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13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF SACRAMENTO**

15 PHILLIP MORGAN and BRYON UNRUH,
16 individually and on behalf of all others similarly
17 situated,

17 Plaintiff,

18 vs.

19 CORE-MARK INTERNATIONAL, INC., a
20 Delaware Corporation, and DOES 1 through
21 100, inclusive,

21 Defendants.

Case No.: 34-2018-00228207-CU-OE-GDS

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **FAILURE TO PROVIDE MEAL BREAKS (Labor Code §§ 226.7, 512, and Wage Order);**
2. **FAILURE TO PROVIDE REST BREAKS (Labor Code §§ 226.7, 512, and Wage Order);**
3. **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES (Labor Code § 2802);**
4. **FAILURE TO PROVIDE ADEQUATE WAGE STATEMENTS (Labor Code §§ 226, 226.2 226.3);**
5. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200); and**
6. **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 (Labor Code §§ 2698, et seq.)**

DEMAND FOR JURY TRIAL

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1 Plaintiffs PHILLIP MORGAN and BRYON UNRUH (“Plaintiffs”), on behalf of
2 themselves, individually, and all others similarly situated, bring this complaint against Defendants
3 CORE-MARK INTERNATIONAL, INC. and DOES 1-100 (collectively, “Defendants”), and
4 for causes of action against them, alleges and complains as follows:

5 INTRODUCTION

6 1. This action seeks relief against Defendants for their knowingly wrongful conduct
7 with respect to their current and former truck drivers. Plaintiffs allege causes of action against
8 Defendants for: (1) failure to provide meal breaks and missed meal break premiums to their current
9 and former drivers; (2) failure to provide paid rest breaks and missed rest break premiums to their
10 current and former drivers; (3) failure to pay all wages owed to their current and former drivers;
11 (4) failure to provide complete wage statements to their current and former truck drivers; (5) failure
12 to reimburse truck drivers for Defendants’ business expenses; (6) unfair business practices based
13 on the foregoing; and (7) civil penalties under The Private Attorney General Act of 2004
14 (“PAGA”) and derivative or related claims for violations of the Labor Code and the Industrial
15 Welfare Commission Wage Orders.

16 2. The systematic policies, practices, and customs of Defendants violated and
17 continue to violate California law, and have injured Plaintiffs and the putative Class.

18 JURISDICTION AND VENUE

19 3. The Court has jurisdiction over the statutory violations alleged herein, including,
20 but not limited to, violations of the California Labor Code, violations of Bus. & Prof. Code
21 §§ 17200 *et seq.*, and the governing Wage Order and Regulations.

22 4. Venue is proper in this county under section 395.5 of the California Code of Civil
23 Procedure. Many of the putative Class Members were employed and/or performed work during
24 the Class Period by Defendants in Sacramento.

25 PARTIES

26 5. Since October, 2016, Plaintiff Morgan has been employed by Defendants as a truck
27 driver at their Sacramento Distribution Center.

28 6. Plaintiff Unruh was employed by Defendants as a truck driver in Humboldt, Del

1 Norte, and Mendocino, California. Plaintiff Unruh's employment with Defendants concluded
2 around November 2017.

3 7. Plaintiffs, along with members of the putative Class, have been victimized by the
4 policies, practices, and customs of Defendants complained of in this action, in ways that have
5 deprived them of the rights guaranteed to him by the Labor Code and Business & Professional
6 Code.

7 8. At all times pertinent, Plaintiffs' employment duties were discharged within the
8 State of California.

9 9. At all times pertinent, Plaintiffs were classified as nonexempt employee, and
10 therefore not exempt from the provisions of the Labor Code and applicable Wage Orders.

11 10. Defendant Core-Mark International, Inc. is a Delaware corporation with its
12 principal place of business and headquarters in San Francisco, California.

13 11. Defendant Core-Mark International, Inc. is one of the largest wholesale distributors
14 to the convenience retail industry in North America, providing sales, marketing, distribution and
15 logistics services to over 43,000 customer locations across the United States and Canada through
16 30 distribution centers.

17 12. Defendants were the employer(s) of Plaintiffs and the putative Class Members for
18 all relevant time periods.

19 13. Plaintiffs do not know the true names or capacities, whether individual, partner, or
20 corporate, of the defendants sued herein as DOE defendants, and for that reason, said defendants
21 are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint when
22 the true names and capacities are known. Plaintiffs are informed and believe, and based thereon
23 allege, that each of the said fictitious defendants were responsible in some way for the matters
24 alleged herein and proximately caused and/or contributed to Plaintiffs and members of the general
25 public and putative Class to be subject to the illegal employment practices, wrongs, breaches, and
26 injuries complained of herein.

27 14. At all times pertinent hereto, each of the said DOE defendants participated in the
28 doing of acts hereinafter alleged to have been done by the named Defendants; and furthermore,

1 the Defendants, and each of them, were the agents, servants, and employees of each of the other
2 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
3 within the course and scope of said agency and employment.

4 15. Plaintiffs are informed and believe, and based thereon allege, that at all times
5 pertinent hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
6 joint venture of, or working in concert with, each of the other co-Defendants and was acting within
7 the course and scope of such agency, employment, joint venture, or concerted activity. To the
8 extent the said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
9 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
10 Defendants.

11 16. At all times pertinent hereto, Defendants, and each of them, were members of, and
12 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
13 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

14 17. At all times pertinent hereto, the various Defendants, and each of them, concurred
15 with and contributed to the acts and omissions of each and all of the other Defendants in
16 proximately causing the injuries and damages as herein alleged. At all pertinent times, Defendants,
17 and each of them, ratified each and every act or omission complained of herein. At all pertinent
18 times, the Defendants, and each of them, aided and abetted the acts and omissions of each and all
19 of the other Defendants in proximately causing the damages as herein alleged.

20 **CLASS ALLEGATIONS**

21 18. The named Plaintiffs herein brings this action on behalf of themselves and the
22 following putative Class:

23 Any and all persons who are or were employed as a truck driver (by that or any other
24 name) by Defendants in the State of California, at any time during the Class Period.

25 19. **Class Period:** The Class Period is defined as commencing at a date that is four
26 years prior to the date of the filing of the original Complaint, or March 1, 2014, and continuing
27 from that point forward, until the date that a final judgment has been entered in this matter.

28 20. **Numerosity:** The members of the Class are so numerous that joinder of all

1 members would be impractical. The identities of the members of the Class are readily ascertainable
2 by review of Defendants' records, including, without limitation, payroll records, dispatch records,
3 work orders, work assignments, and other documents, vouchers and receipts issued to the Class
4 Members by Defendant.

5 21. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
6 steps to represent, fairly and adequately, the interests of the above-defined Class. Plaintiffs'
7 attorneys are ready, willing, and able to fully and adequately represent the Class and individual
8 plaintiffs. Plaintiffs' attorneys have prosecuted, tried, and settled wage-and-hour class actions in
9 the past and currently have a number of wage-and-hour class actions pending in the California
10 state and federal courts.

11 22. Defendants uniformly administered a company-wide policy and practice of: (a) not
12 paying Plaintiffs and the putative Class members all wages earned, (b) failing to provide
13 mandatory meal and rest breaks and/or failing to pay premium wages for missed meal and/or rest
14 periods, (c) requiring Plaintiffs and the Class Members to incur and pay for Defendants' necessary
15 business expenses, without reimbursement therefor, (d) failing to provide accurate wage
16 statements, and (e) engaging in unfair business practices.

17 23. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
18 a consistent and uniform policy, practice, and/or procedure of willfully failing to comply with the
19 California Labor Code, as well as other violations that constitute unfair and/or unlawful conduct
20 under Bus. & Prof. Code §§ 17200 *et seq.*, and the governing Wage Order regulations.

21 24. **Common Questions of Law and Fact:** There are predominant common questions
22 of law and fact and community of interest amongst Plaintiffs and the claims of the putative class
23 concerning Defendants' treatment of them, including but not limited to:

- 24 a. Whether Defendants had a policy, custom, and/or practice of failing to
25 provide Class Members with off-duty rest breaks;
- 26 b. Whether Defendants had a policy, custom, and/or practice of failing to
27 provide Class Members with off-duty meal breaks;
- 28 c. Whether Defendants had a policy, custom, and/or practice of failing to pay

- 1 Class Members premium wages when meal and/or rest periods were missed;
- 2 d. Whether Defendants had a policy, custom, and/or practice of failing to pay
- 3 Class Members their regular hourly wage for the time they spent working
- 4 in lieu of taking paid rest breaks;
- 5 e. Whether the Class Members were improperly required to incur Defendants’
- 6 necessary business expenses without reimbursement therefor;
- 7 f. Whether Defendants provided accurate and itemized wage statements; and
- 8 g. Whether the Defendants’ policies, customs, and/or practices, as described
- 9 herein, were unlawful and/or unfair business practices.

10 25. **Typicality:** The claims of the Plaintiffs are typical of the claims of all members of

11 the Class. Plaintiffs and Class Members have suffered and incurred damages as a result of

12 Defendants’ common course of conduct in violation of the laws as alleged herein in similar ways.

13 26. **Superiority:** The nature of this action and the format of laws available to Plaintiffs

14 and members of the Class identified herein make the class action format a particularly efficient

15 and appropriate procedure to redress the wrongs alleged herein and, therefore, is the superior

16 means of redress of Defendants’ alleged wrongdoings. If Plaintiffs and each member of the

17 putative Class were required to file an individual lawsuit, Defendants would necessarily gain an

18 unconscionable advantage since it would be able to exploit and overwhelm the limited resources

19 of each individual plaintiff with its vastly superior financial and legal resources. Requiring each

20 Class Member to pursue an individual remedy would also discourage the assertion of lawful claims

21 by workers who would be disinclined to file an action against their former and/or current employer

22 for real and justifiable fear of retaliation and permanent damage to their careers at subsequent

23 employments. The filing of individual lawsuits would also create an unnecessary strain on existing

24 judicial resources and raise the potential for inconsistent findings and verdicts among the various

25 litigations.

26 27. The prosecution of separate actions by the individual Class Members, even if

27 possible, would create a substantial risk of: (a) inconsistent or varying adjudications with respect

28 to individual Class Members against the Defendants, which would establish potentially

1 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
2 individual Class Members that would, as a practical matter, be dispositive of the interests of other
3 Class Members not parties to the adjudications or which would substantially impair or impede the
4 ability of the Class Members to protect their interests. Further, the claims of the individual
5 members of the Class are not sufficiently large to warrant vigorous individual prosecution
6 considering all of the concomitant costs and expenses.

7 28. The Labor Code and Wage Order upon which Plaintiffs bases their claims are
8 remedial in nature. These laws and labor standards serve an important public interest in
9 establishing minimum working conditions and standards. These laws and labor standards protect
10 the average worker from exploitation by employers who may seek to take advantage of superior
11 economic and bargaining power in setting onerous terms and conditions of employment. Such
12 statutes and regulations are designed to defeat rather than implement express or implied
13 agreements that depart from the statutory scheme in the employment contract.

14 29. Defendants' pattern, practice, and uniform administration of enterprise-wide
15 policies and practices regarding illegal and improper compensation, as described herein, creates
16 an entitlement to recovery by the Plaintiffs and the putative Class identified herein, in a civil action,
17 for the unpaid balance of the full amount of unpaid and/or improperly deducted and/or withheld
18 compensation, including interest thereon, applicable penalties and premium pay, reasonable
19 attorneys' fees, and costs of suit according to the mandates of the California Labor Code and Code
20 of Civil Procedure § 1021.5.

21 **SUBSTANTIVE ALLEGATIONS**

22 30. Defendants, at all times during the Class Period, have done and do business in
23 California transporting freight, materials, and grocery and convenience items to customers in
24 California. Defendants operate five (5) Distribution Centers in California.

25 31. Defendants, in the course of operating their business in California during the Class
26 Period, employed Plaintiffs and the Class Members as non-exempt, hourly employees. In addition
27 to their hourly wages, Defendants compensated Plaintiffs and Class Members via a piece-rate
28 formula based on how many pieces they delivered, and/or how many stops they made, and/or how

1 many miles they drove during each shift.

2 32. Drivers' job duties included completion of paperwork, pre- and post-trip
3 inspections, refueling and cleaning of the truck, checking the oil and motor, filling up the gas tank
4 and, most importantly, hauling and delivering freight and grocery and convenience items to various
5 locations throughout California.

6 33. Plaintiffs and the Class Members usually worked approximately 10-13 hours per
7 day, five days per week, making deliveries to Defendants' customers.

8 34. During their shifts, Plaintiffs and Class Members are placed under intense pressure
9 to complete their assigned routes within a limited time frame. Defendants monitored truck drivers'
10 progress on their routes via a GPS tracking system throughout the workday and took steps to ensure
11 that drivers met Defendants' strict timelines for completing routes.

12 **Defendants' Fail to Provide Off-Duty Meal and Rest Periods**

13 35. At all times relevant hereto, California Labor Code sections 226.7 and 512 and the
14 applicable Wage Order, section 11, required employers to provide employees with a first meal
15 period of not less than thirty (30) minutes during which they are relieved of all duty before working
16 more than five (5) hours and a second meal period of not less than thirty (30) minutes during which
17 they are relieved of all duty before working more than ten (10) hours per day.

18 36. At all times relevant hereto, California Labor Code section 226.7(b) and IWC
19 Wage Order 9, section 11, required employers to pay one hour of additional pay at the regular rate
20 of compensation for each employee and each workday that a proper meal period is not provided.

21 37. Defendants regularly failed to provide a timely thirty (30) minute off-duty meal
22 period to truck drivers, including Plaintiffs and Class Members, when working more than five (5)
23 hours in a day. Further, Defendants regularly failed to provide a second timely thirty (30) minute
24 meal period to drivers who worked more than ten (10) hours in a day.

25 38. Specifically, Defendants schedule drivers in a manner that does not provide them
26 with sufficient time to take their 30-minute off-duty meal breaks. Notwithstanding any formal
27 written policy to the contrary, Defendants' actual custom and business practice was to undermine
28 any formal policy of providing legally required breaks by pressuring employees to perform their

1 duties in ways that omitted breaks, including, but not limited to, scheduling a heavy workload that
2 made taking breaks extremely difficult, maintaining an informal anti-meal-break policy enforced
3 through pressure, and otherwise exerting coercion against the taking of, creating incentives to
4 forego, or otherwise encouraging the skipping of legally protected breaks.

5 39. At no time did Plaintiffs and Class Members enter into a valid meal period waiver.
6 Defendants did not pay meal period premiums to Plaintiffs and putative Class Members when
7 compliant meal periods were not provided.

8 40. At all times relevant hereto, California Labor Code section 226.7 and IWC Wage
9 Order, 9, section 12, required employers to authorize, permit, and provide a ten (10) minute paid
10 rest period for each four (4) hours of work, during which employees are relieved of all duty. Such
11 breaks are paid and counted as hours worked.

12 41. At all times relevant hereto, California Labor Code section 226.7(b) and IWC
13 Wage Order, 9, section 12, required employers to pay one hour of additional pay at the regular rate
14 of compensation for each employee and each workday that a proper rest period is not provided.

15 42. For the same reasons Defendants failed to allow truck drivers, including Plaintiffs
16 and putative Class Members, to take their meal periods, Defendants regularly failed to provide a
17 ten (10) minute paid rest period for each four (4) hours of work during which the drivers should
18 have been relieved of all duty.

19 43. Defendants are not exempt from the requirement to provide off-duty rest periods to
20 their drivers.

21 44. Defendants did not pay rest period premiums to Plaintiffs and putative Class
22 Members when compliant rest periods were not provided.

23 45. Additionally, Defendants failed to compensate Plaintiffs and the Class Members
24 for the time they spent working instead of taking off-duty rest breaks.

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28 **Defendants Fail to Maintain Adequate Employment Records and Fail to Provide Accurate**

1 **Itemized Wage Statements**

2 46. At all times relevant hereto, California Labor Code section 226 and IWC Wage
3 Order, 9, section 7, required employers to maintain adequate employment records and provide
4 employees with accurate itemized wage statements showing gross wages, total hours worked, all
5 applicable hourly rates worked during each pay period, the corresponding number of hours worked
6 at each hourly rate, and the beginning and end of all meal breaks taken.

7 47. Wage statements provided by Defendants to Plaintiffs and putative Class Members
8 workers do not show all wages earned, all hours worked, or all applicable rates, in violation of the
9 California Labor Code section 226, IWC Wage Order 9, section 7.

10 **Defendants' Fail to Indemnify Delivery Workers for Defendants' Business Expenses**

11 48. At all times relevant hereto, California Labor Code section 2802 required
12 employers to indemnify their employees for "all necessary expenditures or losses incurred by the
13 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
14 the directions of the employer...."

15 49. IWC Wage Order 9, section 9, requires employers to maintain tools and equipment
16 required by the employer or that are necessary to the performance of the job.

17 50. In the course of their employment, Plaintiffs and the putative Class Members,
18 as a business expense, were required by Defendants to use their own personal cellular
19 phones as a result of and in furtherance of their job duties as employees for Defendants.
20 However, Defendants failed to reimburse or indemnify Plaintiffs and the Class Members
21 for the costs associated with the use of their personal cellular phones for Defendants' benefit.
22 As a result, in the course of their employment, Plaintiffs and the Class Members incurred
23 unreimbursed business expenses which included, but were not limited to, costs related to the
24 use of their personal cellular phones all on behalf of and for the benefit of Defendants.

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1 **FIRST CAUSE OF ACTION**

2 **FOR FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS**

3 **(Labor Code §§ 226.7, 512, and Wage Order)**

4 51. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs of
5 this complaint as though fully set forth herein.

6 52. Under California law, and as applicable hereto, no worker may be compelled to
7 labor for a work period of five or more hours without being provided with a 30 minute, duty-free
8 meal break. Likewise, no worker may be compelled to work for more than 10 hours in a single
9 day, without being provided with a second, 30 minute, duty-free meal break. Labor Code § 512
10 and Part 11 of Wage Order 9.

11 53. Defendants failed to provide the required meal breaks to Plaintiffs and the putative
12 Class Members, even though Plaintiffs and the putative Class Members regularly labored for work
13 periods of more than five hours, and workdays of more than 10 hours.

14 54. Specifically, as discussed above, notwithstanding any formal written policy to the
15 contrary, Defendants' actual custom and business practice was to undermine any formal policy of
16 providing meal breaks by pressuring employees to perform their duties in ways that omitted breaks,
17 including, but not limited to, scheduling a heavy workload that made taking breaks extremely
18 difficult, maintaining an informal anti-meal-break policy enforced through pressure, and otherwise
19 exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the
20 skipping of legally protected breaks.

21 55. Therefore, Defendants' custom and business practice required Plaintiffs and Class
22 Members to continue to work during their meal period(s) despite ostensibly off the clock.

23 56. Further, Defendants did not pay Plaintiffs and Class Members the meal period
24 premium of an additional hour of pay at the regular rate whenever duty-free meal periods were not
25 provided, as required by the Labor Code and the Wage Order.

26 57. Pursuant to Labor Code § 226.7(b), Plaintiffs and each member of the putative
27 Class are entitled to recover from Defendants the sum of one hour of pay at their regular rate for
28 each meal period that was not provided by Defendants.

1 **SECOND CAUSE OF ACTION**

2 **FOR FAILURE TO PROVIDE REST BREAKS**

3 **(Labor Code §§ 226.7 and Wage Order)**

4 58. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs of
5 this complaint as though fully set forth herein.

6 59. Under California law, and as applicable hereto, employers must authorize and
7 provide a ten minute, duty-free rest break for every four hours of work in a workday. The rest
8 period shall be counted as "hours worked." Part 12 of Wage Order 9.

9 60. Defendants failed to authorized and/or provide the required off-duty rest breaks to
10 Plaintiffs and the putative Class Members, even though Plaintiffs and the putative Class Members
11 regularly labored for work periods of more than four hours without a rest break, and workdays of
12 more than 10 hours without additional rest breaks.

13 61. Specifically, as discussed above, notwithstanding any formal written policy to the
14 contrary, Defendants' actual custom and business practice was to undermine any formal policy of
15 providing rest breaks by pressuring employees to perform their duties in ways that omitted breaks,
16 including, but not limited to, scheduling a heavy workload that made taking breaks extremely
17 difficult, maintaining an informal anti-rest break policy enforced through pressure, and otherwise
18 exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the
19 skipping of legally protected breaks.

20 62. Therefore, Defendants' custom and business practice required Plaintiffs and Class
21 Members to continue to work during their rest breaks despite ostensibly off the clock.

22 63. Further, Defendants did not pay Plaintiffs and Class Members the rest period
23 premium of an additional hour of pay at the regular rate whenever duty-free rest periods were not
24 provided, as required by the Labor Code and the Wage Order.

25 64. Additionally, Defendants did not pay Plaintiffs and Class Members their normal
26 hourly wage for the time that they spent working instead of taking off-duty rest breaks.

27 65. Pursuant to Labor Code § 226.7(b), Plaintiffs and each member of the putative
28 Class are entitled to recover from Defendants the sum of one hour of pay at their regular rate for

1 each rest period that was not authorized and/or provided by Defendant.

2 **THIRD CAUSE OF ACTION**

3 **FOR FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

4 **(Labor Code § 2802)**

5 66. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs of
6 this complaint as though fully set forth herein.

7 67. Under California law, workers are entitled to be indemnified “for all necessary
8 expenditures or losses incurred by them in direct consequence of the discharge of their duties.”
9 Labor Code § 2802(a).

10 68. As previously alleged herein, Defendants have required Plaintiffs and the members
11 of the putative Class to incur significant, substantial, and ongoing necessary business expenses
12 that rightfully should have been borne by Defendants, and Defendants have failed to reimburse
13 Plaintiffs and the Class Members for the said expenses.

14 69. The aforementioned expenses include costs related to using their personal
15 cellular phones on behalf of and for the benefit of Defendants. Defendants’ custom, practice, and
16 procedure was to not reimburse Plaintiffs and the Class Members for expenses resulting from using
17 their personal cellular phones for Defendants within the course and scope of their employment for
18 Defendants.

19 70. Because these necessary expenses were incurred by Plaintiffs and the Class
20 Members in direct consequence of the discharge of their duties, Plaintiffs and the Class Members
21 are entitled to be indemnified, pursuant to Labor Code § 2802(b), with interest thereon beginning
22 from the date that each expense was incurred.

23 **FOURTH CAUSE OF ACTION**

24 **FOR INCOMPLETE AND/OR INACCURATE WAGE STATEMENTS**

25 **(Labor Code §§ 226, 226.3, 174; Wage Order)**

26 71. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs of
27 this complaint, as though fully set forth herein.

28 72. Labor Code § 226 makes it unlawful for an employer to fail to provide accurate and

1 itemized wage statements to its employees.

2 73. Pursuant to California Labor Code section 226(a), Plaintiffs and the Class Members
3 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
4 itemized statement showing, *inter alia*: (a) gross wages earned; (b) net wages earned; (c) all
5 applicable hourly rates in effect during the pay period; and (d) the corresponding number of hours
6 worked at each hourly rate by the employee.

7 74. Defendants violated the foregoing provisions in that they failed to keep accurate
8 timekeeping or payroll records, and failed to provide Plaintiffs and Class Members with accurate
9 itemized statements in accordance with Labor Code Section 226(a) due to the unlawful labor and
10 payroll practices described herein. Therefore, Plaintiffs and Class Members could not easily and
11 promptly determine from their wage statements alone that they had been properly paid.

12 75. As a result of the foregoing, Plaintiffs and the Class Members are entitled to the
13 statutory penalty set forth in subdivision (e) of section 226, to the civil penalty set forth in Labor
14 Code section 226.3, an injunction against Defendants, under subdivision (h), as well as an award
15 of costs and reasonable attorney's fees.

16 **FIFTH CAUSE OF ACTION**

17 **FOR UNFAIR COMPETITION**

18 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

19 76. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs of
20 this complaint as though fully set forth herein.

21 77. Defendants, and each of them, have engaged and continue to engage in unfair and
22 unlawful business practices in California by practicing, employing, and utilizing the policies,
23 customs, and practices outlined above.

24 78. Plaintiffs and members of the putative Class have suffered actual harm as a result
25 of Defendants' unfair, unlawful, and/or fraudulent business practices. Specifically, Plaintiffs and
26 the Class Members have been deprived of wages actually earned but wrongfully and unlawfully
27 retained by Defendants, as well as reimbursement of business expenses.

28 79. Defendants' utilization of the unfair, unlawful, and/or fraudulent business practices

1 described herein constitutes unfair competition Bus. & Prof. Code §§ 17200, *et seq.*, and provides
2 an unfair advantage over Defendants' competitors who follow the law.

3 80. Defendants' course of conduct described herein further violates Bus. & Prof. Code
4 §§ 17200, *et seq.*, in that it is fraudulent, improper, and/or unfair.

5 81. Additionally, Defendants' course of conduct described herein threatens an incipient
6 violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or
7 otherwise significantly threatens or harms competition.

8 82. Plaintiffs, on their own behalf, on behalf of other members of the putative Class,
9 and on behalf of the general public, seek full restitution of monies, as necessary and according to
10 proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by
11 means of the unfair practices complained of herein.

12 83. Defendants have been unjustly enriched as a direct result of their unlawful business
13 practices alleged in this complaint and will continue to benefit from those practices and have an
14 unfair competitive advantage if allowed to retain the unpaid wages.

15 **SIXTH CAUSE OF ACTION**

16 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**

17 **(Labor Code §§ 2698, *et seq.*)**

18 84. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs of
19 this complaint as though fully set forth herein.

20 85. Under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
21 §§ 2698, *et seq.*, any employee aggrieved by an employer's violation of the Labor Code has the
22 right to file an action on behalf of all aggrieved employees for the penalties established by
23 § 2699 and/or other Labor Code sections.

24 86. The aforementioned wrongful acts and omissions of Defendants were violations of
25 the Labor Code, as set forth herein. Plaintiffs are employees who has been aggrieved by
26 Defendants' violations of the aforementioned Labor Code provisions.

27 87. During the relevant time period, Defendants engaged in each of the wrongful acts
28 and/or omissions detailed above. As a result, Plaintiffs and Class Members are entitled to one

1 hundred dollars (\$100) for each initial Labor Code violation and two hundred dollars (\$200) for
2 each subsequent violation, and/or any and all other penalties permitted by PAGA. Labor Code
3 § 2699(f)(2).

4 88. On February 28, 2018, Plaintiff Morgan provided timely written notice of the facts
5 and claims alleged herein to the Labor and Workforce Development Agency (“LWDA”) and
6 Defendants pursuant to Labor Code § 2699.3. On March 23, 2018, Plaintiff Unruh provided timely
7 written notice to the LWDA and Defendants pursuant to Labor Code § 2699.3. More than sixty-
8 five (65) days have passed since the date the notices were mailed to the LWDA and to Defendants.
9 The LWDA has not responded.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf
12 this suit is brought against Defendants, jointly and severally, as follows:

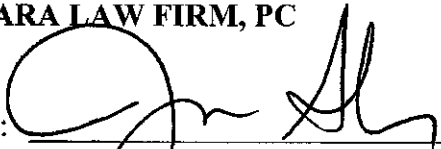
- 13 A. For an order certifying the proposed Class;
- 14 B. For an order appointing Plaintiffs Phillip Morgan and Bryon Unruh, as the
15 representatives of the Class;
- 16 C. For an order appointing Counsel for Plaintiffs as Class Counsel;
- 17 D. For compensatory damages in an amount according to proof with interest thereon;
- 18 E. For economic and/or special damages in an amount according to proof with interest
19 thereon;
- 20 F. For payment of unpaid wages in accordance with California law, including PAGA;
- 21 G. For payment of penalties in accordance with California law, including PAGA;
- 22 H. For Defendants to be found to have engaged in unfair competition in violation of
23 Bus. & Prof. Code §§ 17200, *et seq.*;
- 24 I. For Defendants to be ordered to make restitution to Plaintiffs and the class and
25 disgorgement of profits from their unlawful business practices and accounting,
26 pursuant to Bus. & Prof. Code §§ 17203 and 17204;
- 27 J. For an order preliminarily and permanently enjoining Defendants from engaging in
28 the unlawful and unfair practices alleged herein;

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- K. For attorneys fees and costs as provided by Labor Code §§ 226, 1194, and Code of Civil Procedure § 1021.5; and
- L. For all such other and further relief as the Court may deem just and proper.

DATED: February 7, 2020

**MARLIN & SALTZMAN, LLP
UNITED EMPLOYEES LAW GROUP
MARA LAW FIRM, PC**

By: 

Stanley D. Saltzman
Adam M. Tamburelli
David Mara
Jamie Serb
Attorneys for Plaintiffs PHILLIP
MORGAN and BRYON UNRUH
and the Proposed Class

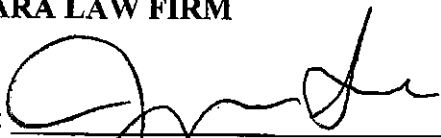
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DEMAND FOR JURY TRIAL

Plaintiffs, for themselves and the putative Class, hereby demand a jury trial.

DATED: February 7, 2020

**MARLIN & SALTZMAN, LLP
UNITED EMPLOYEES LAW GROUP
MARA LAW FIRM**

By: 

Stanley D. Saltzman
Adam M. Tamburelli
David Mara
Jamie Serb
Attorneys for Plaintiffs PHILLIP
MORGAN and BRYON UNRUH and the
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