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12 Attorneys for Plaintiffs and all others similarly situated  
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15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN FRANCISCO DIVISION

18 LORETTA DOWNS and D'ANDRE PARKER,  
 19 individually and on behalf of all others similarly  
 situated,

20 Plaintiffs,

21 vs.

22 U.S. FOODSERVICE, INC.,

23 Defendant.  
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Case No.: 10-2163 EMC

**JOINT STIPULATION AND [PROPOSED]  
 ORDER FOR LEAVE TO FILE FIRST  
 AMENDED COMPLAINT**

1 Plaintiffs LORETTA DOWNS and D'ANDRE PARKER (collectively, "Plaintiffs") and  
2 Defendant US FOODSERVICE ("Defendant") submit this Stipulation and [Proposed] Order for Leave  
3 to File First Amended Complaint.

4 1. WHEREAS Plaintiffs and US FOODSERVICE have agreed to add additional Plaintiffs  
5 to the complaint for settlement purposes only, including Plaintiffs KIRK RAMIREZ, RAUL ROMAN,  
6 and JASON WOLTERDING, and facts supporting their status as Plaintiffs and their allegations, as  
7 reflected in the attached First Amended Complaint.

8 2. WHEREAS Plaintiffs and US FOODSERVICE have agreed to an amended complaint  
9 alleging violations of the Private Attorneys General Act ("PAGA"), California Labor Code § 2698 *et*  
10 *seq.*, as reflected in the attached First Amended Complaint.

11 3. WHEREAS Plaintiffs and US FOODSERVICE have agreed that US FOODSERVICE  
12 reserves its right to object to the addition of these plaintiffs and/or causes of action if the settlement is  
13 not approved by the Court.

14 4. WHEREAS, the current complaint in this action, which was removed from California  
15 state court, makes class allegations pursuant to California Code of Civil Procedure § 382, Plaintiffs and  
16 US FOODSERVICE have agreed to an amended complaint asserting class action allegations under  
17 Federal Rule of Civil Procedure 23, as reflected in the attached First Amended Complaint.

18 5. WHEREAS, Plaintiffs and US FOODSERVICE have agreed that the Defendant need  
19 not file an answer to this amended complaint, but that the defendant's previously filed answer shall be  
20 deemed to be its answer to the amended complaint and that all additional allegations of the amended  
21 complaint shall be deemed to have been denied by US FOODSERVICE.

22 THEREFORE, Plaintiffs and US FOODSERVICE hereby agree and stipulate that the Court  
23 should order that the attached First Amended Complaint may be filed and shall be deemed filed as of  
24 the date of the filing of this Stipulation, and that US FOODSERVICE shall be deemed to have  
25 answered the First Amended Complaint as specified herein.

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Dated: February ~~17~~ 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN

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Dated: February 17, 2012

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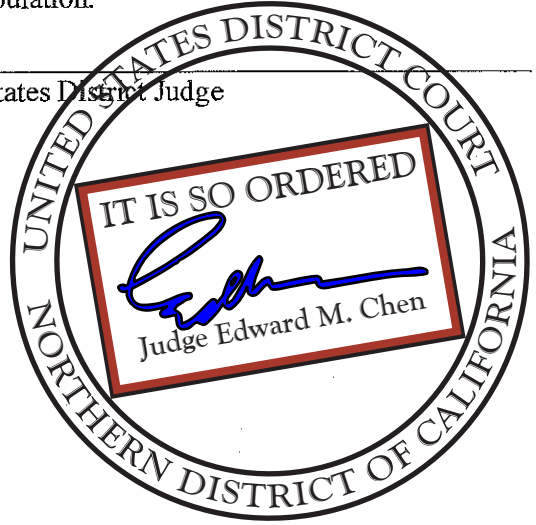
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~~[PROPOSED]~~ ORDER

Pursuant to the Joint Stipulation above, IT IS HEREBY ORDERED that the attached First Amended Complaint is deemed filed on the date that the First Amended Complaint is filed, that US FOODSERVICE shall be deemed to have answered the First Amended Complaint as set forth in the stipulation, and that US FOODSERVICE reserves its right to object to the addition of plaintiffs and/or causes of action as set forth in the stipulation.

Dated: 2/23, 2012

United States District Judge



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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 LORETTA DOWNS, D'ANDRE PARKER,  
12 KIRK RAMIREZ, RAUL ROMAN, and JASON  
13 WOLTERDING, individually and on behalf of  
all others similarly situated,

14 Plaintiffs,

15 vs.

16 U.S. FOODSERVICE, INC.,

17 Defendant.

Case No.: 10-2163 EMC

**FIRST AMENDED CLASS ACTION COMPLAINT**

**(1) FAILURE TO PROVIDE TIMELY MEAL AND REST PERIODS AND/OR PAY MISSED MEAL AND REST PREMIUM PAY (CAL. LABOR CODE §§226.7, 512 AND IWC WAGE ORDER NO. 7);**

**(2) FAILURE TO PAY WAGES DUE/ILLEGAL DEDUCTIONS FROM WAGES (CAL. LABOR CODE §§1194, 1194.2, 204, 218, 1197, 1198, AND 221);**

**(3) FAILURE TO PAY COMPENSATION DUE UPON TERMINATION (CAL. LABOR CODE § 201-203);**

**(4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (CAL. LABOR CODE §§ 226, 226.3;**

**(5) UNFAIR/UNLAWFUL/FRAUDULENT BUSINESS PRACTICES (CAL. BUS. & PROF. CODE, § 17200); and**

**(6) CIVIL PENALTIES (CAL. LABOR CODE § 2698 et seq.).**

**DEMAND FOR JURY TRIAL**

1 Plaintiff LORETTA DOWNS (“Plaintiff DOWNS”), Plaintiff D’ANDRE PARKER (“Plaintiff  
2 PARKER”), Plaintiff KIRK RAMIREZ (“Plaintiff RAMIREZ”), Plaintiff RAUL ROMAN (“Plaintiff  
3 ROMAN”), and Plaintiff JASON WOLTERDING (“Plaintiff WOLTERDING”) (collectively known  
4 as “Plaintiffs”), by and through their undersigned attorneys, for their Class Action Complaint against  
5 Defendant U.S. FOODSERVICE, INC. (“Defendant US FOODSERVICE” or “US FOODSERVICE”),  
6 respectfully allege the following:

## 7 I. NATURE OF ACTION

8 1. Plaintiffs bring this action on behalf of themselves, as a class action, and on behalf of  
9 the California general public, against Defendant US FOODSERVICE for its failure to: (a) provide  
10 timely off-duty thirty-minute Meal Periods to its drivers; (b) pay its California drivers premium pay for  
11 missed, untimely or on-duty Meal Periods; (c) authorize and permit its California drivers to take timely  
12 Rest Periods; (d) pay its California drivers premium pay for untimely Rest Periods; (e) pay its  
13 California drivers for all time worked due to its payroll policy and/or practice of automatically  
14 deducting thirty minutes of working time from the wages of its drivers who worked more than ten  
15 hours (the “automatic deduction practice”) without taking any off-duty lunch periods; (f) pay former  
16 California drivers for all wages due upon separation of employment; (g) issue accurate itemized wage  
17 statements to California drivers. As a result of these acts or omissions, Defendant US FOODSERVICE  
18 has violated California statutes and other applicable provisions of law as described below.

## 19 II. JURISDICTION AND VENUE

20 2. This Court has jurisdiction under 28 U.S.C. §§1332(a)(1) and 1332(c)(1), 1441(a). This  
21 action was originally filed in the Superior Court of California for the County of Alameda and was  
22 removed by Defendant US FOODSERVICE to this Court on the jurisdictional basis of diversity of  
23 citizenship. Defendant is a foreign corporation, and maintains corporate offices and its principal place  
24 of business in Illinois and Maryland. Venue is proper in this District under 28 U.S.C. §§1391(a) and  
25 1391(c). Defendant US FOODSERVICE operates its food service distribution business, serving  
26 customers throughout much of California. Many of the acts, as well as the course of conduct charged  
27 herein, occurred in Alameda County, at Defendant US FOODSERVICE’s distribution facility located  
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1 in Livermore, California, within this judicial district and/or in other portions of this judicial district,  
2 served by that facility.

3 3. Defendant US FOODSERVICE is within the jurisdiction of this Court. Defendant US  
4 FOODSERVICE transacts millions of dollars of business transporting food products in the State of  
5 California and in areas within this judicial district, including Alameda County. Defendant US  
6 FOODSERVICE operates its business through four divisions in California: Los Angeles, located at  
7 15155 Northam Street, La Mirada; Corona, located at 1283 Sherborn Street, Corona; San Diego,  
8 located at 1201 Park Center Drive, Vista; and San Francisco, located at 300 Lawrence Street,  
9 Livermore. Defendant US FOODSERVICE has employed over 800 drivers over the last five years.  
10 Defendant US FOODSERVICE has obtained the benefits of the laws of the State of California and  
11 profited by participating in the food distribution market in California.

12 4. The total amount in controversy for each of the named Plaintiffs' claims is less than  
13 thirty thousand dollars (\$30,000). Plaintiffs assert no claims arising under federal law. Rather,  
14 Plaintiffs brings these causes of action based solely on, and arising from, California law. The claims of  
15 the class are also individual claims for violations of California law as described herein. These claims  
16 arise from Defendant US FOODSERVICE's common and systemic failure to provide timely off-duty  
17 thirty-minute Meal Periods to drivers; its failure to provide timely Rest Periods to California drivers;  
18 its failure to pay its drivers premium pay for missed, untimely and/or on-duty Meal Periods and for  
19 untimely Rest Periods; its failure to pay its California drivers for all time worked due to its automatic  
20 deduction policy in cases where drivers worked for at least ten hours without taking any off-duty Meal  
21 Periods; its failure to pay compensation due to former drivers upon their separation from employment  
22 with Defendant US FOODSERVICE; and its liability for penalties for issuing inaccurate itemized  
23 wage statements.

### 24 III. THE PARTIES

25 5. Plaintiff DOWNS is a California resident. Plaintiff DOWNS is a former driver, based  
26 out of the Corona distribution center, who was employed by Defendant US FOODSERVICE from  
27 May 2006 through August 2006.  
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1 sustained damages arising out of Defendant US FOODSERVICE's failure to: (a) provide timely off-  
2 duty thirty-minute Meal Periods; (b) pay premium pay for missed, untimely and/or on-duty Meal  
3 Periods; (c) authorize and permit timely Rest Periods; (d) pay premium pay for missed Rest Periods;  
4 (e) pay drivers for all hours actually worked as a result of its class-wide policy of automatic deductions  
5 for Meal Periods that were never taken on shifts where drivers drove ten hours or more without any  
6 off-duty Meal Periods; (f) pay all wages due, including missed Meal and Rest break premiums and  
7 unlawfully deducted wages, to all former drivers upon separation of their employment; and (g) issue  
8 accurate itemized wage statements to the members of the Class that included premium payments for  
9 missed, untimely and/or on-duty Meal or Rest Periods among wages earned, and all wages earned as a  
10 result of the automatic deduction policy on all shifts where Meal Periods were not taken at all.

11 Therefore the typicality requirement of Rule 23(a)(3) is met.

12 13. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have  
13 no conflicts of interest with any member of the Class. Plaintiffs understand and accept the duties of  
14 Class Representatives. Plaintiffs have retained counsel competent and experienced in complex, class  
15 action litigation and in litigation asserting the same legal claims made in this action, who have and will  
16 devote the necessary resources to prosecute this action. Therefore the adequacy requirement of Rule  
17 23(a)(4) is met.

18 14. Common questions of law and fact exist as to all members of the Class, and  
19 predominate over any questions affecting only individual members of the Class. Questions of law and  
20 fact common to the Class include:

- 21 a. Whether Defendant US FOODSERVICE engaged in a pattern or practice of  
22 failing to provide timely, off-duty thirty-minute Meal Periods to the Class;
- 23 b. Whether Defendant US FOODSERVICE engaged in a pattern or practice of  
24 preventing members of the Class from taking statutory off-duty thirty-minute  
25 Meal Periods on a timely basis;
- 26 c. Whether Defendant US FOODSERVICE engaged in a pattern or practice of  
27 failing to properly compensate members of the Class for missed, untimely,  
28 and/or on-duty Meal Periods as required by California law;

- 1 d. Whether Defendant US FOODSERVICE violated Cal. Labor Code § 226.7 by  
2 failing to affirmatively relieve members of the Class of duties for timely off-  
3 duty thirty-minute Meal Periods;
- 4 e. Whether Defendant US FOODSERVICE violated Cal. Labor Code § 226.7 by  
5 failing to affirmatively relieve members of the Class of duties for timely off-  
6 duty thirty-minute Meal Periods before the start of the fifth hour of their shift;
- 7 f. Whether Defendant US FOODSERVICE violated Cal. Labor Code § 512 by  
8 failing to affirmatively relieve members of the Class of duties for timely off-  
9 duty thirty-minute Meal Periods before the start of the fifth hour of their shift;
- 10 g. Whether Defendant US FOODSERVICE violated section 11 of California  
11 Industrial Welfare Commission (“IWC”) Wage Order No. 7, which is applicable  
12 to Defendant, by failing to affirmatively relieve members of the Class of duties  
13 for timely off-duty thirty-minute Meal Periods before the start of the fifth or  
14 even sixth hour of their shift;
- 15 h. Whether Defendant US FOODSERVICE violated Labor Code §§ 226.7 and 512  
16 by failing to ensure that the members of the Class were relieved of duties for  
17 timely off-duty thirty-minute Meal Periods before the fifth or even sixth hour of  
18 their shift;
- 19 i. Whether Defendant US FOODSERVICE’s delivery schedule and routes  
20 effectively precluded members of the Class from timely completing their routes  
21 and taking an uninterrupted timely off-duty thirty-minute Meal Period;
- 22 j. Whether Defendant US FOODSERVICE’s policy of combining Rest Periods  
23 and scheduling these combined Rest Periods at the end of drivers’ shifts violated  
24 IWC Wage Order Number 7 section 12 by not authorizing and permitting  
25 members of the Class to take timely Rest Periods at the rate of ten minutes per  
26 four hours or major fraction thereof in the middle of each work period;
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- 1 k. Whether Defendant US FOODSERVICE's policy of automatically deducting  
2 thirty minutes for lunch without maintaining accurate contemporaneous Meal  
3 Period records violates Labor Code §§ 226.7, 512 and IWC Wage Order No. 7;
- 4 l. Whether Defendant US FOODSERVICE's automatic deduction practice, for  
5 members of the Class who did not take an off-duty thirty minute Meal Period on  
6 shifts of ten hours or more, constituted a violation of §1194 of the Labor Code;
- 7 m. Whether Defendant US FOODSERVICE is obligated pursuant to Labor Code  
8 §1194.2, to pay liquidated damages to the Class, for its failure to pay the Class  
9 for all hours worked based on its unlawful deductions from pay where drivers  
10 worked ten hours or more without any off-duty Meal Periods;
- 11 n. Whether Defendant US FOODSERVICE's automatic deduction policy  
12 constituted an illegal deduction from wages in violation of §221 of the Labor  
13 Code, in the circumstances where members of the Class did not in fact take an  
14 off-duty thirty minute Meal Period on shifts of ten hours or more;
- 15 o. Whether Defendant US FOODSERVICE engaged in an unfair and/or unlawful  
16 business practice and violated §17200 of the California Business and  
17 Professions Code by automatically deducting thirty minutes from members of  
18 the Class for lunch breaks, despite the fact that members of the Class routinely  
19 were not provided and/or missed their Meal Periods on shifts of ten hours or  
20 more;
- 21 p. Whether Defendant US FOODSERVICE engaged in an unfair and/or unlawful  
22 business practice and violated §17200 California Business and Professions Code  
23 by failing to provide, allow and/or ensure that the members of the Class were  
24 affirmatively relieved of duties for their off-duty thirty-minute Meal Periods on  
25 a timely basis;
- 26 q. Whether Defendant US FOODSERVICE failed to maintain accurate time  
27 records of off-duty thirty-minute Meal Periods taken by the members of the  
28 Class as required by Section 7 of the applicable IWC Wage Order;



1 scheduled an off-duty thirty-minute Meal Period at the end of their route; (c) routinely combined  
2 drivers' Rest Periods and scheduled these at the end of the drivers' routes; (d) routinely combined  
3 drivers' off-duty thirty-minute Meal Periods and Rest Periods and scheduled these at the end of the  
4 drivers' routes; (e) routinely failed to authorize and permit drivers to take timely Rest Periods in  
5 accordance with the Wage Order; (f) precluded drivers from taking off-duty thirty-minute Meal  
6 Periods on or before the fifth or sixth hour of their shifts through and by its routing and delivery  
7 schedule policies and practices; (g) failed to affirmatively relieve drivers of duties for off-duty thirty-  
8 minute Meal Periods on or before the fifth or even sixth hour of their shifts; and (h) was aware that, on  
9 a daily basis, drivers were not taking off-duty thirty-minute Meal Periods on or before the fifth or even  
10 sixth hour of their shifts, yet did nothing to permit or ensure drivers to take such off-duty Meal Periods  
11 or Rest Periods.

12 18. During the Class Period, Plaintiffs and the members of the Class typically worked a  
13 minimum of eight hours per day and often worked shifts in excess of twelve hours per day. Plaintiffs and  
14 the members of the Class earned an average hourly wage amounting to approximately \$19 per hour.

15 19. During the Class Period, Plaintiffs' and Class Members' shifts typically began in the  
16 early morning hours, often at or before 5:00 a.m. At the start of each shift, Plaintiffs and members of  
17 the Class proceeded to the drivers' room and punched in on the time clock, to commence their shifts.  
18 The times at which the Plaintiffs and members of the Class punched in at the start of their shift and  
19 punched out at the end of their shift are reflected on each of the drivers' Time Card Report, a document  
20 routinely created and maintained by DEFENDANT US FOODSERVICE. Attached as Exhibit A is a  
21 true copy of a Time Card Report for Loretta Downs for the weeks commencing June 25, 2006 through  
22 to July 8, 2006.

23 20. Plaintiffs and members of the Class were then given their daily paperwork, which  
24 included a Drivers' Itinerary. The Drivers' Itinerary was a printout from Defendant US  
25 FOODSERVICE's Roadnet routing software ("Roadnet"). Attached as Exhibits B, C, D, and E,  
26 respectively are true copies of Loretta Downs' Driver Itineraries for June 26, 2006, July 3, 2006, July 8,  
27 2006, and July 14, 2006.

1           21. Defendant US FOODSERVICE used Roadnet to schedule its drivers' routes. The  
2 routes commenced and ended when Plaintiffs and members of the Class logged in and logged out of  
3 the XATA system. The routes included the customers to which each driver delivered (referred to as  
4 "Stops"), the order of Stops from first to last, the Time Windows (the expected arrival and departure  
5 time) in which each delivery was expected to be made, the number of Cases of product to be  
6 delivered, scheduled Rest and Meal Periods (if any), the time estimated to Depart and Return to the  
7 Depot, a summary of the Total Runtime (the number of elapsed hours between Depart Depot and  
8 Return Depot), the Distance traveled during Run, and the total time allowed for breaks (Meal and Rest  
9 Periods). Defendant US FOODSERVICE's trucks carry "XATA" on-board computers that allow  
10 Defendant US FOODSERVICE to track, in real time, drivers' schedules, including deliveries, on-duty  
11 time, and meal periods, if any.

12           22. Upon receipt of the Drivers' Itinerary, Plaintiffs and members of the Class proceeded to  
13 their trucks and completed a Pre-Trip Inspection, which typically took a half hour, departed on their  
14 routes and proceeded to their first scheduled Stop, unloaded the Cases for that customer; and were then  
15 required to continue to each subsequent Stop as listed on the Driver Itinerary and to unload Cases at  
16 each such Stop. Upon completion of the route, drivers returned back to the Depot and completed a  
17 Post-Trip Inspection (which also took approximately thirty minutes), and punched out. The total  
18 Runtime, as indicated on the Driver Itinerary, did not include the amount of time between the time the  
19 driver punched in and Departed the Depot, nor did it include the amount of time between the time the  
20 driver arrived back at the Depot and when the driver punched out.

21           23. The routes consisted of making deliveries of food products to multiple restaurants, hotels,  
22 hospitals and other customers. Plaintiffs and members of the Class typically made on average between  
23 seven to fourteen Stops per day and delivered approximately 500 to 900 Cases per day.

24           24. From at least April 9, 2006 until February or March 2008, Defendant US  
25 FOODSERVICE's routing policy and practice failed to schedule and include within Plaintiffs' and  
26 Class members' routes, as set forth in their Driver Itineraries, an off-duty thirty-minute Meal Period  
27 on or before the fifth or even sixth hour of work on their shifts. In addition, as illustrated by Exhibits  
28 B-E attached hereto, Defendant US FOODSERVICE's routing policy and practice routinely scheduled



1 Plaintiffs' and Class members' off-duty thirty-minute Meal Periods at the end of the day, thereby  
2 requiring Plaintiffs and members of the Class to work through their statutorily mandated first off-duty  
3 thirty-minute Meal Period.

4 25. From at least April 9, 2006 until February or March 2008, as illustrated by Exhibits B-  
5 E attached hereto, Defendant US FOODSERVICE's routing policy and practice required Plaintiffs  
6 and members of the Class to combine and take their statutorily mandated Rest Periods at the end of the  
7 day, and thereby failed to authorize and permit Plaintiffs and members of the Class a timely Rest  
8 Period as required by the applicable Wage Order.

9 26. Furthermore, as illustrated by Exhibits F and G attached hereto, from at least April 9,  
10 2006 until February or March 2008, Defendant US FOODSERVICE instructed drivers, and trained new  
11 drivers, to combine their Meal and Rest Periods and take them at the end of the day, after more than six  
12 hours of work. Exhibits F and G are true copies of Rick Chavez's Driver Itineraries for June 5 and 8,  
13 2006, respectively.

14 27. Defendant US FOODSERVICE's delivery schedules and routes, as specified on the  
15 Driver Itineraries, made it difficult, if not impossible, for drivers to take their off-duty Meal and Rest  
16 Periods in a timely fashion. As a result, on a daily basis during the Class Period, Plaintiffs and the  
17 members of the Class were unable to take their first off-duty thirty-minute Meal Period on or before the  
18 fifth or even sixth hour of work.

19 28. Moreover, Defendant US FOODSERVICE's routing as set forth on the Driver  
20 Itineraries was often unrealistic, for example by underestimating the distance of the Route or  
21 underestimating the time necessary to find parking and unload the Cases to the customer, causing  
22 drivers to fall behind schedule. Approximately 60-70% of Defendant US FOODSERVICE's  
23 customers are restaurants that typically required deliveries to be made either before 11 a.m. or after 2  
24 p.m., which further impeded the drivers' ability to take timely Meal and Rest Periods, since they had  
25 to continue working without interruption from the start of their shift until 11 a.m. in order to complete  
26 as many of their deliveries as possible before the customers' lunch hour periods. In addition, from at  
27 least April 9, 2006 until some time in early 2008, Defendant US FOODSERVICE's managers,  
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1 supervisors and dispatchers routinely emphasized, both verbally and in writing, the importance of  
2 making timely deliveries and/or taking breaks only at the end of the day.

3 29. As a result of their break schedule, scheduled routes, unrealistic routing, and  
4 admonishments from management, and in order to complete their assigned Routes, Plaintiffs and  
5 members of the Class were required to skip or delay their statutorily mandated off-duty thirty-minute  
6 Meal and Rest Periods until the end of their Routes. As shown in Exhibits B-E, Defendant US  
7 FOODSERVICE expressly told drivers to take their Meal and Rest Periods only at the end of Routes,  
8 in violation of California law.

9 30. During the Class Period, through its Roadnet and XATA systems, other documentation,  
10 and observation and monitoring of drivers by their managers, Defendant US FOODSERVICE was  
11 aware that its drivers were consistently missing their statutory off-duty thirty-minute Meal Periods on  
12 or before the fifth or even sixth hour of their shifts because Defendant US FOODSERVICE's  
13 management had access to the electronic and written Meal Period records on a regular basis and had  
14 repeatedly instructed of its drivers to take their Meal and Rest Periods, if at all, only after the  
15 completion of their routes. Although Defendant US FOODSERVICE knew that its drivers routinely  
16 missed or delayed their off-duty thirty-minute Meal and Rest Periods, it nevertheless failed to  
17 compensate Plaintiffs and members of the Class for their missed and/or late off-duty Meal Periods,  
18 and for their untimely Rest Periods, as required by California law.

19 31. In sum, during the Class Period, US FOODSERVICE's policies, practices, and  
20 required delivery schedules caused drivers to work through their statutory Meal and Rest Periods and  
21 prevented drivers from taking timely off-duty Meal and Rest Periods. Far from providing Meal  
22 Periods on a timely basis, or ensuring that drivers were affirmatively relieved of duties for off-duty  
23 Meal Periods and authorizing and permitting timely Rest Periods, Defendant US FOODSERVICE  
24 repeatedly endorsed, encouraged and even mandated that drivers take their Meal and Rest Periods at  
25 the end of shifts. From at least April 9, 2006 through the present, Plaintiffs and the members of the  
26 Class worked numerous shifts without legally required, timely off-duty Meal Periods, and without  
27 timely Rest Periods, with the knowledge and at the direction of Defendant US FOODSERVICE.  
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1           32.     In addition, as illustrated by Exhibits B and E attached hereto, from at least April 9, 2006  
2 until some time in early 2008, Defendant US FOODSERVICE routinely scheduled drivers on routes that  
3 lasted more than twelve hours, yet failed to provide Plaintiffs and members of the Class with a second  
4 off-duty thirty minute Meal Period, nor did it authorize and permit the drivers to take a statutorily  
5 mandated third Rest Period when drivers worked shifts of over twelve hours.

6           33.     As noted, from at least April 9, 2006 until some time in early 2008, Defendant US  
7 FOODSERVICE failed to compensate drivers, including Plaintiffs, for missed and/or untimely Meal  
8 or Rest Periods in the amount of one hour of pay at the driver's regular rate of pay for each missed  
9 and/or late Meal Period and an additional one hour of premium pay per day for each missed or  
10 untimely Rest Period.

11           34.     Furthermore, as illustrated by Exhibit A attached hereto, from at least April 9, 2006  
12 until some time in early 2008, Defendant US FOODSERVICE had a class-wide payroll policy and/or  
13 practice of automatically deducting thirty minutes of working time from the hours worked by  
14 Plaintiffs and members of the Class, irrespective of whether the Plaintiffs and members of the Class  
15 had actually taken an off-duty thirty-minute Meal Period on their shifts of ten hours or more. From at  
16 least April 9, 2006 until some time in early 2008, members of the Class often were unable were to  
17 take an off-duty thirty-minute Meal Period at any point throughout the day, including on numerous  
18 shifts of ten hours or more.

19           35.     During the Class Period, Defendant US FOODSERVICE adopted, and used, unfair and  
20 unlawful business practices to minimize its drivers' compensation and increase profits. These business  
21 practices were causing drivers to work without receiving timely and adequate off-duty Meal and  
22 timely Rest Periods; failing to pay premium pay to drivers for missed and/or untimely or on-duty Meal  
23 Periods; failing to pay premium pay for untimely Rest Periods; and taking unlawful deductions from  
24 wages where drivers worked more then ten hours without any off-duty Meal Periods.

25           36.     During the Class Period, Defendant US FOODSERVICE has been aware that Plaintiffs  
26 and members of the Class have been prevented from taking their off-duty thirty-minute Meal Periods  
27 and their timely Rest Periods in a timely fashion. This awareness is shown by, among other things,  
28 (a) the XATA electronic records, (b) the logs in the dispatch office, (c) Driver Itineraries, and (d)

1 Driver Time Card Reports. All of those documents were, throughout the Class Period, available to,  
2 and reviewed and monitored by, Defendant US FOODSERVICE on a daily and periodic basis as part  
3 of its regular business operations.

4 37. During the Class Period, Defendant US FOODSERVICE failed to pay former drivers  
5 their missed Meal or Rest Period premium pay upon separation of employment, nor has Defendant US  
6 FOODSERVICE ever included wages due based on its illegal deductions in the final paychecks of any  
7 departing truck drivers.

## 8 VI. CAUSES OF ACTION

### 9 FIRST CAUSE OF ACTION

#### 10 **Failure to Provide Timely Off-Duty Meal Periods and Timely Rest Periods and/or Pay Missed** 11 **Meal and Rest Period Premiums** **(IWC Wage Order No. 7; Cal. Labor Code §§ 226.7, 512)**

12 38. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the  
13 preceding paragraphs.

14 39. Cal. Labor Code § 218 and 218.5 authorize Plaintiffs and the members of the Class to  
15 bring a private right of action to recover wages due based on the deprivation of timely Meal and Rest  
16 Periods under Cal. Labor Code § 226.7(b) and the IWC Wage Order, as alleged in this Cause of  
17 Action. The actionable period for this Cause of Action is April 9, 2007 through the present.

18 40. California Labor Code § 226.7(a) provides, “No employer shall require any employee  
19 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare  
20 Commission.”

21 41. IWC Order No. 7-2001(11)(A), at all times pertinent to this claim, has provided, in  
22 relevant part: “No employer shall employ any person for a work period of more than five (5) hours  
23 without a meal period of not less than thirty minutes, except that when a work period of not more than  
24 six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the  
25 employer and the employee.”

26 42. IWC Order No. 7-2001(11)(B), at all times pertinent to this claim, has provided:: “An  
27 employer may not employ an employee for a work period of more than ten (10) hours per day  
28 without providing the employee with a second meal period of not less than 30 minutes, except that if

1 the total hours worked is no more than 12 hours, the second meal period may be waived by mutual  
2 consent of the employer and the employee only if the first meal period was not waived.”

3 43. IWC Order No. 7-2001 (11)(C), at all times pertinent to this claim, has further  
4 provided, in relevant part: “Unless the employee is relieved of all duty during a thirty minute meal  
5 period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

6 44. IWC Wage Order No. 7-2001 (12)(A), at all times pertinent to this claim, has provided,  
7 in relevant part: “Every employer shall authorize and permit all employees to take rest periods, which  
8 insofar as practicable shall be in the middle of each work period. The authorized rest period time shall  
9 be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours  
10 or major fraction thereof. However, a rest period need not be authorized for employees whose total  
11 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be  
12 counted as hours worked for which there shall be no deduction from wages.”

13 45. Section 512(a) of the California Labor Code provides, in relevant part, that:

14 An employer may not employ an employee for a work period of more than  
15 five hours per day without providing the employee with a meal period of  
16 not less than thirty minutes, except that if the total work period per day of  
17 the employee is no more than six hours, the meal period may be waived by  
18 mutual consent of both the employer and employee. An employer may not  
19 employ an employee for a work period of more than 10 hours per day  
without providing the employee with a second meal period of not less than  
thirty minutes, except that if the total hours worked is no more than 12  
hours, the second meal period may be waived by mutual consent of the  
employer and the employee only if the first meal period was not waived.

20 46. As alleged herein, due to Defendant US FOODSERVICE’s insistence that drivers take  
21 their Meal and Rest Periods only at the end of their shifts, its rigorous delivery schedules and routes, its  
22 policy of attempting aggressively to minimize delays and make deliveries within specified time  
23 windows, both of which effectively prevented drivers from taking Meal Periods and Rest Periods, and  
24 its failure to affirmatively relieve drivers of duties for their timely off-duty Meal Periods, Plaintiffs and  
25 the members of the Class were routinely prevented from taking off-duty thirty-minute Meal Periods on  
26 or before the fifth or even sixth hour of their shifts and/or from taking timely Rest Periods at the  
27 direction of Defendant US FOODSERVICE and/or with its endorsement, encouragement, knowledge  
28 and acquiescence.

1           47. By its actions in requiring or encouraging drivers to work through statutory Meal  
2 Periods and/or its failure to ensure the drivers were affirmatively relieved of duties for timely off-duty  
3 Meal Periods and/or were authorized and permitted to take timely Rest Periods, Defendant US  
4 FOODSERVICE has violated California Labor Code § 226.7 and IWC Wage Order No. 7, and is liable  
5 to Plaintiffs and the Class.

6           48. As a result of the unlawful acts of Defendant US FOODSERVICE, Plaintiffs and the  
7 Class have been deprived of timely off-duty thirty-minute Meal Periods, and are entitled to recovery  
8 under Cal. Labor Code §226.7(b) and Section 11(D) of IWC Wage Order No. 7 in the amount of one  
9 additional hour of pay at the employee's regular rate of compensation for each work period during  
10 each day in which Defendant US FOODSERVICE failed to provide drivers with statutory timely off-  
11 duty thirty-minute Meal Periods. Furthermore, Plaintiffs and the Class have been deprived of timely  
12 Rest Periods and are entitled to recovery under Section 12(B) of IWC Wage Order No. 7 in the amount  
13 of one additional hour of pay at the employee's regular rate of compensation for each work period  
14 during each day in which Defendant US FOODSERVICE failed to authorize and.

#### **SECOND CAUSE OF ACTION**

##### **Failure to Pay Wages Due/Illegal Deduction from Wages (Cal. Labor Code §§ 1194, 1194.2, 221, 218.5, 1197, 1198, 204, 558; IWC Wage Order No. 7)**

17           49. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in  
18 the preceding paragraphs.

19           50. Pursuant to Labor Code §§ 218.5 and 1194, Plaintiffs may bring a civil action for  
20 unpaid wages directly against Defendant US FOODSERVICE and may recover such wages, together  
21 with interest thereon, penalties, attorneys' fees and costs. The actionable period for this cause of action  
22 is April 9, 2007 through the present.

23           51. California Labor Code § 204 establishes the fundamental right of all employees with the  
24 State of California to be paid wages in a timely fashion for their work. In direct violation of that  
25 provision, at all time relevant hereto, Defendant US FOODSERVICE has failed to pay Plaintiffs and  
26 the Class the full amount of all wages when due.

27           52. Section 1194 of the Labor Code provides:

28           Notwithstanding any agreement to work for a lesser wage, any employee  
receiving less than the legal minimum wage or the legal overtime

1 compensation applicable to the employee is entitled to recover in a civil  
2 action the unpaid balance of the full amount of this minimum wage or  
overtime compensation, including interest thereon, reasonable attorney's  
3 fees and costs of suit.

4 53. Section 1194.2 of the Labor Code provides:

5 In any action under Section 1193.6 or Section 1194 to recover wages because of  
6 the payment of a wage less than the minimum wage fixed by an order of the  
commission, an employee shall be entitled to recover liquidated damages in an  
7 amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this  
subdivision shall be construed to authorize the recovery of liquidated damages for  
failure to pay overtime compensation.

8 54. Section § 221 of the California Labor Code provides: "It shall be unlawful for any  
9 employer to collect or receive from an employee any part of wages therefore paid by said employer to  
10 said employee."

11 55. Pursuant to California Labor Code § 1197, it is unlawful to pay employees less than the  
12 minimum wage set by the IWC. Pursuant to California Labor Code § 1198, it is unlawful to employ  
13 person under conditions prohibited by the applicable IWC Wage Order.

14 56. Pursuant to Section 4 of IWC Wage Order No. 7, which applies to Defendant US  
15 FOODSERVICE, employees must be paid at least the minimum wage for each hour worked.

16 57. As set forth above, from at least April 9, 2006 until some time in early 2008, Defendant  
17 US FOODSERVICE automatically deducted thirty minutes of working time for "lunch breaks" despite  
18 the fact that drivers were not provided such off-duty thirty-minute Meal Periods and, in many  
19 instances, were not able to take them throughout their working days, including days when they worked  
20 more than ten hour shifts.

21 58. In failing to pay Plaintiffs and Class members for all the hours worked, Defendant US  
22 FOODSERVICE operated in bad faith and without a reasonable basis to believe that drivers were not  
23 entitled to compensation for all hours worked. Accordingly, pursuant to Sections §§ 1194 and 1194.2  
24 of the California Labor Code, Plaintiffs and the Class are entitled to recover unpaid wages, and  
25 liquidated damages in an additional amount equal to the amount wages unlawfully withheld.

26 59. Pursuant to Section § 1194 of the Labor Code, Plaintiffs and the Class are also entitled  
27 to recover interest, costs, and attorneys' fees associated with this cause of action. Plaintiffs and Class  
28 members are also entitled to recover civil penalties under California Labor Code § 558.







**FOURTH CAUSE OF ACTION**  
**Failure to Issue Accurate Itemized Wage Statements**  
**(Cal. Labor Code §§ 226 and 226.3)**

65. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

66. The actionable period for this cause of action is April 9, 2009 through the present.

67. Section 226(a) of the California Labor Code provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of the hours worked at each hourly rate by the employee.

68. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

69. As set forth above, during the Class Period, Defendant US FOODSERVICE knowingly provided Plaintiff PARKER and members of the Class with bi-weekly inaccurate itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff PARKER and members of the Class in that the payments owed to Plaintiff PARKER and the members of the Class for untimely or missed Meal and Rest Periods were not included in gross wages earned by Plaintiff PARKER and the Class.

70. Defendant US FOODSERVICE's failure to provide Plaintiff PARKER and members of the Class with accurate itemized wage statements during the Class Period has caused Plaintiff

1 PARKER and the members of the Class to incur economic damages in that they were not aware that  
2 they were owed and not paid compensation for missed, untimely or on-duty Meal and Rest Periods.

3 71. As a result of Defendant US FOODSERVICE's issuance of inaccurate itemized wage  
4 statements to Plaintiff PARKER and members of the Class in violation of Labor Code § 226(a),  
5 Plaintiff PARKER and the members of the Class are each entitled to recover an initial penalty of \$50,  
6 and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4000 for  
7 Plaintiff PARKER and for every member of the Class to be paid by Defendant US FOODSERVICE  
8 pursuant to §226(e) of the Labor Code.

9 **FIFTH CAUSE OF ACTION**  
10 **Unfair/Unlawful/Fraudulent Business Practices**  
11 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

12 72. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in  
13 the preceding paragraphs.

14 73. Section 17200 of the California Business & Professions Code prohibits any unlawful,  
15 unfair, or fraudulent business practices.

16 74. Labor Code section 90.5(a) states that it is the public policy of California to enforce  
17 vigorously minimum labor standards in order to ensure employees are not required to work under  
18 substandard and unlawful conditions, and to protect employers who comply with the law from those  
19 who attempt to gain competitive advantage at the expense of their workers by failing to comply with  
20 minimum labor standards.

21 75. Beginning at a date unknown to Plaintiffs, but at least as early as April 9, 2006,  
22 Defendant US FOODSERVICE through its actions alleged herein, committed, and continues to  
23 commit, acts of unfair competition and/or unlawful business practices within the meaning of Cal. Bus.  
24 & Prof. Code, § 17200, because Defendant US FOODSERVICE's conduct has violated state wage and  
25 hour laws and underlying public policies, as herein described. In particular, Defendant US  
26 FOODSERVICE engaged in unfair competition in violation of Cal. Bus & Prof. Code, § 17200 *et seq.*  
27 by violating, *inter alia*, each of the following: (a) the rights asserted in the First, Second, Third and  
28

1 Fourth Causes of Action as stated above; (b) Cal. Labor Code §§ 201-204, 218, 226, 226.3, 226.7, 512;  
2 1194, 1194.2, 1197, 1198, and (d) California IWC Order No. 7-2001 (as amended).

3 76. Defendant US FOODSERVICE's course of conduct, act and practice in violation of the  
4 California laws mentioned in each Cause of Action and under each statute and IWC Order provision  
5 alleged to have been violated in this Complaint constitutes a separate and independent violation of  
6 17200 *et seq.* of the California Business and Professions Code.

7 77. The harm to Plaintiffs and members of the Class members in being wrongfully denied  
8 timely off-duty thirty-minute Meal and timely ten minute Rest Periods, and not compensating them  
9 with premium pay for missed or late and/or on-duty Meal Periods and for untimely Rest Periods, as  
10 well as the harm associated with the illegal deductions from wages described herein outweighs the  
11 utility, if any, of Defendant US FOODSERVICE's policies/practices and, therefore, Defendant US  
12 FOODSERVICE's actions described herein constitute an unfair business practice or act within the  
13 meaning of California Business and Professions Code § 17200.

14 78. The unlawful and unfair business practices and acts of Defendant US FOODSERVICE,  
15 as described above, have injured Plaintiffs and the Class, in that they were wrongfully denied premium  
16 pay due for missed, untimely and on-duty Meal Periods; for untimely Rest Periods; and their wages  
17 were subject to unlawful and automatic deductions from working time when no off-duty Meal Periods  
18 were taken on shifts longer than ten hours.

19 79. Plaintiffs and Members of the Class are entitled to restitution of wages, compensation,  
20 and penalties due to them as a result of Defendant US FOODSERVICE's acts and omissions in  
21 violation of law as alleged herein. The actionable period for this cause of action is April 9, 2006  
22 through the present.

23 **SIXTH CAUSE OF ACTION**  
24 **CIVIL PENALTIES**  
25 **(CALIFORNIA LABOR CODE § 2698 *et seq.*,**  
**PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

26 80. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in  
27 the preceding paragraphs.  
28

1           81. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a  
2 civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,  
3 commissions, boards, agencies or employees for violation of the code may, as an alternative, be  
4 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and  
5 other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

6           82. Plaintiffs are aggrieved employees because they were employed by the alleged violator  
7 and had one or more of the alleged violations committed against them, and therefore are properly  
8 suited to represent the interests of other current and former drivers of US FOODSERVICE.

9           83. Plaintiffs have provided notice pursuant to Labor Code § 2699.3 to the California Labor  
10 & Workforce Development Agency of their action based on the alleged Labor Code violations, as set  
11 forth in the letter attached hereto as Exhibit H. As of this date, the Labor & Workforce Development  
12 Agency has not responded to that notice, and no response is anticipated.

13           84. Accordingly, on behalf of themselves and all other similarly aggrieved employees who  
14 have worked for US FOODSERVICE at any time since one year prior to the filing of this Complaint,  
15 Plaintiffs alleges as follows:

16           85. Labor Code § 2698 *et seq.*, the Private Attorney Generals Act of 2004 (“PAGA”),  
17 provides that a Court must award civil penalties for violations of the Labor Code.

18           86. Under Labor Code § 2699(2)(f), US FOODSERVICE is subject to a civil penalty of one  
19 hundred dollars (\$100) for each Plaintiff and similarly aggrieved driver per pay period for the initial  
20 violation of Labor Code § 226.7 for failing to provide meal periods, as alleged in the First Cause of  
21 Action, and two hundred dollars (\$200) for each Plaintiff and similarly aggrieved driver per pay period  
22 for each subsequent violation of Labor Code § 226.7 for failing to provide meal periods, as alleged in  
23 the First Cause of Action.

24           87. Under Labor Code § 558, US FOODSERVICE is subject to a civil penalty of (1) for an  
25 initial violation, fifty dollars (\$50) for each underpaid Plaintiff and similarly aggrieved employee for  
26 each pay period for which the employee was provided a meal period under Labor Code § 512, as  
27 alleged in the First Cause of Action, in addition to an amount sufficient to recover underpaid wages;  
28 and (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid Plaintiff and

1 similarly aggrieved employee for each pay period for which the employee was underpaid under Labor  
2 Code § 512, as alleged in the First Cause of Action, in addition to an amount sufficient to recover  
3 underpaid wages.

4 88. Under Labor Code § 2699(2)(f), Defendants are subject to a civil penalty of one  
5 hundred dollars (\$100) for each Plaintiff and similarly situated driver per pay period for the initial  
6 unlawful wage deduction in violation of Labor Code § 221, as alleged in the Second Cause of Action,  
7 and two hundred dollars (\$200) for each Plaintiff and similarly situated driver per pay period for each  
8 subsequent violation of Labor Code § 221, as alleged in the Second Cause of Action.

9 89. Under Labor Code § 2699(2)(f), US FOODSERVICE is subject to a civil penalty of one  
10 hundred dollars (\$100) for each Plaintiff and similarly situated driver per pay period for the initial  
11 violation of Labor Code §§ 201 and 202 (failure to pay earned wages upon discharge), as alleged in the  
12 Third Cause of Action, and two hundred dollars (\$200) for each Plaintiff and similarly situated driver  
13 per pay period for each subsequent violation of Labor Code §§ 201 and 202, as alleged in the Third  
14 Cause of Action.

15 90. Under Labor Code § 226.3, Defendants are subject to a civil penalty of two hundred  
16 fifty dollars (\$250) for each Plaintiff and similarly situated driver for the first violation, and one  
17 thousand dollars (\$1,000) for each Plaintiff and similarly situated driver for each subsequent violation  
18 of Labor Code § 226(a) (Failure to Furnish Timely and Accurate Wage Statements), as alleged in the  
19 Fourth Cause of Action.

20 91. Plaintiffs, on behalf of themselves and similarly situated drivers, request relief as  
21 described below.

22 **VII. PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray for judgment  
24 against Defendant US FOODSERVICE as follows:

25 1. An order that this action may proceed and be maintained as a class action pursuant to  
26 Federal Rules of Civil Procedure 23(a) and 23(b)(3);

27 2. On the First Cause of Action:  
28

1 a. A declaratory judgment that Defendant US FOODSERVICE has violated  
2 California Labor Code § 226.7, § 512 and the IWC Wage Order No. 7-2001;

3 b. Pursuant to Cal. Labor Code § 226.7 and IWC Wage Order No. 7, an award to  
4 Plaintiffs and the Class Members of one additional hour of pay at the employee's regular rate of  
5 compensation for each day that Meal Periods were missed/not provided on a timely basis, and/or were  
6 provided only on-duty, during the Class Period;

7 c. Pursuant to Cal. Labor Code § 226.7 and IWC Wage Order No. 7, an award to  
8 Plaintiffs and the Class Members of one additional hour of pay at the employee's regular rate of  
9 compensation for each day that Rest Periods were missed and/or not provided on a timely basis, during  
10 the Class Period;

11 d. Pursuant to Cal. Labor Code Section § 218.6, an award of all accrued interest  
12 from the date that the wages were due and payable at the legal interest rate; and

13 e. An award to Plaintiffs and the Class of reasonable attorneys' fees and costs  
14 pursuant to Cal. Labor Code § 218.5 and/or other applicable state laws.

15 3. On the Second Cause of Action:

16 a. A declaratory judgment that Defendant US FOODSERVICE has violated  
17 California Labor Code §§ 1194, 221, 204, 218.5, 558, 1194, 1194.2, 1197, 1198, and IWC Wage Order  
18 No. 7-2001;

19 b. Pursuant to Cal. Labor Code § 1194, an award to Plaintiffs and the Class  
20 members for all wages wrongfully withheld from them for their unpaid hours worked, at the  
21 appropriate rate of compensation including overtime, for each day on which Defendant US  
22 FOODSERVICE automatically deducted thirty minutes of working time from drivers where the drivers  
23 worked more than ten hours without taking any off-duty Meal Periods during the Class Period;

24 c. Pursuant to Cal. Labor Code § 1194.2, an award of liquidated damages to  
25 Plaintiffs and the Class in an additional amount equal to all wages wrongfully withheld from them for  
26 their unpaid hours of working time at the appropriate rate of compensation, including overtime, for  
27 each day on which Defendant US FOODSERVICE automatically deducted thirty minutes of working  
28



1 time from drivers where the drivers worked more than ten hours without taking any off-duty Meal  
2 Periods during the Class Period;

3 d. Pursuant to Cal. Labor Code § 1194, an award to Plaintiffs and the Class of  
4 reasonable attorneys' fees, interest, and costs; and

5 e. Pursuant to Cal. Labor Code Section §§ 221 and 218.5, an award of wages owed  
6 plus interest and reasonable attorney fees to Plaintiffs and Class members based on Defendant US  
7 FOODSERVICE's illegal deduction of thirty minutes of working time from drivers, and civil penalties  
8 under Cal. Labor Code Section § 558.

9 4. On the Third Cause of Action:

10 a. A declaratory judgment that Defendant has violated California Labor Code  
11 §§ 201-203;

12 b. Pursuant to Cal. Labor Code §§ 201-203, an award to Plaintiffs and the Class  
13 Members who are no longer employed by Defendant US FOODSERVICE for waiting time penalties in  
14 the amount of 30 days' wages for each Class Member who is no longer employed by Defendant US  
15 FOODSERVICE; and

16 c. An award to Plaintiffs and the Class Members who are no longer employed by  
17 Defendant US FOODSERVICE of reasonable attorneys' fees and costs pursuant to Cal. Labor Code  
18 §218.5 and/or other applicable state laws.

19 5. On the Fourth Cause of Action:

20 a. A declaratory judgment that Defendant US FOODSERVICE violated Labor  
21 Code § 226 and 226.3 by issuing inaccurate weekly wage statements to Plaintiff PARKER and other  
22 members of the Class;

23 b. An award to Plaintiff PARKER and other members of the Class of \$50 for each  
24 initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay  
25 period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the  
26 Class, as well as an award of costs and reasonable attorney's fees.

27 6. On the Fifth Cause of Action:  
28



1 a. An Order requiring Defendant US FOODSERVICE, its agents, servants, and  
2 employees, and all persons acting, directly or indirectly, in concert with them, to restore and disgorge  
3 all funds to each member of the Class acquired by means of any act or practice declared by this Court  
4 to be unlawful, unfair or fraudulent and therefore constituting unfair competition under the California  
5 Business and Professions Code § 17200 *et seq.*;

6 b. For declaratory relief pursuant to California Business and Professions Code  
7 § 17203, consisting of, *inter alia*, (1) a declaration that Defendant US FOODSERVICE has engaged in  
8 unlawful and unfair business acts and practices in violation of California Business & Professions Code  
9 § 17200 *et seq.*; and (2) restitution, including, but not limited to, the relief permitted by the California  
10 IWC Wage Order No. 7-2001 and Labor Code 226.7.

11 7. On the Sixth Cause of Action

12 a. An award of civil penalties pursuant to the Private Attorneys General Act, Labor  
13 Code § 2698 *et seq.* to Plaintiffs and all similarly aggrieved employees for all violations of the Labor  
14 Code alleged herein;

15 b. An awarded reasonable attorneys' fees and costs to Plaintiffs and all similarly  
16 aggrieved employees pursuant to Labor Code § 2699(g)(1) and/or other applicable law.

17 8. An award to Plaintiffs and the Class members of their attorneys' fees and costs of suit  
18 to the extent permitted by law, including, but not limited to, Cal. Code of Civil Procedure § 1021.5,  
19 and Labor Code § 218.5.

20 9. All other relief as this Court deems proper.

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiffs demand trial by jury of all of their claims on which they are entitled to a jury trial,  
23 including all claims made in the First, Second, Third, and Fourth Causes of Action stated in their  
24 Complaint.

1 Dated: February \_\_, 2012

Respectfully submitted,

2 GOLDSTEIN, DEMCHAK, BALLER, BORGAN &  
3 DARDARIAN

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25 Attorneys for Plaintiffs Downs, Parker, Ramirez, Roman  
26 and Wolterding, and all others similarly situated  
27  
28

07/09/06 14:45 Time Card Report - From: 06/25/06 To: 07/08/06 Page: 1

DOW	Date	Spc	IN	Beg	Brk	End	Brk	OUT	REG	OT1	OT2	TOT	
=====													
Home Department # 16													
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DOWNS, LORETTA				Payroll #: 158614									
Mon	06/26/06		2:30 AM	←		4:15 PM			10.00	3.25	0.00	13.25	
Tue	06/27/06		2:32 AM	←		8:30 PM			10.00	7.47	0.00	17.47	
Wed	06/28/06		6:30 AM			9:50 PM			10.00	4.83	0.00	14.83	
Thu	06/29/06		8:00 AM			6:09 PM			9.65	0.00	0.00	9.65	
Sat	07/01/06		1:00 AM	←		5:38 PM			<del>0.35</del>	08.00	8.13	16.13 OT	
Sun	07/02/06	HOL							10.00	0.00	0.00	10.00	
Mon	07/03/06		4:00 AM			1:17 PM			8.78	0.00	0.00	8.78	
Tue	07/04/06		2:30 AM	←		2:30 PM			<del>10.00</del>	11.50	0.00	11.50	
Wed	07/05/06		3:00 AM			2:51 PM			10.00	1.35	0.00	11.35	
Thu	07/06/06		3:00 AM			3:11 PM			10.00	1.68	0.00	11.68	
Sat	07/08/06		3:00 AM			5:55 PM			<del>1.22</del>	08.00	6.42	14.42 OT	
-----													
										<del>90.00</del>	<del>49.07</del>	<del>0.00</del>	139.07
										78.43	46.08	14.55	

Emp. Signature: \_\_\_\_\_

Approved: \_\_\_\_\_

Department Total: \_\_\_\_\_

~~90.00~~ ~~49.07~~ ~~0.00~~ 139.07

PAYROLL HOURS

REG/+GUAR: 68.43

OT1: 46.08

OT2: 14.55

NP: 58.35

VAC: \_\_\_\_\_

FH: \_\_\_\_\_

SIC: \_\_\_\_\_

JUR: \_\_\_\_\_

FNL: \_\_\_\_\_

HOL: 10

OTHER: \_\_\_\_\_

TOTAL: 197.41

VERIFIED BY \_\_\_\_\_

**DRIVER ITINERARY**

Delivery Date: Monday, June 26, 2006

Route: 1710 - VALENCIA #2

Driver Information

Driver 1: DOWNS, LORETTA - 0116  
 Driver 2:

Equipment ID	Equipment Type ID	Description
-	60	

Spot: DPT - 08

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name	Location ID	Type
	CUBE	CUBE		Location Address		
	CASES	CASES		Open/ Close	Time Windows	
	WEIGHT	WEIGHT		Travel Time	Distance	

Standard Instructions

Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions
--------------	------	-------	--------	----------------	----------------------

Depart Depot 3:00

1 * Arrive: 4:29	87	0	00:47	RUBIO'S-PASADENA #100	13537287	SIT
Depart: 5:16	77	0		216 S LAKE AV PASADENA, CA 91101		
	1,916	0		O/C: 0:01 / 23:59	TW1: 0:01 / 11:00 TW2: /	
				Travel: 01:29	Distance: 52.11	

*506 AL*

KEY STOP

915976	86	76	1,896	MOTION DETECTOR ON ALARM.TO RESET STAND STILL UNTIL YOU SEE A GREEN LIGHT, THEN ENTER CODE AND LEAVE		
916254	1	1	20	MOTION DETECTOR ON ALARM.TO RESET STAND STILL UNTIL YOU SEE A GREEN LIGHT, THEN ENTER CODE AND LEAVE		

2 o Arrive: 5:42	158	0	02:01	VERDUGO HILLS HOSPITAL	33572827	SIT
Depart: 7:43	225	0		1812 VERDUGO BLVD GLENDALE, CA 91208		
	3,965	0		O/C: 6:00 / 14:00	TW1: 6:00 / 10:00 TW2: /	
				Travel: 00:25	Distance: 8.89	

*534*

915839 158 225 3,965

3 * Arrive: 8:47	82	0	00:56	T.G.I. FRIDAY'S #1906	73584823	SIT
Depart: 9:44	96	0		24201 VALENCIA BLVD, #102 SANTA CLARITA, CA 91355		
	2,167	0		O/C: 6:00 / 11:00	TW1: 6:00 / 11:00 TW2: /	
				Travel: 01:03	Distance: 32.21	

*4500 1-3*

916185 82 96 2,167

4 * Arrive: 9:49	76	0	00:51	APPLEBEE'S - SANTA CLARITA	23455744	SIT
Depart: 10:40	85	0		23626 VALENCIA BLVD SANTA CLARITA, CA 91355		
	2,106	0		O/C: 7:00 / 11:00	TW1: 7:00 / 11:00 TW2: /	
				Travel: 00:05	Distance: 0.94	

916225 76 85 2,106 APPT 7-10 AM (NOTIFY CUST.OF LATE DELV.)

**EXHIBIT B**

Pickup sizes are underlined.

Legend

o = arrived before opening time c = arrived before closing time, but services will extend beyond closing time C = arrived after closing  
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**DRIVER ITINERARY**  
 Delivery Date: Monday, June 26, 2006

Route: 1710 -VALENCIA #2

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name	Location ID	Type
	CUBE	CUBE		Location Address		
	CASES	CASES		Open/ Close	Time Windows	
	WEIGHT	WEIGHT		Travel Time	Distance	
<b>Standard Instructions</b>						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
* Arrive: 10:41	46	0	00:39	BARNES & NOBLE #2642	03612793	SIT
Depart: 11:20	62	0		23630 VALENCIA BLVD VALENCIA, CA 91365		
	771	0		O/C: 8:00/14:00	TW1: 8:00/14:00 TW2: /	
				Travel: 00:01	Distance: 0.01	
12169	0	1	0			
14876	46	61	771			

\*\*\* 00:15 PAID BREAK \*\*\*

\*\*\* 00:30 BREAK \*\*\*

\*\*\* 00:15 PAID BREAK \*\*\*

<b>Return to Depot:</b>	<b>14:33</b>	<b>Travel: 02:12</b>	<b>Distance: 87.70</b>
<b>Summary:</b>		<b>Delivery</b>	<b>Pickup</b>
Travel: 05:18	Stops: 5	CUBE: 449	0
Service: 05:15	Distance: 181.92	CASES: 545	0
Break: 01:00	Trips: 1	WEIGHT: 10,925	0
Depot Time: 00:00	Runtime: 11:33	Orders: 7	0
			<b>Total</b>
			449
			545
			10,925
			7

Pickup sizes are underlined.

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**DRIVER ITINERARY**

Delivery Date: Monday, July 03, 2006

Route: 1880 -LOMA LINDA

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name	Location ID	Type
	<u>CUBE</u>	<u>CUBE</u>		Location Address		
	<u>CASES</u>	<u>CASES</u>		Open/ Close	Time Windows	
	<u>WEIGHT</u>	<u>WEIGHT</u>		Travel Time	Distance	
<b>Standard Instructions</b>						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
* Arrive: 10:52	102	0	00:57	SIZZLER #671 MORENO VALLE	43626597	SIT
Depart: 11:49	97	0		25035 SUNNYMEAD BLVD MORENO VALLEY, CA 92553 (909) 242-80		
	3,223	0		O/C: 7:00 / 20:00	TW1: 7:00 / 11:00	TW2: 13:30 / 20:00
				Travel: 00:30	Distance: 11.10	
<b>AT 7-11</b>						
19096	1	4	57	DELIVER 7 TO 11 ON SATURDAYS		
19197	101	93	3,166	DELIVER 7 TO 11 ON SATURDAYS		

\*\*\* 00:15 PAID BREAK \*\*\*

\*\*\* 00:30 BREAK \*\*\*

\*\*\* 00:15 PAID BREAK \*\*\*

Return to Depot: 13:43      Travel: 00:53      Distance: 25.70

Summary:	Travel:	Stops:	Service:	Break:	Depot Time:	Delivery	Pickup	Total
	02:48	5	05:25	01:00	00:00	535	0	535
		67.98	1			565	0	565
		09:13				12,375	0	12,375
						6	0	6

Pickup sizes are underlined.

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**DRIVER ITINERARY**

Delivery Date: Saturday, July 08, 2006

ute: 6750 -LA MIRADA

Order #	Total Deliveries	Total Pickups	Service Time	Location Name Location Address Open/ Close Travel Time	Location ID	Type
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
* Arrive: 9:36 Depart: 10:24	85 88 2,245	<u>0</u> <u>0</u> <u>0</u>	00:48	SIZZLER #949 HUNTINGTON P 2111 E FLORENCE AVE HUNTINGTON PARK, CA 90255 O/C: 7:00 / 20:00 Travel: 00:14	33626607	SIT
21328	85	<u>88</u>	2,245			
* Arrive: 10:41 Depart: 11:17	62 62 1,819	<u>0</u> <u>0</u> <u>0</u>	00:36	SIZZLER #139 BELL 4941 E FLORENCE AVE BELL, CA 90201 O/C: 9:00 / 19:00 Travel: 00:16	23626765	SIT
21341	62	<u>62</u>	1,819			
*** 00:30 PAID BREAK ***						
*** 00:30 BREAK ***						
7 m Arrive: 12:40 Depart: 13:29	84 81 2,327	<u>0</u> <u>0</u> <u>0</u>	00:49	SIZZLER #323 PICO RIVERA 6730 S ROSEMEAD PKWY PICO RIVERA, CA 90660 (562) 949-4511 O/C: 9:00 / 20:00 Travel: 00:22	63626824	SIT
921149	84	<u>81</u>	2,327			
8 * Arrive: 13:45 Depart: 13:56	5 5 168	<u>0</u> <u>0</u> <u>0</u>	00:11	SIZZLER #053 DOWNEY 10315 LAKEWOOD BLVD DOWNEY, CA 90241 (562) 861-8612 O/C: 8:00 / 17:00 Travel: 00:15	83626697	SIT
921559	5	5	168			

Pickup sizes are underlined.

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**DRIVER ITINERARY**

Delivery Date: Saturday, July 08, 2006

Route: 6750 -LA MIRADA

Stop #	Total Deliveries CUBE CASES WEIGHT	Total Pickups CUBE CASES WEIGHT	Service Time	Location Name Location Address Open/ Close Travel Time	Location ID	Type
Standard Instructions						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
* Arrive: 14:15	42	0	00:30	SIZZLER #664 SANTA FE SPR	73663890	SIT
Depart: 14:45	44	0		13225 E TELEGRAPH RD SANTA FE SPRING, CA 90670	(562) 944-0724	
	1,331	0		O/C: 8:00 / 20:00	TW1: 8:00 / 11:30	TW2: 13:30 / 17:00
				Travel: 00:19	Distance: 5.49	
121876	42	44	1,331			

Return to Depot: 16:01      Travel: 01:15      Distance: 40.40

Summary:		Delivery	Pickup	Total
Travel:	05:05	Stops: 9	CUBE: 578	578
Service:	06:26	Distance: 124.97	CASES: 674	674
Break:	01:00	Trips: 1	WEIGHT: 15,653	15,653
Depot Time:	00:00	Runtime: 12:31	Orders: 10	10

Pickup sizes are underlined.

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**DRIVER ITINERARY**

Delivery Date: Friday, July 14, 2006

Route: 5550 -MISSION HILLS

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name Location Address Open/ Close Travel Time	Location ID	Type
	<u>CUBE</u>	<u>CUBE</u>				
	<u>CASES</u>	<u>CASES</u>				
	<u>WEIGHT</u>	<u>WEIGHT</u>				
Standard Instructions						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	

\*\*\* 00:30 BREAK \*\*\*

\*\*\* 00:30 PAID BREAK \*\*\*

Return to Depot: 14:18      Travel: 02:15      Distance: 90.20

Summary:	Travel:	Service:	Break:	Depot Time:	Stops:	Distance:	Trips:	Runtime:	Delivery	Pickup	Total
	05:36	05:42	01:00	00:00	4	198.14	1	12:18	649	0	649
									682	0	682
									13,538	0	13,538
									6	0	6

Pickup sizes are underlined.

Legend

o = arrived before opening time   c = arrived before closing time, but services will extend beyond closing time   C = arrived after closing  
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**DRIVER ITINERARY**  
 Delivery Date: Monday, June 05, 2006

Route: 1880 -LOMA LINDA

Driver Information

Driver 1: Chavez, Rick - 0372  
 Driver 2:

Equipment ID	Equipment Type ID	Description
-	60	

Depot: DPT - 08

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name	Location ID	Type
	CUBE	CUBE		Location Address		
	CASES	CASES		Open/ Close	Time Windows	
	WEIGHT	WEIGHT		Travel Time	Distance	
<b>Standard Instructions</b>						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
Report Depot	4:30					
1 * Arrive: 5:00	115	<u>0</u>	00:58	MILLIES 3403 - RIVERSIDE #2	73678013	SIT
Depart: 5:59	112	<u>0</u>		3580 ADAMS STREET RIVERSIDE, CA 92504 (909) 351-1500		
	2,428	<u>0</u>		O/C: 7:00 / 11:00 TW1: / TW2: /		
				Travel: 00:30 Distance: 11.11		
KEY STOP						
06294	115	112	2,428			
2 * Arrive: 6:38	183	<u>0</u>	01:29	CLAIM JUMPER #1	43527860	SIT
Depart: 8:07	180	<u>0</u>		1905 S. COMMERCENTER EAST SAN BERNARDINO, CA 92408		
	3,761	<u>0</u>		O/C: 5:30 / 9:00 TW1: 5:30 / 9:00 TW2: /		
				Travel: 00:39 Distance: 16.50		
06656	183	180	3,761			
3 * Arrive: 8:20	117	<u>0</u>	00:59	VA CANTEN VCS GROC #605	43550706	SIT
Depart: 9:20	114	<u>0</u>		11201 BENTON ST LOMA LINDA, CA 92357		
	1,928	<u>0</u>		O/C: 7:00 / 12:00 TW1: 7:00 / 10:00 TW2: /		
				Travel: 00:12 Distance: 3.25		
G&MJ						
05983	117	114	1,928	NO DELIVERIES AFTER 2 PM		
4 * Arrive: 9:22	80	<u>0</u>	00:59	VA HOSPITAL - LOMA LINDA	93465722	SIT
Depart: 10:22	114	<u>0</u>		11201 BENTON ST LOMA LINDA, CA 92357		
	1,912	<u>0</u>		O/C: 7:00 / 12:00 TW1: 7:00 / 10:00 TW2: /		
				Travel: 00:02 Distance: 0.27		
G&MJ						
06290	80	114	1,912	***DO NOT SHIP ORDER WITHOUT PO#***		

**EXHIBIT F**

pickup sizes are underlined.

Legend

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**DRIVER ITINERARY**

Delivery Date: Monday, June 05, 2006

Route: 1880 -LOMA LINDA

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name	Location ID	Type
	<u>CUBE</u>	<u>CUBE</u>		Location Address		
	<u>CASES</u>	<u>CASES</u>		Open/ Close	Time Windows	
	<u>WEIGHT</u>	<u>WEIGHT</u>		Travel Time	Distance	
<b>Standard Instructions</b>						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
* Arrive: 10:52	115	<u>0</u>	01:05	SIZZLER #671 MORENO VALLE	43626597	SIT
Depart: 11:57	113	<u>0</u>		25035 SUNNYMEAD BLVD MORENO VALLEY, CA 92553	(909) 242-80	
	3,335	<u>0</u>		O/C: 7:00 / 20:00	TW1: 7:00 / 11:00 TW2: 13:30 / 20:00	
				Travel: 00:30	Distance: 11.10	
AT: 7-11						
06621	115	113	3,335	DELIVER 7 TO 11 ON SATURDAYS		

\*\*\* 00:15 PAID BREAK \*\*\*

\*\*\* 00:15 PAID BREAK \*\*\*

\*\*\* 00:30 BREAK \*\*\*

Return to Depot: 13:51 Travel: 00:53 Distance: 25.70

Summary:				Delivery	Pickup	Total
Travel:	02:48	Stops:	5	CUBE: 610	<u>0</u>	610
Service:	05:33	Distance:	67.98	CASES: 633	<u>0</u>	633
Break:	01:00	Trips:	1	WEIGHT: 13,364	<u>0</u>	13,364
Depot Time:	00:00	Runtime:	09:21	Orders: 5	<u>0</u>	5

Pickup sizes are underlined.

Legend

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**DRIVER ITINERARY**  
Delivery Date: Thursday, June 08, 2006

Route: 4770 -SAN BERNARDINO

## Driver Information

Driver 1: Chavez, Rick - 0372

Driver 2:

Equipment ID	Equipment Type ID	Description
-	60	

Depot: DPT - 08

Stop #	Total Deliveries	<u>Total Pickups</u>	CUBE CASES WEIGHT	<u>CUBE CASES WEIGHT</u>	Service Time	Location Name Location Address Open/ Close Travel Time	Location ID	Type
<b>Standard Instructions</b>								
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions			
Depart Depot	3:30							
1 o	Arrive: 4:29 Depart: 6:07	249 301 4,570	<u>0</u> <u>0</u> <u>0</u>	01:37	COMM HSP SAN BERN-GROC 1805 MEDICAL CENTER DRIVE O/C: 5:00 / 9:00 Travel: 00:59	13529508 SAN BERNARDINO, CA 92411 TW1: 5:00 / 9:00 Distance: 29.25	SIT	
LG&EJ								
908249	249	301	4,570					
2 *	Arrive: 6:21 Depart: 8:18	298 368 5,636	<u>0</u> <u>0</u> <u>0</u>	01:57	ST BERNARDINES MEDCT-GROC 2101 NORTH WATERMAN AVE O/C: 5:00 / 9:00 Travel: 00:13	03529492 SAN BERNARDINO, CA 92404 TW1: 5:00 / 9:00 Distance: 3.56	SIT	(909) 8
908201		298	368	5,636	PLEASE PICK UP ALL PALLETS FROM PREVIOUS DELIVERY			
3 c	Arrive: 8:40 Depart: 10:30	218 203 4,764	<u>0</u> <u>0</u> <u>0</u>	01:50	CLAIM JUMPER #1 1905 S. COMMERCENTER EAST O/C: 5:30 / 9:00 Travel: 00:21	43527860 SAN BERNARDINO, CA 92408 TW1: 5:30 / 9:00 Distance: 6.57	SIT	
908195		218	203	4,764				
4 *	Arrive: 10:39 Depart: 11:11	63 46 976	<u>0</u> <u>0</u> <u>0</u>	00:31	GREAT STEAK #7364 500 INLAND CENTER O/C: 9:00 / 18:00 Travel: 00:09	03674207 SAN BERNARDINO, CA 92408 TW1: 9:00 / 11:30 Distance: 2.05	SIT	
908296		63	46	976				

## EXHIBIT G

Pickup sizes are underlined.

## Legend

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**DRIVER ITINERARY**

Delivery Date: Thursday, June 08, 2006

Route: 4770 -SAN BERNARDINO

Stop #	Total Deliveries	Total Pickups	Service Time	Location Name	Location ID	Type
	<u>CUBE</u>	<u>CUBE</u>		Location Address	Time Windows	
	CASES	CASES		Open/ Close	Distance	
	WEIGHT	WEIGHT		Travel Time		
<b>Standard Instructions</b>						
Order Number	CUBE	CASES	WEIGHT	Order Override	Special Instructions	
5 * Arrive: 12:10	53	<u>0</u>	00:39	BARNES & NOBLE #02205	63641906	SIT
Depart: 12:49	61	<u>0</u>		2470 TUSCANY STREET CORONA, CA 92881 (909) 735-0038		
	993	<u>0</u>		O/C: 7:59 / 15:00	TW1: 8:00 / 14:00	TW2: /
				Travel: 00:59	Distance: 29.18	
904825	2	2	23			
908362	51	59	970			

\*\*\* 00:30 PAID BREAK \*\*\*

\*\*\* 00:30 BREAK \*\*\*

Return to Depot: 14:04      Travel: 00:15      Distance: 4.10

Summary:	Travel:	Service:	Break:	Depot Time:	Stops:	Distance:	Trips:	Runtime:	Delivery	Pickup	Total
	02:58	06:36	01:00	00:00	5	74.73	1	10:34	881	<u>0</u>	881
									979	<u>0</u>	979
									16,939	<u>0</u>	16,939
									6	<u>0</u>	6

Pickup sizes are underlined.

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GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN

A PROFESSIONAL CORPORATION

OF COUNSEL:  
BARRY GOLDSTEIN

300 LAKESIDE DRIVE, SUITE 1000  
OAKLAND, CALIFORNIA 94612-3536  
WWW.GDBLEGAL.COM

TELEPHONE: 510/763-9800  
FACSIMILE: 510/835-1417

February 6, 2012

Via Certified Mail

Acting Secretary Douglas Hoffner  
California Labor & Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, CA 95814

Re: *Downs, et al. v. US Foodservice, Inc.* – U.S. District Court for the Northern  
District of California – No. Case 10-2163 EMC  
*Labor Code Private Attorney General Act Notice*

Dear Acting Secretary Douglas Hoffner:

This letter is to provide notice of claims for penalties under the Labor Code Private Attorneys General Act, as amended, Labor Code § 2699.3.

This firm, along with the Ackerman & Tilajef, P.C. and HammondLaw, P.C. firms, represents Loretta Downs and D'Andre Parker (collectively "Clients") on their claims against U.S. Foodservice, Inc. ("U.S. Foodservice") for compensation for missed meal and rest periods, waiting time penalties, unlawful wage deductions, failure to furnish timely and accurate wage statements, and Unfair Competition Law violations. Our Clients seek penalties for these violations pursuant to Labor Code § 2699 on behalf of themselves and similarly situated truck drivers who work or worked for U.S. Foodservice in California during the period of April 9, 2006, to the present.

The following are the bases for the Labor Code § 2699 penalties:

- (1) Loretta Downs was employed as a truck driver in California by U.S. Foodservice from May 2006 through August 2006. D'Andre Parker has been employed as a truck driver in California by U.S. Foodservice since October 2005.
- (2) U.S. Foodservice did not (a) provide timely off-duty thirty-minute Meal Periods to Clients and similarly situated California truck drivers; (b) pay Clients and similarly situated California truck drivers premium pay for missed, untimely or on-duty Meal Periods; (c) authorize and permit Clients and similarly situated California truck drivers to take timely Rest Periods; and (d) pay Clients and similarly situated California truck drivers premium pay for untimely Rest Periods in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order No. 7.

California Labor & Workforce  
Development Agency

-2-

February 6, 2012

- (3) U.S. Foodservice failed to pay wages due to Clients and similarly situated California truck drivers by unlawfully deducting thirty minutes of working time for "lunch breaks" despite the fact that drivers were not provided such off-duty thirty-minute meal periods and, in many instances, were not able to take them throughout their working days, including days when they worked more than ten hour shifts in violation of Labor Code §§ 221 and 204 and IWC Wage Order No. 7.
- (4) U.S. Foodservice willfully failed to pay Clients and similarly situated California truck drivers who are no longer employed by U.S. Foodservice premium pay for their missed, untimely and/or interrupted meal periods; their untimely rest periods; and for illegal deductions for off-duty meal periods that were never taken on shifts greater than ten hours, upon their termination or separation from employment as required by Labor Code §§ 201 and 202.
- (5) U.S. Foodservice knowingly provided Clients and similarly situated California truck drivers with bi-weekly itemized wage statements containing inaccurate information regarding the wages earned by Clients and other similarly situated California truck drivers, for untimely or missed meal and rest periods were not included in gross wages earned by Clients and similarly situated California truck drivers in violation of Labor Code § 226(a).
- (6) As a result of these violations, Clients seek penalties under Labor Code Section 2699 on behalf of themselves and similarly situated truck drivers who work or worked for U.S. Foodservice in California during the period mentioned above.

Yours truly,



Morris J. Baller, Esq.

MJB/jvd

cc: *Via certified mail:*

Joan Tucker Fife  
Counsel for U.S. Foodservice, Inc.