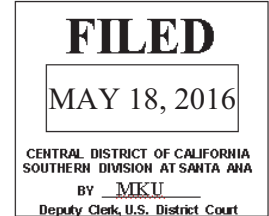


1 Peter Rukin, SBN 178336  
2 Valerie Brender, SBN 298224  
3 RUKIN HYLAND DORIA & TINDALL LLP  
4 100 Pine Street, Suite 2150  
5 San Francisco, CA 94111  
6 Telephone: (415) 421-1800  
7 Facsimile: (415) 421-1700  
8 prukin@rhdtdlaw.com  
9 vbrender@rhdtdlaw.com

10 *Attorneys for PLAINTIFFS*



11 ***ADDITIONAL COUNSEL LISTED BELOW***

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 RUDY URENA, VICTOR URENA,  
15 and FRANK CONTRERAS, on  
16 behalf of themselves and all others  
17 similarly situated

18 PLAINTIFFS,

19 v.

20 EARTHGRAINS DISTRIBUTION,  
21 LLC, EARTHGRAINS BAKING  
22 CO., INC., and DOES\_1 through 10,  
23 inclusive,

24 DEFENDANTS.

25 **CASE NO.: 8:16-cv-00634-CJC-DFMx**

26 **FIRST AMENDED CLASS ACTION  
27 COMPLAINT**

- 28 **(1) REIMBURSEMENT OF BUSINESS EXPENSES (Labor Code §2802);**
- (2) UNLAWFUL DEDUCTIONS FROM WAGES (Labor Code §§221, 223, 400-410);**
- (3) FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§226.7, 512);**
- (4) FAILURE TO PAY EMPLOYEES FOR REST PERIODS (Labor Code §§226.7, 1194 and 1194.2);**
- (5) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §§226, 226.3);and**
- (6) FAILURE TO KEEP ACCURATE PAYROLL RECORDS (Labor §§ 1174 & 1174.5)**
- (7) VIOLATIONS OF UCL (BPC 17200 et seq.)**
- (8) PRIVATE ATTORNEY GENERAL ACT PENALTIES (LABOR CODE § 2699)**

**DEMAND FOR JURY TRIAL**

1     ***ADDITIONAL COUNSEL***

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

13     *Attorneys for PLAINTIFFS*

1           1.     PLAINTIFFS Rudy Urena, Victor Urena, and Frank Contreras allege  
2 as follows on behalf of themselves and all other similarly situated in the State of  
3 California:

4                                           **I.     INTRODUCTION**

5           2.     This is an action for relief from DEFENDANTS’ misclassification of  
6 their California bakery distributor Delivery Drivers (“Delivery Drivers”) as  
7 “independent contractors.” DEFENDANTS Earthgrains Distribution, LCC, and  
8 Earthgrains Bakery Companies, Inc. (collectively “EARTHGRAINS” or  
9 “DEFENDANTS”) are in the wholesale bakery business, relying on Delivery  
10 Drivers such as PLAINTIFFS (collectively PLAINTIFFS or “Class Members” or  
11 “Delivery Drivers”) to deliver to and stock baked goods at retail grocery store  
12 outlets, restaurants, and other retail store outlets. Through their form “Distribution  
13 Agreement” and “Operations Guideline Manual,” among other things,  
14 DEFENDANTS retain all necessary control over its bakery distribution operations,  
15 of which the Delivery Drivers play an integral role, such that the Delivery Drivers  
16 are in fact DEFENDANTS’ employees under California law.

17           3.     By misclassifying PLAINTIFFS and similarly situated Delivery  
18 Drivers as independent contractors, DEFENDANTS have sought to avoid various  
19 duties and obligations owed to employees under California’s Labor Code and  
20 Industrial Welfare Commission (“IWC”) wage orders, including: the duty to  
21 indemnify employees for all expenses and losses necessarily incurred in connection  
22 with their employment (Cal. Labor Code §2802; IWC wage order No. 1, §§ 8-9);  
23 the duty to provide off-duty meal periods (Cal. Labor Code §§ 512, 226.7; IWC  
24 wage order No. 1, § 11); the duty to authorize and permit paid rest periods (Cal.  
25 Labor Code §§ 226.7, 1194; IWC wage order No. 1, § 12); the duty to provide  
26 accurate payroll information on pay statements, including actual hours worked (Cal.  
27 Labor Code §§ 226); the duty to maintain proper payroll records, including records  
28

1 showing the hours worked daily (Cal Labor Code §§ 1175, 1174.5); and other legal  
2 obligations.

3 4. PLAINTIFFS challenge DEFENDANTS’ policy of willfully and  
4 unlawfully misclassifying their Delivery Drivers as “independent contractors,” in  
5 violation of Cal.Labor Code § 226.8, and thereby refusing to indemnify them for  
6 employment-related expenses and losses, taking wrongful deductions from their  
7 wages, failing to provide off-duty meal periods, failing to authorize and permit paid  
8 rest periods, and failing to document actual hours worked on pay statements as  
9 required by California law. This misclassification policy has been in effect since  
10 November 5, 2011.

11 5. PLAINTIFFS bring claims for reimbursement of business expenses  
12 and losses, reimbursement of deductions wrongfully taken from wages, meal period  
13 pay, rest period pay, unpaid minimum wage (and liquidated damages), statutory and  
14 civil penalties, interest, and attorneys’ fees and costs, under Cal. Labor Code §§  
15 203, 218.5, 226, 226.3, 226.7, 226.8, 1174, 1174.5, 1194, 1194.2, 2699, and 2802,  
16 and Cal. Code of Civil Procedure § 1021.5. PLAINTIFFS also seek relief, pursuant  
17 to Cal. Business and Professions Code §§ 17200-17208 (also referred to herein as  
18 the “UCL”), including restitution and disgorgement of all benefits DEFENDANTS  
19 have obtained from the unlawful practices referenced above and detailed below.

20 **II. JURISDICTION**

21 6. Defendants timely removed this case based upon the Class Action  
22 Fairness Act of 2005, 28 U.S.C. §§1332 (d), 1453, and 1711-1715.

23 7. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §  
24 1367 over the claims alleged herein arising under the California Labor Code,  
25 including claims for the following:

- 26 A. reimbursement of business expenses under Labor Code § 2802;
- 27 B. unlawful deduction from wages under Labor Code §§ 221, 223,  
28 400-410;

1 C. failure to provide off-duty meal periods and failure to provide  
2 off-duty paid rest periods under Labor Code §§ 226.7, 512, IWC Wage Order  
3 No. 9;

4 D. minimum wage and liquidated damages under Labor Code §§  
5 1194, 1194.2, 1197;

6 E. unfair competition under Bus. & Prof. Code § 17200, *et seq.*;  
7 including restitution arising from Defendants’ unlawful business practices,  
8 under California’s Unfair Competition Law (“UCL”), Business &  
9 Professions Code §§ 17203 and 17204;

10 F. penalties under The Labor Code Private Attorney General Act of  
11 2004 (“PAGA”), Labor Code § 2699.

12 **III. VENUE**

13 8. Venue as to DEFENDANTS in the Central District of California under  
14 28 U.S.C. §1391(a)(2), because a substantial part of the events or omissions giving  
15 rise to the claims herein occurred in this District. DEFENDANTS transact business  
16 in Los Angeles County, including operating a distribution terminal in Paramount,  
17 California, and DEFENDANTS are otherwise within this Court’s jurisdiction for  
18 purposes of process. The unlawful acts alleged herein have a direct effect on  
19 PLAINTIFFS and those similarly situated within the State of California and within  
20 this District. DEFENDANTS have employed numerous Class Members who have  
21 performed services in Los Angeles County, including PLAINTIFFS, who have  
22 incurred unreimbursed business expenses, worked through meal periods, were not  
23 permitted and authorized paid rest periods, while performing services for  
24 DEFENDANTS and their customers in Los Angeles County during the Class  
25 Period. DEFENDANTS are foreign corporations, and, based on information and  
26 belief, have not registered a principal place of business with the California  
27 Secretary of State, and therefore are subject to venue in any county in California.

28 ///

1 IV. PARTIES

2 A. Plaintiffs

3 9. PLAINTIFF Rudy Urena resides in California. He has been a Driver  
4 for EARTHGRAINS since approximately February 24, 2013. He works for  
5 EARTHGRAINS pursuant to a Distribution Agreement with Earthgrains  
6 Distribution, LLC. Since the beginning of his tenure as an EARTHGRAINS  
7 Driver, he has worked out of EARTHGRAINS' facility in Paramount, California.

8 10. PLAINTIFF Victor Urena resides in California. He has been a Driver  
9 for EARTHGRAINS since approximately October 2014. He works for  
10 EARTHGRAINS pursuant to a Distribution Agreement with Earthgrains  
11 Distribution, LLC. Since the beginning of his tenure as an EARTHGRAINS  
12 Driver, he has worked out of EARTHGRAINS' facility in Paramount, California.

13 11. PLAINTIFF Frank Contreras resides in California. He has been a  
14 Driver for EARTHGRAINS since before February 26, 2012. He works for  
15 EARTHGRAINS pursuant to a Distribution Agreement with Earthgrains  
16 Distribution, LLC., out of EARTHGRAINS' facility in Paramount, California.

17 B. Defendants

18 12. DEFENDANT Earthgrains Distribution, LLC, is a limited liability  
19 company that was organized in 2011. It is a subsidiary of DEFENDANT  
20 Earthgrains Baking Companies, Inc. DEFENDANT Earthgrains Distribution, LLC,  
21 is, and at all relevant times, has been an employer covered by the California Labor  
22 Code and IWC Wage Order No. 1.

23 13. The true names and capacities, whether individual, corporate,  
24 associate, or otherwise, of DEFENDANTS sued herein as DOES 1 through 10,  
25 inclusive, are currently unknown to PLAINTIFFS, who therefore sue  
26 DEFENDANTS by such fictitious names under Cal. Code of Civil Procedure § 474.  
27 PLAINTIFFS are informed and believe, and based thereon allege, that each of the  
28 DEFENDANTS designated herein as a DOE is legally responsible in some manner

1 for the unlawful acts referred to herein. PLAINTIFFS will seek leave of court to  
2 amend this Complaint to reflect the true names and capacities of the  
3 DEFENDANTS designated hereinafter as DOES when such identities become  
4 known. Hereinafter DEFENDANTS and the DOE defendants shall be referred to  
5 collectively as “DEFENDANTS.”

6 14. PLAINTIFFS are informed and believes, and on such information and  
7 belief alleges, that each DEFENDANT acted in all respects pertinent to this action  
8 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan  
9 or policy in all respects pertinent hereto, and that the acts of each DEFENDANT are  
10 legally attributable to the other DEFENDANTS.

11 **V. STATEMENT OF FACTS**

12 15. DEFENDANT Earthgrains Distribution, LLC is in the bakery  
13 manufacturing and distribution business. Earthgrains Distribution serves  
14 DEFENDANTS’ customers through a direct-store delivery system of brand breads  
15 and other baked goods, such as Bimbo, Rainbo, Oroweat, Sara Lee, Entenmann’s,  
16 Tia Rosa, and The Original Thomas English Muffins.

17 16. Earthgrains Distribution was established in 2011 and began operating  
18 its direct-store delivery system with the Delivery Drivers in the California market  
19 on or about November 5, 2011. Its customers are mostly large corporate  
20 companies, including major grocery store chains, “big box” stores, and restaurant  
21 chains. EARTHGRAINS has serviced those accounts and developed new accounts  
22 throughout the class period.

23 17. Throughout the class period, Earthgrains Distribution has entered into  
24 Distribution Agreements with Delivery Drivers. The Distribution Agreements  
25 uniformly classify the Delivery Drivers as “independent contractors.”

26 18. The Distribution Agreements authorize the contracting Delivery Driver  
27 to service a designated territory. The territory typically comprises of a route  
28 populated by EARTHGRAINS’ corporate customers. EARTHGRAINS has the

1 discretion to unilaterally add or remove customer accounts from the Delivery  
2 Drivers' routes and to add, modify, or remove products for distribution.  
3 DEFENDANTS also dictate that the Delivery Drivers only sell and distribute the  
4 specific products that DEFENDANTS authorize and that the Delivery Drivers must  
5 sell all the products required by DEFENDANTS.

6 19. DEFENDANTS employ hundreds of Delivery Drivers out of several  
7 warehouse facilities throughout California, including facilities located in the County  
8 of Los Angeles.

9 20. PLAINTIFFS and the other Delivery Drivers are integral to the  
10 operations of EARTHGRAINS' core business: they were hired to timely deliver  
11 and stock EARTHGRAINS' baked goods to EARTHGRAINS' customers.

12 21. EARTHGRAINS require the Delivery Drivers to purchase the baked  
13 goods from EARTHGRAINS to resell to EARTHGRAINS' customers.  
14 DEFENDANTS determine in its sole discretion the price and other terms and  
15 conditions for the sale of the products to the Delivery Drivers. EARTHGRAINS  
16 contracts directly with the major chain retail and restaurant customers—who make  
17 up the vast majority of EARTHGRAINS' business, negotiating with the customer  
18 over, among other things, what products will be stocked, what shelf space will be  
19 provided by the customer, service requirements, special displays and promotions,  
20 and what wholesale prices the customer will be charged. Delivery Drivers do not  
21 control the rates charged EARTHGRAINS' customers. EARTHGRAINS provides  
22 direct billing to the chain accounts.

23 22. DEFENDANTS retain the right to control the manner and means by  
24 which Delivery Drivers perform their jobs, as evidenced by the requirements and  
25 proscriptions set forth in the Distribution Agreements and the company-issued  
26 Operational Guideline Manual that is incorporated into those agreements. The  
27 Operations Guideline Manual sets forth policies, procedures, and instructions by  
28 which the Delivery Drivers must abide in distributing EARTHGRAINS' products.



1 EARTHGRAINS acknowledges that such company specifications include standards  
2 for performance, functionality and appearance. EARTHGRAINS reserves the right  
3 to add, delete or otherwise modify the policies, procedures, and instructions and  
4 demand immediate compliance with any new requirements and proscriptions.  
5 Under the terms of the Distributor Agreement, breach of any mandatory  
6 requirement of the “Distribution Programs” expressed in the Operational Guidelines  
7 Manual or otherwise communicated to the Delivery Drivers in writing or  
8 electronically constitutes a breach of the agreement and grounds for termination.

9 23. Delivery Drivers pick up trays of EARTHGRAINS baked goods from  
10 DEFENDANTS’ warehouses. Delivery Drivers work designated routes, delivering  
11 to and stocking shelves of customers assigned by DEFENDANTS. DEFENDANTS  
12 provide Delivery Drivers with directions and schematics for how to stock its  
13 customers’ shelves. DEFENDANTS require Delivery Drivers to “rotate” the baked  
14 goods stocked in stores per DEFENDANTS’ policy and schedule.

15 24. DEFENDANTS represent that they will monitor the Delivery Drivers’  
16 performance and the satisfaction of the customers in their respective territories.  
17 DEFENDANTS’ personnel, such as their Territorial District Managers, interact  
18 with EARTHGRAINS’ customers regarding distribution issues, visit customers’  
19 stores, and otherwise check that Delivery Drivers are complying with  
20 DEFENDANTS’ requirements. Territorial District Managers may also ride along  
21 with the Delivery Drivers in order to monitor compliance with company policy,  
22 procedures, and instructions.

23 25. Delivery Drivers process orders, invoices, and accounting for their  
24 routes through DEFENDANTS’ computer system, using handheld computer  
25 devices and printers purchased from DEFENDANTS. Delivery Drivers pay for  
26 using these work tools, along with forms, paper, and printer ribbons, through  
27 deductions from their earned compensation. DEFENDANTS instruct the Delivery  
28

1 Drivers to use automated orders for customers that are generated from the  
2 company's computer system.

3 26. DEFENDANTS specify when baked goods must be removed from  
4 their customers' shelves. DEFENDANTS will "buy back" the removed baked  
5 goods from the Delivery Drivers at a discount. DEFENDANTS then resell those  
6 same baked good to discount stores within the Delivery Drivers' territories.  
7 DEFENDANTS instruct Delivery Drivers when to set up special in-store displays  
8 for their products and supply the racks for such displays.

9 27. Delivery Drivers' remuneration depends on their ability to drive their  
10 vehicles and deliver and stock DEFENDANTS' baked goods.

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

17 29. Despite DEFENDANTS' right to control their overall distribution and  
18 stocking operations, including over Delivery Drivers, DEFENDANTS have  
19 uniformly classified and treated all Delivery Drivers as "independent contractors."

20 30. Although the nature of the work performed by Delivery Drivers makes  
21 detailed control by management unnecessary, DEFENDANTS retain the right to  
22 control the work of PLAINTIFFS and of the other Delivery Drivers.

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

26 32. As a result of DEFENDANTS misclassifying PLAINTIFFS and other  
27 Delivery Drivers as "independent contractors," DEFENDANTS have unlawfully  
28 failed to indemnify PLAINTIFFS and other Delivery Drivers for employment-

1 related expenses, including: the costs of providing their leased or owned vehicles;  
2 all operation costs associated with the vehicle, including fuel, maintenance, repair,  
3 cleaning, and licensing; liability and other insurance covering work place injuries;  
4 the costs of purchasing a handheld computer device and printer required by  
5 DEFENDANTS and for the forms and related supplies used with such equipment;  
6 payments for loaders at DEFENDANTS' facilities to assist in breaking down and  
7 loading product onto the Delivery Drivers' trucks; cellular telephone and  
8 DEFENDANTS' designated text messaging services; and miscellaneous tools, such  
9 as dollies and pallet jacks. DEFENDANTS have also failed to indemnify  
10 PLAINTIFFS and other Delivery Drivers for employment-related losses, such as for  
11 lost, stolen, or damaged baked goods. DEFENDANTS have taken deductions from  
12 their compensation to cover many of these employment-related expenses. Under  
13 the Distribution Agreement, DEFENDANTS reserve the right to and have taken  
14 deductions from the compensation of PLAINTIFFS and other Delivery Drivers to  
15 cover many of these employment-related expenses.

16 33. As a result of DEFENDANTS misclassifying their Delivery Drivers as  
17 "independent contractors," DEFENDANTS have regularly failed to provide a  
18 timely 30 minute off-duty meal period to PLAINTIFFS and other Delivery Drivers  
19 when they worked more than five hours in a day.

20 34. As a result of DEFENDANTS misclassifying their Delivery Drivers as  
21 "independent contractors," DEFENDANTS have regularly failed to provide a  
22 second timely 30 minute meal period to PLAINTIFFS and other Delivery Drivers  
23 who worked more than 10 hours in a day.

24 35. As a result of DEFENDANTS misclassifying their Delivery Drivers as  
25 "independent contractors," DEFENDANTS have regularly failed to permit and  
26 authorize a paid rest period of 10 minutes for every four hour segment of work in a  
27 day.

28 ///

1           36. As a result of DEFENDANTS misclassifying their Delivery Drivers as  
2 “independent contractors,” DEFENDANTS have failed to record the actual hours  
3 worked by PLAINTIFFS and other Delivery Drivers during the Class Period.

4           37. As a result of DEFENDANTS misclassifying their Delivery Drivers as  
5 “independent contractors,” DEFENDANTS have failed to itemize the total hours  
6 worked on wage statements furnished to PLAINTIFFS and other Delivery Drivers.

7           38. PLAINTIFFS are informed and on that basis allege that, as a result of  
8 DEFENDANTS misclassifying their Delivery Drivers as “independent contractors,”  
9 DEFENDANTS have not properly maintained payroll records showing the actual  
10 hours worked and meal periods taken and missed each day by PLAINTIFFS and  
11 other Delivery Drivers.

12                                           **VI. CLASS ACTION ALLEGATIONS**

13           39. PLAINTIFFS brings this lawsuit, on behalf of themselves and all  
14 others similarly situated, as a class action pursuant to Rule 23(b)(3) of the Federal  
15 Rules of Civil Procedure. The Class that PLAINTIFFS seeks to represent is  
16 composed of and defined as:

17                                           All persons who are or have operated as bakery goods Delivery Drivers for  
18 DEFENDANTS in the State of California under a “Distribution Agreement”  
19 or a similar written contract that they entered into on behalf of themselves or  
20 entities in which they have an ownership interest (referred to as “Delivery  
21 Drivers”) during the period commencing February 26, 2012 through trial in  
22 this action.

23 This action has been brought and may properly be maintained as a class action  
24 under Rule 23(b)(3) because all the class action requirements are met, including:

25           a. Numerosity: The potential members of the class as defined  
26 herein are so numerous that joinder would be impracticable. PLAINTIFFS are  
27 informed and believe and on such information and belief allege that  
28 DEFENDANTS have employed over 250 Delivery Drivers in California during the  
Class Period. The names and addresses of the Class Members are available from

1 the DEFENDANTS. Notice can be provided to the Class Members via first class  
2 mail using techniques and a form of notice similar to those customarily used in  
3 class action lawsuits of this nature.

4 b. Commonality and Predominance of Common Questions:

5 Questions of law and fact common to PLAINTIFFS and the class predominate over  
6 any questions affecting only individual members of the class. These common  
7 questions of law and fact include, without limitation:

8 i. Whether Delivery Drivers have served DEFENDANTS as  
9 employees rather than independent contractors under California law;

10 ii. Whether Delivery Drivers have necessarily incurred  
11 employment-related expenses and losses in carrying out their duties for  
12 DEFENDANTS;

13 iii. Whether DEFENDANTS have failed to indemnify  
14 Delivery Drivers for their necessarily incurred employment-related-expenses and  
15 losses, in violation of Cal. Labor Code § 2802;

16 iv. Whether DEFENDANTS' failure to indemnify Delivery  
17 Drivers for necessarily incurred employment-related expenses and losses constitutes  
18 an unlawful, unfair, and/or fraudulent business practice, under Cal. Business &  
19 Professions Code § 17200 *et seq*;

20 v. Whether DEFENDANTS have made deductions from the  
21 compensation paid to Delivery Drivers in violation of California law;

22 vi. Whether DEFENDANTS' deductions from Delivery  
23 Drivers' compensation constitute an unlawful, unfair, and/or fraudulent business  
24 practice, under Cal. Business & Professions Code § 17200 *et seq*;

25 vii. Whether DEFENDANTS have failed to provide Delivery  
26 Drivers adequate off-duty meal periods and missed meal period compensation, in  
27 violation of Cal. Labor Code §§ 226.7 and 512 and IWC wage order No. 1, § 11;  
28

1                   viii. Whether DEFENDANTS’ failure to provide Delivery  
2 Drivers adequate off-duty meal periods and missed meal period compensation  
3 constitutes an unlawful, unfair, and/or fraudulent business practice, under Cal.  
4 Business & Professions Code § 17200 *et seq*;

5                   ix. Whether DEFENDANTS have failed to authorize and  
6 permit Delivery Drivers paid rest periods and missed rest period compensation, in  
7 violation of Cal. Labor Code §§ 226.7 and 1194 and IWC wage order No. 1, § 12;

8                   x. Whether DEFENDANTS’ failure to authorize and permit  
9 Delivery Drivers paid rest periods and missed rest period compensation constitutes  
10 an unlawful, unfair, and/or fraudulent business practice, under Cal. Business &  
11 Professions Code § 17200 *et seq*;

12                   xi. Whether DEFENDANTS knowingly and intentionally  
13 failed to provide Delivery Drivers with an itemized statement showing total hours  
14 worked with each payment of wages, as required by Cal. Labor Code § 226;

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

19                   xiii. Whether DEFENDANTS have violated Cal. Labor Code  
20 § 1174 and IWC wage order No. 1, § 7 by failing to maintain documentation of the  
21 actual hours worked each day by Delivery Drivers;

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

26                   xv. What constitutes the proper formula for calculating  
27 restitution, damages and other statutory penalties owed to PLAINTIFFS and the  
28 class alleged herein.

1                   xvi. Whether DEFENDANTS willfully misclassified the  
2 Delivery Drivers as independent contractors in violation of Cal. Labor Code §  
3 226.8; and

4                   xvii. Whether and what amount of penalties should be assessed  
5 against DEFENDANTS under Cal. Labor Code § 2699 for the violations of the Cal.  
6 Labor Code and Wage Orders averred herein.

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

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

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

27 ///

28 ///

1 **VII. DAMAGES**

2 40. As a direct, foreseeable, and proximate result of DEFENDANTS’  
3 conduct, DEFENDANTS owe PLAINTIFFS and similarly situated Delivery  
4 Drivers unreimbursed business expenses plus interest, repayment of unlawfully  
5 deducted wages plus interest, premium pay for missed meal periods plus interest,  
6 premium pay for missed paid rest periods plus interest, statutory penalties, and  
7 attorneys’ fees and costs, the precise amount of which will be proven at trial.

8 **VIII. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**  
10 **REIMBURSEMENT OF BUSINESS EXPENSES**  
11 **(CAL. LABOR CODE § 2802)**

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

16 42. While acting on the direct instruction of DEFENDANTS and  
17 discharging their duties for them, PLAINTIFFS and similarly situated Delivery  
18 Drivers have incurred work-related expenses. Such expenses include but are not  
19 limited to the costs of purchase or lease of vehicles; fuel, maintenance, and other  
20 vehicle operating costs; various forms of insurance; communications equipment and  
21 handheld device; cellular telephones; and loading services. DEFENDANTS have  
22 also held Delivery Drivers accountable for losses, such as out-of-date baked goods  
23 and shrinkage. PLAINTIFFS and Class Members necessarily incurred these  
24 substantial expenses and losses as a direct result of performing their job duties for  
25 DEFENDANTS.

26 43. DEFENDANTS have failed to indemnify or in any manner reimburse  
27 PLAINTIFFS and similarly situated Delivery Drivers for these expenditures and  
28 losses. By misclassifying Delivery Drivers as “independent contractors,” and  
further by requiring those employees to pay expenses and cover losses that they



1 incurred in direct consequence of the discharge of their duties for DEFENDANTS  
2 and/or in obedience to DEFENDANTS' direction, DEFENDANTS have violated  
3 and continue to violate Cal. Labor Code § 2802.

4 44. As a direct and proximate result of DEFENDANTS' conduct,  
5 PLAINTIFFS and similarly situated Delivery Drivers have suffered substantial  
6 losses according to proof, as well as pre-judgment interest, costs, and attorney fees  
7 for the prosecution of this action.

8 45. PLAINTIFFS, on behalf of themselves and similarly situated Delivery  
9 Drivers, request relief as described below.

10 **SECOND CAUSE OF ACTION**  
11 **UNLAWFUL DEDUCTIONS FROM WAGES**  
**(CAL. LABOR CODE §§ 221, 223, 400-410, IWC. WAGE ORDER NO. 1)**

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

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

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

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

28 ///

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

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

14           52. DEFENDANTS have violated Cal. Labor Code §§ 221, 223, and 400-  
15 410, and IWC wage order No. 1, § 8 by unlawfully taking deductions from  
16 PLAINTIFFS’ and Class Members’ compensation to cover certain ordinary  
17 business expenses of DEFENDANTS, including but not limited to out-of-date  
18 baked goods pulled from customers’ stock; lost, stolen, or damaged baked goods;  
19 loading services; and purchase of a handheld computer device, printer, and related  
20 forms and supplies.

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

25           54. By unlawfully deducting wages and failing to pay PLAINTIFFS and  
26 other similarly situated Delivery Drivers, DEFENDANTS are also liable for  
27 penalties, reasonable attorneys’ fees, and costs under Labor Code §§ 218.5 and  
28 1194.

1 55. PLAINTIFFS, on behalf of themselves and similarly situated Delivery  
2 Drivers, request relief as described below.

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

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

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

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

19 59. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order  
20 No. 1, § 11, DEFENDANTS are also liable for penalties, reasonable attorneys' fees,  
21 and costs under Cal. Labor Code §§ 218.5 and 1194.

22 60. PLAINTIFFS, on behalf of themselves and similarly situated Delivery  
23 Drivers, request relief as described below.

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

28 61. The allegations in all of the preceding paragraphs are realleged and  
incorporated herein by reference, and PLAINTIFFS allege as follows a cause of

1 action on behalf of themselves and the above-described class of similarly situated  
2 Delivery Drivers employed by DEFENDANTS in California.

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

9 63. PLAINTIFFS and similarly situated Delivery Drivers were  
10 compensated for delivering baked goods based on DEFENDANTS’ determination  
11 of a commission, and PLAINTIFFS and other Delivery Drivers were not separately  
12 compensated for taking rest periods.

13 64. PLAINTIFFS and similarly situated Delivery Drivers were unable to  
14 deliver baked goods and/or earn a commission while taking rest periods, and  
15 therefore were precluded from earning compensation during any time during which  
16 they managed to take a rest period.

17 65. DEFENDANTS failed to authorize and permit PLAINTIFFS and  
18 similarly situated Delivery Drivers to take a ten-minute paid rest period for each  
19 four hours of work or major fraction thereof.

20 66. Thus, PLAINTIFFS and other Delivery Drivers regularly worked in  
21 excess of three and a half hours a day without being provided at least one paid 10-  
22 minute rest period , as required by Labor Code § 226.7, and IWC wage order No. 1,  
23 §12(A).

24 67. Thus, PLAINTIFFS and the other Delivery Drivers regularly worked  
25 in excess of six hours a day without being provided at least two paid 10-minute rest  
26 periods, as required by Labor Code § 226.7 and IWC wage order No. 1, §12(A).

27 71. Because DEFENDANTS failed to authorize and permit PLAINTIFFS  
28 and similarly situated Delivery Drivers paid rest periods, they are liable to

1 PLAINTIFFS and other Class Members for one hour of additional pay at the regular  
2 rate of compensation for each workday that the compliant rest periods were not  
3 provided, attorneys' fees, penalties, and interest, pursuant to Labor Code §§  
4 226.7(b), 218.5, and 1194, and IWC wage order No. 1, §12(B).

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

7 **FIFTH CAUSE OF ACTION**  
8 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**  
9 **(CAL. LABOR CODE §§ 226 & 226.3)**

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

14 70. Cal. Labor Code § 226(a) requires employers semi-monthly or at the  
15 time of each payment of wages to furnish each employee with a statement  
16 itemizing, among other things, the total hours worked by the employee. Cal. Labor  
17 Code § 226(b) provides that if an employer knowingly and intentionally fails to  
18 provide a statement itemizing, among other things, the total hours worked by the  
19 employee, then the employee is entitled to recover the greater of all actual damages  
20 or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for  
21 each subsequent violation, up to four thousand dollars (\$4,000).

22 71. DEFENDANTS knowingly and intentionally failed to furnish  
23 PLAINTIFFS and similarly situated Delivery Drivers with timely, itemized  
24 statements showing the total hours worked, as required by Cal. Labor Code §  
25 226(a). As a result, DEFENDANTS are liable to PLAINTIFFS and to the Class for  
26 the amounts provided by Cal. Labor Code § 226(b) and for penalties, and attorneys'  
27 fees.

28 72. PLAINTIFFS, on behalf of themselves and similarly situated Delivery  
Drivers, request relief as described below.

**SIXTH CAUSE OF ACTION  
FAILURE TO KEEP ACCURATE PAYROLL RECORDS  
(CAL. LABOR CODE §§ 1174 & 1174.5; IWC WAGE ORDER NO. 1)**

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

74. DEFENDANTS have violated Cal. Labor Code § 1174 and IWC wage order No. 1, § 7(A) by willfully failing to keep required payroll records showing the actual hours worked each day by PLAINTIFFS and similarly situated Delivery Drivers. As a direct and proximate result of DEFENDANTS’ failure to maintain payroll records, PLAINTIFFS and other Delivery Drivers have suffered actual economic harm as they have been precluded from accurately monitoring the number of hours worked and thus seeking all accrued minimum wage.

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

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

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

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

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

///

1           79.   Beginning at an exact date unknown to PLAINTIFFS, but at least since  
2 approximately February 26, 2012, DEFENDANTS have improperly, fraudulently,  
3 and unlawfully classified its Delivery Drivers as “independent contractors” and  
4 have thereby committed unlawful, unfair, and/or fraudulent business acts and  
5 practices as defined by Cal. Business & Professions Code § 17200, by engaging in  
6 the following:

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

9           b.   improperly and unlawfully making deductions from  
10 PLAINTIFFS’ and similarly situated Delivery Drivers’ compensation because of  
11 the return out-of-date product, work-related expenses and losses not attributable to  
12 the Delivery Drivers’ dishonest or willful act, or to the gross negligence of the  
13 PLAINTIFFS, as described above;

14           c.   failing and refusing to provide meal periods to PLAINTIFFS  
15 and similarly situated Delivery Drivers;

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

18           e.   failing to provide accurate itemized wage statements to  
19 PLAINTIFFS and similarly situated Delivery Drivers;

20           f.   failing to maintain payroll records showing the actual hours  
21 worked each day by PLAINTIFFS and similarly situated Delivery Drivers; and

22           g.   willfully and unlawfully misclassifying PLAINTIFFS and  
23 similarly situated Delivery Drivers as independent contractors in violation of  
24 California Labor Code § 226.8 & and IWC Wage Order No. 1.

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

28    ///

1           81. As a direct and proximate result of DEFENDANTS’ unlawful, unfair,  
2 and/or fraudulent acts and practices described herein, DEFENDANTS have  
3 received and continue to hold ill-gotten gains belonging to PLAINTIFFS and other  
4 similarly situated Delivery Drivers. As a direct and proximate result of  
5 DEFENDANTS’ unlawful business practices, PLAINTIFFS and other Delivery  
6 Drivers have suffered economic injuries including, but not limited to out-of-pocket  
7 business expenses, unlawful deductions from compensation, compensation for  
8 missed meal periods and rest breaks. DEFENDANTS have profited from their  
9 unlawful, unfair, and/or fraudulent acts and practices in the amount of those  
10 business expenses, improper deductions from compensation, meal and rest period  
11 compensation, and interest accrued by PLAINTIFFS and the Class.

12           82. PLAINTIFFS and other similarly situated Delivery Drivers are entitled  
13 to restitution pursuant to Cal. Business & Professions Code §§ 17203 and 17208 for  
14 all unpaid business expenses, unlawful deductions from compensation, meal and  
15 rest period compensation, and interest since November 5, 2011.

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

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

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

25           86. Pursuant to Cal. Business & Prof. Code §17203, PLAINTIFFS and  
26 other similarly situated Delivery Drivers are entitled to: (a) restitution of money  
27 acquired by DEFENDANTS by means of their unfair business practices, in amounts  
28



1 not yet ascertained but to be ascertained at trial; (b) a declaration that  
2 DEFENDANTS' business practices are unfair within the meaning of the statute.

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

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

9 **SEVENTH CAUSE OF ACTION**  
10 **PAGA PENALTIES**  
11 **(LABOR CODE § 2699)**

12 89. The allegations of each of the preceding paragraphs are realleged and  
13 incorporated herein by reference, and PLAINTIFFS allege as follows a claim of  
14 relief on behalf of themselves and the above-described Class of similarly situated  
15 Delivery Drivers and in a representative capacity under California Labor Code §  
16 2699.

17 90. As alleged above, DEFENDANTS failed to comply with the California  
18 Labor Code and applicable Wage Order, including

19 a. Labor Code § 2802 by failing to indemnify PLAINTIFFS and  
20 similarly situated Delivery Drivers for all necessary business expenses and losses;

21 b. Labor Code § 221 and IWC Wage Order No. 9 by making  
22 unlawful deductions from the compensation paid to PLAINTIFFS and Class  
23 Members for ordinary business expenses and losses without a showing that the  
24 expenses and/or losses were due to the Delivery Drivers' dishonest or willful act, or  
25 to the gross negligence of the Delivery Drivers;

26 c. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9 by  
27 failing to provide off-duty meal periods to PLAINTIFFS and similarly situated  
28

1 Delivery Drivers;

2 d. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9 by  
3 failing to permit and authorize paid, off-duty rest periods to PLAINTIFFS and  
4 similarly situated Delivery Drivers;

5 e. Labor Code § 226.8 by willfully misclassifying PLAINTIFFS  
6 and similarly situated Delivery Drivers as independent contractors;

7 91. As a result of the aforementioned violations, PLAINTIFFS are  
8 “aggrieved employee[s]” as defined in Labor Code § 2699(a). Pursuant to Labor  
9 Code § 2699, the Labor Code Private Attorneys General Act of 2004, PLAINTIFFS  
10 bring this action on behalf of themselves and other current and former Delivery  
11 Drivers against DEFENDANTS and seeks recovery of applicable civil penalties as  
12 follows:

13 a. where civil penalties are specifically provided in the Labor Code for  
14 each of the violations alleged herein, PLAINTIFFS seek recovery of such  
15 penalties;

16 b. where civil penalties are not established in the Labor Code for each of  
17 the violations alleged herein, PLAINTIFFS seek recovery of the penalties  
18 established in § 2699(e) of the Labor Code Private Attorneys General Act  
19 of 2004, and in accordance with § 200.5 of the Labor Code.

20 92. On March 2, 2016, PLAINTIFFS caused to be served written notice  
21 via certified mail to the California Labor and Workforce Development Agency and  
22 to Defendant Earthgrains Distribution, LLC and Earthgrains Bakery Companies,  
23 Inc. of PLAINTIFFS’ intent to amend the complaint to add a cause of action  
24 pursuant to Labor Code § 2699 *et seq.* Included with the notice was the original  
25 complaint. To date the California Labor and Workforce Development Agency has  
26 not responded to the notice regarding PAGA claims.

27 ///

28 ///

1 **IX. REQUEST FOR JURY TRIAL**

2 93. PLAINTIFFS request a trial by jury on behalf of themselves and the  
3 above described Class of similarly situated Delivery Drivers.

4 **X. PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS request relief as follows:

6 A. A declaratory judgment that DEFENDANTS have knowingly and  
7 intentionally violated the following provisions of law:

8 1. Cal. Labor Code § 2802 by failing to indemnify PLAINTIFFS  
9 and similarly situated Delivery Drivers for all necessarily incurred business  
10 expenses and losses;

11 2. Cal. Labor Code §§ 221 and 400-410 and IWC wage order No.  
12 1, by making unlawful deductions from the compensation paid to PLAINTIFFS and  
13 similarly situated Delivery Drivers for ordinary business expenses and losses  
14 without a showing that the expenses and/or losses were due to PLAINTIFFS'  
15 dishonest or willful act, or to their gross negligence;

16 4. Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 1  
17 by failure to provide off-duty meal periods to PLAINTIFFS and similarly situated  
18 Delivery Drivers;

19 5. Cal. Labor Code §§ 226.7 and 1194, and IWC wage order No. 1  
20 by failure to authorize and permit paid rest periods to PLAINTIFFS and similarly  
21 situated Delivery Drivers;

22 6. Cal. Labor Code § 226, by failing to provide PLAINTIFFS and  
23 similarly situated Delivery Drivers with itemized statements of total hours worked  
24 with each payment of wages;

25 7. Cal. Labor Code § 1174 and IWC wage order No. 1, § 7(A), by  
26 failing to maintain payroll records of the actual hours worked each day by  
27 PLAINTIFFS and similarly situated Delivery Drivers; and

28 ///

1           8. Cal. Business and Professions Code §§ 17200-17208, by failing  
2 to reimburse PLAINTIFFS and similarly situated Delivery Drivers for necessarily  
3 incurred business expenses, by requiring PLAINTIFFS and similarly situated  
4 Delivery Drivers to indemnify DEFENDANTS for ordinary business losses, by  
5 failing to provide off-duty meal periods and/or pay meal period compensation to  
6 PLAINTIFFS and similarly situated Delivery Drivers, by failing to authorize and  
7 permit paid rest breaks and/or missed rest break compensation to PLAINTIFFS and  
8 similarly situated Delivery Drivers, by failing to provide PLAINTIFFS and  
9 similarly situated Delivery Drivers with itemized wage statements showing all  
10 hours worked, and by failing to maintain payroll records that document all hours  
11 worked by PLAINTIFFS and similarly situated Delivery Drivers;

12           9. Cal. Labor Code § 226.8, by willfully misclassifying  
13 PLAINTIFFS and similarly situated Delivery Drivers as independent contractors.

14           B. A declaratory judgment that DEFENDANTS' violations as described  
15 above were willful;

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

20           D. An award to PLAINTIFFS of statutory penalties because of  
21 DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with  
22 itemized wage statements that comply with the requirements of Cal. Labor Code §  
23 226, subject to proof at trial;

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

1 F. An award to PLAINTIFFS of penalties under PAGA for the violations  
2 of the California Labor Code and Wage Order alleged above;

3 G. An award to PLAINTIFFS and the Class of reasonable attorneys' fees  
4 and costs, pursuant to Cal. Code of Civil Procedure § 1021.5 and Cal. Labor Code  
5 §§ 218.5, 226, 1194, 2699, and 2802 and/or other applicable law

6 H. An award to PLAINTIFFS and the Class of such other and further  
7 relief as this Court deems just and proper.

8

9 DATED: May \_\_, 2016.

LEONARD CARDER

10

11 By: /s/ Aaron Kaufmann  
AARON KAUFMANN  
12 Attorneys for PLAINTIFFS

13

14 RUKIN HYLAND DORIA & TINDALL

15

16 By: /s/ Peter Rukin  
PETER RUKIN  
17 Attorneys for PLAINTIFFS

18

19

20

21

22

23

24

25

26

27

28