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17 Attorneys for Plaintiff and the Putative Class

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 FOR THE COUNTY OF VENTURA

20 LARRY MONTE, an individual,

21 Plaintiff,

22 v.

23 IMAGE DISTRIBUTION SERVICES;  
24 DELUXE SMALL BUSINESS SALES,  
25 INC.; and DOES 1 through 100, inclusive,

26 Defendants.

Case 56-2016-00486848-CU-OE-VTA  
[Assigned to the Hon. Kevin DeNoce,  
Dept. 43]

CLASS ACTION

**SECOND AMENDED COMPLAINT**

Complaint Filed: Sept. 20, 2016



27 **TO ALL INTERESTED PARTIES HEREIN AND TO THEIR ATTORNEYS OF**  
28 **RECORD:**

COME NOW, PLAINTIFFS LARRY MONTE AND CONRAD LUND (herein collectively "Plaintiffs") and the Putative Class, and submit the following Second Amended Complaint against IMAGE DISTRIBUTION SERVICES, DELUXE SMALL BUSINESS SALES, INC., and DOES 1 through 100, inclusive, (collectively "Defendants"), and each of

1 them as follows:

2 **GENERAL ALLEGATIONS**

3 1. At all times herein mentioned, Plaintiff Larry Monte (“MONTE”) was an  
4 employee of Defendants, working in the state of California, within the four (4) years preceding  
5 the filing of the original complaint in this action on September 20, 2016.

6 2. At all times herein mentioned Plaintiff MONTE was an individual residing in the  
7 County of Ventura, in the State of California.

8 3. At all times herein mentioned, Plaintiff Conrad Lund (“LUND”) was an employee  
9 of Defendants, working in the state of California, within the four (4) years preceding the filing  
10 of the original complaint in this action on September 20, 2016.

11 4. At all times herein mentioned Plaintiff LUND was an individual residing in the  
12 County of San Bernardino, in the State of California.

13 5. At all times herein mentioned, Plaintiffs are informed and believe and, based on  
14 such information and belief, thereon allege that IMAGE DISTRIBUTION SOLUTIONS  
15 (“IMAGE”), was a California corporation that did business in the County of Ventura, California.  
16 IMAGE maintained its principal business premises in Irvine, California.

17 6. On or about December 20, 2018, IMAGE merged with defendant DELUXE  
18 SMALL BUSINESS SALES, INC. (“DELUXE”), a Minnesota corporation that does business  
19 in the County of Ventura, California.

20 7. The true names and capacities, whether individual, corporate, associate,  
21 representative or otherwise, of the defendants identified herein as Does 1 through 100, inclusive,  
22 are unknown to Plaintiffs, who therefore sue these defendants by said fictitious names. Plaintiffs  
23 will amend this Complaint to allege the true names and capacities of Does 1 through 100 when  
24 they have been ascertained. Does 1 through 100 are in some manner legally responsible for the  
25 wrongs and injuries alleged herein.

26 8. Each of the Defendants acted as the agent or employee of the others and each acted  
27 within the scope of that agency or employment. The Defendants, and each of them, directly or  
28 indirectly, or through an agent or any other person, engaged, suffered, or permitted Plaintiff

1 and/or the Putative Class to work or exercised control over the wage, hours, or working  
2 conditions of Plaintiff and the Putative Class.

3 9. Venue is appropriate in the Ventura County Superior Court because the unlawful  
4 employment practices complained of herein caused injury to Plaintiff MONTE and the putative  
5 class within Ventura County, California.

6 **CLASS ACTION ALLEGATIONS**

7 10. Plaintiffs bring this action on their own behalf and on behalf of all persons  
8 similarly situated. The class consists of all persons employed by Image Distribution Solutions  
9 and Deluxe Small Business Sales, Inc. as Account Executives at any location in California at  
10 any time during the period of September 20, 2012 through the present (hereinafter the "Putative  
11 Class"). The Putative Class represents over 25 persons and is so numerous that the joinder of  
12 each member of the putative class is impracticable.

13 11. There is a well-defined community of interest in the questions of law and fact  
14 affecting the class Plaintiffs represent. Plaintiffs' and the Putative Class members' claims  
15 against Defendants involve questions of common or general interest, in that each:

- 16 a. Was employed by Defendants,
- 17 b. Was not exempt from overtime premium pay under the commissioned  
18 salesperson exemption for one half of each month due to Defendants' policy and practice of  
19 paying Putative Class members their commissions on a monthly basis in violation of California  
20 Supreme Court authority, *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 670 (2014),  
21 requiring that commissions be paid each pay period in order for such exemption to apply;
- 22 c. Was not paid all wages owed based on the same policy and practice of  
23 making unauthorized, illegal deductions from the Putative Class members' wages;
- 24 d. Was not fully reimbursed for work-related expenses such as cell phones,  
25 mileage, and meals;
- 26 e. Was denied accurate paycheck stubs, which did not reflect the number of  
27 hours worked by Putative Class members each pay period, among other defects;
- 28 f. Was willfully denied all wages due at the conclusion of their employment;

1 g. Was not paid the minimum wage for all hours worked; and  
2 h. Was not provided with legally compliant rest periods as required by  
3 California law.

4 12. These questions are such that proof of a state of facts common to the members of  
5 the Putative Class will entitle each member to the relief requested in this complaint.

6 13. The members of the Putative Class that Plaintiffs represent have no plain, speedy  
7 or adequate remedy at law against Defendants, other than by maintenance of this class action,  
8 because Plaintiffs are informed and believe, and on such information and belief allege, that the  
9 damage to each member of the Putative Class is relatively small and diminishing within  
10 applicable statutory timeframes, and that it would be economically infeasible to seek recovery  
11 against Defendants other than by a class action.

12 14. Plaintiffs will fairly and adequately represent the interest of the Putative Class,  
13 because Plaintiffs are members of the Putative Class, and Plaintiffs' claims are typical of those  
14 in the Putative Class.

15 **FIRST CAUSE OF ACTION**

16 ***Failure To Pay Overtime Premium Wages***

17 **(Action Brought By Plaintiff Monte On Behalf Of Himself**

18 **And The Putative Class Against All Defendants)**

19 15. Plaintiff Monte incorporates by reference and re-alleges each and every one of the  
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
21 forth herein.

22 16. California law requires payment of overtime premium pay for all hours worked  
23 by non-exempt employees in excess of eight in one day or 40 hours in one week and for the first  
24 eight hours on the seventh-straight day of work in one workweek. Lab. Code § 510.

25 17. Plaintiff Monte and Putative Class regularly worked hours for which they were  
26 not paid overtime premium wages. Defendants' overtime wage violations include, but are not  
27 limited to, the failure to pay overtime premium wages whatsoever to Plaintiff Monte and the  
28 Putative Class for one half of each month (i.e., that part of the month when Defendants did not

1 pay Plaintiff Monte and the Putative Class any commissions earnings). During those time  
2 periods, Plaintiff Monte and the Putative Class worked overtime hours whether measured on a  
3 daily, weekly, or seventh-day basis, as those terms are used in Labor Code section 510, without  
4 receiving required overtime premiums therefor.

5 18. Plaintiff Monte and the Putative Class seek such overtime premium wages owed  
6 to them for the statutory period measured backward from the date of the filing of the initial  
7 Complaint in this matter.

8 19. The exact amount of overtime premium wages owed will not be fully ascertained  
9 until discovery is completed. Until Defendants produce the necessary documents for an  
10 accounting, Plaintiff Monte will be unable to determine the exact amount of overtime premium  
11 wages owed.

12 20. Labor Code section 218.6 states, “[I]n any action brought for the nonpayment of  
13 wages, the court shall award interest on all due and unpaid wages at the rate of interest specified  
14 in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the  
15 wages were due and payable ...” Plaintiff Monte seeks such interest on all overtime premium  
16 wages owed to him and the Putative Class for the statutory period measured backward from the  
17 date of the filing of the initial Complaint in this matter. Plaintiff Monte additionally seeks  
18 interest on such wages pursuant to Labor Code section 1194.

19 21. Pursuant to Labor Code section 1194, Plaintiff Monte requests the Court to award  
20 Plaintiff’ reasonable attorney’s fees and costs incurred in this action.

21 **SECOND CAUSE OF ACTION**

22 ***Unauthorized Deductions from Wages***

23 **(Action Brought By Plaintiffs On Behalf Of Themselves**

24 **And The Putative Class Against All Defendants)**

25 22. Plaintiffs incorporate by reference and re-allege each and every one of the  
26 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
27 forth herein.

28 23. Labor Code section 221 provides: “It shall be unlawful for any employer to collect

1 or receive from an employee any part of wages theretofore paid by said employer to said  
2 employee.”

3 24. Labor Code section 223 provides: “Where any statute or contract requires an  
4 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower  
5 wage while purporting to pay the wage designated by statute or by contract.”

6 25. IWC Wage Order 7-2001, section 8 provides that the only circumstance under  
7 which an employer can make a deduction from an employee’s wage due to cash shortage,  
8 breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss  
9 was the result of the employee’s gross negligence or dishonest or willful act.

10 26. These and related statutes, along with California’s fundamental public policy  
11 protecting wages and wage scales, prohibit employers from subjecting employees to  
12 unanticipated or unpredicted reductions in their wages; making employees the insurers of their  
13 employer’s business losses; otherwise passing the ordinary business losses of the employer onto  
14 the employee; taking deductions from wages for business losses unless the employer can  
15 establish that the loss was caused by a dishonest or willful act, or gross negligence of the  
16 employee; or taking other unpredictable deductions that may impose a special hardship on  
17 employees.

18 27. Defendants have violated California Labor Code sections 221, 223 and IWC Wage  
19 Order 9, section 8, by unlawfully taking deductions from the compensation of Plaintiffs and the  
20 Putative Class to cover certain ordinary business expenses of Defendants, including but not  
21 limited to credit card fees and storage costs, and for losses attributable to actions by third parties  
22 (and without any gross negligence or willful or dishonest acts on the part of the Plaintiffs and/or  
23 the Putative Class).

24 28. Because Defendants took unlawful deductions from the compensation owed to  
25 Plaintiffs and the Putative Class, Defendants are liable to Plaintiffs and the Putative Class for  
26 the compensation that should have been paid but for the unlawful deductions, pursuant to Labor  
27 Code sections 202, 204, 221 and 221 and IWC Wage Order 7-2001, section 8.

28 29. By unlawfully deducting wages and failing to pay Plaintiffs and other similarly

1 situated persons, Defendants are also liable for penalties, reasonable attorneys' fees, and costs  
2 under Labor Code sections 218.5 and 1194.

3 **THIRD CAUSE OF ACTION**

4 ***Failure To Reimburse Job-Related Expenses***

5 **(Action Brought By Plaintiffs On Behalf Of Themselves**

6 **And The Putative Class Against All Defendants)**

7 30. Plaintiffs incorporate by reference and re-allege each and every one of the  
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
9 forth herein.

10 31. Labor Code section 2802 and interpreting case law provides that California  
11 employees must be reimbursed for their employment-related expenses, including mileage  
12 reimbursement, cell phone costs, meals and other such expenses incurred for business purposes.

13 32. Section 2802 of the Labor Code states in pertinent part: "An employer shall  
14 indemnify his or her employee for all necessary expenditures or losses incurred by the employee  
15 in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
16 directions of the employer, even though unlawful, unless the employee, at the time of obeying  
17 the directions, believed them to be unlawful."

18 33. Defendants violated section 2802 by not fully reimbursing Plaintiffs and the  
19 Putative Class for use their personal vehicles and fuel for work-related purposes, cell phone  
20 costs, and meals without reimbursement. By these and similar acts, the Defendants have  
21 violated section 2802.

22 34. Plaintiffs and those similarly situated employees of Defendants incurred  
23 substantial expenses in order to perform their jobs and for the benefit of the defendant  
24 employers, which were not fully reimbursed.

25 35. Plaintiffs have sustained economic damages and losses in the amount of the actual  
26 costs of purchases made for the necessary discharge of his duties.

27 36. Labor Code section 2802(c) provides that the employee may recover all  
28 reasonable costs, including attorneys' fees, for enforcing the employee's right under this section.

1 Plaintiffs have incurred costs and attorneys' fees, and will continue to incur costs and attorneys'  
2 fees to enforce their rights and the rights of similarly situated employees of Defendants under  
3 section 2802. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs in an  
4 exact amount to be proven at trial.

5 **FOURTH CAUSE OF ACTION**

6 ***Unfair Competition***

7 **(Action Brought By Plaintiffs On Behalf Of Themselves**

8 **And The Putative Class Against All Defendants)**

9 37. Plaintiffs incorporate by reference and re-allege each and every one of the  
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as though  
11 fully set forth herein.

12 38. This cause of action is being brought pursuant to California Business and  
13 Professions Code section 17200 et seq. and California case law including *Cortez v. Purolator*  
14 *Air Filtration Products Co.* (2000) 23 Cal.App.4th 163.

15 39. It is alleged herein that Defendants failed to pay Plaintiffs and the Putative Class  
16 overtime and minimum wages and rest period premiums and for all business-related expenses  
17 and made impermissible deductions from the commissions earned by Plaintiffs and the Putative  
18 Class. The failures to pay such earned wages and premium wages and to reimburse such  
19 expenses constitute unfair business practices under California Business and Professions Code  
20 section 17200.

21 40. As a result of the conduct of Defendants, Defendants profited from breaking the  
22 law. Plaintiffs and the Putative Class seek disgorgement of Defendants' unlawfully obtained  
23 benefits (plus interest thereon) for the full period measured backward from the date of filing of  
24 the initial Complaint in this matter.

25 41. California Business and Professions Code section 17203, under the authority of  
26 which a restitutionary order may be made, provides, in relevant part:

27 Any person who engages, has engaged, or proposes to engage in  
28 unfair competition may be enjoined in any court of competent



1 jurisdiction. The court may make such orders or judgments,  
2 including the appointment of a receiver, as may be necessary to  
3 prevent the use of employment by any person of any practice which  
4 constitutes unfair competition, as defined in this chapter, or as may  
5 be necessary to restore to any person in interest any money or  
6 property, real or personal, which may have been acquired by means  
7 of such unfair competition. Any person may pursue representative  
8 claims or relief on behalf of others only if the claimant meets the  
9 standing requirements of Section 17204 and complies with Section  
10 282 of the Code of Civil Procedure....

11 42. As a result of the alleged aforesaid actions, Plaintiffs and the Putative Class have  
12 suffered injury in fact and have lost money as a result of such unfair competition.

13 43. In this case, it is requested that this Court order such restitution.

14 **FIFTH CAUSE OF ACTION**

15 ***Pay Stub Violations***

16 **(Action Brought By Plaintiff LUND On Behalf Of Himself**

17 **And The Putative Class Against All Defendants)**

18 44. Plaintiff Lund incorporates by reference and re-alleges each and every one of the  
19 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
20 forth herein.

21 45. Labor Code section 226 sets forth the requirements for what must appear on the  
22 itemized wage statements (i.e., paycheck stubs) of California employees. These requirements  
23 include, but are not limited to, the employee's (1) gross wages earned, (2) total hours worked,  
24 (3) all deductions, provided, that all deductions made on written orders of the employee may be  
25 aggregated and shown as one item, (4) net wages earned, and (9) all applicable hourly rates in  
26 effect during the pay period and the corresponding number of hours worked at each hourly rate  
27 by the employee.

28 46. In this case, Defendants have failed to provide such wage deduction statements to  
Plaintiff Lund and the Putative Class in that their wage deduction statements do not include,  
without limitation, all hours worked, or all applicable hourly rates in effect during the pay period,  
all deductions made to their wages, and the corresponding number of hours worked at each  
hourly rate by the employee.

1 47. Pursuant to Labor Code section 226(e), damages are appropriate. At this time,  
2 Plaintiff Lund believes and alleges that he and the Putative Class are owed the maximum  
3 allowable penalty under section 226(e) because Defendants knowingly and intentionally failed  
4 to provide adequate paycheck stubs.

5 48. However, the exact amount of damages under Labor Code section 226(e) will not  
6 be fully ascertained until discovery is completed. Until Defendants produce the necessary  
7 documents for an accounting, Plaintiff Lund will be unable to determine the exact amount of  
8 damages under Labor Code section 226(e).

9 49. Pursuant to Labor Code section 226(e), Plaintiff Lund requests the Court to award  
10 Plaintiff's reasonable attorney's fees and the costs incurred by Plaintiff in this action.

11 **SIXTH CAUSE OF ACTION**

12 ***Failure to Timely Pay Final Wages***

13 **(Action Brought By Plaintiff Monte On Behalf Of Himself**

14 **And The Putative Class Against All Defendants)**

15 50. Plaintiff Monte incorporates by reference and re-alleges each and every one of the  
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
17 forth herein.

18 51. Labor Code section 201 provides, "If an employer discharges an employee, the  
19 wages earned and unpaid at the time of discharge are due and payable immediately." Labor  
20 Code section 202 provides generally that wages earned and unpaid at the time of an employee's  
21 resignation must be paid within 72 hours thereof (unless the employee gives notice of greater  
22 than 72 hours of his intent to resign). *See* Lab. Code § 202. Defendants did not pay immediately  
23 all wages earned and unpaid to Plaintiff Monte and the Putative Class upon discharge or  
24 resignation. Defendants have refused and continue to refuse to pay said wages.

25 52. Pursuant to Labor Code section 203, Defendants have willfully failed to pay  
26 without abatement or reduction, in accordance with Labor Code sections 201 and 202 all of the  
27 overtime and commissions wages of the Plaintiff Monte and the Putative Class, as herein  
28 alleged. Defendants are aware that they owe the wages claimed by Plaintiff Monte and the

1 Putative Class, yet Defendants willfully failed to make payment. As a result, Plaintiff Monte  
2 seeks wages and waiting-time penalties pursuant to Labor Code section 203 on behalf of himself  
3 and the putative class. These penalties consist of up to 30 days of pay for Plaintiff Monte and  
4 the Putative Class at their regular rates of pay.

5 53. Plaintiff Monte and the Putative Class have been available and ready to receive  
6 wages owed to them.

7 54. Plaintiff Monte and the Putative Class have never refused to receive any payment,  
8 nor have they been absent from their regular places of residence.

9 55. Defendants' failure to pay wages due and owing Plaintiff Monte, as indicated in  
10 prior paragraphs, was willful; Defendants have knowingly refused to pay any portion of the  
11 amount due and owing Plaintiff Monte.

12 **SEVENTH CAUSE OF ACTION**

13 ***Failure to Pay Minimum Wages***

14 **(Action Brought By Plaintiff Monte On Behalf Of Himself**

15 **And The Putative Class Against All Defendants)**

16 56. Plaintiff Monte incorporates by reference and re-alleges each and every one of the  
17 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
18 forth herein.

19 57. Section 1197 of the Labor Code establishes California's minimum wage. Until  
20 July 1, 2014, the minimum wage in California was \$8.00 per hour, and it increased to \$9.00 on  
21 that date; it increased to \$10 per hour on January 1, 2016. Lab. Code § 1182.12.

22 58. Labor Code section 1194 creates a cause of action for employees to recover unpaid  
23 wages from an employer who fails to pay them at the legal minimum wage or overtime rate.

24 59. Labor Code section 1194.2 allows an employee to recover liquidated damages for  
25 a violation of Labor Code section 1194 as it pertains to unpaid minimum wages. "In any action  
26 under Section ... 1194 ... to recover wages because of the payment of a wage less than the  
27 minimum wage fixed by an order of the commission or by statute, an employee shall be entitled  
28 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest

1 thereon.” Lab. Code § 1194.2, subd. (a).

2           60. Plaintiff Monte seeks unpaid minimum wages and liquidated damages on behalf  
3 of himself and the Putative Class pursuant to Labor Code sections 1194, 1194.2, and 1197.  
4 Plaintiff Monte’s minimum wage claim stem from the fact that Defendants paid Plaintiff Monte  
5 and the Putative Class on a commission-only basis. This payment structure violates California’s  
6 minimum wage laws. An employer must compensate its nonexempt employees at a rate of no  
7 less than the minimum wage for every hour worked in a pay period. *Armenta v. Osmose, Inc.*,  
8 135 Cal. App. 4th 314, 324 (2005). An employee who works inside the employer’s office more  
9 than half of the time and is paid on a commission-only basis cannot qualify for any minimum  
10 wage exemption. *See* 8 Cal. Code Regs. § 11070, subds. 1(A)(1)(f), 1(A)(2)(g), 1(A)(3)(d)  
11 (requiring payment of a monthly salary to qualify for administrative, executive, and professional  
12 exemptions), 1(C), 2(J) (defining “outside salesperson” exemption and limiting it to those who  
13 work more than half of the working time outside the office), and 3(D) (limiting commission  
14 salesperson exemption to wage order’s overtime provisions and then only for pay periods when  
15 the employee’s earnings exceed one and one-half times the minimum wage).

16           61. Thus, for inside salespersons like Plaintiff Monte and the Putative Class,  
17 California law requires the payment of at least the minimum wage for all hours worked. An  
18 employer cannot attribute commission wages paid in one pay period to other pay periods in  
19 order to satisfy California’s compensation requirements. *Peabody v. Time Warner Cable, Inc.*,  
20 59 Cal. 4th 662, 669 (2014) (“[P]ermitting wages paid in one pay period to be attributed to a  
21 different pay period would be inconsistent with the Labor Code.”). Because Defendants paid  
22 commissions to Plaintiff Monte and the Putative Class on a once-a-month basis, there was one  
23 pay period each month during which Defendants paid nothing to these individuals.  
24 (Occasionally, Defendants paid these individuals a draw, which did not always cover  
25 Defendants’ minimum wage obligations.) Hence, for such pay periods when Defendants paid  
26 nothing (or an insufficient amount to cover its minimum wage obligations), Defendants violated  
27 California’s minimum wage laws.

28           62. Defendants also violated California’s minimum wage laws by not paying Plaintiff

1 Monte and the Putative Class members for each of their ten-minute rest periods, which are  
2 required by California law. Employees are entitled to “a paid 10-minute rest period per four  
3 hours of work.” *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 871 (2013). Under the  
4 rule of *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th at 323, rest periods must be separately  
5 compensated in a piece-rate system. *Bluford*, 216 Cal. App. 4th at 872. “[A] piece-rate  
6 compensation formula that does not compensate separately for rest periods does not comply  
7 with California minimum wage law.” *Id.*; *Balasanyan v. Nordstrom, Inc.*, 294 F.R.D. 550, 567  
8 (S.D. Cal. 2013) (applying *Bluford* to commission-only pay structure). Hence, Defendants were  
9 obligated to pay Plaintiff Monte and the Putative Class ten minutes of pay at a rate of no less  
10 than the minimum wage for each rest period Defendants provided. Defendants’ failure to do so  
11 results in minimum wage liability, and Plaintiff Monte seeks such amounts for unpaid minimum  
12 wages and liquidated damages for all unpaid rest periods.

13 63. Plaintiff Monte seeks all minimum wages owed to himself and the putative class  
14 under the aforementioned theories. Plaintiff Monte also seeks liquidated damages pursuant to  
15 Labor Code section 1194.2.

16 64. Plaintiff Monte seeks all attorney’s fees and costs incurred and interest on all  
17 minimum wages owed. *See* Lab. Code §§ 218.6 and 1194, subd. (a).

18 **EIGHTH CAUSE OF ACTION**

19 ***Failure to Provide Legally Compliant Rest Periods***

20 **(Action Brought By Plaintiff Monte On Behalf Of Himself**

21 **And The Putative Class Against All Defendants)**

22 65. Plaintiff Monte incorporates by reference and re-alleges each and every one of the  
23 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
24 forth herein.

25 66. Employees are entitled to “a *paid* 10-minute rest period per four hours of work.”  
26 *Bluford*, 216 Cal. App. 4th at 871 (emphasis added); 8 Cal. Code Regs. § 11070, subd. 12(A).

27 67. “If an employer fails to provide an employee a ... rest ... period in accordance  
28 with a state law..., the employer shall pay the employee one additional hour of pay at the

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1 employee's regular rate of compensation for each workday that the ... rest ... period is not  
2 provided." Lab. Code § 226.7(c).

3 68. By not paying Plaintiff Monte and the Putative Class for their rest periods,  
4 Defendants did not provide rest periods in accordance with California law. Plaintiff Monte  
5 therefore seeks one additional hour of pay at each employee's regular rate of compensation for  
6 each workday that such paid rest period was not so provided, pursuant to section 226.7.

7 69. Plaintiff Monte seeks interest pursuant to law on all amounts owed for rest period  
8 premiums under section 226.7.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Putative Class,  
11 pray for relief as follows:

- 12 1. For certification of the above-described class as a class action, pursuant to law;
- 13 2. For class notice to be provided to all Putative Class members;
- 14 3. For all wages and premium wages owed under California law according to proof;
- 15 4. For liquidated damages pursuant to Labor Code section 1194.2;
- 16 5. For prejudgment interest pursuant to Labor Code sections 218.6 and 1194 and  
17 Civil Code sections 3288 and 3291 on all amounts claimed;
- 18 6. For attorney's fees and costs pursuant to Labor Code sections 218.5, 226, 1194,  
19 and 2802;
- 20 7. For waiting-time penalties under Labor Code section 203;
- 21 8. For statutory penalties under Labor Code section 226;
- 22 9. For an equitable order, ordering Defendants to pay all Putative Class members all  
23 wages and premium wages, unreimbursed expenses, and interest they are owed;
- 24 10. For an appointment of a receiver to perform an accounting of all monies owed to  
25 these employees;
- 26 11. For a declaratory judgment declaring that Defendants have willfully and  
27 wrongfully violated their statutory and legal obligations and deprived Plaintiff and all others  
28 who are similarly situated of their rights, privileges, protections, compensation, benefits, and

1 entitlements under the law, as alleged herein;

2 12. For a complete and accurate accounting of all the compensation to which the  
3 Plaintiff and all others who are similarly situated are entitled;

4 13. For costs of suit; and

5 14. For any other and further relief that the Court considers just and proper.

6 DATED: June 11, 2019

**STRAUSS & STRAUSS, APC**

7 By:           /s/ Michael A. Strauss            
8 Michael A. Strauss  
9 Andrew C. Ellison  
10 Attorneys for Plaintiff and the

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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is STRAUSS & STRAUSS, APC, 121 N. Fir Street, Suite F, Ventura, California 93001. On June 11, 2019, I served the within documents:

**SECOND AMENDED COMPLAINT**

\_\_\_\_\_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Ventura, California addressed as set forth below.

\_\_\_\_\_ by electronically mailing the document(s) listed above to the e-mail address(es) set forth above, or as stated on the attached service list per agreement in accordance with the Code of Civil Procedure §1010.6.

**SEE ATTACHED MAILING LIST**

\_\_\_\_\_ by placing the document(s) listed above in a sealed envelope and depositing for pick-up in a designated FedEx box via **FedEx Overnight** delivery at Ventura, California addressed as set forth below.

\_\_\_\_\_ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_\_ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 11, 2019, at Ventura, California.

Jacqueline Villarreal  
JACQUELINE VILLARREAL

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1 **Re: Monte v. Image Distribution Services**  
2 **Ventura Superior Court Case No.: 56-2016-00486848-CU-OE-VTA**

3 **MAILING LIST**

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