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OUR FILE NUMBER:

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December 10, 2010

VIA HAND DELIVERY

Judge Alan Simpson
Fresno County Superior Court
"M" Street Civil Courthouse
2317 Tuolumne Street
Fresno, CA 93721-1220

RE: *Becerra et al v. The McClatchy Co., et al.*
FCSC Case No. 08CE CG 04411 AMS

Dear Judge Simpson:

The parties have signed the attached Stipulation and [Proposed] Order for Leave of Plaintiffs to File a Second Amended Complaint. Plaintiffs respectfully request that Your Honor review the attached Stipulation, and if acceptable, please sign.

Should you require anything further, please do not hesitate to contact me. Thank you.

Very truly yours,

Kathleen L. Dunham

KLD:er

Enclosure

cc: Richard Lapp, Esq.
William C. Haahsy, Esq.

CALLAHAN & BLAINE

A Professional Law Corporation

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Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

VERONICA BECERRA, an individual;
WILLIAMS HERRERA LUIS, an individual;
VANNESSA CASTRO, an individual; ALMA
LANDEROS, an individual; RANDY LEYVA,
an individual; ROGER CARPENTER, an
individual; and ELEUTERIA SOSA
MENDOZA, an individual, on their own behalf
and on behalf of all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 08 CE CG 04411 AMS

Assigned to Judge Alan Simpson
Dept. 97C

**STIPULATION AND [PROPOSED]
ORDER FOR LEAVE OF PLAINTIFFS TO
FILE A SECOND AMENDED
COMPLAINT**

Complaint Filed: December 19, 2008

1 WHEREAS, Plaintiffs filed their original Complaint on December 19, 2008 and filed their
2 First Amended Complaint on July 17, 2009; and

3 WHEREAS, Defendants THE McCLATCHY COMPANY, a Delaware Corporation, d/b/a The
4 Fresno Bee; McCLATCHY NEWSPAPERS INC., a Delaware corporation, d/b/a The Fresno Bee
5 (hereinafter collectively referred to as "Defendants") have agreed that Plaintiffs may file a Second
6 Amended Complaint, a copy of which is attached hereto as Exhibit "A"; and

7 THEREFORE, Plaintiffs and Defendants hereby stipulate that Plaintiffs may file the Second
8 Amended Complaint. Plaintiffs will serve Defendants with the Second Amended Complaint within
9 five (5) days of receiving the Court's Order, and Defendants will have thirty (30) days from the date of
10 service to file responsive pleadings, including filing a demurrer and/or motion to strike.

11 DATED: ^{December 6} ~~November~~ __, 2010

CALLAHAN & BLAINE, APLC

12
13 By: 

14 Michael J. Sachs
15 Kathleen L. Dunham
Attorneys for Plaintiffs

16 DATED: ^{December 6} ~~November~~ __, 2010

SEYFARTH SHAW LLP

17
18 By: 

19 Richard Lapp
Attorneys for Defendants

20 **[PROPOSED] ORDER**

21 Pursuant to the Parties' Stipulation, the Court GRANTS the Parties' request and the Second
22 Amended Complaint of Plaintiffs attached hereto as Exhibit A is deemed filed as of the date of the
23 signing of this Order. Plaintiffs will serve Defendants with the Second Amended Complaint within
24 five (5) days of receiving the Court's Order, and Defendants will have thirty (30) days from the date of
25 service to file responsive pleadings, including filing a demurrer and/or motion to strike.

26 IT IS SO ORDERED.

27 DATED: _____, 2010

28 The Honorable Alan Simpson
Judge of the Fresno County Superior Court

EXHIBIT A

CALLAHAN & BLAINE

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Attorneys for Plaintiffs

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

VERONICA BECERRA, an individual;
WILLIAMS HERRERA LUIS, an individual;
VANNESSA CASTRO, an individual; ALMA
LANDEROS, an individual; RANDY LEYVA,
an individual; ROGER CARPENTER, an
individual; on their own behalf and on behalf
of all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 08 CE CG 04411 AMS

**Judge: Alan Simpson
Dept.: Dept. 97E**

**SECOND AMENDED 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 Pay for Training**
(29 C.F.R. §§ 785.27 et seq.)
7. **Failure to Provide Itemized Wage**
Statements (Labor Code §226,
§226.3)
8. **Failure to Keep Accurate Payroll**
Records (Labor Code §1174)
9. **Unfair Business Practices (Business**
& Professions Code §17200)

Plaintiffs, VERONICA BECERRA, an individual; WILLIAMS HERRERA LUIS, an individual; VANNESSA CASTRO, an individual; ALMA LANDEROS, an individual; RANDY LEYVA, an individual; and ROGER CARPENTER, an individual (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 Defendants. For at least 4 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. Plaintiffs, on their own 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, California Wage Order No. 1-2001 (8 Cal. Code Reg., §11010), and 29 C.F.R. § 785.27 et seq., seeking unpaid regular and overtime wages, unpaid rest break and meal period compensation, reimbursement of all illegal deductions made from their wages, payment of all wages earned, reimbursement of expenses and losses incurred by them in discharging their duties, payment of

minimum wage to all employees who failed to receive minimum wage for all hours worked in each payroll period, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

II.

VENUE

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

III.

PARTIES

A. Plaintiffs

5. Plaintiffs are all individuals residing in the State of California. Plaintiffs Randy Leyva, and Vannessa Castro are currently employed by Defendants as newspaper carriers in Fresno County, California. Plaintiffs Veronica Becerra, Williams Herrera Luis, Roger Carpenter, and Alma Landeros are former newspaper carriers for Defendants and during their terms of employment, were employed in Fresno County, California. Plaintiffs are subject to Title VIII of the California Code of Regulations, §11010, and related Industrial Welfare Commission (“IWC”) Wage Order No. 1-2001.

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

5 **B. Defendants.**

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

15 8. The true names and capacities, whether individual, corporate, associate, or
16 otherwise, of Defendants sued herein as Does 27 through 50, inclusive, are currently unknown to
17 Plaintiffs who therefore sue said Defendants by such fictitious names under Code of Civil Procedure
18 §474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
19 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to
20 herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and
21 capacities of the Defendants designated as Does when such entities become known.

22 9. Plaintiffs are informed and believe and upon such information and belief allege
23 that at all times herein mentioned, that each named Defendant, and Defendant DOES 27 through 50,
24 inclusive, and each of them, were the agents, servants, employees and assistants of each remaining
25 Defendants, and in doing the things alleged in this Complaint, were acting within the course, scope,
26 purpose and authority of said agency and employment and that each Defendant ratified the conduct of
27 every other Defendant.
28

1 10. At all relevant times, the newspaper carriers performed work – specifically, the
2 home delivery of The Fresno Bee newspaper – which constituted one step in the sequence of steps
3 necessary to the newspaper business of Defendants The McClatchy Company and McClatchy
4 Newspapers, Inc. (collectively, “the McClatchy Defendants”) At all relevant times the McClatchy
5 Defendants handled all of the other major steps of that business, including determining and producing
6 the content, format and look of the newspaper, printing the newspaper, managing deliveries of the
7 newspaper to distribution centers and ultimately subscribers, determining the price of the newspaper,
8 and determining what areas home deliveries were to be made, among other things. During a portion of
9 the class period, the McClatchy Defendants directly engaged newspaper carriers for home delivery of
10 newspapers. At some point, the McClatchy Defendants devised a charade, the aim of which was to
11 improperly avoid payroll taxes and the requirements of the Labor Code; under this charade, the
12 McClatchy Defendants engaged newspaper carriers indirectly through persons/entities (many of whom
13 were former managers of the McClatchy Defendants) with whom McClatchy entered into standard
14 contracts to deliver newspapers to multiple routes in an area; routes within these areas were then
15 assigned to newspaper carriers. In other words, the McClatchy Defendants installed middlemen,
16 which they controlled and used as conduits in an attempt to present a false facade to hide the fact that
17 the McClatchy Defendants were actually controlling (and thus employing) the carriers. Both before
18 and after implementation of this charade, the McClatchy Defendants were employers of the newspaper
19 carriers because at all times: the McClatchy Defendants made considerable investments in the
20 equipment and materials necessary for home delivery of newspapers, including the newspaper
21 publication infrastructure, customer service system (for receiving complaints from subscribers about
22 home deliveries), distribution centers for home delivery, computers, printers, copiers, tables,
23 newspapers, and subscriber billing and payment services, among other things. Also, both before and
24 after implementation of the charade, the McClatchy Defendants received tips from subscribers for the
25 carriers and maintained tips records, received customer complaints made against the carriers and
26 maintained customer complaint records, determined the number of newspapers to be delivered to each
27 route and advised the carriers of same in daily written instructions, determined what subscribers were
28 on vacation and what subscribers wanted home delivery started or stopped and advised the carriers of

same in daily written instructions, prepared “Quick Throw List Reports” for carriers and determined what advertisements and printed plastic bags would be used and advised the carriers of same in daily written instructions. The persons/entities, described above, served as conduits for the McClatchy Defendants to pass along to carriers the above-described documents and information. The McClatchy Defendants utilized various means to provide said conduit persons/entities with documents and information to give to the carriers including APAC, emails from McClatchy managers, circulationportal.com, through meetings, and through assignment of McClatchy managers to each of said conduit persons/entities. Further, at all times, the McClatchy Defendants provided tools and supplies to the carriers such as rubber bands, plastic bags, carrying bags and tape, and the McClatchy Defendants physically verified the carriers’ deliveries to ensure that they were done in accordance with McClatchy’s instructions.

11. Plaintiffs are informed and believe that, after implementation of the aforementioned charade to avoid payroll taxes and Labor Code requirements, the McClatchy Defendants continued at all times to be the employers of the newspaper carriers or, in the alternative, that the McClatchy Defendants became the joint employers of the carriers, together with the conduit entities/persons. Alternatively, said conduit entities/persons were at all relevant times agents of the McClatchy Defendants and acted at their behest. At all relevant times, the McClatchy Defendants provided to said conduits the above-described premises, equipment, services and written instructions, and the conduits acted as instrumentalities to pass along to carriers the instructions and materials from the McClatchy Defendants.

IV.

FACTUAL BACKGROUND

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

13. Defendants organize the distribution of the newspapers that they write and publish by, among other things, maintaining distribution facilities located in Fresno County. Class

1 Members perform work at those distribution facilities, which are owned (or leased) and controlled by
2 Defendants, including but not limited to assembling inserts, sections, pre-prints, samples, bags, and
3 supplements as well as other products provided by Defendants. Defendants determine and control the
4 number of newspapers made available to Class Members, and determine and control where and when
5 those newspapers are required to be picked up by the Class Members.

6 14. Defendants utilize computer systems and other means to instruct Class
7 Members on exactly how and when to deliver newspapers, and Defendants further enjoy the right to
8 terminate, at will and without cause, their employment relationship with the Class Members. At all
9 relevant times, the McClatchy Defendants have closely monitored the work of the Class Members
10 through an extensive and sophisticated customer service system; Defendants prepare daily and weekly
11 reports of the complaints about the carriers' work received by Defendants and these reports are sent to
12 managers and the conduit entities/persons frequently. If a Class Member receives too many
13 complaints, he/she is subject to termination.

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

16 16. Newspaper delivery is an integral part of the business enterprise of Defendants.
17 Class Members perform an integral part of the operation of Defendants' writing, printing, and
18 distribution of newspapers.

19 17. Defendants have, at all relevant times, had the right to control the Class
20 Members' performance of their newspaper carrier work.

21 18. Under conventional, legal, and economic tests, the Class Members' relationship
22 with Defendants is that of employees of Defendants and not independent contractors.

23 19. Because Class Members are employees, not independent contractors, numerous
24 California Labor Code violations have occurred and are occurring on an ongoing basis, including
25 failure to provide overtime, meal breaks, rest breaks, proper payroll withholding, and other protections
26 under Labor Code §2802 and Labor Code §221, all of which the Class Members are entitled to as valid
27 non-exempt employees under California law.
28

V.

CLASS ACTION ALLEGATIONS

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

All persons presently or formerly engaged by Defendants as newspaper home delivery carriers of The Fresno Bee newspaper in the State of California during the class period, whether engaged directly by The Fresno Bee or by an intermediary.

21. Not included in the class are persons who only signed interim agreements, single copy agreements, Vida Only agreements, or license agreements. Also not included in the class are the conduit entities/persons. Plaintiffs reserve the right under 1855(b) of the California Rules of Court, to amend or modify the class description by making it more specific or dividing the class members into subclasses or limiting the issues.

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

A. Numerosity

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

B. Common Questions Predominate

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

- (a) Defendants require the Class Members to perform some of their duties at a pick-up and assembly facility prior to distribution, including handling

1 Defendant-provided inserts, samples, sections, and other products
2 provided by the Defendants.

- 3 (b) Defendants train and instruct Class Members on how to assemble and
4 deliver the newspapers.
- 5 (c) Defendants review and supervise the Class Members' work, and punish
6 them for customer complaints.
- 7 (d) Defendants (not the Class Members) are the sellers of the home delivery
8 newspapers, and Defendants unilaterally set the price of the newspapers
9 and directly bill the subscribers.
- 10 (e) Class Members collectively have periodic improper deductions made by
11 Defendants from their wages.
- 12 (f) Class Members have been paid semi-monthly, according to a formula
13 determined by Defendants.
- 14 (g) The degree of skill required of the Class Members is relatively low.
- 15 (h) The relationship between the Class Members and Defendants is
16 relatively permanent with some Class Members working for many years
17 for Defendants.
- 18 (i) The delivery of newspapers is a critical and integral part of Defendants'
19 business.
- 20 (j) Defendants provide premises and tools to the Class Members in
21 connection with their home delivery work, including warehouses,
22 newspapers, daily written delivery instructions, list of subscribers,
23 written driving directions, plastic bags, rubber bands, string, tables, and
24 carts, among other things.

25 25. Common questions of law that exist include the following:

- 26 (a) Whether or not the Class Members are properly categorized as
27 independent contractors.
28

- (b) Whether the benefits and protections of the California Labor Code apply to Class Members when they are properly characterized as non-exempt employees.
- (c) Whether each Class Member is entitled to remedial relief in the form of compensation for violations of the Labor Code as set forth hereinafter.
- (d) Whether the Class Members are entitled to damages, penalties, interest, and attorneys' fees and costs, as provided by the Labor Code and Wage Order 1-2001;
- (e) Whether the Class Members are entitled to injunctive relief to enjoin further violations of the Labor Code and Wage Order 1-2001.

C. Typicality

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

D. Adequacy of Representation

27. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have no interests adverse to the interests of the other Class Members. Proposed class counsel, Callahan & Blaine, is competent and experienced in litigation including wage and hour class action cases.

E. Superiority of Class Action

28. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the class is impractical and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Class action treatment will permit a large number of similarly-situated persons to prosecute their claims in a single forum simultaneously, which will be efficient for both the parties and the court system, and which will avoid unnecessary duplication of effort and

1 expense that many individual actions would require. Furthermore, as the damages suffered by many
2 individual members of the class may be relatively small, the expenses and burden of individual
3 litigation would make it difficult or impossible for individual members of the class to redress the
4 wrongs done to them, while an important public interest will be served by addressing the matter as a
5 class action. The cost to the Court system of adjudication of each individual claim would be
6 substantial. Individualized litigation would also present the potential for inconsistent or contradictory
7 judgments.

8 **FIRST CAUSE OF ACTION**

9 **(Against All Defendants)**

10 **Failure to Pay Minimum Wage, Hourly Wages and Overtime Wages**

11 **(Labor Code §§1194, 1197, 1197.1)**

12 29. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-28,
13 supra, as though fully set forth at this point.

14 30. During the class period, Defendants had a consistent policy of failing to pay
15 minimum wages and overtime wages to newspaper carrier employees, including Plaintiffs, and failing
16 to provide itemized records reflecting all hours worked by said employees in violation of California
17 state wage and hour laws.

18 31. During the class period, Defendants further had a consistent policy of
19 requiring newspaper carrier employees, including Plaintiffs, to work for the first eight hours on the
20 seventh consecutive day of work in a work week without compensating said employees at the rate of
21 one and one-half of said employees' regular rate of pay, in willful violation of the provisions of Labor
22 Code §1194.

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

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1 38. As a proximate result of Defendants' unlawful acts, Plaintiffs and the Class
2 Members have been deprived of, and are each entitled to, one hours' pay per day for each such
3 violation as provided for by Labor Code §226.7 and IWC Wage Orders No. 1-2001, plus interest
4 thereon, attorney's fees and costs.

5 **FOURTH CAUSE OF ACTION**

6 **(Against All Defendants)**

7 **Failure to Reimburse for Reasonable Business Expenses**

8 **(Violation of Labor Code §2802; Wage Order 1-2001,**

9 **Cal. Code Regs., Title 8, §11010, Section 8)**

10 39. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-38,
11 supra, as though fully set forth at this point.

12 40. California Labor Code §2802(a) provides in pertinent part:

13 An employer shall indemnify his or her employee for all
14 necessary expenditures or losses incurred by the employee in
15 direct consequence of the discharge of his or her duties, or of his
16 or her obedience to the directions of the employer, even though
17 unlawful, unless the employee, at the time of obeying the
18 directions, believed them to be unlawful.

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

23 41. During the liability period, Plaintiffs and the Class Members incurred necessary
24 expenditures and losses in direct consequence of the discharge of their employment duties and their
25 obedience to the directions of Defendants, as follows:

26 (a) Plaintiffs and the Class Members were required by Defendants to
27 provide their own vehicles in order to deliver the Defendants'
28 newspapers, and in connection with provision of their own vehicles and

1 the delivery of Defendants' newspapers, the Plaintiffs and the Class
2 Members necessarily incurred expenditures for gasoline, maintenance,
3 and insurance. As well, they incurred losses associated with wear and
4 tear to their vehicles. On information and belief, none of these
5 expenditures or losses were reimbursed by the Defendants to Plaintiffs
6 and the Class Members.

7 (b) Defendants routinely made deductions from the Plaintiffs' and Class
8 Members' wages for each complaint they allegedly received from
9 Defendants' customers for, among other things, damaged papers, wet
10 papers, and allegedly undelivered papers. Even though most, if not all,
11 of these complained-of damages and losses were beyond the employee's
12 control, or due to the simple negligence of the employee, Defendants
13 nevertheless wrongfully and willfully made deductions from the
14 Plaintiffs' and Class Members' wages for each complaint. Defendants
15 made said deductions as part of a wrongful attempt to make the
16 Plaintiffs and Class Members insurers of the Defendants' merchandise,
17 which purpose is prohibited by California law. Said deductions were
18 made by Defendants as part of a deliberate subterfuge that was designed,
19 constructed, implemented and administered to circumvent the clear
20 prohibitions of California case law and IWC Wage Order 1-2001 (8
21 C.C.R. §11010).

22 (c) Defendants routinely required Plaintiffs and Class Members to pay for
23 string and rubber bands to bind the newspapers for delivery. Defendants
24 also required Plaintiffs and Class Members to purchase plastic bags used
25 to hold newspapers together and to protect the newspapers. Defendant
26 routinely made deductions for the string, rubber bands, and plastic bags
27 from the wages of the Plaintiffs and the Class Members in contravention
28 of IWC Wage Order No. 1-2001 §9(B) (8 C.C.R. §11010).

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

6 (e) Defendant routinely deducted from the wages of Plaintiffs and the Class
7 Members an amount for a bond to secure the performance of the
8 Plaintiffs and the Class Members of their employment duties. Said
9 deductions violated Labor Code §401 which provides that if a bond of
10 an employee is required by an employer, the cost of the bond shall be
11 paid by the employer.

12 42. Plaintiffs are informed and believe that pursuant to California Labor Code
13 §2802 and Wage Order 1-2001, Section 8, Plaintiffs and the Class Members are entitled to recover
14 their unreimbursed expenditures and losses, interest, and attorneys' fees and costs, in amounts to be
15 proven at the time of trial. Further, with regard to all deductions described herein, which are all
16 violative of IWC Wage Order 1-2001, Plaintiffs and the Class Members are entitled to recover
17 penalties of \$100 for the initial violation and \$200 for each subsequent violation for every pay period
18 in which Defendants made said illegal deductions from the wages of Plaintiffs and the Class Members.

19 **FIFTH CAUSE OF ACTION**

20 **(Against All Defendants)**

21 **Failure to Pay for Training**

22 **(29 C.F.R. §§ 785.27 et seq.)**

23 43. Plaintiffs incorporate by reference the allegations set forth in paragraphs
24 1-42, supra, as though fully set forth at this point.

25 44. During the class period, Defendants had a consistent policy of failing to pay
26 newspaper carrier employees for training, meetings, and similar activities. Plaintiffs should have been
27 compensated for this working time as: (a) attendance was not outside of the Plaintiffs' regular working
28 hours; (b) attendance was not voluntary; (c) the training, course, lecture, or meeting was directly

1 related to the Plaintiffs' job; and (d) Plaintiffs performed productive work during such attendance.

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

8 **SIXTH CAUSE OF ACTION**

9 **(Against All Defendants)**

10 **(Unlawful Withholding of Wages Due; Labor Code §§221, 223; Wage Order 1-2001;**

11 **Cal. Code Regs., Title 8, §11010, Section 9)**

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

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

22 48. Said illegal deductions amounted to an unlawful withholding of wages due
23 Plaintiffs and the Class Members and constituted a violation of Labor Code § 221 by Defendants.
24 Said actions by Defendants to recoup their losses from subscribers' nonpayment of fees also amounted
25 to a violation of Labor Code § 221. As a proximate result of the unlawful acts of Defendants,
26 Plaintiffs and the Class Members have been damaged in an amount according to proof at the time of
27 trial. Plaintiffs and the Class Members are entitled to recover penalties of \$100 for the initial violation
28 and \$200 for each subsequent violation for every pay period in which Defendants made said illegal

1 withholdings from the wages of Plaintiffs and the Class Members. Under Labor Code §218.5,
2 Plaintiffs and the Class Members are further entitled to recover their attorneys' fees and costs, in an
3 amount to be proven at the time of trial.

4 **SEVENTH CAUSE OF ACTION**

5 **(Against All Defendants)**

6 **Failure to Provide Itemized Wage Statements**

7 **(Violation of IWC Wage Order No. 1-2001(7) and Labor Code §§226, 226.3)**

8 49. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-48,
9 supra, as though fully set forth at this point.

10 50. California Labor Code §226(a) provides in pertinent part:

11 Every employer shall, semi-monthly or at the time of each
12 payment of wages, furnish each of his or her employees, either as
13 a detachable part of the check, draft, or voucher paying the
14 employee's wages, or separately when wages are paid by
15 personal check or cash, an itemized statement in writing
16 showing: (1) gross wages earned, (2) total hours worked by the
17 employee, except for any employee whose compensation is
18 solely based on a salary and who is exempt from payment of
19 overtime under subdivision (a) of Section 515 or any applicable
20 order of the Industrial Welfare Commission, (3) the number of
21 piece-rate units earned and any applicable piece rate if the
22 employee is paid on a piece-rate basis, (4) all deductions,
23 provided, that all deductions made on written orders of the
24 employee may be aggregated and shown as one item, (5) net
25 wages earned, (6) the inclusive dates of the period for which the
26 employee is paid, (7) the name of the employee and his or her
27 social security number, (8) the name and address of the legal
28 entity that is the employer, and (9) all applicable hourly rates in

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

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

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

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

1 the fact that Defendants were making illegal deductions, were failing to pay overtime and all wages
2 earned, and, were paying Plaintiffs and the Class Members less than the statutory minimum wage.

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

10 **EIGHTH CAUSE OF ACTION**

11 **(Against All Defendants)**

12 **Failure to Keep Accurate Payroll Records Showing Hours Worked**

13 **Daily by Newspaper Carrier Employees**

14 **(Violation of Labor Code §1174(d) and IWC Wage Order No. 1-2001(7)(A))**

15 55. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-54,
16 supra, as though fully set forth at this point.

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

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

1 58. 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 59. 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 pursuant to Labor Code §1174.5.

9 **NINTH CAUSE OF ACTION**

10 **(Against All Defendants)**

11 **Unfair Business Practices**

12 **(Violation of Business & Professions Code §17200 et seq.)**

13 60. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-59,
14 supra, as though fully set forth at this point.

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

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

26 63. The illegal conduct alleged herein is continuing, and there is no
27 indication that Defendants will discontinue such activity in the future. Plaintiffs allege that if
28 Defendants are not enjoined from said illegal conduct, it will continue to fail to pay legal hourly and

1 overtime wages, continue to fail to provide rest and meal periods or provide appropriate compensation
2 in lieu thereof, and will continue to charge carriers for string, rubber bands, and bags.

3 64. Plaintiffs request that the court issue a preliminary and permanent
4 injunction prohibiting Defendants from requiring Plaintiffs and Class Members to work without legal
5 hourly and overtime compensation, from continuing to fail to provide to carriers rest or meal periods
6 without appropriate compensation in lieu thereof, and from continuing to charge carriers for string,
7 rubber bands, and bags.

8 65. Pursuant to Business & Professions Code §17203, Plaintiffs and the Class
9 Members are entitled to restitution of the amounts of the illegal deductions, unpaid hourly and
10 overtime wages, unpaid rest break and meal period compensation, as well as reimbursement of all
11 necessary expenditures and losses incurred by Plaintiffs and the Class Members in the discharge of
12 their duties. Plaintiffs are informed and believe, and thereon allege, that Defendants are unjustly
13 enriched through their failure to pay legal hourly and overtime wages and to provide rest and meal
14 periods or in-lieu compensation to Plaintiffs and other newspaper carrier employees. In addition,
15 unless the Court imposes an injunction against Defendants requiring Defendants to stop making illegal
16 deductions, to pay all legal hourly and overtime wages, and to reimburse for necessary expenditures
17 and losses, Plaintiffs, the Class Members, and the general public will suffer continuing and irreparable
18 harm and will have no adequate remedy at law. Plaintiffs bring this cause of action individually and as
19 members of the general public, and as representatives of all of those who are subject to Defendants'
20 unlawful acts and practices. Accordingly, Plaintiffs and the Class Members request that the Court
21 enter a preliminary and permanent injunction requiring Defendants to cease and desist from their
22 unlawful business practices and properly compute and pay to Plaintiffs and the Class Members the
23 amounts of all illegal deductions and unpaid wages and to reimburse them for the necessary expenses
24 and losses they incurred in carrying out their employment duties. Further, Plaintiffs and Class
25 Members request attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 upon proof
26 they have acted in the public interest.

1 **PRAYER FOR DAMAGES**

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

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

- 5 1. For compensatory damages in an amount according to proof with interest
6 thereon;
7 2. For economic and/or special damages, and/or liquidated damages in an amount
8 according to proof with interest thereon;

9 **As to Causes of Action One and Four Through Eight:**

- 10 3. For penalties, according to proof;

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

- 12 4. For reimbursement of work-related expenses (Labor Code §2802);

13 **As to the Ninth Cause of Action:**

- 14 5. That Defendants be found to have engaged in unfair competition in violation of
15 §17200, et. seq. of the California Business and Professions Code;
16 6. That Defendants be ordered and enjoined to make restitution of all losses
17 incurred by Plaintiffs and other similarly situated employees due to its unfair
18 competition, including disgorgement of wrongfully-withheld wages and
19 unreimbursed expenses pursuant to California Business and Professions Code
20 §§17203 and 17204;
21 7. That Defendants be enjoined from continuing the illegal course of conduct
22 alleged herein;
23 8. That Defendants further be enjoined from unfair competition in violation of
24 §17200, et seq. of the California Business and Professions Code;
25
26
27
28

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

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

3 10. For such other relief as the Court deems just and proper.

4
5 Dated: December 10, 2010

CALLAHAN & BLAINE, APLC

6
7 By: 

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

10
11 **DEMAND FOR JURY TRIAL**

12
13 Plaintiffs hereby demand trial by jury of all factual issues arising hereunder.

14
15 Dated: December 10, 2010

CALLAHAN & BLAINE, APLC

16
17 By: 

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

20
21
22 G:\2960\2960-02\Pld\Second Amended Complaint.wpd

1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and
3 not a party to the within action; my business address is 3 Hutton Centre, Ninth Floor, Santa Ana,
4 California 92707.

5 On **December 10, 2010**, I served the foregoing document(s) entitled:

6 **STIPULATION AND [PROPOSED] ORDER FOR LEAVE OF PLAINTIFFS TO FILE A**
7 **SECOND AMENDED COMPLAINT**

8 on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a
9 sealed envelope addressed as follows:

10 **SEE ATTACHED SERVICE LIST**

11 ☒ **(BY MAIL):** I deposited such envelope in the mail at Santa Ana, California. The envelope was
12 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of
13 collection and processing correspondence for mailing. It is deposited with the United States
14 Postal Service on that same day in the ordinary course of business. I am aware that on motion
15 of party served, service is presumed invalid if postal cancellation date or postage meter date is
16 more than one (1) day after date of deposit for mailing in affidavit.

17 ☐ **BY FEDEX:** I deposited such envelope at Santa Ana, California for collection and delivery by
18 Federal Express with delivery fees paid or provided for in accordance with ordinary business
19 practices. I am "readily familiar" with the firm's practice of collection and processing packages
20 for overnight delivery by Federal Express. They are deposited with a facility regularly
21 maintained by Federal Express for receipt on the same day in the ordinary course of business.


22 ☐ **BY PERSONAL SERVICE:** I caused such document to be delivered by hand to the
23 aforementioned addressee.

24 ☐ **VIA E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
25 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
26 documents to be sent to the persons at the e-mail addresses listed below. I did not receive,
27 within a reasonable time after the transmission, any electronic message or other indication that
28 the transmission was unsuccessful.

☐ **BY FACSIMILE:** I transmitted the foregoing document by facsimile to the party(s) identified
above by using the facsimile number(s) indicated. Said transmission(s) were verified as
complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

Executed on **December 10, 2010**, at Santa Ana, California.

24 
25 _____
26 Elena Richards

SERVICE LIST

Becerra et al. v. The McClatchy Company et al.
Case No. 08 CE CG 04411 AMS

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