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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

TAREE TRUONG, KHALED ALKOJAK,
OLGA GEORGIEVA, and CYNTHIA
MILLER, on behalf of themselves and all
persons similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
Corporation, SCOOBEEZ, INC., a California
Corporation, ABT HOLDINGS, INC, an
Idaho Corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT

- (1) FAILURE TO PAY MINIMUM WAGE (Labor Code §§ 1182.12, 1194 *et seq.*, § 1197 *et seq.*; Minimum Wage Order; IWC Wage Order 9);
- (2) FAILURE TO PAY OVERTIME COMPENSATION (Labor Code §§ 512, 1194; IWC Wage Order 9);
- (3) FAILURE TO PAY REPORTING TIME PAY (IWC Wage Order 9)
- (4) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (Labor Code § 2802);
- (5) FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512; IWC Wage Order 9);
- (6) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §226; IWC Wage Order 9);
- (7) WAITING TIME PENALTIES (Labor Code §§ 201, 202, 203);
- (8) BREACH OF CONTRACT (Civil Code § 1559);
- (9) VIOLATIONS OF THE UNFAIR COMPETITION LAW (Bus. & Prof. Code §§ 17200 *et seq.*).

DEMAND FOR JURY TRIAL

1 Plaintiffs Taree Truong, Khaled Alkojak, Olga Georgieva, and Cynthia Miller allege, on
2 behalf of themselves and all persons similarly situated, the following for their complaint:

3 **I. INTRODUCTION**

4 1. Plaintiffs are four individuals who have been engaged by Defendants to provide
5 same day, timed deliveries of consumer goods to customers of the newly launched “Amazon Prime
6 Now” service in the State of California. Plaintiffs were hired by Defendant Scoobeez
7 (“Scoobeez”), a courier company operated by Defendant ABT Holdings, Inc. (“ABT”), to work
8 exclusively for Amazon.com, Inc.’s (“Amazon”) “Prime Now” delivery service. Defendants
9 schedule Plaintiffs to work regular shifts, pay them by the hour, and assign packages for Plaintiffs
10 to deliver to Amazon Prime Now customers who place orders for one- to two-hour delivery of all
11 manner of consumer goods using the Amazon Prime Now mobile application. Plaintiffs perform
12 their delivery duties wearing a uniform that identifies them to customers as representatives of
13 Amazon Prime Now. Despite these and other clear indicia that Plaintiffs are and were
14 Defendants’ employees, Defendants have classified them as “independent contractors” and, in so
15 doing, have denied them the benefits and protections of California employment law.

16 2. In this action, Plaintiffs seek to recover damages on behalf of themselves and
17 similarly situated delivery drivers (collectively “Plaintiffs” or “Delivery Drivers”) who have been
18 all jointly employed by Defendants Amazon.Com, Inc., Scoobeez, ABT Holdings, Inc., and Does
19 1 through 10 (collectively “Defendants”) for violations of the California wage and hour law,
20 including the California Labor Code (“Labor Code”), the California Minimum Wage Order, and
21 the California Industrial Welfare Commission (“IWC”) wage orders. Plaintiffs also seek
22 declaratory and injunctive relief based on Defendants’ conduct of engaging in unfair and unlawful
23 business practices prohibited by Business and Professions Code § 17200 *et. seq.*

24 3. The class action (“CLASS ACTION”) asserts violations of the California Labor
25 Code, the IWC wage orders, and THE Unfair Competition Law (“UCL”), arising from Defendants’
26 unlawful conduct, including: the failure to pay minimum wage, overtime compensation, and
27 reporting time pay; the failure to reimburse employees for all necessary expenses and losses
28 incurred in connection with their employment; the failure to provide meal periods; the failure to

1 furnish accurate wage statements and keep accurate payroll records; the failure to promptly pay all
2 wages due and owing upon termination; the failure to maintain workers' compensation insurance
3 covering all employees and to pay compensation to injured workers; the failure to contribute to the
4 Unemployment Trust Fund on behalf of all employees; and other legal obligations.

5 4. Because Defendants have willfully deprived Plaintiffs of the rights and protections
6 guaranteed by California law to all employees, as described above, Defendants' classification of
7 Plaintiffs as "independent contractors" and the attendant deprivation of substantial rights and
8 benefits of employment is part of an on-going unfair and/or unlawful business practice by
9 Defendants. Plaintiffs seek, on behalf of themselves and those similarly situated, back wages,
10 waiting time penalties, restitution, disgorgement, interest thereon, declaratory and injunction relief,
11 and attorneys' fees and costs.

12 II. PARTIES

13 A. Plaintiffs

14 5. Plaintiff Taree Truong resides in Garden Grove, California (Orange County). She
15 worked as a full-time Delivery Driver for Defendants from approximately September 10, 2015 to
16 approximately October 5, 2015. Throughout her tenure with Defendants, she performed delivery
17 services exclusively to Amazon Prime Now customers and worked out of Amazon's facilities in
18 Irvine, California (Orange County). Plaintiff has driven her personal vehicle to carry out her duties
19 for Defendants.

20 6. Plaintiff Khaleed Alkojak resides in Garden Grove, California (Orange County). He
21 worked as a part-time Delivery Driver for Defendants from approximately September 14, 2015 to
22 approximately October 5, 2015. Throughout his tenure with Defendants, he performed delivery
23 services exclusively to Amazon Prime Now customers and worked out of Amazon's facilities in
24 Irvine, California (Orange County). Plaintiff has driven his personal vehicle to carry out his duties
25 for Defendants.

26 7. Plaintiff Olga Georgieva resides in Huntington Beach, California (Orange County).
27 She worked as a full-time Delivery Driver for Defendants from approximately September 8, 2015
28 to approximately October 4, 2015. Throughout her tenure with Defendants, she performed delivery

1 services exclusively to Amazon Prime Now customers and worked out of Amazon’s facilities in
2 Irvine, California (Orange County). Plaintiff has driven her personal vehicle to carry out her duties
3 for Defendants.

4 8. Plaintiff Cynthia Miller resides in Victorville, California (San Bernardino, County).
5 She worked as a full-time Delivery Driver for Defendants from approximately September 3, 2015
6 to approximately October 7, 2015. Throughout her tenure with Defendants, she performed delivery
7 services exclusively to Amazon Prime Now customers and worked out of Amazon’s facilities in
8 Irvine, California (Orange County). Plaintiff has driven her personal vehicle to carry out her duties
9 for Defendants.

10 **B. Defendants**

11 9. Defendant Amazon.com, Inc. is incorporated under the laws of the state of
12 Delaware and has its principal executive offices in Seattle, Washington. Defendant Amazon has at
13 all relevant times been an employer covered by the Labor Code and IWC Wage Order 9.

14 10. Defendant Scoobeez, Inc. is incorporated under the laws of the state of California
15 and has its principal office in Glendale, California (Los Angeles County). Defendant Scoobeez
16 has at all relevant times an employer covered by the Labor Code and IWC Wage Order 9.

17 11. Defendant ABT Holdings, Inc., is incorporated under the laws of the state of Idaho
18 and has its principal offices in Pasadena, California (Los Angeles County). Defendant ABT has at
19 all relevant times an employer covered by the Labor Code and IWC Wage Order 9.

20 12. The true names and capacities, whether individual, corporate, associate, or
21 otherwise, of defendants sued herein as Does 1 through 10, inclusive, are currently unknown to
22 Plaintiffs, who therefore sue defendants by such fictitious names under Cal. Code of Civil
23 Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the
24 defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
25 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true
26 names and capacities of the defendants designated hereinafter as Does when such identities become
27 known. Hereinafter Defendants and the DOE defendants shall be referred to collectively as
28 “Defendants.”

1 Drivers based out of Amazon warehouses in Southern California, including out of hubs in Irvine,
2 Silver Lake, Santa Monica, Manhattan Beach, and San Diego locations. During October 2015,
3 Scoobeez began expanding its partnership with Amazon into the San Francisco Bay Area and other
4 Northern California locations, and is in the process of on-boarding hundreds more Delivery Drivers
5 Northern California. San Francisco service commenced the week of October 22, 2015.

6 17. Scoobeez hired the Plaintiffs to work as delivery drivers exclusively to provide
7 service to Amazon customers. Plaintiffs were each required to execute lengthy written contracts
8 but were not provided with copies of these agreements, and their requests for copies of these
9 contracts were denied by Scoobeez.

10 18. At all material times, Plaintiffs reported to and worked exclusively out of an
11 Amazon warehouse. They each received multiple days of training in making Amazon Prime Now
12 deliveries at the Amazon warehouse including, *inter alia*, performing practice deliveries using
13 training routes generated in the App. Defendants require Plaintiffs to wear shirts and hats bearing
14 the Amazon Prime Now logo and provide the Plaintiffs with a smart phone pre-loaded with the
15 App. Defendants assign Scoobeez e-mail addresses to each Delivery Driver for purposes of
16 communicating their weekly work schedules and other company information.

17 19. Plaintiffs are scheduled to work fixed shifts during Amazon's Prime Now service
18 hours. Scoobeez explicitly instructs the Delivery Drivers to report to the Amazon warehouse 15
19 minutes before their scheduled start time, for which time they receive no compensation at all.
20 Plaintiffs check in with a dispatcher – using their identification card, which bears both the
21 Scoobeez and Amazon logos – at the beginning of the shift and check out with the dispatcher at the
22 end of the shift. Not infrequently they are scheduled to work six or seven consecutive days in a
23 week, and have been occasionally sent home without pay after reporting to the warehouse if there
24 is not enough work. Upon information and belief, Defendants do not have a written policy that
25 provides for off-duty meal breaks.

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28 available at <http://globenewswire.com/news-release/2015/09/14/768004/0/en/ABT-s-Scoobeez-has-Boarded-over-200-Drivers-and-Riders-due-to-Soaring-Growth.html>.

1 20. After checking-in at the Amazon warehouse, Plaintiffs muster in a Scoobeez line,
2 next to the dispatch lines of drivers working for other Amazon contractors, and wait for the
3 Amazon dispatcher to assign them packages for the next two-hour delivery window. The Delivery
4 Drivers then scan each package into the App for real time tracking. Amazon unilaterally decides
5 how many and which packages will be assigned to Delivery Drivers and makes their work
6 assignments. Plaintiffs cannot reject work assignments, nor can they request that their deliveries be
7 restricted to a particular geographic area. Plaintiffs who do not follow Defendants’ rules or
8 instructions are subject to discipline up to and including termination.

9 21. Plaintiffs are instructed to deliver their assigned packages in a set sequence
10 determined by Defendants, starting with the delivery the farthest distance from the Amazon
11 warehouse and then working their way back. The App generates routes and directions for each
12 delivery. Plaintiffs can be assigned to drive as many as 100 miles or more in a day for which they
13 receive no mileage reimbursement. Defendants track the Plaintiffs while they are out on deliveries
14 and Defendants’ dispatchers (located at the Amazon warehouse) frequently call or send text
15 messages to alert Plaintiffs that they are running late or to suggest alternate routes. The delivery
16 window is strict: Plaintiffs are instructed that they cannot deliver “two minutes early or two
17 minutes late.” After making the delivery, Plaintiffs are required to ask customers to fill out and
18 return to them an Amazon customer service survey. After finishing that window’s deliveries,
19 Plaintiffs return to the Amazon warehouse to line up for the next delivery window.

20 22. Plaintiffs wait at the Amazon warehouse until they are assigned the next batch of
21 deliveries. The Amazon warehouse in Irvine, California, for example, has a designated waiting
22 area where the many dozens of drivers who delivery for Amazon wait for their work assignments.
23 The waiting area has neither windows nor air conditioning, and Amazon requires that all external
24 doors stay closed. While there are often as many as 60-100 drivers present at any one time waiting
25 for work, there is only a single unisex restroom available for their use.

26 23. Plaintiffs are paid by the hour as “independent contractors” at rates that are
27 unilaterally determined by Defendants. The Delivery Drivers do not negotiate any aspect of their
28 compensation terms and Defendants reserve the right to change the compensation terms at any time

1 in its sole discretion. For example, upon information and belief, Plaintiffs were told at the time of
2 hiring that they would be paid \$11 per hour, plus \$2.50 per delivery drop, and tips. In mid-
3 September 2015, Defendants eliminated the per drop bonus; Scoobeez required Plaintiffs to sign a
4 new contract agreeing to compensation of \$11 per hour plus tips, but again did not provide the
5 Plaintiffs copies of the new contract. Upon information and belief, Plaintiffs are paid in hourly
6 increments. They are paid for their actual hours worked only if they work fewer than their
7 scheduled hours. Plaintiffs are not paid at a premium rates for hours worked in excess of eight in
8 day or 40 in a workweek for if they work more, they are paid only for their scheduled hours work
9 performed on a seventh consecutive day in a week.

10 24. Amazon guarantees its customers that “your entire tip goes to your courier.” But
11 the App does not allow the Plaintiffs to see if or how much they were tipped for any given delivery,
12 nor are Plaintiffs provided a summary or itemized report of their tips by Defendants. Upon
13 information and belief, Plaintiffs have not received the tips left designated for them by customers
14 in full or in part.

15 25. Plaintiffs perform their delivery work in their personal vehicles. They are required
16 to show proof of “full coverage, personal vehicle insurance” and are instructed to add “Scoobeez,
17 Inc.” and “Scoobeez Global, Inc.” as additional insureds to their policies. Defendants do not
18 provide commercial insurance coverage to Plaintiffs nor do Defendants require Plaintiffs to obtain
19 such coverage. Defendants do not reimburse the Plaintiffs for fuel, insurance, maintenance, tolls,
20 or other vehicle expenses they incur in performing services for Defendants, either at the IRS
21 mileage rate or otherwise. On information and belief, Plaintiffs’ net compensation is at times less
22 than the lawful minimum wage after they pay these expenses, despite the fact that the hourly pay
23 is, on its face, higher than the applicable minimum wage.

24 26. Defendants’ classification and treatment of Plaintiffs throughout the period covered
25 by this lawsuit as “independent contractors” rather than as “employees” is and has been unlawful.

26 27. As a result of Defendants misclassifying Plaintiffs as “independent contractors,”
27 Defendants have unlawfully failed to indemnify Plaintiffs for employment-related expenses,
28 including the costs of providing their leased or owned vehicles; all operation costs associated with

1 the vehicle, including fuel, maintenance, repair, cleaning, and licensing; liability and other
2 insurance covering work place injuries.

3 28. As a result of Defendants misclassifying their Delivery Drivers as “independent
4 contractors,” Defendants have regularly failed to provide a timely 30 minute off-duty meal period
5 to Plaintiffs when they worked more than five hours in a day.

6 29. As a result of Defendants misclassifying their Delivery Drivers as “independent
7 contractors,” Defendants have failed to record the actual hours worked by Plaintiffs during the
8 Class Period.

9 30. As a result of Defendants misclassifying their Delivery Drivers as “independent
10 contractors,” Defendants have failed to itemize the total hours worked on wage statements
11 furnished to Plaintiffs.

12 31. Plaintiffs are informed and on that basis allege that, as a result of Defendants’
13 misclassifying their Delivery Drivers as “independent contractors,” Defendants have not properly
14 maintained payroll records showing the actual hours worked and meal periods taken and missed
15 each day by Plaintiffs.

16 32. The services that Plaintiffs provide to Defendants are integral to their respective
17 business enterprises. By providing vehicles, by reliably serving Defendants’ customers, by
18 following Defendants’ controlled delivery assignments and delivery schedules, and in other
19 material ways, Plaintiffs have rendered services to Defendants that are vital to Defendants’ delivery
20 services.

21 33. Despite Defendants’ pervasive control over all aspects of the Amazon Prime Now
22 one- to two-hour delivery operation, including over all aspects of Plaintiffs’ work, Defendants have
23 uniformly classified and unlawfully treated Plaintiffs as “independent contractors,” rather than
24 employees.

25 **IV. CLASS ACTION ALLEGATIONS**

26 34. Plaintiffs bring claims for violations of California’s Labor Code and Wage Order 9
27 on behalf of themselves and the Plaintiff Class (“CLASS”) pursuant Code of Civil Procedure §
28 382. The CLASS is comprised of:

1 All persons who are or have operated as Delivery Drivers pursuant to a contract between
2 Scoobeez/ABT and Amazon to deliver goods to Amazon customers in the State of
3 California and who are or were classified as “independent contractors” during the period
4 commencing on or about August 2015 through the date of trial.

5 35. **Numerosity**: The members of the CLASS are sufficiently numerous that joinder of
6 all members is impracticable. During the class period, Defendants have required Delivery Drivers
7 to deliver Amazon packages to Amazon customers within one- or two-hour delivery windows.
8 Plaintiffs are informed and believe, and on that basis allege, that Defendants jointly employ over
9 200 Delivery Drivers in California and that all current Delivery Drivers are members of the
10 CLASS, as defined herein. In addition, the CLASS includes former Delivery Drivers employed by
11 Defendants since August 2015, and unknown future Class Members who will become employed by
12 Defendants as Delivery Drivers prior to the date of judgment.

13 36. **Commonality**: There are questions of law and fact common to the CLASS that are
14 answerable on a common basis, and these questions predominate over individual questions. The
15 questions of law and fact common to the CLASS include, without limitation:

- 16 a. Whether Delivery Drivers have served Defendants as employees rather than
17 independent contractors under California law;
- 18 b. Whether Delivery Drivers have failed to pay Delivery Drivers:
 - 19 i. minimum wages for all hours worked, in violation of Labor Code §§
20 1194 and 1197, General Minimum Wage Order, and Wage Order 9 §4;
21 and
 - 22 ii. overtime compensation when Delivery Drivers worked in excess of eight
23 (8) hours in a day or forty (40) hours in a workweek, in violation of
24 California’s Labor Code § 510 and Wage Order 9 § 3;
- 25 c. Whether Defendants’ failure to pay Delivery Drivers minimum wage for all
26 hours worked constitutes an unlawful, unfair, and/or fraudulent business
27 practice, under Cal. Business & Professions Code § 17200 *et seq.*;

- 1 d. Whether Defendants' failure to pay Delivery Drivers overtime compensation
2 for all hours worked in excess of eight (8) hours in a day or forty (40) hours
3 in a workweek constitutes an unlawful, unfair, and/or fraudulent business
4 practice, under Cal. Business & Professions Code § 17200 *et seq.*;
- 5 e. Whether Defendants have a policy and practice of not paying sufficient
6 wages for reporting to work when they send Delivery Drivers home when
7 there is not enough work on a scheduled work day, in violation of Wage
8 Order 9 § 5;
- 9 f. Whether Defendants' failure to pay reporting time pay constitutes an
10 unlawful, unfair, and/or fraudulent business practice, under Cal. Business &
11 Professions Code § 17200 *et seq.*;
- 12 g. Whether Delivery Drivers have necessarily incurred employment-related
13 expenses and losses in carrying out their duties for Defendants;
- 14 h. Whether Defendants have failed to indemnify Delivery Drivers for their
15 necessarily incurred employment-related-expenses and losses, in violation of
16 Labor Code § 2802;
- 17 i. Whether Defendants' failure to indemnify Delivery Drivers for necessarily
18 incurred employment-related expenses and losses constitutes an unlawful,
19 unfair, and/or fraudulent business practice, under Cal. Business &
20 Professions Code § 17200 *et seq.*;
- 21 j. Whether Defendants have failed to provide Delivery Drivers adequate off-
22 duty meal periods and missed meal period compensation, in violation of
23 Labor Code §§ 226.7 and 512 and IWC wage order 9 § 11;
- 24 k. Whether Defendants' failure to provide Delivery Drivers adequate off-duty
25 meal periods and missed meal period compensation constitutes an unlawful,
26 unfair, and/or fraudulent business practice, under Cal. Business &
27 Professions Code § 17200 *et seq.*;
- 28

- 1 i. Whether Defendants knowingly and intentionally failed to provide Delivery
2 Drivers with an itemized statement showing total hours worked and tips
3 earned with each payment of wages, as required by Labor Code § 226 and
4 IWC wage order 9 § 7;
- 5 m. Whether Defendants’ failure to provide an itemized statement showing total
6 hours worked with each payment of wages constitutes an unlawful, unfair,
7 and/or fraudulent business practice, under Cal. Business & Professions Code
8 § 17200 *et seq.*;
- 9 n. Whether Defendants are liable for waiting time penalties to CLASS
10 Members whose employment with Defendants has terminated, pursuant to
11 Labor Code § 203, for failure to comply with Labor Code §§ 201 and 202;
12 and
- 13 o. Whether Defendants are liable to the CLASS Members for breach of
14 contract.

15 37. **Typicality**: Plaintiffs claims are typical of the claims of the CLASS they seek to
16 represent. As set forth herein, Defendants’ common course of conduct causes Plaintiffs and
17 similarly situated Delivery Drivers employed by Defendants the same or similar injuries and
18 damages. Plaintiffs’ claims are thereby representative of and co-extensive with the claims of the
19 CLASS.

20 38. **Adequacy**: Plaintiffs will fairly and adequately represent the interests of all
21 members of the CLASS they seek to represent. Plaintiffs are members of the CLASS they seek to
22 represent, do not have any conflicts of interest with the putative CLASS, will prosecute the case
23 vigorously on behalf of the CLASS, and have already devoted time and resources to the initial
24 investigation of these claims. Plaintiffs’ attorneys are competent and experienced in litigating
25 employment actions, including wage and hour class actions.

26 39. **Superiority of Class Action**: A class action is superior to other available methods
27 for the fair and efficient adjudication of this controversy. In particular, Plaintiffs are informed and
28 believe that CLASS Members are unwilling to bring individual lawsuits for fear of retaliation by

1 Defendants. Because the damages suffered by certain individual members of the CLASS may be
2 relatively small, the expense and burden of individual litigation make it impracticable for Class
3 Members to pursue their claims separately. Class action treatment will allow those similarly
4 situated persons to litigate their claims in the manner that is most efficient and economical for the
5 parties and the judicial system. Class action treatment will also avoid inconsistent outcomes
6 because the same issues can be adjudicated in the same manner for all members of the CLASS.

7 **V. DAMAGES**

8 40. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiffs and
9 similarly situated Delivery Drivers are owed minimum wage and liquidated damages, overtime
10 compensation, reporting time pay, reimbursement of business expenses, compensation for missed
11 meal periods, waiting time penalties, statutory interest and other penalties under California law.
12 The precise amount of these damages will be proved at trial.

13 **VI. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION** 15 **FAILURE TO PAY MINIMUM WAGE**

16 **(Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1; General Minimum Wage Order;
17 IWC Wage Order 9)
18 (Against all Defendants)**

19 41. The allegations of each of the preceding paragraphs are alleged and incorporated
20 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
21 themselves and the CLASS.

22 42. California's Labor Code § 1197 and Wage Order 9 § 4 require employers to pay at
23 least the applicable minimum wage for all hours worked.

24 43. Section 2(H) of Wage Order 9 defines "hours worked" as "the time during which an
25 employee is subject to the control of an employer, and including all the time the employee is
26 suffered or permitted to work, whether or not required to do so."

27 44. California's General Minimum Wage Order requires all employers to pay a
28 minimum of \$9.00 per hour for all hours worked beginning July 1, 2014, and will require a
29 minimum of \$10.00 per hour beginning January 1, 2016.

45. Labor Code § 1194 entitles an employee receiving less than the minimum wage to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage, including
2 interest thereon, reasonable attorneys' fees, and costs of suit.

3 46. Labor Code § 1194.2 entitles an employee receiving less than the legal minimum
4 wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
5 interest thereon.

6 47. Labor Code § 1197.1 subjects an employer or other person who caused an employee
7 to be paid a wage less than the minimum wage to : (1) a civil penalty equal to one hundred dollars
8 (\$100) for each underpaid employee for each pay period in which the employee is underpaid for an
9 initial violation that is intentionally committed; (2) a civil penalty equal to two hundred fifty
10 dollars (\$250) for a subsequent violation for the same specific offense for each underpaid employee
11 for each pay period regardless of whether the initial violation is intentionally committed; (3)
12 restitution of wages; and (4) liquidated damages, all payable to the employee.

13 48. Since on or about August 2015, Defendants have failed and refused to pay members
14 of the CLASS at the lawful minimum wage by paying an hourly rate that falls below the minimum
15 wage once necessary business expenses that are Defendants' legal responsibility – such as fuel,
16 vehicle maintenance, insurance, and tolls – are incurred and paid by Plaintiffs without
17 reimbursement. In addition, Plaintiffs are paid no compensation for hours worked in excess of
18 their scheduled hours, including but not limited to fifteen (15) minutes before the start of each
19 scheduled shift.

20 49. As a consequence, Defendants have failed to pay minimum wages to Plaintiffs and
21 the CLASS for all hours worked as alleged above in violation of California's Labor Code
22 §§1182.12, 1194, 1194.2, 1197, 1197.1, General Minimum Wage Order and IWC Wage Order 9,
23 §4.

24 50. As a result of Defendants' conduct, Plaintiffs and the CLASS have been deprived of
25 minimum wages in an amount to be determined at trial, and are entitled to recovery of the unpaid
26 balance of the full amount of these minimum wages, including interest thereon, reasonable
27 attorneys' fees, and costs of suit pursuant to Labor Code § 1194; liquidated damages and interest
28

1 thereon pursuant to Labor Code § 1194.2; and civil penalties, restitution of wages, and liquidated
2 damages pursuant to Labor Code § 1197.1.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY OVERTIME COMPENSATION**
5 **(Labor Code §§ 510, 1194; IWC Wage Order 9)**
6 **(Against all Defendants)**

7 51. The allegations of each of the preceding paragraphs are alleged and incorporated
8 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
9 themselves and all CLASS.

10 52. Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an
11 employee is subject to the control of an employer, and including all the time the employee is
12 suffered or permitted to work, whether or not required to do so.”

13 53. Labor Code § 510 and California IWC Wage Order 9 §3(A)(1)(a) require employers
14 to pay employees one-and-one-half (1-1/2) times the regular hourly rate of all those hours worked
15 in excess of eight (8) hours in one workday and in excess of forty (40) hours in one workweek, and
16 for the first eight (8) hours worked on the seventh day of work in any one workweek.

17 54. Labor Code § 510 and California IWC Wage Order 9 § 3(A)(1)(b) further require
18 employers to pay employees two (2) times the regular rate of pay for hours worked in excess of
19 twelve (12) hours per day and, on the seventh consecutive workday, any work in excess of eight (8)
20 hours.

21 55. California Labor Code §1194 entitles an employee receiving less than the legal
22 overtime compensation to recover in a civil action the unpaid balance of the full amount of all
23 overtime wages owed, including interest thereon, reasonably attorney’s fees, and costs of suit.

24 56. Since on or about August 2015, Defendants have had a policy and practice of failing
25 to pay overtime premium pay for hours worked over eight (8) in day, 40 in a week, or for hours
26 worked on a seventh consecutive day. Defendants have also failed to pay any wages to the
27 members of the CLASS for certain hours worked. including hours worked before their scheduled
28 start time and after their scheduled end time.

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1 **FOURTH CAUSE OF ACTION**
2 **REIMBURSEMENT OF BUSINESS EXPENSES**
3 **(Labor Code § 2802)**
4 **(Against all Defendants)**

5 64. The allegations of each of the preceding paragraphs are alleged and incorporated
6 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
7 themselves and all CLASS.

8 65. Labor Code § 2802 provides that “an employer shall indemnify his or her employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of his or her duties.”

11 66. While acting on the direct instruction of Defendants and discharging their duties for
12 them, Plaintiffs and similarly situated Delivery Drivers have incurred work-related expenses. Such
13 expenses include but are not limited to the costs of purchase or lease of vehicles; fuel, maintenance,
14 and other vehicle operating costs; various forms of insurance; and tolls. Plaintiffs and CLASS
15 Members necessarily incurred these substantial expenses and losses as a direct result of performing
16 their job duties for Defendants.

17 67. Defendants have failed to indemnify or in any manner reimburse Plaintiffs and
18 similarly situated Delivery Drivers for their expenditures and losses. By misclassifying Delivery
19 Drivers as “independent contractors,” and further by requiring those employees to pay expenses
20 and cover losses that they incurred in direct consequences of the discharge of their duties for
21 Defendants and/or in obedience to Defendants’ direction, Defendants have violated and continue to
22 violate Cal. Labor Code § 2802.

23 68. As a direct and proximate result of Defendants’ conduct, Plaintiffs and similarly
24 situated Delivery Drivers have suffered substantial losses according to proof, as well as pre-
25 judgment interest, costs, and attorney fees for the prosecution of this action.

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1 **FIFTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS**
3 **(Labor Code §§ 226.7, 512; IWC Wage Order 9)**
4 **(Against all Defendants)**

5 69. The allegations of each of the preceding paragraphs are alleged and incorporated
6 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
7 themselves and all CLASS.

8 70. Plaintiffs and similarly situated Delivery Drivers have regularly worked in excess of
9 five (5) hours a day without being afforded at least a half-hour meal period in which they were
10 relieved of all duties, as required by Labor Code §§ 226.7 and 512, and IWC wage order 9, §
11 11(A).

12 71. Because Defendants failed to afford proper and timely meal periods, they are liable
13 to Plaintiffs and similarly situated Delivery Drivers for one hour of additional pay at the regular
14 rate of compensation for each workday that the proper meal periods were not provided, pursuant to
15 Labor Code § 226.7(b) and IWC wage order 9, § 11(B).

16 72. By violating Cal Labor Code §§ 226.7 and 512, and IWC wage order 9, § 11,
17 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Labor Code §§
18 218.5 and 1194.

19 73. Plaintiffs, on behalf of themselves and similarly situated Delivery Drivers, request
20 relief as described below.

21 **SIXTH CAUSE OF ACTION**
22 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
23 **(Labor Code §§ 226 & 226.3; IWC Wage Order 9)**
24 **(Against all Defendants)**

25 74. The allegations of each of the preceding paragraphs are alleged and incorporated
26 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
27 themselves and all CLASS.

28 75. Labor Code § 226(a) and IWC wage order 9, § 7(B) require employers semi-
monthly or at the time of each payment of wages to furnish each employee with a statement
itemizing, among other things, the total hours worked by the employee. Labor Code § 226(b)

1 provides that if an employer knowingly and intentionally fails to provide a statement itemizing,
2 among other things, the total hours worked by the employee, then the employee is entitled to
3 recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one
4 hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

5 76. Defendants knowingly and intentionally failed to furnish Plaintiffs and similarly
6 situated Delivery Drivers with timely, itemized statements showing the total hours worked and tips
7 paid, as required by Labor Code § 226(a) and IWC wage order 9, § 7(B). As a result, Defendants
8 are liable to Plaintiffs and to the Class for the amounts provided by Labor Code § 226(b) and for
9 penalties, and attorneys' fees.

10 77. Plaintiffs, on behalf of themselves and similarly situated Delivery Drivers, request
11 relief as described below.

12 **SEVENTH CAUSE OF ACTION**
13 **WAITING TIME PENALTIES**
14 **(LABOR CODE §§ 201, 202, AND 203)**
(AGAINST ALL DEFENDANTS)

15 78. The allegations of each of the preceding paragraphs are realleged and incorporated
16 herein by reference and Plaintiffs allege as follows a cause of action on behalf of themselves and
17 the CLASS who were or are no longer employed by Defendants.

18 79. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
19 due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice,
20 or within 72 hours of resignation made without 72 hours' notice.

21 80. Labor Code § 203 provides that if an employer willfully fails to pay compensation
22 promptly upon separation, as required by §§ 201 or 202, then the employer is liable for waiting
23 time penalties in the form of one day of wages for up to 30 days.

24 81. Plaintiffs and the CLASS are informed, believe, and allege thereon that Defendants
25 have failed to pay all earned wages to Plaintiffs and the CLASS during their employment with
26 Defendants. In addition, members of the CLASS have been discharged, laid off, resigned, retired
27 or otherwise voluntarily left employment, but Defendants have not unconditionally paid earned
28

1 wages upon separation of employment within the time frame mandated by Labor Code §§ 201 and
2 202. Defendants' conduct in this regard has been willful.

3 82. As a consequence of Defendants' willful failure to pay wages due to each such
4 employee following separation from employment as required by Labor Code §§ 201 and 202,
5 Plaintiffs and members of the CLASS whose employment ended prior to the filing of this case and
6 continuing through the date of class certification are entitled to recover from Defendants an
7 additional sum as a penalty, pursuant to Labor Code § 203, equal to a day's wages, for thirty (30)
8 days, plus interest, for each employee who separated from employment with Defendants, in
9 amounts according to proof at trial, attorneys' fees, and costs.

10 **EIGHTH CAUSE OF ACTION**
11 **BREACH OF CONTRACT**
12 **(Cal. Civil Code § 1559)**
13 **(Against Defendant Amazon)**

14 83. The allegations of each of the preceding paragraphs are alleged and incorporated
15 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
16 themselves and all CLASS Members.

17 84. Pursuant to California Civil Code §1559, "A contract, made expressly for the
18 benefit of a third person, may be enforced by him at any time before the parties thereto rescind it."

19 85. The agreement between Amazon and its Amazon Prime Now customers explicitly
20 provides: "If you elect to leave a tip, the entire tip goes to your courier." These contracts were
21 made for the benefit for the Plaintiffs and Delivery Drivers.

22 86. Plaintiffs are informed and believe that Defendant Amazon breached said contracts
23 in that it has failed to ensure that the Plaintiffs and Delivery Drivers receive the tips provided for
24 them on the App as a consequence of their delivery service and Plaintiffs have not received from
25 Defendants the tips left for them in the App by patrons either in whole or in par.

26 87. As a consequence of Defendant Amazon's foregoing breach of the third party
27 beneficiary contracts, Plaintiffs have sustained general, special, and consequential damages in an
28 amount presently unknown in that Plaintiffs were denied a portion of their compensation.
Plaintiffs will establish the precise amount of damages at trial, according to proof.

1 **NINTH CAUSE OF ACTION**
2 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**
3 **(Cal. Bus. & Prof. Code §§ 17200-09)**
4 **(Against all Defendants)**

5 88. The allegations of each of the preceding paragraphs are alleged and incorporated
6 herein by reference, and Plaintiffs allege as follows a cause of action of action on behalf of
7 themselves and all CLASS.

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

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

12 91. Beginning at an exact date unknown to Plaintiffs, but at least since on or about
13 August 2015, Defendants have improperly, fraudulently, and unlawfully classified its Delivery
14 Drivers as “independent contractors” and have thereby committed unlawful, unfair, and/or
15 fraudulent business acts and practices as defined by Business & Professions Code § 17200, by
16 engaging in the following conduct:

- 17 a. failing to pay Plaintiffs and similarly situated Delivery Drivers minimum wage for
18 all hours worked, as required by Labor Code §§ 1182.12, 1194 *et seq.*, 1197 *et seq.*
19 and IWC Wage Order 9;
- 20 b. failing to pay Plaintiffs and similarly situated Delivery Drivers overtime
21 compensation for all hours worked over eight (8) in a day or forty (4) in a
22 workweek, as required by Labor Code §§ 510, 1194 *et seq.* and IWC Wage Order 9;
- 23 c. failing to pay Plaintiffs and similarly situated Delivery Drivers reporting time pay,
24 as required by IWC Wage Order 9;
- 25 d. failing to indemnify Plaintiffs and similarly situated Delivery Drivers for
26 employment-related business expenses and losses, as required by Labor Code §
27 2802;
- 28 e. failing and refusing to provide meal periods to Plaintiffs and similarly situated
Delivery Drivers, as required by Labor Code §§ 226.7 and IWC Wage Order 9;

- f. failing to provide accurate itemized wage statements to Plaintiffs and similarly situated Delivery Drivers, as required by Labor Code § 226 and IWC Wage Order 9;
- g. failing to maintain payroll records showing the actual hours worked each day by Plaintiffs and similarly situated Delivery Drivers, as require by Labor Code § 1174 *et seq.* and IWC Wage Order 9;
- h. failing to pay, upon termination of employment, all wages due to Plaintiffs and similarly situated members of the CLASS, as required by Labor Code §§ 201, 202, and 203;
- i. failing to pay the Plaintiffs and similarly situated Delivery Drivers the full amount of the gratuity that the patron indicated in the App, as required by Labor Code §351;
- j. failing to keep accurate records of gratuities left for the Plaintiffs and similarly situated Delivery Drivers as indicated in the App by patrons, as required by Labor Code § 353;
- k. failing to maintain workers' compensation insurance covering all employees and failing to pay compensation to injured workers, in violation of Labor Code §§ 2700 *et seq.*;
- l. failing to contribute to the Unemployment Trust Fund on behalf of all employees, in violation of Cal. Unemployment Ins. Code § 978; and
- m. willfully misclassifying Plaintiffs and the CLASS as independent contractors, in violation of Labor Code § 226.8.

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

93. As a result of the aforementioned actions, Plaintiffs and the CLASS have lost and continue to lose money or properly and suffered and continue to suffer injury in fact. Defendants continue to hold unpaid wages and other funds legally belong to Plaintiffs and the CLASS.

94. Plaintiffs and the CLASS are entitled to restitution pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, minimum wage, overtime pay, missed

1 meal period compensation, reporting time compensation, reimbursement for business expenses,
2 and interest since four years prior to the filing of this complaint.

3 95. Pursuant to Business & Prof. Code §17203, Plaintiffs and other similarly situated
4 Delivery Drivers are entitled to: (a) restitution of money acquired by Defendants by means of their
5 unfair business practices, in amounts not yet ascertained but to be ascertained at trial; (b) a
6 declaration that Defendants' business practices are unfair within the meaning of the statute, (c) a
7 permanent injunction to prohibit Defendants from classifying Plaintiffs and the class as
8 independent contractors.

9 96. Plaintiffs and the CLASS are entitled to enforce all applicable penalty provisions of
10 the Labor Code pursuant to Business & Professions Code § 17202.

11 97. By all of the foregoing alleged conduct, Defendants have committed, and are
12 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
13 meaning of Business & Professions Code §17200 et seq.

14 98. Plaintiffs have assumed the responsibility of enforcement of the laws and lawful
15 claims specified herein. There is a financial burden incurred in pursuing this action which is in the
16 public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil
17 Procedure § 1021.5.

18 **VII. DEMAND FOR JURY TRIAL**

19 99. Plaintiffs demand a trial by jury.

20 **I. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, on behalf of themselves and the above-described CLASS, prays
22 for relief as follows, jointly and severally from all Defendants:

23 A. That the Court determine that this action may be maintained as a class action under
24 Code of Civil Procedure § 382, and define the Class as requested herein;

25 B. Provision of class notice to all members of the CLASS;

26 C. A declaratory judgment that Defendants have knowingly and intentionally violated
27 the following provisions of law:

28 ///

1. Labor Code §§ 1182.12, 1194 *et seq.*, 1197 *et seq.* and IWC Wage Order 9 by failing to pay minimum wage to PLAINTIFFS and the class;
2. Labor Code §§ 510, 1194 *et seq.* and IWC Wage Order 9 by failing to pay proper overtime compensation to Plaintiffs and the CLASS;
3. IWC Wage Order 9 by failing to pay proper reporting time pay to Plaintiffs and the CLASS;
4. Labor Code § 2802 for failing to indemnify Plaintiffs and the CLASS for all necessary business expenses and losses;
5. Labor Code § 226.7 and IWC Wage Order 9 for failing to provide off-duty meal periods to Plaintiffs and the CLASS;
6. Labor Code §§ 201, 202, 203 for failing to pay all wages due to Plaintiffs and the CLASS at the time of termination of employment;
7. Breach of contract, pursuant to California Civil Code § 1559, for failing to ensure that Plaintiffs and the CLASS, as third party beneficiaries to the agreement between Amazon and its patrons, were paid gratuities left for them by patrons;
8. Business & Professions Code §§ 17200 *et seq.* by failing to pay proper minimum wage, overtime compensation, and reporting time pay under California law; by failing to reimburse for business expenses; by failing to provide meal periods; by failing to provide itemized statements showing all hours worked and failing to keep accurate payroll records; by failing to pay the full amount of, or keep accurate records of, gratuities owed; by failing to maintain workers' compensation insurance; by failing to contribute to the Unemployment Trust Fund; and by willfully misclassifying the Plaintiffs and the CLASS as independent contractors.

D. A declaratory judgment that Defendants' violations described above were willful;

E. An equitable accounting to identify, locate, and restore to Plaintiffs and the CLASS the wages due;

1 F. A permanent injunction to prohibit Defendants from classifying Plaintiffs and the
2 class as independent contractors;

3 G. An award to Plaintiffs in the amount of unpaid minimum wage and liquidated
4 damages thereon, overtime compensation, reporting time pay, missed meal period compensation,
5 including interest thereon, subject to proof at trial;

6 H. An award to Plaintiffs and the CLASS of statutory penalties because of Defendants'
7 failure to provide Plaintiffs and the CLASS with itemized wage statements that comply with the
8 requirements of Labor Code § 226 and because of Defendants' failure to pay all wages due at
9 termination, subject to proof at trial;

10 I. An order requiring Defendants to pay restitution of all amounts owed to Plaintiffs
11 for Defendants' failure to pay legally required minimum wage, overtime compensation, reporting
12 time pay, business expenses, missed meal periods, pursuant to Business & Professions Code §
13 17203, and for Amazon's breach of contract;

14 J. An award of reasonable attorneys' fees and costs, pursuant to Labor Code §§ 226
15 and 1194, Code of Civil Procedure § 1021.5 and/or other applicable law; and

16 K. An award to Plaintiffs and the CLASS of such other and further relief as this Court
17 deems just and proper.

18
19
20 DATED: October 27, 2015.

LEONARD CARDER

21
22 By: /s/ Beth Ross

Beth A. Ross

Aaron Kaufmann

Elizabeth Gropman

Attorneys for Plaintiffs