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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

VICTOR FUENTES, an individual,  
JOSE AVILA, an individual,  
MARIO NAVARRO, an individual,  
and GEORGE GARCIA JR., an  
individual; Individually and on  
Behalf of All Similarly Situated  
Individuals,

Plaintiffs,

vs.

MACY'S WEST STORES, INC.,  
an Ohio corporation; JOSEPH  
ELETTO TRANSFER, INC., a  
New York corporation, and DOES  
1-25,

Defendants.

Case No: CV 14-00790-ODW (FFMx)

[The Honorable Otis D. Wright II]

**CLASS ACTION**

**~~PROPOSED~~ ORDER FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
SETTING OF A FINAL APPROVAL  
HEARING AND APPROVAL OF  
NOTICE TO THE CLASS**

Date: March 16, 2015  
Time: 1:30 p.m.  
Courtroom: 11

*Complaint Filed:* November 19, 2013

*Complaint Removed:* January 31, 2014

*Trial:* None currently Scheduled

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**ORDER FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT**

1 The Court, having fully reviewed the Class Representatives’ Motion for  
2 Preliminary Approval of Class Action Settlement, the supporting Points and  
3 Authorities, the Declaration of Thomas W. Falvey in support thereof, the fully-  
4 executed Stipulation of Class Action Settlement containing a release (“Final  
5 Settlement Agreement”) attached as Exhibit “1” to the Declaration of Thomas W.  
6 Falvey, the proposed Notice of Class Action Settlement and Verified Claim Form  
7 for the Putative Class Member helpers attached as Exhibits “A” and “A-1” to the  
8 Final Settlement Agreement, and the third-party settlement administrator proposal  
9 submitted by Simpluris, Inc. attached as Exhibit “2” to the Declaration of Thomas  
10 W. Falvey, and in recognition of the Court’s duty to make a preliminary  
11 determination as to the reasonableness of any proposed Class Action settlement,  
12 and if preliminarily determined to be reasonable, to ensure proper notice is  
13 provided to Putative Class Members in accordance with due process requirements;  
14 and to conduct a Final Approval hearing as to the good faith, fairness, adequacy  
15 and reasonableness of any proposed settlement, THE COURT HEREBY MAKES  
16 THE FOLLOWING DETERMINATIONS AND ORDERS:

17 1. The Court finds, on a preliminary basis, that the Final Settlement Agreement  
18 appears to be within the range of reasonableness of a settlement which could  
19 ultimately be given final approval by this Court; the Court notes that Defendants  
20 MACY’S WEST STORES, INC., an Ohio corporation; and JOSEPH ELETTO  
21 TRANSFER, INC., a New York corporation, have agreed to pay the entire  
22 Settlement Amount of \$4,000,000 (MACY’S WEST STORES, INC. paying  
23 \$3,000,000 thereof, and JOSEPH ELETTO TRANSFER, INC., paying \$1,000,000  
24 respectively) to the Putative Class Members, Class Representatives, Class  
25 Counsel, the Claims Administrator, and the State of California Labor Workforce  
26 and Development Agency, in full satisfaction of the claims as more specifically  
27 described in the Final Settlement Agreement;

1           It further appears to the Court, on a preliminary basis, that the settlement is  
2 fair and reasonable to Putative Class Members when balanced against the probable  
3 outcome of further litigation, liability and damages issues, and potential appeals of  
4 rulings. It further appears that significant formal and informal discovery,  
5 investigation, research, and litigation has been conducted such that counsel for the  
6 Parties at this time are able to reasonably evaluate their respective positions. It  
7 further appears that settlement at this time will avoid substantial costs, delay and  
8 risks that would be presented by the further prosecution of the litigation. It also  
9 appears that the proposed Settlement has been reached as the result of intensive,  
10 informed and non-collusive negotiations between the Parties;

11  
12           **ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR**  
13 **ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**  
14 **IS HEREBY GRANTED.**

15  
16 2.       The Court finds that the Notice of Proposed Class Action Settlement and  
17 Exclusion Form fully advises Putative Class Members of the proposed settlement,  
18 of preliminary Court approval of the proposed Settlement, exclusion timing and  
19 procedures, dispute resolution procedures, and of the Final Approval Hearing.  
20 These documents fairly and adequately advise Putative Class Members of the  
21 terms of the proposed Settlement and the benefits available to Putative Class  
22 Members thereunder, as well as their right to exclude themselves from the Class  
23 and procedures for doing so, and of the Final Approval Hearing and the right of  
24 Putative Class Members to file documentation in objection and to appear in  
25 connection with said hearing; the Court further finds that said Notice clearly  
26 comports with all constitutional requirements including those of due process;

1 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY  
2 APPROVES THE PROPOSED NOTICE OF PROPOSED CLASS ACTION  
3 SETTLEMENT.  
4

5 3. The mailing to the present and last known addresses of the Putative Class  
6 Members constitutes an effective method of notifying Putative Class Members of  
7 their rights with respect to the Settlement; ACCORDINGLY, IT IS HEREBY  
8 ORDERED as follows:

9 (a) Within five (5) days, Defendant JOSEPH ELETTO TRANSFER,  
10 INC. shall forward to the appointed Claims Administrator, Simpluris, Inc., a  
11 database (in an electronic spreadsheet format) of all Putative Class Members,  
12 including the names, last known addresses, telephone numbers, dates of  
13 employment, social security numbers, and respective total days worked during the  
14 Class Period (November 19, 2009 through the date of this Order);

15 (b) Within fourteen (14) days, the Claims Administrator, Simpluris, Inc.,  
16 shall mail to each member of the Settlement Class, by first class, postage pre-paid,  
17 the Notice of Class Action Settlement, Exclusion Form, and a postage-paid  
18 envelope addressed to the Claims Administrator. All mailings shall be made to the  
19 present and/or last known mailing address of the Putative Class Members based on  
20 Defendants' records, as well as addresses that may be located by the Claims  
21 Administrator, who will conduct standard address searches in cases of returned  
22 mail. The Court finds that the mailing of notices to Putative Class Members as set  
23 forth in this paragraph is the best means practicable by which to reach Putative  
24 Class Members and is reasonable and adequate pursuant to all constitutional and  
25 statutory requirements including all due process requirements;

26 (c) At most 90 days prior to the Final Approval Hearing, Defendants will  
27 provide confirmation that they have provided notice to all appropriate Federal and  
28

1 State officials pursuant to 28 U.S.C. § 1715.

2  
3 4. IT IS FURTHER ORDERED that all:

4 (a) Requests for Exclusion must be mailed to the Claims Administrator,  
5 postmarked on or before the 45th day after the Notice Packet was mailed to the  
6 relevant Putative Class Member, excepting Putative Class Members who had  
7 Notice Packets re-mailed, who shall have until the 45th day after the Notice Packet  
8 was re-mailed to them;

9 (b) Objections must be filed with the Court as described in the Class  
10 Notice and also served on Class Counsel and on Defense Counsel at most twenty-  
11 one (21) days before the Final Approval Hearing;

12  
13 5. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held  
14 before the undersigned at 1:30 p.m., on <sup>June 30,</sup> ~~July 27,~~ 2015, at the above-entitled court  
15 located at 312 North Spring Street, Los Angeles, California 90012 to consider the  
16 fairness, adequacy and reasonableness of the proposed Settlement preliminarily  
17 approved by this Order of Preliminary Approval, and to consider the application of  
18 Class Counsel for an award of reasonable attorneys' fees, litigation expenses,  
19 Class Representative Service Payments, and for costs of claims administration  
20 incurred;

21  
22 6. IT IS FURTHER ORDERED that all briefs in support of final approval of  
23 the Settlement and for Award of Attorneys' Fees, Costs, Class Representative  
24 Service Awards, and Putative Class Member Service Awards shall be served and  
25 filed with the Court within 90 days of this Order.

26 ///

27 ///

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1 7. IT IS FURTHER ORDERED that pending final determination of whether  
2 this proposed Settlement should be granted final approval, no Putative Class  
3 Member, either directly or representatively, or in any other capacity, shall  
4 commence or prosecute any action or proceeding asserting any of the Putative  
5 Class Members' Released Claims, as defined in the Settlement Agreement, against  
6 Defendants in any court or tribunal;

7  
8 8. IT IS FURTHER ORDERED that any party to this case, including Putative  
9 Class Members, may appear at the Final Approval Hearing in person or by  
10 counsel, and may be heard to the extent allowed by the Court, in support of or in  
11 opposition to, the Court's determination of the good faith, fairness, reasonableness  
12 and adequacy of the proposed Settlement, the requested attorneys' fees and  
13 litigation expenses, and any Order of Final Approval and Judgment regarding such  
14 Settlement, fees and expenses; provided, however, that no person, except Class  
15 Counsel and counsel for Defendants, shall be heard in opposition to such matters  
16 unless such person has complied with the conditions set forth in the Notice of  
17 Proposed Class Action Settlement which conditions are incorporated therein;

18  
19 9. IT IS FURTHER ORDERED that in the event of the occurrence of the  
20 Effective Date, as defined in the Settlement Agreement, all Putative Class  
21 Members, except those who have requested exclusion from the settlement, and  
22 their successors shall conclusively be deemed to have given full releases of any  
23 and all Released Claims as defined in the Settlement Agreement against  
24 Defendants, their former and present parents, subsidiaries, affiliated corporations  
25 and entities, and each of their respective officers, officials, directors, employees,  
26 partners, shareholders and agents, any other successors, assigns or legal  
27 representatives ("Released Parties") and all such Putative Class Members and their  
28

1 successors shall be permanently enjoined and forever barred from asserting any  
2 Released Claims against any Released Parties as described by the Settlement  
3 Agreement;

4  
5 10. IT IS FURTHER ORDERED that if, for any reason, the Court does not  
6 execute and file an Order of Final Approval, or if the Effective Date does not  
7 occur for any reason whatsoever, the proposed Settlement Agreement and the  
8 proposed Settlement subject of this Order and all evidence and proceedings had in  
9 connection therewith, shall be without prejudice to the status quo ante rights of the  
10 parties to the litigation as more specifically set forth in the Settlement Agreement.

11  
12 11. IT IS FURTHER ORDERED that, pending further order of this Court, all  
13 proceedings in this matter except those contemplated herein and in the Settlement  
14 Agreement are stayed.

15  
16 The Court expressly reserves the right to adjourn or continue the Final Approval  
17 Hearing from time-to-time without further notice to the Putative Class Members.

18  
19 IT IS SO ORDERED.

20  
21 Dated: March 16, 2015



Hon. Otis D. Wright II  
JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF  
CALIFORNIA

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11 Attorneys for Defendant, JOSEPH ELETTO TRANSFER, INC.  
 (Additional Counsel Listed on Following Page)

13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15	VICTOR FUENTES, an individual, )	<b>CASE NO. 2:14-CV-00790-ODW-FFM</b>
16	JOSE AVILA, an individual, MARIO )	
17	NAVARRO, an individual, GEORGE )	<b><u>CLASS ACTION</u></b>
18	GARCIA, JR., an individual; )	
19	Individually and on Behalf of All )	<b>JOINT STIPULATION REGARDING</b>
20	Similarly Situated Individuals, )	<b>PLAINTIFFS' MOTION FOR</b>
21	Plaintiffs, )	<b>PRELIMINARY APPROVAL OF</b>
22	v. )	<b>CLASS ACTION SETTLEMENT</b>
23	MACY'S WEST STORES, INC., an )	The Honorable Judge Otis D. Wright II
24	Ohio corporation; JOSEPH ELETTO )	Location: Courtroom 11
25	TRANSFER, INC., a New York )	Hearing Date: N/A
26	corporation, and DOES 1 through 25, )	Time: N/A
27	Inclusive, )	
28	Defendants. )	



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20 Attorneys for Plaintiffs, VICTOR FUENTES, JOSE AVILA, MARIO NAVARRO,  
and GEORGE GARCIA, JR., Individually and on Behalf of All Similarly Situated  
21 Individuals

22  
23 Plaintiffs VICTOR FUENTES, MARIO NAVARRO, JOSE AVILA, and  
24 GEORGE GARCIA, JR., ("Plaintiffs"), on behalf of themselves and the putative  
25 class, and Defendants MACY'S WEST STORES, INC. ("Macy's") and JOSEPH  
26 ELETTO TRANSFER, INC. ("Eletto") (collectively hereinafter referred to as  
27  
28

1 “Defendants”) (Plaintiffs and Defendants are collectively the “Parties”), by and  
2 through their respective counsel of record, hereby stipulate and agree to the  
3 following:

4 1. Shortly before the Parties engaged in mediation with the Honorable  
5 Peter D. Lichtman (Ret.), in July of 2014, Eletto provided Plaintiffs with an estimate  
6 of the number of individuals in the putative class. At that time, Eletto estimated the  
7 putative class to be around 225 individuals. Eletto based this figure on two  
8 assumptions: (1) number of total truck runs during the putative class period; and (2)  
9 an estimate of driver and helper turnover during the putative class period.

10 2. The Parties agreed in principle to the terms of a settlement in October  
11 of 2014, and subsequently entered into a formal settlement agreement on or about  
12 January 29, 2015. Shortly thereafter, on February 13, 2015, Plaintiffs filed a Notice  
13 of Motion and Motion for Preliminary Approval of Class Action Settlement;  
14 Memorandum of Points and Authorities in Support Thereof (ECF No. 38)  
15 (“Preliminary Approval Motion”). Plaintiffs also filed the Declaration of Thomas  
16 Falvey in Support of the Preliminary Approval Motion (ECF No. 38-1) (“Falvey  
17 Declaration”).

18 3. The Preliminary Approval Motion and Falvey Declaration both  
19 represent that there are about 225 individuals in the putative class, the number  
20 provided by Eletto to Plaintiffs prior to the mediation in July of 2014.

21 4. Eletto has since engaged in a process of going one-by-one through  
22 thousands of hard-copy background-check records in order to better ascertain the  
23 membership of the putative class for purposes of compliance with the Class Action  
24 Fairness Act of 2005, 28 U.S.C. § 1715, and, ultimately, settlement administration.  
25 As a result of this process, Eletto now believes that the current number of class  
26 members is about 612. This estimate is higher than before for two reasons. First,  
27

1 new drivers and helpers have joined the putative class since July of 2014. Second,  
2 the driver and helper turnover at the facility is higher than initially estimated.

3 5. The Parties have discussed the new estimate of the size of the putative  
4 class and agree that it does not affect the Settlement Agreement executed by the  
5 Parties. The Settlement Agreement does not make any reference to an estimated  
6 number of putative class members. Moreover, the new class-size estimate does not  
7 materially affect the putative class members' overall alleged damages. Plaintiffs'  
8 claimed damages are allegedly caused when a driver or helper makes a truck run,  
9 and the total number of truck runs during the putative class period has not changed.  
10 Put differently, while the Parties now know that there are more drivers and helpers  
11 (due to the passage of time and higher-than-estimated turnover), the number of truck  
12 runs driven during the class period, and consequently the number of days worked by  
13 drivers and helpers, has not changed.

14 NOW, THEREFORE, the Parties hereby stipulate, agree, and respectfully  
15 request that the Court, in considering the Preliminary Approval Motion, take into  
16 account the revised estimate of total class members, and that the Court grant the  
17 Preliminary Approval Motion.

18  
19 Dated: March 16, 2015

Respectfully submitted,

20  
21 /s/ Robert L. Browning  
22 Robert L. Browning (Pro Hac Vice)  
23 Braden K. Core (Pro Hac Vice)  
24 Paul D. Root (Pro Hac Vice)  
25 Scopelitis Garvin Light Hanson & Feary  
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Attorneys for Defendant,  
Joseph Eletto Transfer, Inc.

1 /s/ Michael Christman

2 Michael Christman, (Pro Hac Vice)  
3 **(Signature Affixed by Permission)**  
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5 111 Boulder Industrial Drive, 2nd Floor  
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7 (314) 342-6334

8 Attorneys for Defendant, Macy's West Stores,  
9 Inc.

10 /s/ Michael H. Boyamian

11 Michael H. Boyamian, Cal. Bar No. 256107  
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13 Armand R. Kizirian, Cal. Bar No. 293992  
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19 Attorneys for Plaintiffs, Victor Fuentes, Jose  
20 Avila, Mario Navarro, and George Garcia, Jr.,  
21 Individually and on Behalf of All Similarly  
22 Situated Individuals  
23  
24  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on March 16, 2015. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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11 Individually and on Behalf of All Similarly Situated Individuals

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

NOV 19 2013

John A. Clarke, Executive Officer/Clerk  
By SHAUKYA WESLEY Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES

14 VICTOR FUENTES, an individual, JOSE  
15 AVILA, an individual; MARIO  
NAVARRO, an individual; GEORGE  
16 GARCIA, JR., an individual; Individually  
and on Behalf of All Similarly Situated  
17 Individuals,

18 Plaintiffs,

19 vs.

20 MACY'S WEST STORES, INC., an Ohio  
corporation; JOSEPH ELETTO  
21 TRANSFER, INC., a New York  
corporation, and DOES 1 through 25,  
22 Inclusive,

23 Defendants.

CASE NO.

[CLASS ACTION]

BC 528221

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194)
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194)
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);
4. FAILURE TO PROVIDE MEAL AND REST PERIODS (LABOR CODE §§ 512 and 226.7);
5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
6. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
7. INDEMNIFICATION (LABOR CODE §§ 2800 and 2802);
8. CONVERSION (LABOR CODE §§ 3336 and 3294); and
9. UNFAIR COMPETITION (LABOR CODE §§ 17200 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiffs Victor Fuentes, Jose Avila, Mario Navarro, and George Garcia, Jr.  
2 (“Plaintiffs”), individually and on behalf of all similarly situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants MACY’S WEST  
5 STORES, INC., JOSEPH ELETTO TRANSFER, INC., and DOES 1-25, inclusive (collectively,  
6 “Defendants”), on behalf of Plaintiffs and all other individuals who worked in California as a  
7 Driver and/or Helper for Defendants at any time during the four years preceding the filing of this  
8 action, and continuing while this action is pending (“Class Period”), who were denied the  
9 benefits and protections required under the California Labor Code and other statutes and  
10 regulations applicable to California employees.

- 11 2. During the Class Period, Defendants:
- 12 a. failed to pay wages for all hours worked by Drivers and Helpers;
  - 13 b. failed to pay Drivers and Helpers the legal minimum wage of \$8.00/hour;
  - 14 c. failed to pay overtime wages due to Drivers and Helpers;
  - 15 d. failed to provide meal and rest periods due to Drivers and Helpers;
  - 16 e. failed to provide the Drivers and Helpers with timely and accurate wage  
17 and hour statements;
  - 18 f. failed to pay the Drivers and Helpers compensation in a timely manner  
19 upon their termination or resignation;
  - 20 g. failed to maintain complete and accurate payroll records for the Drivers  
21 and Helpers;
  - 22 h. wrongfully withheld wages and compensation due to the Drivers and  
23 Helpers; and
  - 24 i. committed unfair business practices in an effort to increase profits and to  
25 gain an unfair business advantage at the expense of the Drivers and Helpers and the public.

26 3. The foregoing acts and other acts by Defendants - committed throughout  
27 California and Los Angeles County - violated provisions of the California Labor Code, including  
28 sections 201, 202, 203, 226, 226.7, 510, 512, 515, 551, 552, 1194, and 1198 (collectively,

1 “Employment Laws”), violated the applicable Wage Orders issued by California’s Industrial  
2 Welfare Commission, including Wage Orders 5-2001 during the Class Period (“Regulations”),  
3 violated California’s Unfair Business Practices Act, California Business & Professions Code  
4 sections 17200 *et seq.*, and violated Plaintiffs’ rights.

5 **JURISDICTION AND VENUE**

6 4. Venue is proper in this Judicial District and the County of Los Angeles because  
7 work was performed by Plaintiffs and other members of the Class for Defendants in the County  
8 of Los Angeles, California, and Defendants’ obligations under the Employment Laws and  
9 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage  
10 statements to Plaintiffs and other members of the Class arose and were breached in the County of  
11 Los Angeles.

12 5. The California Superior Court has jurisdiction in this matter because Plaintiffs are  
13 all residents of California, and Defendants are corporations qualified to do business in California  
14 and regularly conduct business in California. Further, no federal question is at issue as the  
15 claims are based solely on California law.

16 **THE PARTIES**

17 6. Plaintiff Victor Fuentes is, and at all relevant times was, a competent adult  
18 residing in California. Mr. Fuentes brings suit on behalf of himself and all similarly situated  
19 individuals pursuant to California Code of Civil Procedure section 382, and California Business  
20 & Professions Code sections 17200, *et seq.* Mr. Fuentes is unlawfully classified by Defendants  
21 as an independent contractor and currently works as a Driver out of Macy’s Logistics and  
22 Operations Center located in the City of Industry, California.

23 7. Plaintiff Jose Avila is, and at all relevant times was, a competent adult residing in  
24 California. Mr. Avila brings suit on behalf of himself and all similarly situated individuals  
25 pursuant to California Code of Civil Procedure section 382, and California Business &  
26 Professions Code sections 17200, *et seq.* Mr. Avila is unlawfully classified by Defendants as an  
27 independent contractor and currently works as a Driver out of Macy’s Logistics and Operations  
28 Center located in the City of Industry, California.



1           8.       Plaintiff Mario Navarro is, and at all relevant times was, a competent adult  
2 residing in California. Mr. Navarro brings suit on behalf of himself and all similarly situated  
3 individuals pursuant to California Code of Civil Procedure section 382, and California Business  
4 & Professions Code sections 17200, *et seq.* Mr. Navarro was unlawfully classified by  
5 Defendants as an independent contractor and worked as a Driver out of Macy's Logistics and  
6 Operations Center located in the City of Industry, California.

7           9.       Plaintiff George Garcia, Jr. is, and at all relevant times was, a competent adult  
8 residing in California. Mr. Garcia brings suit on behalf of himself and all similarly situated  
9 individuals pursuant to California Code of Civil Procedure section 382, and California Business  
10 & Professions Code sections 17200, *et seq.* Mr. Garcia was unlawfully classified by Defendants  
11 as an independent contractor and worked as a Driver Assistant or commonly referred to by  
12 Defendants as a "Helper" out of Macy's Logistics and Operations Center located in the City of  
13 Industry, California.

14          10.       Defendant Macy's West Stores, Inc. is, and at all relevant times was, an Ohio  
15 corporation registered with the State of California's Secretary of State. Macy's is one of the  
16 nation's premier chain of department stores and is a retailer of a variety of private and in-store  
17 brands. Macy's conducts business throughout the State of California, including in Los Angeles  
18 County.

19          11.       Defendant Joseph Eletto Transfer, Inc. is, and at all relevant times was, a New  
20 York corporation registered with the State of California's Secretary of State. Eletto is a carrier  
21 for department stores providing logistics management. Defendants have engaged in unlawful  
22 employment practices addressed in this Complaint throughout California and in Los Angeles  
23 County.

24          12.       Defendants Macy's and Eletto, are, and at all relevant times were, corporations  
25 conducting business in the State of California, including the County of Los Angeles. Plaintiffs  
26 are informed and believe, and based upon such information and belief, allege that Macy's  
27 exercised control over the operations of Eletto from its resources, preparation, and management,  
28 to Eletto utilizing Macy's criteria and standards for hiring personnel and performing deliveries.

1           13.     The degree of control exercised by Macy's over Eletto is enough to reasonably  
2 deem Eletto an agent of Macy's under traditional agency principles. Eletto can legitimately be  
3 described as only a means through which Macy's acts and conducts its global business.  
4 Defendants Eletto and Macy's have such a unity of interest and ownership that the separate  
5 personalities do not in reality exist and that the corporate structure is just a shield for the alter ego  
6 of each other. Plaintiffs therefore are informed and believe and thereupon allege Eletto, Macy's,  
7 and each of them, were their employer under California law, that Defendants herein did acts  
8 consistent with the existence of an employer-employee relationship with Plaintiffs - despite their  
9 unlawful classification of Plaintiffs as independent contractors - and that Eletto was owned,  
10 controlled, directly or indirectly, by Macy's.

11           14.     Plaintiffs are informed and believe and based thereon allege that Defendants  
12 uniformly apply their pay practices, and overtime policies to all Drivers and Driver Assistants.

13           15.     Plaintiffs are currently unaware of the true names and capacities of the defendants  
14 sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those  
15 defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true  
16 names and capacities of such fictitiously named defendants when they are ascertained.

17           16.     Plaintiffs are informed and believe and based thereon allege that each defendant  
18 sued in this action, including each defendant sued by the fictitious names DOES 1 through 25,  
19 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged  
20 below.

21           17.     Plaintiffs are informed and believe and based thereon allege that DOES 1 through  
22 25, inclusive were the agents, servants and/or employees of Defendants and, in doing the things  
23 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,  
24 servants and employees, and with the permission and consent of Defendants.

25           18.     Plaintiffs are informed and believe and based thereon allege that Defendants  
26 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged  
27 herein.

28     ///

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 19. Defendants unlawfully classified Plaintiffs as independent contractors when, in  
3 fact, they were heavily regulated through a series of work-related restrictions and directives.  
4 Macy's directs Eletto to secure truck owners to have them contract with Macy's for purposes of  
5 delivering Macy's products to its customers. These truck owners arrive at Macy's Logistics and  
6 Operations Center and go through a hiring process with Macy's employees who office at the  
7 same site. Truck owners are hired by Macy's and are required to have a Macy's banner put on  
8 the truck. Truck owners then bring on Drivers and Driver Assistant or commonly referred to by  
9 Defendants as "Helpers", like Plaintiffs, who are also evaluated by Macy's employees for hiring  
10 purposes.

11 20. After Defendants hired Plaintiffs, Macy's instructed Plaintiffs to follow a series of  
12 directives related to the delivery of Macy's products. These directives include, but are not  
13 limited to, the following:

- 14 a. the truck must bear a Macy's logo and cannot be used for any others  
15 purposes while having the Macy's banner;
- 16 b. the truck must be left at the site at the end of the work day;
- 17 c. the delivery schedules are set and controlled by Macy's and cannot be  
18 varied by Drivers or Driver's Assistants, like Plaintiffs;
- 19 d. Plaintiffs were required to purchase at their own cost and wear Macy's  
20 distinct uniforms;
- 21 e. Drivers and Helpers, like Plaintiffs, were required to carry personalized  
22 Macy's business cards that they give out to customers carrying the Macy's logo ;
- 23 f. Plaintiffs were also required to announce themselves to Macy's customers  
24 as "Macy's delivery" and "from Macy's";
- 25 g. Plaintiffs were required to provide felt and plastic at their own cost and  
26 expense in connection with delivering Macy's products;
- 27 h. each morning Plaintiffs and other similarly situated Drivers and Helpers  
28 were required to go through a process of "role-playing" where Macy's employees evaluate

1 whether the Driver or Helper, like Plaintiffs, met Macy's standards and expectations of delivery  
2 and customer service;

3 i. on each delivery - and as part of their "role-playing" exercise -  
4 Plaintiffs were instructed to use a red carpet provided by Macy's in delivering Macy's products  
5 and if that red carpet was lost or destroyed, then the Driver and/or Helper must purchase a red  
6 carpet for \$200;

7 j. if a customer has furniture and offers it to a Driver or Helper, Macy's  
8 considers the donation as Macy's property and it must be delivered and left at the site or  
9 warehouse;

10 k. Drivers and Helpers must offer to vacuum the floor when they remove  
11 furniture;

12 l. if Drivers and Helpers are requested to remove mattress, they must do it  
13 even if it is covered in bedbugs, feces, or blood;

14 m. if any of the furniture is damaged, even if the damage comes from the  
15 store, the Driver must pay for it and/or receives a negative evaluation - the negative evaluation is  
16 in turn assessed by Macy's employees and is used as a basis to dock pay;

17 n. Drivers and Helpers, including Plaintiffs, were required to leave customers  
18 with a performance checklist with "Macy's" printed on it, and customers are encouraged to  
19 provide feedback directly to Macy's to rate the performance of the Driver or Helper;

20 o. Plaintiffs were required to obtain worker's compensation insurance and  
21 umbrella insurance at their own expense and must purchase the umbrella insurance from Macy's.

22 21. Plaintiffs, including the putative class of Drivers and Helpers they seek to  
23 represent, were all compensated on a flat-rate - \$120/day for Drivers and \$100/day for Helpers -  
24 regardless of how many hours were actually worked. Plaintiffs received their compensation by  
25 personal check issued by the truck owners, and not from Defendants. This "flat rate" also  
26 constitutes an unlawful piece-rate compensation system because Drivers and Helpers had no  
27 control over how many hours they worked and could do nothing to change the amount of pay  
28 through their own efficiencies. This unlawful compensation scheme did not account for all the

1 work performed by Drivers or Helpers, like Plaintiffs, who typically worked 12 to 15 hours a day  
2 and performed various non-driving tasks all under the control and direction of Defendants. This  
3 compensation scheme is illegal and is in violation of the Employment Laws and Regulations.

4 22. During the time Plaintiffs were employed by Defendants and as part of the four  
5 years preceding the filing of this action, Defendants failed to provide Plaintiffs and similarly  
6 situated Drivers and Helpers with rest periods during work shifts over four hours. Defendants  
7 also routinely failed to provide Plaintiffs and similarly-situated employees a 30-minute meal  
8 period in which they were relieved of all duties when they worked over five hours. These  
9 practices are in violation of the Employment Laws and Regulations.

10 23. During Plaintiffs' employment with Defendants, Plaintiffs and Drivers and  
11 Helpers were regularly required to work more than eight hours per day and more than forty hours  
12 per workweek. Defendants regularly did not compensate Plaintiffs and Drivers and Helpers for  
13 the overtime hours they worked, in violation of the Employment Laws and Regulations.

14 24. During Plaintiffs' employment with Defendants, Macy's and Eletto failed to  
15 provide Plaintiffs with timely and accurate wage and hour statements showing gross hours  
16 earned, total hours worked, all deductions made, net wages earned, accrued vacation, and all  
17 applicable hourly rates in effect during each pay period, as well as the corresponding number of  
18 hours worked at each hourly rate.

19 25. During Plaintiffs' employment with Defendants, Defendants wrongfully withheld  
20 from Plaintiffs and failed to pay their wages and other compensation which was due them for all  
21 of their hours worked, for overtime work, for missed meal and rest periods, and as otherwise  
22 required pursuant to the Employment Laws and Regulations.

23 26. Plaintiffs seek restitution and disgorgement of all sums wrongfully obtained by  
24 Defendants through unfair business practices in violation of California's Business & Professions  
25 Code sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of  
26 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair  
27 Businesses Act are equitable in nature and are not to be considered damages. Plaintiffs are also  
28 entitled to costs, attorney's fees, interest and penalties as provided for by the California Labor

1 Code, the California Business & Professions Code, and the Private Attorney General Act,  
2 California Code of Civil Procedure section 1021.5.

3 27. To the extent that any Class Member, including Plaintiffs, entered into any  
4 arbitration agreement with any Defendant and such agreement purports to require arbitration,  
5 such agreement is void and unenforceable. Any such agreement was one of adhesion, executed  
6 under duress, lacked consideration and mutuality, and was otherwise void under both California  
7 Labor Code section 229 and the California Supreme Court case of *Armendariz v. Foundation*  
8 *Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

9 **CLASS ACTION ALLEGATIONS**

10 28.. Plaintiffs bring these claims as a class action pursuant to Code of Civil Procedure  
11 § 382 and Business and Professions Code §§ 17203 & 17204. Plaintiffs bring this action on their  
12 own behalf and on behalf of the following class of individuals (the “Class” or “Class Members”):

13 All individuals employed by, or formerly employed by, Defendants as Drivers at  
14 Macy’s Logistic and Operations Center located in the City of Industry in the State  
15 of California at any time from November 19, 2009, and continuing while this  
action is pending.

16 All individuals employed by, or formerly employed by, Defendants as Driver  
17 Assistants or referred to as “Helpers” at Macy’s Logistic and Operations Center  
18 located in the City of Industry in the State of California at any time from  
November 19, 2009, and continuing while this action is pending.

19 29. All Drivers or Helpers, including Plaintiffs, are putative class members.

20 30. During the Class Period, by virtue of unlawfully classifying Plaintiffs and Class  
21 Members as independent contractors and compensating Class Members with a “flat rate”  
22 Defendants have routinely failed to compensate Drivers and Helpers all of the wages they are due  
23 (“off-the-clock” work).

24 31. During the Class Period, Plaintiffs and Drivers and Helpers were subject to  
25 Defendants’ unlawful company practice of classifying employees as independent contractors and  
26 subjecting them to Defendants’ unlawful piece rate system. All who were subject to this  
27 unlawful classification and compensation scheme were not paid for all hours worked, including  
28 overtime, and were deprived of compliant meal and rest periods, among other things. Defendants

1 applied this illegal wage device uniformly to all Drivers and Helpers who worked out of Macy's  
2 Logistic and Operations Center to the disadvantage of Class Members. All who were subject to  
3 this unlawful classification and compensation scheme suffered damages.

4 32. As a result, during the Class Period, Defendants have failed to provide Drivers  
5 and Helpers with accurate wage and hour statements since the daily "flat rate" did not fully  
6 compensate Drivers and Helpers for all hours worked. Defendants have failed to provide Drivers  
7 and Helpers with accurate wage and hour statements since the gross hours earned, total hours  
8 worked, all deductions made, net wages earned, and all applicable hourly rates in effect during  
9 each pay period and the corresponding number of hours worked at each hourly rate were  
10 incomplete, inaccurate, and/or missing from all wage statements.

11 33. During the Class Period, Plaintiffs and Drivers and Helpers have been required to  
12 work more than eight hours per day and more than forty hours per workweek. Defendants have  
13 routinely failed to compensate Drivers and Helpers all of the overtime wages they are due.

14 34. During the Class Period, Defendants have failed to pay accrued wages and other  
15 compensation due immediately to Drivers and Helpers who were terminated, and Defendants  
16 have failed to pay accrued wages and other compensation due within seventy-two hours to  
17 Drivers and Helpers who ended their employment.

18 35. The proposed class is ascertainable in that its members can be identified using  
19 information contained in Defendants' payroll and personnel records.

20 36. Numerosity. The Drivers and Helpers are so numerous, conservatively estimated  
21 to include over 100 Drivers and Helpers, that joinder of each individual Class Member would be  
22 impracticable, and the disposition of their claims in a class action, rather than numerous  
23 individual actions, will benefit the parties, the Court and the interests of justice.

24 37. Commonality. There is a well-defined community of interest in the questions of  
25 law and fact involved in this action, because Defendants' failure to pay Drivers and Helpers their  
26 wages or afford them the protections required under the Employment Laws and Regulations  
27 affects all Class Members. Common questions of law and fact predominate over questions that  
28 affect only individual Driver and Helpers, because all Drivers and Helpers were subject to the

1 uniform, unlawful pay practices and policies. The predominate questions of law and fact include,  
2 but are not limited to:

3 a. Did Defendants devise a scheme and plan to circumvent California wage and hour  
4 laws?;

5 b. Was/is Defendants' conduct fraudulent and deceitful?;

6 c. Did/does Defendants' conduct violate the Employment Laws and Regulations?;

7 and

8 (i) failing to compensate Plaintiff and the Class Members for all  
9 hours worked;

10 (ii) failing to compensate Plaintiff and the Class Members at the  
11 applicable and legally-mandated minimum hourly rate of \$8.00;

12 (iii) failing to provide Plaintiffs and the Class Members with compliant  
13 meal and rest periods;

14 (iii) failing to provide Plaintiffs and the Class Members with timely and  
15 accurate wage and hour statements; and

16 (iv) failing to maintain complete and accurate payroll records for  
17 Plaintiffs and the Class Members;

18 d. Do/did Defendants' systematic acts and practices violate, *inter alia*, California  
19 Business & Professions Code section 17200, *et seq.*?

20 38. Typicality. Plaintiffs' claims are typical of those of the other Drivers and Helpers  
21 because all Drivers and Helpers share the same or similar employment duties and activities, all  
22 are automatically classified as independent contractors, and all have been denied the benefits and  
23 protections of the Employment Laws and Regulations in the same manner. Since Defendants  
24 have uniformly applied the same pay practices and policies to each Driver and Helper, Plaintiffs'  
25 claims are typical of the claims of all Drivers and Helpers. Plaintiffs' claims are also typical  
26 because they have suffered the same damages as those suffered by all Class Members.

27 39. Adequacy of Representation. Plaintiffs can fairly and adequately represent and  
28 protect the interests of all Drivers and Helpers in that neither Plaintiffs have disabling conflicts of



1 interest which are antagonistic to those of all other Drivers and Helpers. Plaintiffs seek no relief  
2 which is antagonistic or adverse to the other Class Members, and the infringement of their rights  
3 and the damages they have suffered are typical of all other Class Members. Plaintiffs' counsel is  
4 competent and experienced in litigating class actions in California based on large employers'  
5 violations of the Employment Laws and Regulations.

6 40. As mentioned above, to the extent that any Driver or Helper entered into any  
7 arbitration agreement with any Defendant and such agreement purports to require arbitration,  
8 such agreement is void and unenforceable. Even if such agreement is deemed enforceable,  
9 however, classwide arbitration is appropriate and should be utilized to obtain classwide relief.

10 41. Superiority of Class Action. The nature of this action and the nature of laws  
11 available to Plaintiffs and the other Drivers and Helpers in the putative Class make use of the  
12 class action a particularly efficient and effective procedure because:

13 a. For many of the Drivers and Helpers, individual actions or other individual  
14 remedies would be impracticable and litigating individual actions would be too costly;

15 b. The action involves large corporate employers (Macy's and Eletto) and a large  
16 number of individual employees (Plaintiffs and the other Class Members), many with relatively  
17 small claims and all with common issues of law and fact;

18 c. If the Drivers and Helpers are forced to bring individual lawsuits, the corporate  
19 defendants would necessarily gain an unfair advantage, the ability to exploit and overwhelm the  
20 limited resources of individual Class Members with vastly superior financial and legal resources;

21 d. The costs of individual suits would likely consume the amounts recovered;

22 e. Requiring each Class Member to pursue an individual remedy would also  
23 discourage the assertion of lawful claims by current employees of Defendants, who would be  
24 disinclined to pursue an action against their present and/or former employer due to an appreciable  
25 and justified fear of retaliation and permanent damage to their immediate and/or future  
26 employment; and

27 ///

28 ///

1 f. Common business practices Plaintiffs experienced are representative of those  
2 experienced by all Drivers and Helpers and can establish the right of all Drivers and Helpers to  
3 recover on the alleged claims.  
4

5 **FIRST CAUSE OF ACTION**

6 **(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194**  
7 **By Plaintiffs Individually and on Behalf of All Drivers and Helpers)**

8 42. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
9 allegations contained in this complaint, and incorporate them by reference into this cause of  
10 action as though fully set forth herein, excepting those allegations which are inconsistent with  
11 this cause of action.

12 43. Plaintiffs bring this action to recover their unpaid compensation for all hours  
13 worked as defined by the applicable Industrial Welfare Commission wage order as the time  
14 during which an employee is subject to the control of an employer, and includes all the time the  
15 employee is suffered or permitted to work, whether or not required to do so.

16 44. Drivers and Helpers, including Plaintiffs, were unlawfully classified as  
17 independent contractors but were instructed, directed or otherwise controlled by Defendants to  
18 perform their work through a series of Defendants' requirements, expectations, and standards for  
19 performance. Defendants knew or should have known that Plaintiffs were working these hours  
20 because a) Defendants required employees to "swipe-in" and "swipe-out" on an electronic cash  
21 register, thus Defendants knew the actual hours worked by employees, and b) Plaintiffs were  
22 informed that this directive to not report all hours worked on their hand-written time records  
23 came from the highest level of management.

24 45. Current and former employees who were food servers (waiters and waitresses)  
25 were instructed to record a meal period on their hand-written time log regardless of the fact that  
26 they were not relieved of duty for a meal period. Defendants would "auto-deduct" for a meal  
27 period each and every shift without any confirmation that the meal period was provided. This

28 ///

1 half-hour a day of unpaid time for meal periods not taken is further indicia of "Off the Clock"  
2 work and violates the Employment Laws and Regulations.

3 47. Plaintiffs are entitled to recover the unpaid balance of compensation Defendants  
4 owe Plaintiffs, plus interest, associated statutory penalties, and reasonable attorney fees and costs  
5 pursuant to Labor Code section 1194.  
6

7 **SECOND CAUSE OF ACTION**

8 **(Failure to Pay Minimum Wages - Labor Code § 1194**

9 **By Plaintiffs Individually and on Behalf of All Class Members)**

10 48. As a separate and distinct cause of action, Plaintiffs complain and reallege all of  
11 the allegations contained in this complaint, and incorporate them by reference into this cause of  
12 action as though fully set forth herein, excepting those allegations which are inconsistent with  
13 this cause of action.

14 49. At all relevant times, the IWC Wage Order 5-2001 applied to Plaintiffs in  
15 Plaintiffs' capacity as employees of Defendants. The Wage Orders and California law provided,  
16 among other things, that Plaintiffs must receive minimum wage earnings for all hours worked.

17 50. During the Class Period, Defendants have routinely failed to pay Drivers and  
18 Helpers, including Plaintiffs, the minimum wage required by the Employment Laws and  
19 Regulations for all hours worked. Defendants unlawfully classified Drivers and Helpers as  
20 independent contractor and compensated Plaintiffs through an unlawful piece rate - a flat rate -  
21 for work. Defendants' unlawful scheme of a "flat rate" violates the provisions of Wage Order 5-  
22 2001 as it exceeds the maximum allotted amount that can be charged to an employee.

23 51. Drivers and Helpers, including Plaintiffs, have been deprived of their rightfully  
24 earned minimum wages as a direct and proximate result of Defendants' policies and practices  
25 and Defendants' failure and refusal to pay said wages for all hours worked. Drivers and Helpers,  
26 including Plaintiffs, are entitled to recover the past wages owed to them, under the minimum  
27 wage laws, plus an additional equal amount as liquidated damages as permitted under the Wage  
28

///

1 Orders and California law, plus interest thereon and attorneys' fees and costs, pursuant to Labor  
2 Code § 1194, in an amount according to proof at the time of trial.

3  
4 **THIRD CAUSE OF ACTION**

5 **(Failure to Pay Overtime Compensation - By Plaintiffs Individually and on Behalf of All**  
6 **Drivers and Helpers: California Labor Code §§ 510 and 1194)**

7 52. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
8 allegations contained in this complaint, and incorporate them by reference into this cause of  
9 action as though fully set forth herein, excepting those allegations which are inconsistent with  
10 this cause of action.

11 53. During the Class Period, Defendants have routinely required Drivers and Helpers,  
12 including Plaintiffs, to work over eight hours in a day and over forty hours in a workweek.  
13 However, Defendants have failed and refused to pay the Drivers and Helpers, including  
14 Plaintiffs, the overtime compensation required by the Employment Laws and Regulations.

15 54. The Drivers and Helpers, including Plaintiffs, have been deprived of their  
16 rightfully earned overtime compensation as a direct and proximate result of Defendants' policies  
17 and practices and Defendants' failure and refusal to pay that compensation. Drivers and Helpers,  
18 including Plaintiffs, are entitled to recover such amounts, plus interest, attorney's fees and costs.

19  
20 **FOURTH CAUSE OF ACTION**

21 **(Failure to Provide Meal and Rest Periods - By Plaintiffs Individually and on Behalf of All**  
22 **Drivers and Helpers: California Labor Code §§ 226.7 and 512)**

23 55. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
24 allegations contained in this complaint, and incorporate them by reference into this cause of  
25 action as though fully set forth herein, excepting those allegations which are inconsistent with  
26 this cause of action.

27 56. During the Class Period, Defendants have routinely failed to provide employees in  
28 the position of Drivers and Helpers, including Plaintiffs, with meal and rest periods during their

1 work shifts, and have failed to compensate these Drivers and Helpers, including Plaintiffs, for  
2 those meal and rest periods, as required by California Labor Code section 226.7 and the other  
3 applicable sections of the Employment Laws and Regulations.

4 57. Drivers and Helpers, including Plaintiffs, have been deprived of their rightfully  
5 earned compensation for meal and rest periods as a direct and proximate result of Defendants'  
6 policies and practices and Defendants' failure and refusal to pay that compensation. These  
7 Drivers and Helpers, including Plaintiffs, are entitled to recover such amounts pursuant to  
8 California Labor Code section 226.7(b), plus interest, attorney's fees and costs.

9  
10 **FIFTH CAUSE OF ACTION**

11 **(Failure to Accurate Furnish Wage and Hour Statements - By Plaintiffs Individually and**  
12 **on Behalf of All Drivers and Helpers: California Labor Code § 226)**

13 58. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
14 allegations contained in this complaint, and incorporate them by reference into this cause of  
15 action as though fully set forth herein, excepting those allegations which are inconsistent with  
16 this cause of action.

17 59. During the Class Period, Defendants have routinely failed to provide Drivers and  
18 Helpers, including Plaintiffs, with timely and accurate wage and hour statements showing gross  
19 hours earned, total hours worked, all deductions made, net wages earned, the name and address  
20 of the legal entity employing the Drivers and Helpers, and all applicable hours rates in effect  
21 during each pay period and the corresponding number of hours worked at each hourly rate.

22 60. As a consequence of Defendants' actions, Drivers and Helpers are entitled to all  
23 available statutory penalties, costs and reasonable attorney's fees, including those provided in  
24 California Labor Code section 226(e), as well as all other available remedies.

25 ///

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **(For Waiting Time Penalties - By Plaintiffs Individually and on Behalf of All Drivers and**  
3 **Helpers: California Labor Code §§ 201-203)**

4 61. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
5 allegations contained in this complaint, and incorporate them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with  
7 this cause of action.

8 62. During the Class Period, Defendants failed to pay accrued wages and other  
9 compensation due immediately to each Driver and Helper who was terminated and failed to pay  
10 accrued wages, including meal and rest period wages and other compensation due within  
11 seventy-two hours to each Driver and Helper who ended his or her employment.

12 63. As a consequence of Defendants' actions, Drivers and Helpers are entitled to all  
13 available statutory penalties, including those provided in California Labor Code section 203, as  
14 well as all other available remedies.

15  
16 **SEVENTH CAUSE OF ACTION**

17 **(For Indemnification - By Plaintiffs Individually and on Behalf of All Drivers and Helpers-**  
18 **Labor Code § 2802)**

19 64. As a separate and distinct cause of action, Plaintiffs complain and reallege all of  
20 the allegations contained in this complaint, and incorporate them by reference into this cause of  
21 action as though fully set forth herein, excepting those allegations which are inconsistent with  
22 this cause of action.

23 65. Pursuant to Labor Code § 2802(a), an employer shall indemnify its employees for  
24 all necessary expenditures or losses incurred by the employees in direct consequence of the  
25 discharge of their duties, or of their obedience to the directions of the employer, even though  
26 unlawful, unless the employee, at the time of obeying the directions, believed them to be  
27 unlawful.

28 ///



1           72. Defendants have knowingly and intentionally failed to pay Drivers and Helpers,  
2 including Plaintiffs, the legal minimum wage, overtime wages for hours worked over eight hours  
3 in a day and forty hours in a workweek, failed to compensate them for meal and rest periods, and  
4 failed to provide them with other compensation due. Defendants have intentionally converted  
5 the wages and compensation of Drivers and Helpers, including Plaintiffs, by

6           a. Withholding earned overtime wages and other compensation which the  
7 Drivers and Helpers, including Plaintiffs, owned or had the right to own and had the legal right to  
8 hold, possess and dispose of, and then,

9           b. Taking the overtime wages and other compensation due to the Drivers and  
10 Helpers, including Plaintiffs, and utilizing such wages and compensation for Defendants' own  
11 use and benefit.

12           73. Among other thing, by employing an unlawful company practice as demonstrated  
13 by Defendants' compensation scheme of paying "flat rate", Defendants have converted such  
14 wages and compensation as part of an intentional and deliberate scheme to maximize profits at  
15 the expense of Drivers and Helpers, including Plaintiffs. Defendants' conversion has been done  
16 with the advance knowledge, express or implied authorization, and/or ratification of Defendants'  
17 respective corporate officers, directors and managing agents.

18           74. In refusing to pay all of the wages, overtime wages, expense reimbursements and  
19 other compensation due to the Drivers and Helpers, including Plaintiffs, Defendants have  
20 knowingly, unlawfully and intentionally taken, appropriated and converted such wages and  
21 compensation for Defendants' own use, purpose and benefit. At the time the conversion took  
22 place, Drivers and Helpers, including Plaintiffs, were entitled to immediate possession of the  
23 wages earned.

24           75. The Drivers and Helpers, including Plaintiffs, have been injured by Defendants'  
25 intentional conversion of such wages and compensation. The Drivers and Helpers, including  
26 Plaintiffs, are entitled to all monies converted by Defendants, with interest, as well as any and all  
27 profits, whether direct or indirect, which Defendants' acquired by their unlawful conversion.

28 ///





1 h. Wrongful conversion of wages and compensation due to Drivers and  
2 Helpers, including Plaintiffs,  
3 all constitute unfair business practices in violation of the California Business &  
4 Professions Code section 17200, *et seq.*

5 79. Defendants have avoided payment of wages, overtime wages and other benefits as  
6 required by the California Labor Code, the California Code of Regulations, and applicable  
7 Industrial Welfare Commission Wage Orders.

8 80. As a result of Defendants' unfair business practices, Defendants have reaped  
9 unfair benefits and illegal profits at the expense of Drivers and Helpers, including Plaintiffs, and  
10 members of the public. Defendants should be made to disgorge their ill-gotten gains and to  
11 restore them to Drivers and Helpers, including Plaintiffs.

12 81. Defendants' unfair business practices entitles Plaintiffs to an order that  
13 Defendants account for, disgorge and restore to the Drivers and Helpers, including Plaintiffs, the  
14 wages and other compensation unlawfully withheld from them.

15  
16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs, individually and on behalf of all Drivers and Helpers, pray  
18 that the Court enter judgment in their favor and against Defendants as follows:

- 19 1. For an Order requiring and certifying this action as a class action;
- 20 2. For an Order appointing Plaintiffs' counsel as Class Counsel;
- 21 3. For compensatory damages in an amount to be ascertained at trial;
- 22 4. For restitution in an amount to be ascertained at trial;
- 23 5. For punitive damages in an amount to be ascertained at trial;
- 24 6. For penalties as required by the applicable Wage Order or otherwise by law;
- 25 7. For prejudgment interest at the legal rate pursuant to California Labor Code  
26 section 218.6 and other applicable sections;
- 27 8. For reasonable attorney's fees pursuant to California Labor Code §§ 1194;
- 28 9. For cost of suit incurred herein;

