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7 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 PAULA LABRIE, ALFREDO MACIAS,
12 PETER MILLMAN, TOM CHORTABTIM,
RAF SISON

13
14 Plaintiffs,

15 v.

16 UPS SUPPLY CHAIN SOLUTIONS, INC.

17
18 Defendant.
19
20
21
22

Case No. C08-03182 PJH

**SECOND AMENDED COMPLAINT
DEMAND FOR JURY TRIAL
FLSA COLLECTIVE ACTION
RULE 23 CLASS ACTION**

1. FLSA Minimum Wage, Overtime
29 U.S.C. §§ 206, 207, 216(b), 255(a);
2. Calif. Minimum Wage, Overtime
CA Labor Code §§ 510, 1194,
IWC Wage Order 9-2001, §§ 3, 4;
3. Calif. Expense Reimbursement
CA Labor Code § 2802;
4. Calif. Reporting Time Pay
IWC Wage Order 9-2001, § 5;
5. Calif. Waiting Time Penalties
Calif. Labor Code § 203;
6. Calif. Unlawful, Unfair Business Practices
CA Bus. & Prof. Code § 17200;
7. Penalties, CA Labor Code § 2699

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1 Plaintiffs PAULA LABRIE, ALFREDO MACIAS, PETER MILLMAN, TOM
2 CHORTABTIM and RAF SISON, on behalf of themselves and similarly situated drivers for
3 Defendant UPS SUPPLY CHAIN SOLUTIONS, INC., in the United States (FLSA claim) and in
4 the State of California (California claims), and on behalf of the general public allege as follows:
5

6 **INTRODUCTION**

7 1. The Fair Labor Standards Act requires that covered employers pay to all their
8 employees at least the minimum wage for all hours worked, and time-and-a-half their regular rate
9 of pay as overtime premium compensation for all hours worked in excess of 40 in a week,
10 including hours where employees are “engaged to wait” for the employer’s benefit. 29 U.S.C. §
11 216. Likewise, the California Labor Code requires employers to pay at least minimum wage and
12 overtime premium pay for hours worked in excess of 8 in a day, as well as in excess of 40 in a
13 week. Calif. Lab. Code §1194. The California Labor Code further requires employees to meet
14 other legal obligations to their employees, including the duty to reimburse employees for all
15 expenses necessarily incurred in connection with their employment (Lab. Code §2802), the duty
16 to provide workers compensation coverage (Lab. Code §§3200 *et seq.*), the duty to promptly pay
17 all wages due and owing upon termination (Lab. Code § 201, 203.) and other legal obligations.
18

19 2. Employers may not avoid these legal obligations by simply labeling their workers
20 as “independent contractors,” if the employers in fact treat their workers as employees.
21

22 3. Defendant UPS SUPPLY CHAIN SOLUTIONS, INC. (hereinafter “UPS SCS”)
23 does just that. UPS SCS is a specialized business unit within United Parcel Services, Inc., which
24 provides expedited pick up and delivery services for business customers, using smaller vehicles
25 separate from the familiar UPS brown truck. To secure an unfair competitive advantage over its
26 competitors by lowering its labor costs in an integral element of its business, UPS SCS
27 misclassified the drivers of these delivery vehicles as “independent contractors.” Specifically,
28

1 UPS SCS has created a sham independent contractor relationship with these drivers for the
2 purpose of shifting risk and operating expenses onto those drivers, while retaining all the control
3 and dominion that an employer exercises over employees.

4 4. UPS SCS has called these so-called “independent contractor” drivers within its
5 Supply Chain Solutions unit by a variety of names such as “smart couriers,” “transportation
6 suppliers,” “transportation service providers” and “contractors.” Hereinafter all such persons,
7 however labeled by UPS, who performed delivery and pick-up services for defendant UPS SCS
8 as purported “independent contractors” will be called “drivers.” The term “drivers” as used
9 herein does not refer to persons who work or worked for UPS as acknowledged employees.
10

11 5. The California Employment Development Department (“EDD”) has determined in
12 two audits that predecessor entities now owned and controlled by UPS SCS misclassified their
13 drivers as “independent contractors,” when in fact they were employees. *See Air Couriers*
14 *International, et al. v. Employment Development Department, et al*, 150 Cal.App.4th 923 (2007).
15 Since those audits, UPS SCS has changed the names of those corporate entities, but it has
16 continued the same operations without meaningfully changing the degree of control it exercises
17 over the means and manner of the drivers’ work.
18

19 6. Despite UPS SCS’s control over virtually all material aspects of the employment
20 relationship with drivers, and despite the unequivocal command of applicable statutes and case
21 law that workers such as plaintiffs are entitled to the protections due employees under the FLSA
22 and California law, and despite the finding of the Court of Appeal in the *Air Couriers case*, UPS
23 SCS continues to misrepresent the status of these drivers, and to misclassify them as “independent
24 contractors.”
25

26 7. As a result, UPS SCS has willfully deprived these drivers of the rights and
27 protections guaranteed by the FLSA and California law to all employees described above. UPS
28

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1 SCS's mis-characterization of its drivers as independent contractors, its concealment and/or non-
2 disclosure of the true nature of the legal relationship between UPS SCS and these drivers and the
3 attendant deprivation of substantial rights and benefits of employment are part of an on-going
4 unfair and/or unlawful business practice by UPS SCS which this court should remedy, both as to
5 harm done to UPS SCS's drivers and to lawful competitors.
6

7 **PARTIES**

8 8. Plaintiffs PAULA LABRIE, ALFREDO MACIAS, PETER MILLMAN, TOM
9 CHORTABTIM and RAF SISON are residents, respectively, of Alameda, Los Angeles, Santa
10 Clara, Los Angeles and Los Angeles Counties, in the State of California. Plaintiffs were
11 employed by UPS SCS as purported "independent contractor" drivers in California for all
12 relevant times. Together, they sue on behalf of themselves, as representatives of all drivers in the
13 classes defined below, on behalf of the public, and as private attorney generals pursuant to the
14 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200, *et seq.* Plaintiffs have already
15 filed Consents to Become Party Plaintiff to the FLSA claims in this action, executed by named
16 Plaintiffs and by a number of similarly situated drivers. Plaintiffs will file additional Consents to
17 Become Party Plaintiffs executed by similarly situated drivers as they are secured.
18

19 9. Plaintiffs are informed and believe and on that basis allege that defendant UPS
20 SUPPLY CHAIN SOLUTIONS, INC., is incorporated in Georgia, and is a wholly owned
21 subsidiary of United Parcel Service, Inc. Defendant UPS SUPPLY CHAIN SOLUTIONS, INC.,
22 is a registered foreign corporation with the California Secretary of State, doing business at various
23 locations throughout the state of California, including at least one location in the Counties of San
24 Francisco, Alameda, and Santa Clara.
25

26 10. Plaintiffs are informed and believe and on that basis allege that the corporate entity
27 named herein as defendant UPS SUPPLY CHAIN SOLUTIONS, INC., was formerly known as
28

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1 and/or operated by one or more of the following entities: Air Couriers International, Sonic
2 Couriers of Arizona, Inc., Sonic Air, Inc., Arizona Sonic Air, Inc., UPS Service Parts Logistics,
3 Inc., and UPS Logistics Group. On information and belief, these entities have been purchased,
4 merged and/or reorganized under the ownership, direction and control of defendant UPS
5 SUPPLY CHAIN SOLUTIONS, INC., and/or its parent United Parcel Service, Inc., and
6 defendant UPS SUPPLY CHAIN SOLUTIONS, INC. is liable for the violations alleged herein,
7 whether committed under the name UPS SUPPLY CHAIN SOLUTIONS, INC., or under
8 different names, including but not limited to those identified above.
9

10 **JURISDICTION AND VENUE**

11 11. This court has jurisdiction over the subject matter and the parties pursuant to 28
12 U.S.C. §§ 1331, 2201, and 2202. This court has supplemental jurisdiction over the related state
13 law claims pursuant to 28 U.S.C. § 1367(a). Plaintiffs' state law claims are closely related to
14 plaintiffs' federal claims, as all of plaintiffs' claims share common operative facts. Resolving all
15 state and federal claims in a single action serves the interests of judicial economy, convenience
16 and fairness to the parties.
17

18 12. Venue is proper in the Northern District of California under 28 U.S.C. Section
19 1391(b), because some or all of the wrongful conduct at issue took place in, and defendant has
20 offices in and does business in the Northern District of California.
21

22 **INTRADISTRICT ASSIGNMENT**

23 13. A substantial part of the events or omissions which give rise to the claims alleged
24 herein occurred in Alameda and San Francisco County, and accordingly this action may be
25 assigned to the San Francisco Division or the Oakland Division of this Court.
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FLSA COLLECTIVE ACTION ALLEGATIONS

1
2 14. Plaintiffs bring their First Claim For Relief, for violations of the FLSA, as a
3 nationwide “opt-in” collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b)
4 on behalf of the following class, numbering approximately 1,000 persons, which will hereinafter
5 be referred to as the “FLSA Collective Action Plaintiffs.”
6

7 All persons in the United States who perform or performed delivery services for
8 Defendant UPS Supply Chain Solutions, or for its predecessor entities, as purported
9 “independent contractors” and who file written Consents To Become Party Plaintiffs in
10 this Action, for the period commencing three years prior to the filing of such Consents.

11 15. Named Plaintiffs and the FLSA Collective Action Plaintiffs are similarly situated,
12 perform substantially similar duties for UPS SCS and are uniformly subject to UPS SCS’s
13 common policy and practice of unlawfully classifying said Plaintiffs as “independent
14 contractors,” despite UPS SCS’s common practice of reserving to itself the right to control and/or
15 controlling the manner and means of said Plaintiffs’ performance of their duties for UPS SCS.

16 16. The First Claim For Relief, for violations of the FLSA may be brought and
17 maintained as an “opt-in” collective action pursuant to Section 16(b) of the FLSA, Section
18 216(b), because named Plaintiffs’ claims are similar to the claims of the members of the FLSA
19 Collective Action Plaintiffs.

20 17. The names and addresses of the FLSA Collective Action Plaintiffs are available
21 from UPS SCS. Accordingly, Plaintiffs pray herein for an Order requiring UPS SCS to provide
22 the names and all available locating information for all members of the FLSA Collective Action
23 Plaintiffs class, so notice can be provided to this class of the pendency of this action, and their
24 right to opt in to this action as party Plaintiffs.
25

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RULE 23 CLASS ACTION ALLEGATIONS

1
2 18. Plaintiffs bring all claims alleged herein under California law as a statewide “opt-
3 out” class action under Federal Rules of Civil Procedure, Rule 23, on behalf of the following
4 class, which will hereinafter be referred to as the “Rule 23 Class” or the “Plaintiff Class.”

5
6 All persons who performed delivery services in California for Defendant UPS Supply
7 Chain Solutions, Inc., or for its predecessor entities, as purported “independent
8 contractors,” for the period commencing four years prior to the filing of this Complaint.

9 19. During the class period, Plaintiffs are informed and believe and on that basis allege
10 that more than 300 persons have worked for UPS SCS as drivers in California and who fall within
11 the class identified above, whose identities may be ascertained from Defendants’ records.

12 20. This action may be properly maintained as a class action under Federal Rule of
13 Civil Procedure 23 because:

- 14 A. The members of the Rule 23 Class are so numerous that their individual
15 joinder in a single action is impossible and/or impracticable;
- 16 B. The central questions of law and fact involved in this action are of a
17 common or general interest and those common legal and factual issues
18 predominate over any questions affecting only individual members of the
19 Rule 23 Class. Among the common questions of law and fact are the
20 following:
21
22 i. Whether class members have been mis-classified as independent
23 contractors pursuant to UPS SCS’s written independent contractor
24 agreements, and/or common practice of classifying class members
25 as independent contractors while treating them like employees;
26 ii. Whether UPS SCS has violated their legal obligations under federal
27 and California law as detailed below;
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- iii. Whether UPS SCS has unlawfully failed to provide workers compensation insurance benefits and unemployment insurance benefits to the class members in violation of Cal. Labor Code §§3200 *et seq.* and Cal. Unempl. Ins. Code §§100 *et seq.* respectively;
- iv. Whether UPS SCS's actions constitute violations of the Unfair Competition Law, Bus. & Prof. Code, § 17200, *et seq.*

21. The claims of the named representative plaintiffs are typical of the claims of the Plaintiff Class. The named Plaintiffs share the same interests as other members of the Plaintiff Class in this action because, like other class members, they have each been mis-classified, have been subjected to UPS SCS's unlawful policies and procedures and practices, and suffered substantial financial loss due to UPS SCS's wrongful mis-classification. Given the significance of the deprivation of their rights, Plaintiffs have the incentive, and are committed to vigorously prosecuting this action. They have retained competent and experienced counsel who specializes in class action and employment litigation to represent themselves and the proposed class.

22. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the class to seek redress individually for the wrongful conduct herein alleged. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

23. Defendant UPS SUPPLY CHAIN SOLUTIONS, INC., is a national corporation

1 and a division of United Parcel Services, Inc., whose business consists of expedited on-demand
2 package delivery and pick-up service to business customers, using a single integrated nationwide
3 network of transportation, sortation and communication facilities, and integrating Plaintiffs,
4 FLSA Collective Action Plaintiffs and members of the Rule 23 Class into this existing network of
5 operations. Further reference to “Plaintiff Classes” or “drivers” shall refer to both the FLSA
6 Collective Action Plaintiffs and the Rule 23 Class.
7

8 24. UPS SCS hired Plaintiffs and members of the Plaintiff Classes to timely deliver
9 and pick up packages at times, locations determined solely by UPS SCS, and charging rates to
10 customers and paying drivers in amounts determined solely by UPS SCS.

11 25. UPS SCS reserves the right to control the manner and means by which Plaintiffs
12 and the Plaintiff Classes perform their duties for UPS SCS. UPS SCS controls the dispatch of
13 these drivers’ work each day.
14

15 26. UPS SCS unilaterally dictates drivers’ “professional appearance and behavior.”

16 27. UPS SCS requires drivers to insure UPS SCS against all loss resulting from
17 drivers’ work for UPS SCS.

18 28. UPS SCS unilaterally prescribes in detail how drivers record and document their
19 work for UPS SCS.

20 29. UPS SCS unilaterally requires drivers to follow UPS SCS’s prescribed methods of
21 delivery and inspection of packages, within deadlines prescribed by UPS SCS.
22

23 30. UPS SCS employs a variety of managerial and supervisory employees who have
24 supervisory responsibility over the drivers, their daily assignments, paperwork and payment.
25 Drivers also interact with other UPS SCS personnel on a daily basis.

26 31. UPS SCS unilaterally sets the compensation to be paid to Plaintiffs and plaintiff
27 class members, pursuant to a formula determined by UPS SCS.
28

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1 32. UPS SCS unilaterally set the prices charged to their customers for the services
2 rendered by Plaintiffs and the Plaintiff Classes.

3 33. UPS SCS identifies drivers to the Transportation Security Administration (“TSA”)
4 as UPS SCS agents, requires drivers to obtain a security clearance with the TSA and assists
5 drivers through this process.
6

7 34. UPS SCS has a wide array of written and unwritten policies and procedures
8 outside of so-called “independent contractor agreements” which drivers are required to follow.
9 When drivers do not follow UPS SCS rules they are subject to various types of punishment, some
10 financial and some disciplinary.

11 35. Plaintiffs and members of the Plaintiff Classes provide services which are an
12 integral and essential part of UPS SCS’s core business enterprise - the timely delivery of
13 packages - and they have no separate or distinct occupation or business. By reliably serving UPS
14 SCS’s customers, by following UPS SCS’s delivery and pick-up specifications, by reporting to
15 UPS terminals, by using UPS SCS-mandated equipment, and in other material ways, Plaintiffs
16 and members of the Plaintiff Classes have rendered, and continue to render, services to UPS SCS
17 which are integral to the UPS SCS package delivery system.
18

19 36. Plaintiffs and the Plaintiff Classes are entirely dependent for their financial
20 livelihood on UPS SCS; and UPS SCS is entirely dependent on Plaintiffs and the Plaintiff Classes
21 to deliver the services provided by UPS SUPPLY CHAIN SOLUTIONS.
22

23 37. Either pursuant to written agreements, or common unwritten policies and written
24 practices, UPS SCS uniformly purports to classify Plaintiffs and members of the Plaintiff Classes
25 as “independent contractors.” But at the same time, UPS SCS requires drivers to perform all pick
26 up and delivery services that UPS SCS requests, according to the terms and conditions imposed
27 by UPS SCS, including detailed service specifications and payment specifications. Likewise,
28

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1 UPS SCS retains the right of entry into the drivers' vehicles and to remove items belonging to
2 UPS SCS's customers. UPS SCS further reserves to itself the right to control and to demand
3 drivers' compliance with UPS SCS's unilaterally imposed requirements regarding *inter alia*,
4 security procedures, payment processes; lost or damaged items processes, purchase and
5 maintenance of insurance, advertising and publicity. Moreover, UPS SCS requires drivers to
6 secure advance authorization from UPS SCS before drivers can assign any rights or obligations
7 under any agreements with UPS SCS.
8

9 38. Written and oral "independent contractor agreements" between UPS SCS and
10 members of the Plaintiff Classes are and were at all times mentioned herein contracts of adhesion,
11 drafted or imposed exclusively by Defendants and/or their legal counsel, and presented to drivers,
12 who are required to sign written agreements and or comply with oral agreements as a condition of
13 employment, without any negotiation. Such agreements are unlawful, unconscionable and
14 fraudulent in form and effect.
15

16 39. Although the nature of the work performed by Plaintiffs and members of the
17 Plaintiff Classes makes detailed control by management unnecessary, Defendants nonetheless
18 retain the right to control and do in fact exercise extensive control over the work of the drivers, to
19 fulfill UPS SCS's commitments to its customers.
20

21 40. As a practical matter, drivers' so-called "independent contractor" agreements with
22 UPS SCS are terminable by UPS SCS at will, and without cause.

23 **FIRST CLAIM FOR RELIEF**
24 **(Failure to pay minimum wage and overtime compensation,**
25 **29 U.S.C. §206, 207, 216, 255(a))**

26 Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth
27 herein.

28 41. UPS SCS is an enterprise engaged in commerce and/or in the production of goods

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1 for commerce as defined by 29 U.S.C. Section 203(r) & (s) and related Department of Labor
2 regulations.

3 42. As employees of UPS SCS, Plaintiffs and FLSA Collective Action Plaintiffs are
4 entitled to the protections of the FLSA, including payment of at least the minimum wage for all
5 hours worked, overtime compensation when due, and accurate recordkeeping of hours worked.
6

7 43. UPS SCS routinely required and/or suffered or permitted Plaintiffs and FLSA
8 Collective Action Plaintiffs to work for UPS SCS, paying only a limited sum for use of drivers'
9 vehicles, and without paying them the minimum wage for all hours worked, and without paying
10 them any overtime premium compensation for the many weeks when Plaintiffs and FLSA
11 Collective Action Plaintiffs worked more than 40 hours per week. Plaintiffs and FLSA Collective
12 Action Plaintiffs regularly worked far in excess of 8 hours per day, for six and often seven days
13 per week.
14

15 44. In failing to pay Plaintiffs and FLSA Collective Action Plaintiffs the minimum
16 wage for all hours worked in weeks when said Plaintiffs worked 40 hours per week or less, UPS
17 SCS willfully violated 29 U.S.C. Section 206.

18 45. In failing to pay Plaintiffs and FLSA Collective Action Plaintiffs overtime
19 compensation at one-and-one-half times their regular rate of pay for all hours worked in excess of
20 40 hours per week, and straight time wages for all hours worked up to 40 hours per week in such
21 weeks, UPS SCS willfully violated 29 U.S.C. Section 207.
22

23 46. WHEREFORE, Plaintiffs, and FLSA Collective Action Plaintiffs are entitled to all
24 wages due and owing for hours worked, including:

25 A. Minimum wages for all hours worked in weeks when said Plaintiffs
26 worked no more than 40 hours or less;

27 B. Straight-time wages calculated according to law, for all hours worked up to
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40 hours per week in those weeks when said Plaintiffs worked more than 40 hours;

C. Overtime premium compensation at time-and-one-half Plaintiffs' straight time regular rate of pay for all hours worked in excess of 40 hours per week commencing three years prior to the filing of said Plaintiffs' Consents To Become Party Plaintiffs, pursuant to 29 U.S.C. Sections 216(b) & 255(a),

D. In addition, said Plaintiffs are entitled to an additional equal amount as liquidated damages and to attorneys fees pursuant to 29 U.S.C. Section 216(b).

SECOND CLAIM FOR RELIEF
(Failure to Pay Minimum Wages and Overtime Wages;
Calif. Lab. Code §§ 510, 1194 and IWC Wage Order 9-2001)

Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

47. As employees of UPS SCS, Plaintiffs and the Plaintiff Class are entitled to the protections of California law, including but not limited to payment of the minimum wage for all hours worked, and overtime compensation when due.

48. In failing to pay Plaintiffs and the Plaintiff Class the minimum wage for all hours worked in days when they worked less than 8 hours per day, and/or in weeks when they worked 40 hours or less per week, UPS SCS willfully violated IWC Wage Oder 9-2001, as amended, § 4.

49. In failing to pay Plaintiffs and the Plaintiff Class overtime compensation at one-and-one-half times their regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week, or double-time for hours worked in excess of 12 hours per day or after 8 hours on the seventh consecutive day, UPS SCS willfully violated IWC Wage Oder 9-2001, as

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1 amended, § 3(A) and California Labor Code Sections 510.

2 50. WHEREFORE, Plaintiffs and the Plaintiff Class are entitled to all wages due and
3 owing for hours worked, including:

- 4 A. Minimum wages for all hours worked in weeks when said Plaintiffs
5 worked no more than 40 hours or less, except those days in such weeks
6 when said Plaintiffs worked more than 8 hours, and an equal additional
7 amount as liquidated damages, pursuant to Labor Code § 1194 and 1194.2;
- 8 B. Straight-time wages calculated according to law, for all hours worked up to
9 40 hours per week in those weeks when Plaintiffs worked more than 40
10 hours, and for all hours worked in days in which Plaintiffs worked more
11 than 8 hours, pursuant to Labor Code Section 1194;
- 12 C. Overtime premium compensation at time-and-one-half Plaintiffs' straight
13 time regular rate of pay for all hours worked in excess of 40 hours per
14 week and for all hours worked in excess of 8 hours per day, pursuant to
15 Labor Code Section 1194, commencing three years prior to the filing of
16 this action, pursuant to California Code of Civil Procedure Section 338(a),
17 plus interest thereon and attorneys fees and costs.

18 //
19 //

20
21
22 **THIRD CLAIM FOR RELIEF**
(Failure to Reimburse Expenditures, Calif. Labor Code §2802)

23 Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth
24 herein.

25 51. While acting on the direct instruction of UPS SCS and/or discharging their duties
26 for UPS SCS, Plaintiffs and Plaintiff Class members incurred work-related expenses including
27
28

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1 but not limited to fuel, maintenance, operating costs and depreciation of vehicles; insurance,
2 communications and other equipment and uniforms. Plaintiffs and Plaintiff Class necessarily
3 incurred these substantial expenses as a direct result of performing their job duties for UPS SCS.

4
5 52. UPS SCS has failed to indemnify or in any manner reimburse the Plaintiffs or the
6 Plaintiff Class members for these expenditures, and has knowingly inserted illegal contractual
7 provisions as part of an unconscionable and illegal scheme designed to avoid its legal duty to
8 indemnify its employees. By mis-classifying its employees as “independent contractors,” and
9 further by contractually requiring those employees to pay expenses which they incurred in direct
10 consequence of the discharge of their duties for UPS SCS and/or in obedience to the direction of
11 UPS SCS, UPS SCS has violated California Labor Code Section 2802.

12
13 53. As a direct and proximate result of UPS SCS’s conduct, Plaintiffs and Plaintiff
14 Class members have suffered substantial losses according to proof.

15 54. WHEREFORE, Plaintiffs and the Plaintiff Class are entitled to reimbursement of
16 all costs necessarily incurred in discharge of their duties for UPS SCS, in an amount to be
17 ascertained at the trial of the matter according to proof, as well as interest thereon, costs and
18 attorney fees for the prosecution of this action.

19
20 **FOURTH CLAIM FOR RELIEF**
(Reporting Time Pay, Calif. IWC Wage Order 9-2001, § 5.)

21 Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth
22 herein.

23
24 55. California Industrial Welfare Commission Wage Order 9-2001, § 5 requires that
25 when an employee is required to report to report to work, but is not put to work, he or she shall be
26 paid for half the usual or scheduled day’s work, but in no event for less than 2 hours, nor more
27 than 4 hours, at the employee’s regular rate of pay.

28 56. Plaintiffs and members of the Plaintiff Class were frequently required to report to

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1 UPS SCS facilities to await dispatch to pickup and/or delivery service, without being dispatched.
2 UPS SCS paid Plaintiffs and the Plaintiff Class no compensation whatsoever for this reporting
3 time, which was time spent for UPS SCS's benefit, and which deprived Plaintiffs of the
4 opportunity to pursue other matters.

5
6 57. WHEREFORE, Plaintiffs and the Plaintiff Class are entitled to two to four hours
7 of Reporting Time Pay for every day they reported to work and were not allowed to work, in an
8 amount according to proof, to interest thereon, and to attorneys fees and costs for pursuing this
9 claim.

10 **FIFTH CLAIM FOR RELIEF**
11 **(Waiting time penalties, Calif. Labor Code §§ 201, 202 & 203)**

12 Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth
13 herein.

14 58. California Labor Code Section 201 requires an employer who discharges an
15 employee to pay all compensation due and owing to that employee immediately upon discharge.

16 59. California Labor Code Section 202 requires an employer within 72 hours to pay all
17 compensation due and owing to an employee who quits, unless the employee provides at least 72
18 hours notice of quitting, in which case all compensation is due at the end of the employee's final
19 day of work.

20 60. California Labor Code Section 203 provides that if an employer willfully fails to
21 pay all compensation due and owing promptly upon termination, as required by Sections 201 and
22 202, then the employer is liable for waiting time penalty pay in the form of continued
23 compensation of up to 30 work days.

24 61. UPS SCS has discharged all Plaintiffs and all members of the Plaintiff Class have
25 either quit or been terminated by UPS SCS. But UPS SCS has willfully failed and refused to
26 timely pay all compensation and wages due to Plaintiffs and the Plaintiff Class.
27
28

1 to identify all members of the FLSA Plaintiff Class and to provide all available locating
2 information for members of the class, and to provide notice to all class members of this lawsuit
3 and their opportunity to file Consents To Become Party Plaintiffs thereto;

4 2. On Plaintiffs' **First Claim For Relief**, for all unpaid wages due and owing under
5 the FLSA, including: (A) minimum wages for all hours worked in weeks when Plaintiffs worked
6 less or no more than 40 hours; (B) overtime compensation at time-and-one-half Plaintiffs' regular
7 rate of pay for all hours worked in excess of 40 hours per week; (C) straight-time wages for all
8 hours worked up to 40 hours per week in those weeks when Plaintiffs worked more than 40
9 hours; (D) plus an equal additional amount as liquidated damages, (E) plus attorneys fees and
10 costs;

11 3. On Plaintiffs' **Second through Seventh Claims For Relief**, for an order certifying
12 these claims as a state-wide class action pursuant to Fed. Rule Civ. Proc. 23, and providing for
13 notice to all class members of this action and their opportunity to opt out of the Class;

14 4. On Plaintiffs' **Second Claim For Relief**, for all unpaid wages due and owing,
15 including: (A) minimum wages for all hours worked in weeks when Plaintiffs worked no more
16 than 40 hours or less, except those days in such weeks when Plaintiffs worked more than 8 hours,
17 (B) plus an equal additional amount as liquidated damages, (C) overtime premium compensation
18 at time-and-one-half Plaintiffs' straight time regular rate of pay for all hours worked in excess of
19 40 hours per week and for all hours worked in excess of 8 hours per day; (D) Straight-time wages
20 for all hours worked up to 40 hours per week in those weeks when Plaintiffs worked more than 40
21 hours, and for all hours worked up to 8 hours per day in those days in which Plaintiffs worked
22 more than 8 hours; (E) plus attorneys fees and costs. In this and following Prayers, "Plaintiff"
23 refers to individual named Plaintiffs and also all members of the Plaintiff Class who do not opt
24 out of the Class;

25 5. On Plaintiffs' **Third Claim For Relief**, for reimbursement of all work-related
26 expenses associated with Plaintiffs' employment with Defendants, plus interest thereon and
27 attorneys fees;

28 6. On Plaintiffs' **Fourth Claim For Relief**, for two to four hours of reporting pay at

EXHIBIT A

LEONARD CARDER, LLP

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LYNN ROSSMAN FARIS
SHAWN GROFF
KATE R. HALLWARD
CHRISTINE S. HWANG
JENNIFER KEATING*
ARTHUR A. KRANTZ
JENNIFER MARSTON**
PHILIP C. MONRAD
ELEANOR I. MORTON
ROBERT REMAR
MARGOT A. ROSENBERG
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TELEPHONE (415) 771-6400
FAX (415) 771-7010

July 10, 2008

* ADMITTED ALSO IN CANADA
** ADMITTED ALSO IN OREGON
AND WASHINGTON

579-1

PLEASE REFER TO OUR FILE NO.

Victoria Bradshaw, Secretary
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

By Certified Mail No.7007-3020-0000-1747-1586
Return Receipt Requested

Re: Labor Code violations by UPS Supply Chain Solutions, Inc.
Notice of Claim seeking L.C. § 2699 penalties

Dear Secretary Bradshaw:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699.3, enclosed please find a copy of a Complaint in the matter of Labrie, et al. v. UPS Supply Chain Solutions, Inc., filed July 2, 2008 in U.S. District Court for the Northern District of California, No. C08-03182. In addition to violations of the federal Fair Labor Standards Act, this Complaint sets forth provisions of the California Labor Code (Sections 510, 1194, 2802,) IWC Wage Order 9, and Business & Professions Code (Section 17200, *et seq.*) that UPS Supply Chain Solutions, Inc. ("UPS SCS") has violated, regarding its purported "independent contractors" who performed specialized pick-up and delivery services for UPS SCS, subject to the extensive control of UPS SCS. These drivers are not the familiar UPS brown truck drivers, but rather are drivers operating as purported "independent contractors" for the Supply Chain Solutions business unit of UPS.

The Labor Code violations cited above and described in the enclosed Complaint result from UPS SCS's practice of characterizing its drivers as "independent contractors," despite the extensive control exercised by UPS SCS over these drivers' service for UPS SCS, which control renders them "employees" entitled to the benefits and protection of the Labor Code and Industrial Welfare Commission Wage Orders.

Please consider this letter, the enclosed letter to UPS SCS, and the Complaint enclosed hereto as notice of intent to seek penalties under Labor Code Section 2699, *et seq.*, as required by Section 2699.3.

Very truly yours,

LEONARD CARDER, LLP

By: 

Philip C. Monrad

PCM/ks

Enclosure

cc: General Counsel, UPS SCS

LEONARD CARDER, LLP

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LYNN ROSSMAN FARIS
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July 10, 2008

* ADMITTED ALSO IN CANADA
** ADMITTED ALSO IN OREGON
AND WASHINGTON

579-1

PLEASE REFER TO OUR FILE NO.

General Counsel
UPS Supply Chain Solutions, Inc.
c/o CSC - Lawyers Incorporating Service
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

By Certified Mail No.7007-3020-0000-1747-1593
Return Receipt Requested

Re: California Labor Code violations by UPS Supply Chain Solutions, Inc.
Notice of claim seeking California Labor Code § 2699 penalties

Dear Sir or Madame,

This is to give notice pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699.3, that Plaintiffs named in the Complaint enclosed herewith intend to seek penalties against UPS Supply Chain Solutions, Inc. ("UPS SCS"), pursuant to the aforementioned Act, for numerous violations of the California Labor Code committed by UPS SCS against its California drivers. Those violations are described specifically in the enclosed Complaint, including violations of California Labor Code Sections 510, 1194 and 2802,) IWC Wage Order 9, and Business & Professions Code (Section 17200, *et seq.*)

The Labor Code violations cited above and described in the enclosed Complaint resulted from UPS SCS's practice of characterizing its drivers as "independent contractors," despite the degree of control exercised by UPS SCS over these drivers' service for UPS SCS, which control renders them "employees" entitled to the benefits and protection of the California Labor Code and Industrial Welfare Commission Wage Orders.

Please consider this letter, the enclosed Complaint, and the enclosed letter to the Secretary of the California Labor and Workforce Development Agency as the notice required by California Labor Code § 2699.3.

Please note that, in light of this pending litigation you must ensure that all documents in your possession or control (including computer documents, emails and electronically generated or stored documents) which are or may be relevant to Plaintiffs' claims set out in the enclosed Complaint must not be destroyed or otherwise rendered inaccessible.

Very truly yours,

LEONARD CARDER, LLP

By: 

Philip C. Monrad

PCM/ks
Enclosure

cc: Victoria Bradshaw, Labor and Workforce Development Agency

EXHIBIT B



Labor & Workforce Development Agency

Governor
Arnold
Schwarzenegger

Secretary
Victoria L. Bradshaw

July 23, 2008

Agricultural
Labor
Relations
Board

California
Unemployment
Insurance
Appeals
Board

California
Workforce
Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

Leonard Carder, LLP
1188 Franklin Street, Suite 201
San Francisco, CA 94109

RE: Employer: UPS Supply Chain Solutions, Inc.
RE: Employee(s) Paula Labrie, Alfredo Macias, Peter Millman, Tom
Chortabtim, Raf Sison
RE: LWDA No: 3739

Dear Representative of the Employee:

The California Labor and Workforce Development Agency (LWDA) is in receipt of your letter postmarked July 10, 2008, regarding alleged Labor Code violation(s).

The LWDA has forwarded a copy of your letter, along with any enclosures, to the Department of Industrial Relations, Division of Labor Standards Enforcement, for its review and advice regarding whether or not to investigate the alleged violations.

If you require additional information, please feel free to contact Amalya Martinez at 916-327-9064.

Sincerely,

Doug Hoffner
Undersecretary

