hours worked, the net wages earned, and the applicable hourly rates in effect during the pay
24 period and corresponding number of hours worked at each hourly rate.

25 54. The Wage Statement Class suffered injury as a result of DEFENDANTS' failure to
26 maintain accurate records for the members of the Wage Statement Class in that the members of the
27 Wage Statement Class were not timely provided written accurate itemized statements showing all
28 requisite information including but not limited to total hours worked by the employee, net wages

1 earned and all applicable hourly rates in effect during the pay period and the corresponding number
2 of hours worked at each hourly rate, in violation of Labor Code §226 and the IWC Wage Orders
3 §7(A), such that the members of the Wage Statement Class were misled by DEFENDANTS as to the
4 correct information regarding various items, including but not limited to. total hours worked by the
5 employee, net wages earned and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate. The actual injuries suffered by the
7 members of the Wage Statement Class as a result of DEFENDANTS' knowing and intentional failure
8 to maintain accurate records for the members of the Wage Statement Class include but are not limited
9 to: (a) Confusion over whether they received all wages owed them by DEFENDANTS; (b) The
10 difficulty and expense of attempting to reconstruct time and pay records; (c) Being forced to engage
11 in mathematical computations to analyze whether DEFENDANTS' wages in fact compensated for all
12 hours worked; (d) The inability to accurately calculate wage rates complicated by the fact that wage
13 statement information required by Labor Code §226 is not accurate; (e) That such practice prevents
14 the members of the Wage Statement Class from being able to effectively challenge information on
15 their wage statements; and/or (f) The difficulty and expense of filing and maintaining this lawsuit,
16 and the discovery required to collect and analyze the very information that California law requires.

17 55. Pursuant to Labor Code Section 226(e), Plaintiff and members of the Wage Statement
18 Class are entitled to recover actual damages or fifty dollars for the initial pay period in which a
19 violation of Labor Code Section 226 occurred and one hundred dollars for each violation of Labor
20 Code Section 226 in a subsequent pay period, not to exceed an aggregate penalty of four thousand
21 dollars per employee.

22 56. Pursuant to Labor Code Section 226(g), Plaintiff and members of the Wage Statement
23 Class are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
24 Labor Code Section 226(a). Injunctive relief is warranted because DEFENDANTS continue to
25 provide currently employed members of the Class with inaccurate wage statements in violation of
26 Labor Code Section 226(a) and currently employed members of the Class have no adequate legal
27 remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
28 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS comply

1 with Labor Code Section 226(a). (Lab. Code §226, subd. (h).)

2 57. Pursuant to Labor Code Sections 226(e) and 226(g), Plaintiff and members of the Class
3 are entitled to recover the full amount of penalties due under Labor Code Section 226(e), reasonable
4 attorney fees, and costs of suit.

5 **FIFTH CAUSE OF ACTION**

6 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS**

7 **CODE SECTION 17200, *et seq.***

8 **(Against DEFENDANTS UNITED PARCEL SERVICE, INC., UPS and DOES 1 to 50 by the**
9 **California Class)**

10 58. Plaintiff incorporates all paragraphs above as if fully alleged herein.

11 59. The unlawful conduct of Defendants alleged herein constitutes unfair competition
12 within the meaning of Business and Professions Code Section 17200. This unfair conduct includes
13 DEFENDANTS' use of policies and procedures which resulted in DEFENDANTS' failure to provide:
14 minimum wage or applicable overtime wages for all hours worked, meal and rest period premium
15 wages, complete and accurate wage statements, and timely payment of final wages, all as described
16 in more detail above. Due to DEFENDANTS' unfair and unlawful business practices in violation of
17 the Labor Code, DEFENDANTS have gained a competitive advantage over other comparable
18 companies doing business in the State of California that comply with their obligations to provide their
19 employees with: wages at the applicable rate for all hours worked, meal and rest period premium
20 wages when employees weren't provided all legally required and compliant meal and rest periods,
21 complete and accurate wage statements, and timely payment of final wages, all as described in more
22 detail above.

23 60. As a result of DEFENDANTS' unfair competition as alleged herein, Plaintiff and
24 members of the California Class have suffered injury in fact and lost money or property, as described
25 in more detail above and are entitled to restitution and/or injunctive relief.

26 61. Pursuant to Business and Professions Code Section 17203, Plaintiff and members of
27 the California Class are entitled to restitution of all wages (unpaid minimum wage and overtime and
28 meal and rest period premium wages) and other monies rightfully belonging to them that

1 DEFENDANTS failed to pay them and wrongfully retained by means of their unlawful and unfair
2 business practices, Plaintiff also seeks an injunction against DEFENDANTS on behalf of the
3 California Class enjoining them, and any and all persons acting in concert with them, from engaging
4 in each of the unlawful practices, policies and patterns set forth herein.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON BEHALF OF THOSE**
7 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

8
9 **ON THE FIRST, SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION:**

10 1. That the Court determine that this action may be maintained as a class action (for the
11 entire California Class and/or any and all of the specified sub-classes) pursuant to Code of Civil
12 Procedure section 382 and any other applicable law;

13 2. That the named Plaintiff be designated as class representative for the California Class
14 (and all sub-classes thereof);

15 3. A declaratory judgment that the practices complained herein are unlawful; and,

16 4. An injunction against Defendants enjoining them, and any and all persons acting in
17 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
18 herein.

19 **ON THE FIRST CAUSE OF ACTION:**

20 1. That the Defendants be found to have violated the minimum wage provisions and
21 overtime provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and the
22 Minimum Wage Class and Overtime Wage Class;

23 2. For damages, according to proof, including unpaid wages during the relevant statute
24 of limitations subject to any permissible tolling;

25 3. For any and all legally applicable penalties during the relevant statute of limitations
26 subject to any permissible tolling;

27 4. For liquidated damages pursuant to Labor Code section 1194.2;

28 5. For pre-judgment interest, including but not limited to that recoverable under

1 California Labor Code section 1194, and post-judgment interest;

2 6. For attorneys' fees and costs of suit, including but not limited to that recoverable under
3 California Labor Code section 1194; and,

4 7. For such and other further relief, in law and/or equity, as the Court deems just or
5 appropriate.

6 **ON THE SECOND CAUSE OF ACTION:**

7 1. That the Defendants be found to have violated the meal break provisions of the Labor
8 Code and the IWC Wages Orders as to the Plaintiff and the Meal Period Class;

9 2. For damages, according to proof, including unpaid wages;

10 3. For any and all legally applicable penalties;

11 4. For pre-judgment interest, including but not limited to that recoverable under
12 California Labor Code section 218.6, and post-judgment interest; and

13 5. For such and other further relief, in law and/or equity, as the Court deems just or
14 appropriate.

15 **ON THE THIRD CAUSE OF ACTION:**

16 1. That the Defendants be found to have violated the rest break provisions of the Labor
17 Code and the IWC Wages Orders as to the Plaintiff and the Rest Period Class;

18 2. For damages, according to proof, including unpaid wages;

19 3. For any and all legally applicable penalties;

20 4. For pre-judgment interest, including but not limited to that recoverable under
21 California Labor Code section 218.6, and post-judgment interest; and

22 5. For such and other further relief, in law and/or equity, as the Court deems just or
23 appropriate

24 **ON THE FOURTH CAUSE OF ACTION:**

25 1. That the Defendants be found to have violated the provisions of the Labor Code
26 regarding proper itemized paystubs as to the Wage Statement Class;

27 2. For damages and/or penalties, according to proof, including damages and/or statutory
28 penalties under Labor Code section 226(e) and any other legally applicable damages or penalties

1 incurred during the relevant statute of limitations subject to any permissible tolling;

2 3. For pre-judgment interest and post-judgment interest;

3 4. For attorneys' fees and costs of suit, including but not limited to that recoverable
4 under California Labor Code section 226(e); and,

5 5. For such and other further relief, in law and/or equity, as the Court deems just or
6 appropriate.

7 **ON THE FIFTH CAUSE OF ACTION:**

8 1. That the Defendants be found to have violated Business and Professions Code section
9 17200 for the conduct alleged herein as to all Classes;

10 2. A declaratory judgment that the practices complained herein are unlawful;

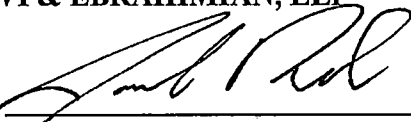
11 3. An injunction against Defendants enjoining them, and any and all persons acting in
12 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
13 herein;

14 4. For restitution to the full extent permitted by law; and,

15 5. For such and other further relief, in law and/or equity, as the Court deems just or
16 appropriate.

17
18 Dated: September 18, 2019

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

19
20 By: 

21 Joseph Lavi, Esq.
22 Jordan D. Bello, Esq.
23 Attorneys for PLAINTIFF
24 THOMAS SIMS II and Other Class Members

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DEMAND FOR JURY TRIAL

PLAINTIFF THOMAS SIMS II demands a trial by jury for himself and the Class on all claims so triable.

Dated: September 18, 2019

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
Joseph Lavi, Esq.
Jordan D. Bello, Esq.
Attorneys for PLAINTIFF
THOMAS SIMS II and Other Class Members

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JORDAN D. BELLO, ESQ. SBN: 243190 LAVI & EBRAHIMIAN LLP 8889 W. OLYMPIC BLVD., SUITE 200, BEVERLY HILLS, CA 90211 TELEPHONE NO.:(310) 432-0000 FAX NO.:(310) 432-0001 ATTORNEY FOR (Name): Thomas Sims	ENFORCED FILED ONLY FILED ALAMEDA COUNTY SEP 18 2019 CLERK OF THE SUPERIOR COURT By: ERICA BAKER, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: 1225 Fallon St. CITY AND ZIP CODE: Oakland, 94612 BRANCH NAME: Rene C. Davidson Alameda County Courthouse	CASE NUMBER: <div style="font-size: 1.2em; font-weight: bold;">RG19035659</div> JUDGE: DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NAME:

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:

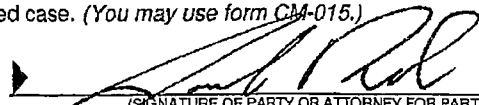
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> 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): 5: Min. wage/overtime; meal and rest periods; wage statements; B&P 17200
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: September 18, 2019

JORDAN D. BELLO, ESQ.

(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.

FILE

SEP 18 REC'D

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

Lavi & Ebrahimian LLP Attn: Bello, Jordan D 8889 W Olympic Blvd. #200 Beverly Hills, CA 90211	┌ └	United Parcel Service, Inc.	┌ └
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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Sims Plaintiff/Petitioner(s) VS. United Parcel Service, Inc. Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG19035659</u> NOTICE OF HEARING
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To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:

DATE: 10/29/2019 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:

DATE: 12/03/2019 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.

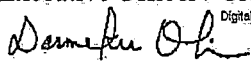
All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 09/19/2019

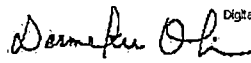
Chad Finke Executive Officer / Clerk of the Superior Court

By  ^{Digital}
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 09/20/2019.

By  ^{Digital}
Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [UPS Failed to Pay California Employees for All Hours Worked, Class Action Claims](#)
