

VIA FAX

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**FILED**  
DEC 19 2008  
FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_  
NAG DEPUTY

6 Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF FRESNO**

11 VERONICA BECERRA, an individual;  
WILLIAMS HERRERA LUIS, an individual;  
12 VANNESSA CASTRO, an individual;  
AURORA HOLGUIN, an individual; ALMA  
13 LANDEROS, an individual; ADALBERTO  
HERNANDEZ, an individual; and  
14 ELEUTERIA SOSA MENDOZA, an  
individual, on their own behalf and on behalf  
15 of all others similarly situated,

16 Plaintiffs,

18 vs. This case is filed in  
the Fresno County Superior Court.

20 THE McCLATCHY COMPANY, a Delaware  
Corporation, d/b/a The Fresno Bee;  
21 McCLATCHY NEWSPAPERS INC., a  
Delaware corporation, d/b/a The Fresno Bee;  
22 and DOES 1 through 50, inclusive,

23 Defendants.

CASE NO.

Judge: 08CECG04411 AMS  
Dept.:

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wage and Overtime Wages (Labor Code §§1194, 1197, 1197.1; IWC Wage Order No. 1-2001; Cal. Code Regs., Title 8, § 11010)
2. Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§226.7, 512; IWC Order No. 1-2001; Cal. Code Regs., Title 8 §11010)
3. Failure to Provide Rest Periods or Compensation in Lieu Thereof (Lab. Code, §§226.7; IWC Order No. 1-2001; Cal. Code Regs., Title 8, §11010)
4. Failure to Reimburse for Reasonable Business Expenses (Labor Code §2802)
5. Unlawful Deductions from Wages (Labor Code §221, §223)

- 6. Failure to Provide Itemized Wage Statements (Labor Code §226, §226.3)
- 7. Failure to Keep Accurate Payroll Records (Labor Code §1174)
- 8. Unfair Business Practices (Business & Professions Code §17200)

Plaintiffs, VERONICA BECERRA, an individual; WILLIAMS HERRERA LUIS, an individual; VANNESSA CASTRO, an individual; AURORA HOLGUIN, an individual; ALMA LANDEROS, an individual; ADALBERTO HERNANDEZ, an individual; and BLEUTERIA SOSA MENDOZA (collectively "Plaintiffs") on their own behalf and on behalf of all others similarly situated, allege:

**I.**

**INTRODUCTION**

1. This is a class action, brought pursuant to Code of Civil Procedure §382, on behalf of a Plaintiff class of newspaper carrier employees currently and formerly employed by Defendant The McClatchy Company d/b/a The Fresno Bee and Defendant McClatchy Newspapers Inc., d/b/a The Fresno Bee. For at least 10 years prior to the filing of this action and through the present, Plaintiffs are informed and believe that Defendants have violated the California Labor Code and applicable California Wage Orders by improperly categorizing the Class Members as independent contractors when they are, as a matter of law, employees (class-wide relief which results from this improper categorization is set forth hereafter.)

2. Defendants are estopped from asserting the statute of limitations as a defense because the newspaper carrier employees were prevented from discovering the facts concerning Defendants' violations of the California Labor Code and Wage Order, described above, because of the intentional concealment of those facts by Defendants.

3. Plaintiffs, on their behalf and on behalf of all Class Members, bring this action pursuant to Labor Code §§ 204, 226, 226.7, 1174, 1194, 1197, 1197.1, 1199, 2802, and 3751, and California Wage Order No. 1-2001 (8 Cal. Code Reg., §11010), seeking unpaid regular and overtime

1 wages, unpaid rest break and meal period compensation, reimbursement of all illegal deductions made  
2 from their wages, payment of all wages earned, reimbursement of expenses and losses incurred by  
3 them in discharging their duties, payment of minimum wage to all employees who failed to receive  
4 minimum wage for all hours worked in each payroll period, penalties, injunctive and other equitable  
5 relief, and reasonable attorneys' fees and costs.

6 4. Plaintiffs, on behalf of themselves and members of a class (hereafter "Class  
7 Members"), pursuant to Business & Professions Code §§17200-17208, also seek injunctive relief,  
8 restitution, and disgorgement of all wages owed Plaintiffs by Defendants from: (1) their failure to pay  
9 hourly and overtime wages, and compensation for rest and meal periods due; (2) making illegal  
10 deductions from employees' wages; (3) their failure to pay all wages earned; (4) their failure to  
11 reimburse employees for expenses and losses incurred in discharging duties; and (5) their failure to  
12 pay minimum wage to each employee for all hours worked in each payroll period. In addition, waiting  
13 time penalties and enforcement of civil penalties are sought pursuant to Business and Professions  
14 Code §17202, and Labor Code §2698 et seq.

15 **II.**

16 **VENUE**

17 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code  
18 of Civil Procedure §395.5. The wrongful and unlawful acts and omissions of Defendants, which are  
19 described infra, were committed by Defendants in the County of Fresno, State of California.  
20 Said wrongful and unlawful acts had, and continue to have, a direct effect on Plaintiffs and those  
21 similarly situated within the State of California and within Fresno County, and out of said acts arose  
22 the liability described herein.

23 **III.**

24 **PARTIES**

25 **A. Plaintiffs**

26 6. Plaintiffs are all individuals residing in the State of California. Plaintiffs  
27 Adalberto Hernandez, Eleuteria Sosa, and Vannessa Castro are currently employed by Defendants as  
28 newspaper carriers in Fresno County, California. Plaintiffs Veronica Becerra, Williams Herrera Luis,

1 Aurora Holguin, and Alma Landeros are former newspaper carriers for Defendants and during their  
2 terms of employment, were employed in Fresno County, California. Plaintiffs are subject to Title VIII  
3 of the California Code of Regulations, §11010, and related Industrial Welfare Commission ("IWC")  
4 Wage Order No. 1-2001.

5           7. Plaintiffs, and each of them, will adequately represent the interests of the class  
6 and will vigorously participate in this matter as a class action when certified. Plaintiff class  
7 representatives have further secured counsel experienced in class action litigation who will likewise  
8 adequately represent the class.

9           **B. Defendants.**

10           8. On information and belief, Plaintiffs allege that Defendant The McClatchy  
11 Company, d/b/a The Fresno Bee and Defendant McClatchy Newspapers, Inc. d/b/a The Fresno Bee are  
12 incorporated under the laws of the State of Delaware, and are authorized to transact, and are  
13 transacting business in California. Defendants are engaged in the ownership, management, and  
14 operation of The Fresno Bee newspaper. Plaintiffs are informed and believe, and thereon allege that,  
15 during the liability period, Defendants employed Plaintiffs and other similarly-situated persons as non-  
16 exempt newspaper carrier employees within Fresno County, California. Plaintiffs are further informed  
17 and believe that Defendants directly or indirectly exercised control over the wages, hours, and work of  
18 said employees, including Plaintiffs.

19           9. The true names and capacities, whether individual, corporate, associate, or  
20 otherwise, of Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to  
21 Plaintiffs who therefore sue said Defendants by such fictitious names under Code of Civil Procedure  
22 §474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants  
23 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to  
24 herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and  
25 capacities of the Defendants designated hereafter as Does when such entities become known.

26           10. Plaintiffs are informed and believe and based thereon allege that each Defendant  
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
28

1 | scheme, business plan, or policy in all respects pertinent thereto, and the acts of each Defendant are  
2 | legally attributable to the other Defendants.

3 | **IV.**

4 | **FACTUAL BACKGROUND**

5 | 11. Defendants publish and distribute a newspaper of general circulation, operating  
6 | in Fresno County. Most customers of Defendants' business receive home delivery of newspapers on a  
7 | daily basis which are printed and distributed under the auspices of the Defendants doing business as  
8 | The Fresno Bee newspaper.

9 | 12. Defendants organize the distribution of the newspapers that they write and  
10 | publish by, among other things, maintaining distribution facilities located in Fresno County. Class  
11 | Members perform work at those distribution facilities, which are owned and controlled by Defendants,  
12 | including but not limited to assembling inserts, sections, pre-prints, samples, bags, and supplements as  
13 | well as other products provided by Defendants. Defendants determine and control the number of  
14 | newspapers made available to Class Members, and determine and control where and when those  
15 | newspapers are required to be picked up by the Class Members.

16 | 13. Defendants utilize computer systems and other means to instruct Class  
17 | Members on exactly how and when to deliver newspapers, and Defendants further enjoy the right to  
18 | terminate, at will and without cause, their employment relationship with the Class Members.

19 | 14. Other than personal vehicles, there is a lack of investment in equipment by the  
20 | Class Members, and a relatively low degree of skill is required to perform Class Members' duties.

21 | 15. Newspaper delivery is an integral part of the business enterprise of Defendants.  
22 | Class Members perform an integral part of the operation of Defendants' writing, printing, and  
23 | distribution of newspapers.

24 | 16. Defendants have, at all relevant times, had the right to control the Class  
25 | Members' performance of their newspaper carrier work.

26 | 17. Under conventional, legal, and economic tests, the Class Members' relationship  
27 | with Defendants is that of employees of Defendants and not independent contractors.

28 |

1 18. Because Class Members are employees, not independent contractors, numerous  
2 California Labor Code violations have occurred and are occurring on an ongoing basis, including  
3 failure to provide overtime, meal breaks, rest breaks, proper payroll withholding, and other protections  
4 under Labor Code §2802 and Labor Code §221, all of which the Class Members are entitled to as valid  
5 non-exempt employees under California law.

6 V.

7 **CLASS ACTION ALLEGATIONS**

8 19. Plaintiffs bring this action on behalf of themselves and all others similarly  
9 situated as a class action pursuant to §382 of the Code of Civil Procedure. The class is composed of  
10 and defined as follows:

11 All persons presently or formerly engaged as newspaper home delivery  
12 carriers by Defendants and for The Fresno Bee newspaper in the State of  
13 California during the class period, who, as a condition of such  
14 engagement, signed an agreement categorizing them as independent  
15 contractors and not as employees.

16 20. Plaintiffs reserve the right under 1855(b) of the California Rules of Court, to  
17 amend or modify the class description by making it more specific or dividing the class members into  
18 subclasses or limiting the issues.

19 21. This action has been brought and may properly be maintained as a class action  
20 under the provisions of §382 of the Code of Civil Procedure because there is a well-defined  
21 community of interest in the litigation and the proposed class is easily ascertainable.

22 A. **Numerosity**

23 22. The members of the Class, as defined above, are so numerous that individual  
24 joinder of all members is impractical. While the exact number of Class Members is currently  
25 unknown, Plaintiffs are informed and believe that they number in the hundreds.  
26  
27  
28

1           **B.    Common Questions Predominate**

2           23.    Common questions of law and fact exist as to all members of the Plaintiff class  
3 and predominate over any questions that affect individual members of the class. The common  
4 questions of fact include, but are not limited to:

- 5                   (a)    Defendants require each Class Member to execute a pre-printed  
6                                agreement.
- 7                   (b)    Defendants require the Class Members to perform some of their duties at  
8                                a pick-up and assembly facility prior to distribution, including handling  
9                                Defendant-provided inserts, samples, sections, and other products  
10                              provided by the Defendants.
- 11                   (c)    Defendants train and instruct Class Members on how to assemble and  
12                              deliver the newspapers.
- 13                   (d)    Defendants review and supervise the Class Members' work, and  
14                              punishes them for customer complaints.
- 15                   (e)    Defendants (not the Class Members) are the sellers of the home delivery  
16                              newspapers, and Defendants unilaterally set the price of the newspapers  
17                              and directly bill the subscribers. Defendants, through deception, require  
18                              the Class Members to act as guarantors of Defendants' subscriber  
19                              accounts receivables, and this causes the Class Members to routinely  
20                              have deductions made from their wages and be paid less than minimum  
21                              wage.
- 22                   (f)    Class Members collectively have periodic improper deductions made by  
23                              Defendant from their wages.
- 24                   (g)    Class Members are paid semi-monthly, according to a formula  
25                              determined by Defendants.
- 26                   (h)    The degree of skill required of the Class Members is relatively low.
- 27
- 28

1 (i) The relationship between the Class Members and Defendants is  
2 relatively permanent with some Class Members working for many years  
3 for Defendants.

4 (j) The delivery of newspapers is a critical and integral part of Defendants'  
5 business.

6 24. Common questions of law that exist include the following:

7 (a) Whether or not the Class Members are properly categorized as  
8 independent contractors.

9 (b) Whether the benefits and protections of the California Labor Code apply  
10 to Class Members when they are properly characterized as non-exempt  
11 employees.

12 (c) Whether each Class Member is entitled to remedial relief in the form of  
13 compensation for violations of the Labor Code as set forth hereinafter.

14 (d) Whether the Class Members are entitled to damages, penalties, interest,  
15 and attorneys' fees and costs, as provided by the Labor Code and Wage  
16 Order 1-2001;

17 (e) Whether the Class Members are entitled to injunctive relief to enjoin  
18 further violations of the Labor Code and Wage Order 1-2001.

19 **C. Typicality**

20 25. Plaintiffs' claims are typical of the claims of the Class Members in that  
21 Plaintiffs and the Class Members performed identical duties for Defendants and were mis-classified as  
22 independent contractors rather than properly classified as employees, and all Plaintiffs and Class  
23 Members sustained similar damages arising out of Defendants' common course of conduct which is in  
24 violation of laws and regulations governing the compensation of employees.

25 **D. Adequacy of Representation**

26 26. Plaintiffs will fairly and adequately represent and protect the interests of the  
27 members of the Class. Plaintiffs have no interests adverse to the interests of the other Class Members.  
28



1 Proposed class counsel, Callahan & Blaine, is competent and experienced in litigation including wage  
2 and hour class action cases.

3 **E. Superiority of Class Action**

4 27. A class action is superior to other available means for the fair and efficient  
5 adjudication of this controversy. Individual joinder of all members of the class is impractical and  
6 questions of law and fact common to the class predominate over any questions affecting only  
7 individual members of the class. Class action treatment will permit a large number of similarly-  
8 situated persons to prosecute their claims in a single forum simultaneously, which will be efficient for  
9 both the parties and the court system, and which will avoid unnecessary duplication of effort and  
10 expense that many individual actions would require. Furthermore, as the damages suffered by many  
11 individual members of the class may be relatively small, the expenses and burden of individual  
12 litigation would make it difficult or impossible for individual members of the class to redress the  
13 wrongs done to them, while an important public interest will be served by addressing the matter as a  
14 class action. The cost to the Court system of adjudication of each individual claim would be  
15 substantial. Individualized litigation would also present the potential for inconsistent or contradictory  
16 judgments.

17 **FIRST CAUSE OF ACTION**

18 **(Against All Defendants)**

19 **Failure to Pay Minimum Wage; Hourly Wages, and Overtime Wages**  
20 **(Labor Code §§1194, 1197, 1197.1)**

21 28. Plaintiffs incorporate by reference the allegations set forth in  
22 paragraphs 1-27; supra, as though fully set forth at this point.

23 29. During the liability period, Defendants had a consistent policy of  
24 failing to pay minimum wages and overtime wages to newspaper carrier employees, including  
25 Plaintiffs, and failing to provide itemized records reflecting all hours worked by said employees in  
26 violation of California state wage and hour laws. Defendants also had a consistent policy of  
27 withholding wages from Plaintiffs and Class Members for the wrongful purpose of recouping  
28

1 Defendants' losses when subscribers (who Defendant billed directly) failed to timely pay the  
2 subscription fees charged by Defendants.

3           30.     During the liability period, Defendants further had a consistent policy of  
4 requiring newspaper carrier employees, including Plaintiffs, to work for the first eight hours on the  
5 seventh consecutive day of work in a work week without compensating said employees at the rate of  
6 one and one-half of said employees' regular rate of pay, in willful violation of the provisions of Labor  
7 Code §1194.

8           31.     As a proximate result of the unlawful acts of Defendants, Plaintiffs  
9 and the Class Members have been damaged in an amount according to proof at the time of trial, and  
10 are entitled to recovery of such amount, plus interest thereon, and attorney's fees and costs, under  
11 Labor Code §§1194 and 1197.1. Plaintiffs and the Class Members are further entitled to recover \$100  
12 each for each initial pay period that they were paid less than the minimum wage, and \$250 for each  
13 subsequent pay period that they were so underpaid.

14                                   **SECOND CAUSE OF ACTION**

15                                   **(Against All Defendants)**

16                   **Failure to Provide Proper Meal Periods, or Compensation in Lieu Thereof**  
17                   **(Lab. Code §§226.7, 512; IWC Order No. 1-2001; Cal. Code Regs., Title 8 §11010)**

18           32.     Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-31,  
19 supra, as though fully set forth at this point.

20           33.     By their failure to provide Plaintiffs and the other newspaper carrier employees  
21 30 minute meal periods for days on which they worked in excess of 5 hours, and by their failure to  
22 provide in-lieu compensation, Defendants willfully violated the provisions of Labor Code §512 and  
23 the applicable Wage Orders of the California Department of Labor.

24           34.     As a proximate result of Defendants' unlawful acts, Plaintiffs and  
25 the Class Members have been deprived of, and are each entitled to, one hours' pay per day for each  
26 such violation as provided for by Labor Code §226.7 and IWC Wage Order No. 1-2001, plus interest  
27 thereon, attorney's fees and costs. Plaintiffs and the Class Members are further entitled to recover  
28

1 \$100 each for each initial pay period that they were not paid in-lieu compensation, and \$250 for each  
2 subsequent pay period that they were not paid in-lieu compensation.

3 **THIRD CAUSE OF ACTION**

4 **(Against All Defendants)**

5 **Failure to Provide Rest Breaks, or Compensation in Lieu Thereof**  
6 **(Lab. Code, §§226.7; IWC Order Nos. 1-2001; Cal. Code Regs., Title 8, §11010).**

7 35. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-34,  
8 supra, as though fully set forth at this point.

9 36. By their failure to provide rest breaks for every four hours, or major  
10 fraction thereof, worked per day by the newspaper carrier employees, including Plaintiffs, and by their  
11 failure to provide in-lieu compensation for such unprovided rest breaks, Defendants willfully violated  
12 the provisions of Labor Code §226.7 and IWC Wage Order No. 1-2001. Plaintiffs and the Class  
13 Members did not willfully waive rest periods through any mutual consent with Defendants.

14 37. As a proximate result of Defendants' unlawful acts, Plaintiffs and the Class  
15 Members have been deprived of, and are each entitled to, one hours' pay per day for each such  
16 violation as provided for by Labor Code §226.7 and IWC Wage Orders No. 1-2001, plus interest  
17 thereon, attorney's fees and costs. Plaintiffs and the Class Members are further entitled to recover  
18 \$100 each for each initial pay period that they were not paid in-lieu compensation, and \$250 for each  
19 subsequent pay period that they were not paid in-lieu compensation.

20 **FOURTH CAUSE OF ACTION**

21 **(Against All Defendants)**

22 **Failure to Reimburse for Reasonable Business Expenses**  
23 **(Violation of Labor Code §2802; Wage Order 1-2001,**  
24 **Cal. Code Regs., Title 8, §11010, Section 8)**

25 38. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-37,  
26 supra, as though fully set forth at this point.

27 39. California Labor Code §2802(a) provides in pertinent part:

28 An employer shall indemnify his or her employee for all  
necessary expenditures or losses incurred by the employee in

1 direct consequence of the discharge of his or her duties, or of his  
2 or her obedience to the directions of the employer, even though  
3 unlawful, unless the employee, at the time of obeying the  
4 directions, believed them to be unlawful.

5 Wage Order 1-2001, Section 8, provides that "No employer shall make any deduction from the  
6 wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of  
7 equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or  
8 willful act, or by the gross negligence of the employee."

9 40. During the liability period, Plaintiffs and the Class Members incurred necessary  
10 expenditures and losses in direct consequence of the discharge of their employment duties and their  
11 obedience to the directions of Defendants, as follows:

12 (a) Plaintiffs and the Class Members were required by Defendants to  
13 provide their own vehicles in order to deliver the Defendants'  
14 newspapers, and in connection with provision of their own vehicles and  
15 the delivery of Defendants' newspapers, the Plaintiffs and the Class  
16 Members necessarily incurred expenditures for gasoline, maintenance,  
17 and insurance. As well, they incurred losses associated with wear and  
18 tear to their vehicles. On information and belief, none of these  
19 expenditures or losses were reimbursed by the Defendants to Plaintiffs  
20 and the Class Members.

21 (b) Defendants routinely made deductions from the Plaintiffs' and Class  
22 Members' wages for each complaint they allegedly received from their  
23 customers for, among other things, damaged papers, wet papers, and  
24 allegedly undelivered papers. Even though most, if not all, of these  
25 complained-of damages and losses were beyond the employee's control,  
26 or due to the simple negligence of the employee, Defendants  
27 nevertheless wrongfully and willfully made deductions from the  
28 Plaintiffs' and Class Members' wages of \$1.00 for each complaint.

1 Defendants made said deductions as part of a wrongful attempt to make  
2 the Plaintiffs and Class Members insurers of the Defendants'  
3 merchandise, which purpose is prohibited by California law. Said  
4 deductions were made by Defendants as part of a deliberate subterfuge  
5 that was designed, constructed, implemented and administered to  
6 circumvent the clear prohibitions of California case law and IWC Wage  
7 Order 1-2001 (8 C.C.R. §11010).

8 (c) Defendants routinely required Plaintiffs and Class Members to pay for  
9 string and rubber bands to bind the newspapers for delivery. Defendants  
10 also required Plaintiffs and Class Members to purchase plastic bags used  
11 to hold newspapers together and to protect the newspapers in inclement  
12 weather. Defendant routinely made deductions for the string, rubber  
13 bands, and plastic bags from the wages of the Plaintiffs and the Class  
14 Members in contravention of IWC Wage Order No. 1-2001 §9(B) (8  
15 C.C.R. §11010).

16 (d) Defendants required Plaintiffs and the Class Members to purchase  
17 insurance to cover accidental injury to them arising during the course of  
18 their employment with Defendants, which insurance constitutes  
19 workers' compensation insurance. This, at all times during the class  
20 period, violated Labor Code §3751(a).

21 (e) Defendant routinely deducted from the wages of Plaintiffs and the Class  
22 Members an amount for a bond to secure the performance of the  
23 Plaintiffs and the Class Members of their employment duties. Said  
24 deductions violated Labor Code §401 which provides that if a bond of  
25 an employee is required by an employer, the costs of the bond shall be  
26 paid by the employer.

27 41. Plaintiffs are informed and believe that pursuant to California Labor Code  
28 §2802 and Wage Order 1-2001, Section 8, Plaintiffs and the Class Members are entitled to recover

1 their unreimbursed expenditures and losses, interest, and attorneys' fees and costs, in amounts to be  
2 proven at the time of trial. Further, with regard to all deductions described herein, which are all  
3 violative of IWC Wage Order 1-2001, Plaintiffs and the Class Members are entitled to recover  
4 penalties of \$100 for the initial violation and \$250 for each subsequent violation for every pay period  
5 in which Defendants made said illegal deductions from the wages of Plaintiffs and the Class Members.

6 **FIFTH CAUSE OF ACTION**

7 **(Against All Defendants)**

8 **(Unlawful Withholding of Wages Due; Labor Code §§221, 223; Wage Order 1-2001;  
9 Cal. Code Regs., Title 8, §11010, Section 9)**

10 42. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-41,  
11 supra, as though fully set forth at this point.

12 43. The illegal deductions charged by Defendants against the wages of  
13 the Plaintiffs and Class Members, as described in the Fourth Cause of Action, supra, constituted a  
14 device utilized by Defendants to pay Plaintiffs and Class Members less than their stated wages. Those  
15 illegal deductions include: (1) deductions made for customer complaints about alleged damages not  
16 caused by a dishonest or willful act or by the gross negligence of Plaintiffs and the Class Members; (2)  
17 deductions made for strings, rubber bands, and bags required by the Defendants as necessary to the  
18 performance of the Plaintiffs' and Class Members' duties; (3) deductions made for the cost of  
19 workers' compensation insurance; and (4) deductions made for surety bonds.

20 44. Defendants' withholding of wages from Plaintiffs and Class Members in order  
21 to recoup their losses from subscribers' nonpayment and fees, as described in the First Cause of  
22 Action, supra, also constituted a device utilized by Defendants to pay Plaintiffs and Class Members  
23 less than their stated wages.

24 45. Said illegal deductions amounted to an unlawful withholding of wages due  
25 Plaintiffs and the Class Members and constituted a violation of Labor Code §221 by Defendants. Said  
26 actions by Defendants to recoup their losses from subscribers' nonpayment of fees also amounted to a  
27 violation of Labor Code § 221. As a proximate result of the unlawful acts of Defendants, Plaintiffs  
28 and the Class Members have been damaged in an amount according to proof at the time of trial.

1 Plaintiffs and the Class Members are entitled to recover penalties of \$100 for the initial violation and  
2 \$250 for each subsequent violation for every pay period in which Defendants made said illegal  
3 withholdings from the wages of Plaintiffs and the Class Members. Under Labor Code §218.5,  
4 Plaintiffs and the Class Members are further entitled to recover their attorneys' fees and costs, in an  
5 amount to be proven at the time of trial.

6 **SIXTH CAUSE OF ACTION**

7 **(Against All Defendants)**

8 **Failure to Provide Itemized Wage Statements**  
9 **(Violation of IWC Wage Order No. 1-2001(7) and Labor Code §§226, 226.3)**

10 46. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-45,  
11 supra, as though fully set forth at this point.

12 47. California Labor Code §226(a) provides in pertinent part:  
13 Every employer shall, semi-monthly or at the time of each  
14 payment of wages, furnish each of his or her employees, either as  
15 a detachable part of the check, draft, or voucher paying the  
16 employee's wages, or separately when wages are paid by  
17 personal check or cash, an itemized statement in writing showing  
18 (1) gross wages earned, (2) total hours worked by the employee,  
19 except for any employee whose compensation is solely based on  
20 a salary and who is exempt from payment of overtime under  
21 subdivision (a) of Section 515 or any applicable order of the  
22 Industrial Welfare Commission, (3) the number of piece-rate  
23 units earned and any applicable piece rate if the employee is paid  
24 on a piece-rate basis, (4) all deductions, provided, that all  
25 deductions made on written orders of the employee may be  
26 aggregated and shown as one item, (5) net wages earned, (6) the  
27 inclusive dates of the period for which the employee is paid, (7)  
28 the name of the employee and his or her social security number,

1 (8) the name and address of the legal entity that is the employer,  
2 and (9) all applicable hourly rates in effect during the pay period  
3 and the corresponding number of hours worked at each hourly  
4 rate by the employee. The deductions made from payments of  
5 wages shall be recorded in ink or other indelible form, properly  
6 dated, showing the month, day, and year, and a copy of the  
7 statement or a record of the deductions shall be kept on file by  
8 the employer for at least three years at the place of employment  
9 or at a central location within the State of California.

10 48. Similarly, IWC Wage Order No. 1-2001 (8 C.C.R. 11010), paragraph (7)(B)  
11 requires employers, semi-monthly or at the time of each payment of wages, to furnish each employee  
12 with an itemized statement in writing showing, among other things, all deductions. Defendants'  
13 failure to provide such itemized statements to each and every Plaintiff and Class Member is a violation  
14 of Labor Code § 226 and of IWC Wage Order No. 1-2001.

15 49. During the liability period, Defendants routinely failed to provide to each and  
16 every one of the Plaintiffs and the Class Members, at the time of each payment of wages, an itemized  
17 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the  
18 number of piece-rate units earned and any applicable piece rate where the employee was paid on a  
19 piece-rate basis; and (4) all deductions. Defendants' failure to provide itemized statements to the  
20 Plaintiffs and the Class Members was knowing and intentional and was in violation of Labor Code  
21 §226(a).

22 50. Plaintiffs and the Class Members suffered injuries as a result of the knowing  
23 and intentional failure of Defendants to comply with Labor Code §226(a), and IWC Wage Order No.  
24 1-2001, in that Defendants' failure to provide each and every one of them with an itemized wage  
25 statement made it impossible for the Plaintiffs and the Class Members to be aware that illegal  
26 deductions were being made from their wages, that they were not being paid overtime and all wages  
27 earned, and that in certain instances their wages fell below the statutory hourly minimum wage.  
28 Plaintiffs contend that Defendants' failure to provide the Plaintiffs and the Class Members with



1 itemized wage statements was a deliberate subterfuge that was implemented and administered to hide  
2 the fact that Defendants were making illegal deductions, were failing to pay overtime and all wages  
3 earned, and, were paying Plaintiffs and the Class Members less than the statutory minimum wage.

4 51. Plaintiffs are informed and believe that Defendants' knowing and intentional  
5 failure to furnish Plaintiffs and the Class Members with itemized wage statements, as alleged above,  
6 violated Labor Code §226(a), as well as §(7)(B) of IWC Wage Order No. 1-2001. Labor Code §226(e)  
7 entitles Plaintiffs and the Class Members to recover the greater of their actual damages caused by  
8 Defendants' violation of Labor Code §226(a), or \$50 for the initial pay period in which the violation  
9 occurred, and \$100 per employee for each violation in subsequent pay periods, not exceeding an  
10 aggregate penalty of \$4,000 per employee.

11 **SEVENTH CAUSE OF ACTION**

12 **(Against All Defendants)**

13 **Failure to Keep Accurate Payroll Records Showing Hours Worked**  
14 **Daily by Newspaper Carrier Employees**  
15 **(Violation of Labor Code §1174(d) and IWC Wage Order No. 1-2001(7)(A))**

16 52. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-51,  
17 supra, as though fully set forth at this point.

18 53. California Labor Code §1174(d) requires an employer to keep at a central  
19 location in California or at the plant or establishment at which employees are employed, payroll  
20 records showing the hours worked daily by, and the wages paid to, each employee, and the number of  
21 piece-rate units earned by and any applicable piece rate paid to each employee. Plaintiffs are informed  
22 and believe that Defendants wilfully failed to make and keep such records for Plaintiffs and the Class  
23 Members.

24 54. IWC Wage Order No. 1-2001, paragraph (7)(A) requires that every employer  
25 shall keep accurate information with respect to each employee, including time records showing when  
26 each employee begins and ends each work period, the total daily hours worked by each employee, and  
27 the total hours worked in each payroll period, and applicable rates of pay. Plaintiffs are informed and  
28 believe that Defendants failed to make and keep such records for Plaintiffs and the Class Members.

1           55.     Plaintiffs are informed and believe that Defendant's failure to keep payroll  
2 records and accurate employee information, as described above, violated Labor Code §1174(d) and  
3 IWC Wage Order No. 1-2001(7)(A). Plaintiffs and the Class Members are entitled to penalties of  
4 \$100 for the initial violation and \$200 for each subsequent violation for every pay period during which  
5 these records and information were not kept by Defendants.

6           56.     Plaintiffs are informed and believe that Defendants' failure to keep and  
7 maintain records and information, as described above, was willful, and Plaintiffs and the class  
8 members are therefore entitled to a civil penalty of \$500 for each Plaintiff and Class Member, pursuant  
9 to Labor Code §1174.5.

### 10                                 EIGHTH CAUSE OF ACTION

11                                 **(Against All Defendants)**

#### 12                                 **Unfair Business Practices** 13                                 **(Violation of Business & Professions Code §17200 et seq.)**

14           57.     Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-56,  
15 supra, as though fully set forth at this point.

16           58.     Plaintiffs are informed and believe that Defendants' mis-classification of Class  
17 Members as independent contractors and its unlawful failure to pay regular and overtime wages, their  
18 failure to pay minimum wages, their illegal failure to provide rest periods or in-lieu compensation,  
19 their unlawful failure to provide meal periods or in lieu compensation, their unlawful deductions from  
20 the wages of Plaintiffs and Class Members, and their unlawful failure to reimburse Plaintiffs and Class  
21 Members for necessary expenses incurred in performing their jobs constitute unlawful, unfair, and  
22 fraudulent business practices, in violation of California Business & Professions Code §17200, et seq.

23           59.     California Labor Code §450 provides that no employer may compel or coerce  
24 any employee to purchase anything of value from the employer. Defendants' requirement that  
25 Plaintiffs and the Class Members purchase string, rubber bands, and plastic bags from Defendants,  
26 which items were and are necessary for the performance of their work, constitutes a violation of Labor  
27 Code §450, and is thus an unlawful business practice.

28

1           60. Defendants' failure to pay Plaintiffs and Class Members in a lawful  
2 manner, as set forth above and below, is fraudulent and deceptive and constitutes an ongoing and  
3 continuous unlawful and unfair business practice within the meaning of Business and Professions  
4 Code §17200 et seq.

5           61. The illegal conduct alleged herein is continuing, and there is no  
6 indication that Defendants will discontinue such activity in the future. Plaintiffs allege that if  
7 Defendants are not enjoined from said illegal conduct, it will continue to fail to pay legal hourly and  
8 overtime wages, continue to fail to provide rest and meal periods or provide appropriate compensation  
9 in lieu thereof, and will continue to charge carriers for string, rubber bands, and bags.

10           62. Plaintiffs request that the court issue a preliminary and permanent  
11 injunction prohibiting Defendants from requiring Plaintiffs and Class Members to work without legal  
12 hourly and overtime compensation, from continuing to fail to provide rest or meal periods without  
13 appropriate compensation in lieu thereof, and from continuing to charge carriers for string, rubber  
14 bands, and bags.

15           63. Pursuant to Business & Professions Code §17203, Plaintiffs and the Class  
16 Members are entitled to restitution of the amounts of the illegal deductions, unpaid hourly and  
17 overtime wages, unpaid rest break and meal period compensation, as well as reimbursement of all  
18 necessary expenditures and losses incurred by Plaintiffs and the Class Members in the discharge of  
19 their duties. Plaintiffs are informed and believe, and thereon allege, that Defendants are unjustly  
20 enriched through its failure to pay legal hourly and overtime wages and to provide rest and meal  
21 periods or in-lieu compensation to Plaintiffs and other newspaper carrier employees. In addition,  
22 unless the Court imposes an injunction against Defendants requiring Defendants to stop making illegal  
23 deductions, to pay all legal hourly and overtime wages, and to reimburse for necessary expenditures  
24 and losses, Plaintiffs, the Class Members, and the general public will suffer continuing and irreparable  
25 harm and will have no adequate remedy at law. Plaintiffs bring this cause of action individually and as  
26 members of the general public, and as representatives of all of those who are subject to Defendants'  
27 unlawful acts and practices. Accordingly, Plaintiffs and the Class Members request that the Court  
28 enter a preliminary and permanent injunction requiring Defendants to cease and desist from their

1 unlawful business practices and properly compute and pay to Plaintiffs and the Class Members the  
2 amounts of all illegal deductions and unpaid wages and to reimburse them for the necessary expenses  
3 and losses they incurred in carrying out their employment duties. Further, Plaintiffs and Class  
4 Members request attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 upon proof  
5 they have acted in the public interest.

6 **PRAYER FOR DAMAGES**

7 WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them,  
8 as follows:

9  
10 **As to all Causes of Action:**

- 11 1. For compensatory damages in an amount according to proof with interest  
12 thereon;
- 13 2. For economic and/or special damages, and/or liquidated damages in an amount  
14 according to proof with interest thereon;
- 15 3. Plaintiffs reserve their rights to any and all benefits to which they may be  
16 entitled to under law upon a finding of employment status;

17 **As to Causes of Action One Through Seven:**

- 18 4. For penalties, according to proof;

19 **As to the Fourth Cause of Action:**

- 20 5. For reimbursement of work-related expenses (Labor Code §2802);

21 **As to the Eighth Cause of Action:**

- 22 6. That Defendants be found to have engaged in unfair competition in violation of  
23 §17200, et. seq. of the California Business and Professions Code;
- 24 7. That Defendants be ordered and enjoined to make restitution of all losses  
25 incurred by Plaintiffs and other similarly situated employees due to its unfair  
26 competition, including disgorgement of wrongfully-withheld wages and  
27 unreimbursed expenses pursuant to California Business and Professions Code  
28 §§17203 and 17204;

1 8. That Defendants be enjoined from continuing the illegal course of conduct  
2 alleged herein;

3 9. That Defendants further be enjoined to cease and desist from unfair competition  
4 in violation of §17200, et seq. of the California Business and Professions Code;

5 10. That Defendants be enjoined from further restraint of trade or unfair  
6 competition;

7 **As to all Causes of Action:**

8 11. For punitive damages, as allowed by law;


9 12. For attorneys' fees, interest and costs of suit;

10 13. Such other relief as the Court deems just and proper.

11  
12 Dated: December 19, 2008

Respectfully submitted,  
CALLAHAN & BLAINE

13  
14 By:

  
Daniel J. Callahan  
Michael J. Sachs  
Kathleen L. Dunham  
Attorneys for Plaintiffs

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18  
19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand trial by jury of all factual issues arising hereunder.  
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26

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