

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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8 UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF WASHINGTON

10 DANIEL VALENCIA, BELARMINO
 HERNANDEZ, JUNIOR ARACHIGA,
 11 individually and on behalf of all others
 similarly situated,

12 Plaintiffs,

13 v.

14 HOMEDELIVERYLINK, INC.

15 Defendant.

NO.

CLASS ACTION COMPLAINT

16 Plaintiffs Daniel Valencia, Belarmino Hernandez, and Junior Arachiga, by
 17 their undersigned attorneys, for this class action complaint against Defendant
 18 HomeDeliveryLink, Inc. (“HomeDeliveryLink”), allege as follows:
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1 **I. INTRODUCTION**

2 1.1 Nature of Action. Plaintiffs Daniel Valencia, Belarmino Hernandez,
3 and Junior Arachiga bring this class action against HomeDeliveryLink for willfully
4 misclassifying Plaintiffs and the members of the Class as independent contractors
5 rather than employees, in violation of Washington State law. As a result,
6 HomeDeliveryLink has willfully failed to pay Plaintiffs and the members of the
7 Class overtime compensation they are due for hours worked beyond 40 each week,
8 made unlawful deductions from the paychecks of Plaintiffs and the members of the
9 Class, and failed to provide and compensate for meal and rest breaks as required
10 under Washington State law.

11 **II. JURISDICTION AND VENUE**

12 2.1 Jurisdiction. This Court has subject matter jurisdiction over all claims
13 asserted in this action pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1367. The
14 matter in controversy for Plaintiffs' claims against HomeDeliveryLink, exclusive
15 of interest and costs, exceeds \$75,000, and Plaintiffs' and Class members' claims
16 against HomeDeliveryLink exceeds, exclusive of interest and costs, the sum of
17 \$5,000,000.

18 2.2 Venue. Venue in the Eastern District of Washington is proper
19 because HomeDeliveryLink transacts business in this District, and Plaintiffs reside
20 and performed work for HomeDeliveryLink in this District.

III. PARTIES

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2 3.1 Plaintiff Daniel Valencia. Plaintiff Daniel Valencia (“Plaintiff
3 Valencia”) resides in Pasco, Washington. He worked as a delivery driver for
4 HomeDeliveryLink from approximately September 2015 until July 2017. During
5 this time, HomeDeliveryLink required Plaintiff Valencia to work five to six days
6 each week, from 6:00 a.m. or 7:00 a.m. each morning until 6:00 p.m. or 7:00 p.m.
7 in the evening (and sometimes as late as midnight), delivering furniture and
8 appliances to HomeDeliveryLink’s customers out of a terminal in Richland,
9 Washington. Plaintiff Valencia was not allowed to take a day off to perform
10 delivery work for any other company besides HomeDeliveryLink, or to carry
11 another company’s furniture and appliance deliveries while delivering for
12 HomeDeliveryLink. Each morning, a HomeDeliveryLink supervisor assigned
13 Plaintiff Valencia a full day’s worth of deliveries, with precise two-hour time
14 windows in which Plaintiff Valencia was required to perform each delivery, and
15 Plaintiff Valencia was not allowed to reject any assignment. Although Plaintiff
16 Valencia consistently worked sixty-plus hours each week as a delivery driver for
17 HomeDeliveryLink, he never received overtime pay. Instead, HomeDeliveryLink
18 paid him a piece rate for his work—specifically a flat rate for each stop plus
19 approximately \$0.30 or \$0.40 per mile. In addition, HomeDeliveryLink failed to
20 provide Plaintiff Valencia with a paid ten-minute rest break for every four hours of
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1 work, required Plaintiff Valencia to work more than three consecutive hours
2 without a rest break, and failed to ensure that Plaintiff Valencia took proper breaks.
3 HomeDeliveryLink also failed to pay Plaintiff Valencia separately for rest breaks,
4 whether he received them or not, at his average hourly rate. HomeDeliveryLink
5 also failed to provide Plaintiff Valencia with a thirty-minute meal break for every
6 five hours worked, failed to provide Plaintiff Valencia a second thirty-minute meal
7 break when he worked more than eleven hours in a day, and failed to ensure that he
8 take all his meal breaks. HomeDeliveryLink failed to provide Plaintiff Valencia
9 with thirty minutes of additional pay for each missed meal break.

10 HomeDeliveryLink made regular deductions from Plaintiff Valencia's bi-weekly
11 paychecks to cover HomeDeliveryLink's own costs of doing business, including a
12 security deposit to be used for any damaged property, administration and payroll
13 expenses, vehicle maintenance and upkeep, and insurance. Plaintiff Valencia was
14 an employee of HomeDeliveryLink for purposes of the Washington Minimum
15 Wage Act ("MWA").

16 3.2 Plaintiff Belarmino Hernandez. Plaintiff Belarmino Hernandez
17 ("Plaintiff Hernandez") resides in Kennewick, Washington. Plaintiff Hernandez
18 performed appliance deliveries for HomeDeliveryLink from approximately 2014 to
19 2015, out of the Sears warehouse in Richland, Washington, where
20 HomeDeliveryLink maintained an office. Plaintiff Hernandez worked full-time,
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1 five to six days each week, and typically twelve or more hours each day,
2 performing deliveries for HomeDeliveryLink in the precise order dictated by
3 HomeDeliveryLink and according to HomeDeliveryLink's strict two-hour time
4 windows. Plaintiff Hernandez was not allowed to refuse any assignment, take a
5 day off to perform deliveries for any other company, or to carry deliveries for any
6 other company while delivering for HomeDeliveryLink. Like the other Plaintiffs
7 and class members, Plaintiff Hernandez never received any overtime pay despite
8 consistently working sixty-plus hours each week as a delivery driver for
9 HomeDeliveryLink. Instead, HomeDeliveryLink paid him a piece rate for his
10 work—specifically he was paid a flat rate for each stop plus approximately \$0.30
11 or \$0.40 per mile. In addition, HomeDeliveryLink failed to provide Plaintiff
12 Hernandez with a paid ten-minute rest break for every four hours of work, required
13 Plaintiff Hernandez to work more than three consecutive hours without a rest
14 break, and failed to ensure that Plaintiff Hernandez took proper breaks.
15 HomeDeliveryLink also failed to pay Plaintiff Hernandez separately for rest
16 breaks, whether he received them or not, at his average hourly rate.
17 HomeDeliveryLink also failed to provide Plaintiff Hernandez with a thirty-minute
18 meal break for every five hours worked, failed to provide Plaintiff Hernandez a
19 second thirty-minute meal break when he worked more than eleven hours in a day,
20 and failed to ensure that he take all his breaks. HomeDeliveryLink failed to
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1 provide Plaintiff Hernandez with thirty minutes of additional pay for each missed
2 meal break. HomeDeliveryLink made regular deductions from Plaintiff
3 Hernandez's bi-weekly paychecks to cover HomeDeliveryLink's own costs of
4 doing business, including a security deposit to be used for any damaged property,
5 administration and payroll expenses, vehicle maintenance and upkeep, and
6 insurance. Plaintiff Hernandez was an employee of HomeDeliveryLink for
7 purposes of the MWA.

8 3.3 Plaintiff Junior Arachiga. Plaintiff Junior Arachiga ("Plaintiff
9 Arachiga") resides in Kennewick, Washington. Plaintiff Arachiga performed
10 appliance deliveries for HomeDeliveryLink from June 2016 to November 2016,
11 out of the Sears warehouse in Richland, Washington, where HomeDeliveryLink
12 maintained an office. Plaintiff Arachiga worked full-time, five to six days each
13 week, from 5:30 a.m. until anywhere between 8:00 p.m. and midnight each day,
14 performing deliveries for HomeDeliveryLink in the precise order dictated by
15 HomeDeliveryLink and according to HomeDeliveryLink's strict two-hour time
16 windows. Plaintiff Arachiga was not allowed to refuse any assignment, take a day
17 off to perform deliveries for any other company, or to carry deliveries for any other
18 company while delivering for HomeDeliveryLink. Like Plaintiff Valencia, Plaintiff
19 Arachiga never received any overtime pay despite consistently working seventy-
20 plus hours each week as a delivery driver for HomeDeliveryLink. Instead,

1 HomeDeliveryLink paid him a piece rate for this work—specifically, he was paid a
2 flat rate for each stop plus approximately \$0.30 or \$0.40 per mile. In addition,
3 HomeDeliveryLink failed to provide Plaintiff Arachiga with a paid ten-minute rest
4 break for every four hours of work, and required Plaintiff Arachiga to work more
5 than three consecutive hours without a rest break. HomeDeliveryLink also failed to
6 pay Plaintiff Arachiga separately for rest breaks, whether he received them or not,
7 at his average hourly rate. HomeDeliveryLink also failed to provide Plaintiff
8 Arachiga with a thirty-minute meal break for every five hours worked, failed to
9 provide Plaintiff Arachiga a second thirty-minute meal break when he worked
10 more than eleven hours in a day, and failed to ensure that he received all his
11 breaks. HomeDeliveryLink failed to provide Plaintiff Arachiga with thirty minutes
12 of additional pay for each missed meal break. HomeDeliveryLink made regular
13 deductions from Plaintiff Arachiga’s bi-weekly paychecks to cover
14 HomeDeliveryLink’s own costs of doing business, including a security deposit to
15 be used for any damaged property, administration and payroll expenses, vehicle
16 maintenance and upkeep, and insurance. Plaintiff Arachiga was an employee of
17 HomeDeliveryLink for purposes of the MWA.

18 3.4 Defendant HomeDeliveryLink. HomeDeliveryLink is a California
19 corporation with its headquarters in San Juan Capistrano, California.
20 HomeDeliveryLink is registered to do and does business throughout the State of
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1 Washington, including Richland, Seattle, and Spokane, Washington.

2 HomeDeliveryLink relies on Plaintiffs and other Class members to perform
3 deliveries for its customers, which include Sears, Ashley's Furniture, and Mor.

4 HomeDeliveryLink employs dispatchers, supervisors, and other management staff
5 to supervise and assign work to the Plaintiffs and Class members.

6 HomeDeliveryLink has misclassified the named Plaintiffs and at least 50 similarly
7 situated delivery drivers as independent contractors when they were actually
8 HomeDeliveryLink's employees for purposes of the MWA.

9 4.1 Class Definition: Pursuant to Civil Rule 23, Plaintiffs bring this case
10 as a class action against HomeDeliveryLink on behalf of a Class defined as
11 follows:

12 All persons who, from March 1, 2015 and the date of
13 final disposition of this action, have performed services
14 for HomeDeliveryLink in Washington as delivery drivers
pursuant to independent contractor agreements.

15 4.2 Numerosity. On information and belief there are more than fifty
16 individuals in the Class who have performed services for HomeDeliveryLink
17 during the class period. The members of the Class are so numerous that joinder of
18 all members is impracticable. Moreover, the disposition of the claims of the Class
19 in a single action will provide substantial benefits to all parties and the Court.
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1 4.3 Commonality. There are numerous questions of law and fact common
2 to Plaintiffs and Class members. These questions include, but are not limited to,
3 the following:

4 a. Whether HomeDeliveryLink is an employer of Class members;

5 b. Whether HomeDeliveryLink has engaged in a common course
6 of failing to properly compensate Class members for all hours worked, including
7 overtime;

8 c. Whether HomeDeliveryLink has engaged in a common course
9 of failing to provide Class members with a ten-minute rest break for every four
10 hours of work;

11 d. Whether HomeDeliveryLink has engaged in a common course
12 of failing to ensure that Class members do not work more than three consecutive
13 hours without a rest break;

14 e. Whether HomeDeliveryLink has engaged in a common course
15 of failing to separately pay Class members for rest breaks, whether received or not;

16 f. Whether HomeDeliveryLink has engaged in a common course
17 of failing to provide Class members with a thirty-minute meal break for every five
18 hours of work;

19 g. Whether HomeDeliveryLink has engaged in a common course
20 of failing to provide Class members with a second thirty-minute meal break when
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1 they work more than eleven hours in a day;

2 h. Whether HomeDeliveryLink has engaged in a common course
3 of failing to ensure that Class members receive their meal breaks;

4 i. Whether HomeDeliveryLink has failed to provide Class
5 members with thirty minutes of additional pay for each missed meal break;

6 j. Whether HomeDeliveryLink has failed to keep true and
7 accurate time records for all hours worked by Class members;

8 k. Whether HomeDeliveryLink has engaged in a common course
9 of improperly taking or threatening to take unlawful deductions from wages owed
10 to Class members;

11 l. Whether HomeDeliveryLink's failure to pay all wages owed to
12 Class members was willful;

13 m. Whether HomeDeliveryLink has violated RCW 49.46.130;

14 n. Whether HomeDeliveryLink has violated RCW 49.46.090;

15 o. Whether HomeDeliveryLink has violated RCW 49.52.050;

16 p. Whether HomeDeliveryLink has violated RCW 49.12.020;

17 q. Whether HomeDeliveryLink has violated WAC 296-126-092;

18 r. Whether HomeDeliveryLink has violated RCW 49.52.070;

19 s. Whether HomeDeliveryLink has violated RCW 49.52.060;

20 t. Whether HomeDeliveryLink has violated WAC 296-126-028;

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1 u. The nature and extent of class-wide injury and the measure of
2 compensation for such injury.

3 4.4 Typicality. Plaintiffs' claims are typical of the claims of the Class.
4 Plaintiffs have performed services for HomeDeliveryLink in Washington, and thus
5 Plaintiffs are members of the Class. Plaintiffs' claims, like the claims of the Class,
6 arise out of the same common course of conduct by HomeDeliveryLink and are
7 based on the same legal and remedial theories, including that HomeDeliveryLink
8 misclassified the Plaintiffs and all Class members as independent contractors when
9 they were HomeDeliveryLink employees under Washington law; and failed to pay
10 them separately for rest breaks, whether received or not; and as a result Plaintiffs
11 and Class members were denied overtime compensation and other benefits as
12 HomeDeliveryLink employees under the MWA.

13 4.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of
14 the Class. Plaintiffs have retained competent and capable attorneys who have
15 significant experience in complex and class action litigation, including
16 employment law. Plaintiffs and their counsel are committed to prosecuting this
17 action vigorously on behalf of the Class and have the financial resources to do so.
18 Neither Plaintiffs nor their counsel have interests that are contrary to or that
19 conflict with those of the Class.
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1 4.6 Predominance. HomeDeliveryLink has engaged in a common course
2 of wage and hour abuse toward Plaintiffs and members of the Class. The common
3 issues arising from this conduct that affect Plaintiffs and members of the Class
4 predominate over any individual issues. Adjudication of these common issues in a
5 single action has important and desirable advantages of judicial economy.

6 4.7 Superiority. Plaintiffs and Class members have suffered and will
7 continue to suffer harm and damages as a result of HomeDeliveryLink's unlawful
8 and wrongful conduct. Absent a class action, however, most Class members likely
9 would find the cost of litigating their claims prohibitive. Class treatment is superior
10 to multiple individual suits or piecemeal litigation because it conserves judicial
11 resources, promotes consistency and efficiency of adjudication, provides a forum
12 for small claimants, and deters illegal activities. There will be no significant
13 difficulty in the management of this case as a class action. The Class members are
14 readily identifiable from HomeDeliveryLink's records.

15 **IV. SUMMARY OF FACTUAL ALLEGATIONS**

16 5.1 Common Course of Conduct: Misclassification as Independent
17 Contractors. HomeDeliveryLink is the employer of all individuals who have
18 worked directly for HomeDeliveryLink as delivery drivers in Washington pursuant
19 to a purported "independent contractor" agreement with HomeDeliveryLink. The
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1 following facts, among many others, show that HomeDeliveryLink is the employer
2 of Plaintiffs and Class members:

3 5.1.1 HomeDeliveryLink is in the business of performing furniture
4 and appliance deliveries for its retail clients, including Ashley's Furniture and
5 Sears. The package pick-up and delivery services of Plaintiffs and Class members
6 are an integral part of the HomeDeliveryLink's business.

7 5.1.2 HomeDeliveryLink requires Plaintiffs and Class members to
8 work full-time, five or more days each week, performing furniture and appliance
9 deliveries for HomeDeliveryLink's clients including Sears and Ashley's Furniture,
10 out of terminals in Richland, Spokane, and Seattle.

11 5.1.3 Each morning, HomeDeliveryLink requires Plaintiffs and Class
12 members to report to work at a set time early each morning to begin their work
13 day. HomeDeliveryLink typically assigns the Plaintiffs and Class members a full
14 day's worth of deliveries. Plaintiffs and Class members frequently work from as
15 early as 5:30 a.m. or 6:00 a.m. each morning until as late as 10:00 p.m. or 11:00
16 p.m. (or later) at night. Plaintiffs and Class members are not allowed to take a day
17 off without HomeDeliveryLink's permission.

18 5.1.4 HomeDeliveryLink requires Plaintiffs and Class members to
19 report to work wearing a mandatory uniform of a specific color that bears the logos
20 of either HomeDeliveryLink or HomeDeliveryLink's client for whom the Plaintiffs
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1 and Class members are delivering that day, and HomeDeliveryLink requires
2 Plaintiffs and Class members to pay HomeDeliveryLink for the mandatory uniform
3 shirts. HomeDeliveryLink also requires Plaintiffs and Class members to wear
4 shoes and pants of a specific color, and to report to work clean shaven.

5 5.1.5 HomeDeliveryLink also requires each Plaintiff and Class
6 member to sign in to HomeDeliveryLink's GPS tracking software each morning
7 using a tablet or cell phone so that HomeDeliveryLink can track when the
8 Plaintiffs and Class members have reported to work as well as their whereabouts
9 throughout the day as they make deliveries. Plaintiffs and Class members are
10 required to update HomeDeliveryLink on their tablet or cell phone every time they
11 arrive at a customer's address, and again when finish making a delivery. If a
12 problem arises, such as if a customer is not home to accept the delivery, Plaintiffs
13 and Class members are required to call HomeDeliveryLink or an associated third-
14 party company to obtain instructions on how to proceed; often, Plaintiffs and Class
15 members are instructed to return to the customer's address later that same day,
16 regardless of how many other assignments they have that day.

17 5.1.6 HomeDeliveryLink employs supervisors at each terminal who
18 make sure the Plaintiffs and Class members report to work, are wearing
19 HomeDeliveryLink's mandatory uniforms, and perform their deliveries according
20 to HomeDeliveryLink's procedures.

1 5.1.7 HomeDeliveryLink’s supervisors are also responsible for
2 deciding which Plaintiffs and Class members are assigned which deliveries each
3 day. The HomeDeliveryLink supervisors at each terminal assemble the day’s
4 delivery assignments into discrete routes, and the supervisors decide which routes
5 are assigned to which Plaintiffs and Class members. Plaintiffs and Class members
6 are paid on a flat “per stop” basis for their delivery work. Plaintiffs and Class
7 members have had no possibility of promotion or higher pay per stop based on
8 their work performance or efficiency.

9 5.1.8 Plaintiffs and Class members are not allowed to reject any route
10 or any particular delivery assignment on their assigned route. Since
11 HomeDeliveryLink pays its drivers on a “per stop” basis, assignments that are
12 farther away are worth less money to Plaintiffs and Class members. However,
13 HomeDeliveryLink fines and also threatens to fire any Plaintiffs or Class members
14 who refuse to show up to work or who reject any particular assignment given to
15 them by HomeDeliveryLink. HomeDeliveryLink has the right to fire any Plaintiff
16 or Class member at any time, for any reason or for no reason at all.

17 5.1.9 The Plaintiffs and Class members are also not allowed to divide
18 up the assignments on their routes among themselves as they choose; instead,
19 HomeDeliveryLink requires the Plaintiffs and Class members to perform all of the
20 deliveries on their routes exactly that are assigned.
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1 5.1.10 HomeDeliveryLink also dictates the specific order in which
2 the Plaintiffs and Class members must perform their daily routes; Plaintiffs and
3 Class members cannot decide for themselves the order in which they perform the
4 deliveries on their routes. In addition, HomeDeliveryLink dictates narrow time
5 windows within which each delivery must be made, and Plaintiffs and Class
6 members cannot deviate from those time windows.

7 5.1.11 When the Plaintiffs and Class members are on the road
8 making deliveries for HomeDeliveryLink, HomeDeliveryLink tracks the Plaintiffs
9 and Class members using GPS to ensure they are following their assigned routes.
10 When Plaintiffs or Class members deviate from their assigned routes,
11 HomeDeliveryLink supervisors and dispatchers call the Plaintiffs and Class
12 members to order them to return to their route.

13 5.1.12 HomeDeliveryLink requires Plaintiffs and Class members, for
14 no additional compensation, to call each customer a specific amount of time before
15 each delivery, and to recite a scripted speech in which the Plaintiff or Class
16 member identifies him or herself as a delivery driver for HomeDeliveryLink's
17 retail customer (e.g. as a "Sears" delivery driver). HomeDeliveryLink also requires
18 Plaintiffs and Class members to remind customers at the conclusion of each
19 delivery to complete an online customer satisfaction survey, the results of which
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1 are sent to the Plaintiffs' or Class members' supervisor at HomeDeliveryLink for
2 review.

3 5.1.13 HomeDeliveryLink requires Plaintiffs and Class members to
4 attend mandatory meetings at their assigned terminals. At these meetings, a
5 HomeDeliveryLink supervisor reviews the Plaintiffs' and Class members'
6 performance metrics, including how frequently they met HomeDeliveryLink's
7 narrow time windows for deliveries, how frequently they performed mandatory
8 pre-delivery calls to customers, and how well Plaintiffs and Class members
9 performed on mandatory customer surveys. At these meetings, the manager
10 frequently tells the Plaintiffs and Class members that they must improve their
11 performance or risk being terminated.

12 5.1.14 HomeDeliveryLink prohibits Plaintiffs and Class members
13 from taking rest breaks and meal breaks while making deliveries on their assigned
14 routes, and moreover Plaintiffs and Class members have no time to take rest breaks
15 or meal breaks because HomeDeliveryLink assigns too much work and requires
16 the Plaintiffs and Class members to follow strict time windows for each delivery.

17 5.1.15 HomeDeliveryLink makes regular deductions from the
18 Plaintiffs' and Class members' bi-weekly paychecks to cover HomeDeliveryLink's
19 own costs of doing business, as set forth below.
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1 5.1.16 The nature of HomeDeliveryLink’s furniture and appliance
2 delivery assignments requires the Plaintiffs and Class members to hire helpers to
3 assist with the deliveries. However, HomeDeliveryLink can deny Plaintiffs and
4 Class members the right to hire any helper that HomeDeliveryLink does not
5 approve of, for any reason or for no reason at all. Helpers are also required to wear
6 the same uniforms as the Plaintiffs and Class members, and are subject to the same
7 level of supervision and control by HomeDeliveryLink supervisors and
8 dispatchers. HomeDeliveryLink can, and has, required the Plaintiffs and Class
9 members to terminate any helper, at any time, for any reason or for no reason at all.

10 5.1.17 The full-time nature of the Plaintiffs’ and Class members’
11 work for HomeDeliveryLink, HomeDeliveryLink’s requirement that Plaintiffs and
12 Class members work five or more days each week, and HomeDeliveryLink’s rule
13 that Plaintiffs and Class members cannot reject assignments without being
14 punished or terminated means that the Plaintiffs and Class members are not able to
15 perform delivery services for anyone other than HomeDeliveryLink.

16 5.1.18 Plaintiffs and Class members work for HomeDeliveryLink on
17 a piece work basis, with no opportunity to increase their earnings other than by
18 performing more delivery stops. However, because HomeDeliveryLink requires
19 the Plaintiffs and Class members to work full-time, five or six days each week, the
20 Plaintiffs and Class members are not able to take a day off or reject any
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1 assignments. HomeDeliveryLink controls how many deliveries the Plaintiffs and
2 Class members perform as well as how far they have to drive to perform them and
3 in what order. And because the Plaintiffs and Class members are paid by the stop,
4 HomeDeliveryLink has complete control over how much the Plaintiffs and Class
5 members are able to earn each week.

6 5.2 Common Course of Conduct: Overtime Violations. As the employer
7 of Plaintiffs and Class members, HomeDeliveryLink has engaged in, and continues
8 to engage in, a common course of wage and hour abuse against its delivery drivers
9 in Washington, including as described below:

10 5.2.1 HomeDeliveryLink's common course of wage and hour abuse
11 includes failing and refusing to pay overtime compensation to Plaintiffs and Class
12 members—that is, one and one-half times the regular rate for all hours worked
13 over 40 in any workweek. Instead, HomeDeliveryLink pays its drivers a piece rate
14 for their work—specifically, a flat per-stop rate plus a certain amount for each mile
15 driven, regardless of how many hours they worked each week.

16 5.2.2 Plaintiffs and Class members are entitled to one and one-half
17 times the regular rate of pay for all hours worked in excess of forty hours per week.

18 5.2.3 HomeDeliveryLink refuses to recognize Plaintiffs and Class
19 members as employees and thus fails to pay them overtime wages when they work
20 over 40 hours per week.

1 5.2.4 HomeDeliveryRate’s piece-rate compensation system fails to
2 pay drivers the reasonable equivalent of overtime pay.

3 5.2.5 HomeDeliveryLink has had actual knowledge of the facts set
4 forth in Paragraphs 5.2 and 5.2.1–5.2.5.

5 5.3 Common Course of Conduct: Failure to Provide Proper Rest Breaks.

6 HomeDeliveryLink has engaged in a common course of failing to provide
7 Plaintiffs and Class members with a paid ten-minute rest break for every four hours
8 of work and failing to ensure that Plaintiffs and Class members take their breaks.

9 5.3.1 HomeDeliveryLink has engaged in a common course of failing
10 to ensure that Plaintiffs and Class members receive a paid ten-minute rest break for
11 every four hours of work.

12 5.3.2 HomeDeliveryLink has engaged in a common course of failing
13 to separately pay Class members for rest breaks, whether received or not, at their
14 average hourly rate.

15 5.3.3 HomeDeliveryLink has had actual or constructive knowledge of
16 the facts set forth in Paragraphs 5.3 and 5.3.1–5.3.3.

17 5.4 Common Course of Conduct: Failure to Provide Proper Meal Breaks.

18 HomeDeliveryLink does not provide Plaintiffs and Class members with a thirty-
19 minute meal break for every five hours of work and requires or permits Plaintiffs
20 and Class members to work more than five consecutive hours without a meal
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1 break. Moreover, HomeDeliveryLink does not provide Plaintiffs and Class
2 members with a second thirty-minute meal break when they work more than
3 eleven hours in a day. HomeDeliveryLink fails to ensure that Plaintiffs and Class
4 members receive their meal breaks in accordance with Washington law.

5 5.4.1 HomeDeliveryLink requires or permits Plaintiffs and Class
6 members to remain on duty in the interest of HomeDeliveryLink while driving a
7 vehicle bearing the logos of HomeDeliveryLink’s client companies and making
8 deliveries for HomeDeliveryLink when Plaintiffs and Class members should be
9 taking their meal breaks.

10 5.4.2 Plaintiffs and Class members regularly are not able to take the
11 thirty-minute meal breaks to which they are entitled because of the amount of work
12 they must do each day, and because HomeDeliveryLink prohibits them from taking
13 breaks; instead, Plaintiffs and Class members regularly must eat while “on-the-go”
14 and while driving in order to ensure that they can make every delivery
15 HomeDeliveryLink requires them to deliver.

16 5.4.3 HomeDeliveryLink fails to ensure that Plaintiffs and Class
17 members receive proper meal breaks.

18 5.4.4 HomeDeliveryLink has had actual or constructive knowledge of
19 the facts set forth in Paragraphs 5.4 and 5.4.1–5.4.4.
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1 5.5 Common Course of Conduct: Unlawful Deductions.

2 HomeDeliveryLink makes regular deductions from the Plaintiffs’ and Class
3 members’ bi-weekly paychecks to cover HomeDeliveryLink’s own costs of doing
4 business.

5 5.5.1 HomeDeliveryLink takes an approximately \$200 per paycheck
6 “security deposit” deduction from each Plaintiff and Class member, to go toward
7 any property damage or other expenses that HomeDeliveryLink, in its sole
8 discretion, decides is owed by the Plaintiffs and Class members.

9 HomeDeliveryLink also deducts several hundred dollars per paycheck from the
10 Plaintiffs’ and Class members’ pay to cover HomeDeliveryLink’s administrative
11 and payroll costs.

12 5.5.2 HomeDeliveryLink requires Plaintiffs and Class members to
13 pay out of pocket for the cost of the vehicles they use to deliver
14 HomeDeliveryLink’s cargo as well as vehicle maintenance and upkeep, and
15 HomeDeliveryLink requires Plaintiffs and Class members to obtain specific levels
16 of cargo and vehicle liability insurance coverage and to have HomeDeliveryLink
17 listed as an “additional insured” party on these insurance policies. When Plaintiffs’
18 and Class members’ vehicles break down, HomeDeliveryLink fines them if they
19 do not rent a replacement vehicle to continue making deliveries each day until their
20 vehicle is repaired. HomeDeliveryLink often provides rental vehicles to Plaintiffs
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1 and Class members and deducts the cost of the rental from the Plaintiffs' and Class
2 members' wages. HomeDeliveryLink also has the right to require the Plaintiffs and
3 Class members to display the logos of HomeDeliveryLink's client companies such
4 as Ashley's Furniture and Sears on their vehicles.

5 5.5.3 HomeDeliveryLink derives a financial profit or benefit from all
6 of these deductions.

7 5.5.4 None of these deductions are for a lawful purpose.

8 5.5.5 All of these deductions are for the benefit of
9 HomeDeliveryLink and its customers, and none of these deductions are for the
10 benefit of the Plaintiffs and Class members.

11 5.5.6 HomeDeliveryLink has had actual or constructive knowledge of
12 the facts set forth in Paragraphs 5.5.

13 5.6 Common Course of Conduct: Failure to Maintain and Provide
14 Accurate Wage Statements. HomeDeliveryLink has engaged in a common course
15 of failing to keep true and accurate records for all hours worked by Plaintiffs and
16 Class members.

17 **V. FIRST CLAIM FOR RELIEF**
18 **(Violations of RCW 49.46.130 – Failure to Pay Overtime Wages)**

19 6.1 Plaintiffs reallege and incorporate by reference each and every
20 allegation set forth in the preceding paragraphs.
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1 6.2 HomeDeliveryLink failed to pay or ensure payment for delivery
2 drivers, including Plaintiffs and Class members, for all hours worked above 40 in a
3 week at a rate of not less than one and one-half times their regular rate of pay.

4 6.3 RCW 49.46.130 provides that “no employer shall employ any of his
5 employees for a workweek longer than 40 hours unless such employee receives
6 compensation for his employment in excess of the hours above specified at a rate
7 not less than one and one-half times the regular rate at which he is employed.”

8 6.4 By the actions alleged above, HomeDeliveryLink has violated the
9 provisions of RCW 49.46.130.

10 6.5 As a result of these unlawful acts, Plaintiffs and the Class have been
11 deprived of compensation in amounts to be determined at trial and pursuant to
12 RCW 49.46.090, Plaintiffs and the Class are entitled to recovery of such damages,
13 including interest thereon, as well as attorneys’ fees and costs.

14 **VI. SECOND CLAIM FOR RELIEF**
15 **(Violations of RCW 49.12.020 and WAC 296-126-092 –**
16 **Failure to Provide Rest Periods)**

17 7.1 Plaintiffs reallege and incorporate by reference each and every
18 allegation set forth in the preceding paragraphs.

19 7.2 HomeDeliveryLink’s wage and hour violations include routinely (1)
20 failing to provide Plaintiffs and Class members with rest breaks as required by law;
21 (2) failing to ensure that Plaintiffs and Class members take the breaks to which

1 they are entitled; and (3) failing to provide Plaintiffs and Class members with ten
2 minutes of additional pay for each missed rest break.

3 7.3 RCW 49.12.010 provides that “[t]he welfare of the state of
4 Washington demands that all employees be protected from conditions of labor
5 which have a pernicious effect on their health. The state of Washington, therefore,
6 exercising herein its police and sovereign power declares that inadequate wages
7 and unsanitary conditions of labor exert such pernicious effect.”

8 7.4 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any
9 person in any industry or occupation within the state of Washington under
10 conditions of labor detrimental to their health.”

11 7.5 Pursuant to RCW 49.12.005 and WAC 296-126-002, “conditions of
12 labor” “means and includes the conditions of rest and meal periods” for employees.

13 7.6 WAC 296-126-092 provides that employees shall be allowed certain
14 paid rest periods during their shifts.

15 7.7 Under Washington law, HomeDeliveryLink has an obligation to
16 provide employees with the rest breaks to which they are entitled.

17 7.8 Under Washington law, HomeDeliveryLink has an obligation to
18 ensure that employees take the rest breaks to which they are entitled.

1 7.9 Under Washington law, HomeDeliveryLink has an obligation to pay
2 employees paid a piece rate separately for each missed break, regardless of
3 whether the employees receive those rest breaks.

4 7.10 By the actions alleged above, including the failure to provide
5 Plaintiffs and Class members with proper rest periods, HomeDeliveryLink has
6 violated the provisions of RCW 49.12.020 and WAC 296-126-092.

7 7.11 As a result of these unlawful acts, Plaintiffs and the Class have been
8 deprived of compensation in amounts to be determined at trial, and Plaintiffs and
9 the Class are entitled to the recovery of such damages, including interest thereon,
10 as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

11 **VII. THIRD CLAIM FOR RELIEF**
12 **(Violations of RCW 49.12.020 and WAC 296-126-092 –**
13 **Failure to Provide Paid Meal? Periods)**

14 8.1 Plaintiffs reallege and incorporate by reference each and every
15 allegation set forth in the preceding paragraphs.

16 8.2 RCW 49.12.010 provides that “[t]he welfare of the state of
17 Washington demands that all employees be protected from conditions of labor
18 which have a pernicious effect on their health. The state of Washington, therefore,
19 exercising herein its police and sovereign power declares that inadequate wages
20 and unsanitary conditions of labor exert such pernicious effect.”
21

1 8.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any
2 person in any industry or occupation within the state of Washington under
3 conditions of labor detrimental to their health.”

4 8.4 Under RCW 49.12.005 and WAC 296-126-002, “conditions of labor”
5 “means and includes the conditions of rest and meal periods” for employees.

6 8.5 WAC 296-126-092 provides that employees shall be allowed certain
7 meal periods during their shifts, and the meal periods shall be on the employer’s
8 time when the employee is required by the employer to remain on duty on the
9 premises or at a prescribed work site in the interest of the employer.

10 8.6 Under Washington law, HomeDeliveryLink has an obligation to
11 provide employees with the meal breaks to which they are entitled.

12 8.7 Under Washington law, HomeDeliveryLink has an obligation to
13 ensure that employees take the meal breaks to which they are entitled.

14 8.8 Under Washington law, HomeDeliveryLink has an obligation to
15 provide employees with thirty minutes of additional pay for each missed meal
16 break.

17 8.9 By the actions alleged above, HomeDeliveryLink has violated the
18 provisions of RCW 49.12.020 and WAC 296-126-092.

19 8.10 As a result of these unlawful acts, Plaintiffs and the Class have been
20 deprived of compensation in amounts to be determined at trial, and Plaintiffs and
21

1 the Class are entitled to the recovery of such damages, including interest thereon,
2 as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

3 **VIII. FOURTH CLAIM FOR RELIEF**
4 **(Violation of RCW 49.52.050(1) — Unlawful Rebate of Wages)**

5 9.1 Plaintiffs reallege and incorporate by reference each and every
6 allegation set forth in the preceding paragraphs.

7 9.2 RCW 49.52.050(1) provides that any employer or agent of any
8 employer who “[s]hall collect or receive from any employee a rebate of any part of
9 wages theretofore paid by such employer to such employee” shall be guilty of a
10 misdemeanor.

11 9.3 HomeDeliveryLink’s requirement that Plaintiffs and Class members
12 pay, as a condition of employment, a portion of their wages back to
13 HomeDeliveryLink in the form of administrative payroll fees, fines, uniform costs,
14 and alleged property damage at HomeDeliveryLink’s discretion, constitutes an
15 unlawful rebate in violation of RCW 49.52.050(1).

16 9.4 Likewise, HomeDeliveryLink’s requirement that Plaintiffs and Class
17 members pay, as a condition of employment, a portion of their wages to third
18 parties to pay for HomeDeliveryLink’s own business expenses, including for the
19 cost of delivery vehicles, fuel, and insurance, constitutes an unlawful rebate in
20 violation of RCW 49.52.050(1).

1 9.5 RCW 49.52.070 provides that any employer who violates the
2 provisions of RCW 49.52.050(1) and (2) shall be liable in a civil action for twice
3 the amount of wages rebated or withheld, together with attorneys' fees and costs.

4 9.6 By the actions alleged above, HomeDeliveryLink has violated the
5 provisions of RCW 49.52.050(1). As a result, Plaintiffs and Class members have
6 been deprived of compensation in amounts to be determined at trial and pursuant to
7 RCW 49.52.070, Plaintiffs and the Class are entitled to recovery of twice such
8 damages, including interest thereon, as well as attorneys' fees and costs.

9 **IX. FIFTH CLAIM FOR RELIEF**
10 **(Violation of RCW 49.46.090, RCW 49.52.060, and WAC 296-126-028 —**
11 **Unlawful Deductions)**

12 10.1 Plaintiffs reallege and incorporate by reference each and every
13 allegation set forth in the preceding paragraphs.

14 10.2 Under RCW 49.52.060 and WAC 296-126-028(2), an employer may
15 not make deductions to the wages of an employee unless the employee has
16 expressly authorized those deductions in writing and in advance.

17 10.3 Under RCW 49.52.060 and WAC 296-126-028(2), an employer may
18 not make deductions to the wages of an employee unless those deductions are for a
19 lawful purpose.
20
21

1 10.4 Under RCW 49.52.060 and WAC 296-126-028(2), an employer may
2 not make deductions to the wages of an employee unless those deductions are for
3 the benefit of the employee.

4 10.5 Under RCW 49.52.060 and WAC 296-126-028(3), neither the
5 employer nor any person acting in the interest of the employer can derive any
6 financial profit or benefit from any deduction to the wages of an employee.

7 10.6 Under RCW 49.52.060 and WAC 296-126-028(5), an employer must
8 identify and record all wage deductions openly and clearly in employee payroll
9 records.

10 10.7 Under Washington law, an employer may not make deductions from
11 an employee's wages during on-going employment to compensate the employer
12 for damage or loss of the employer's property, even if the damage or loss is a result
13 of the employee's violation of established policies.

14 10.8 By requiring Plaintiffs and Class members to pay, as a condition of
15 employment, a portion of their wages back to HomeDeliveryLink in the form of
16 administrative payroll fees, fines, uniform costs, rental vehicle costs, and alleged
17 property damage at HomeDeliveryLink's discretion without first getting Plaintiffs
18 and Class member's consent to the deductions in writing, HomeDeliveryLink is
19 violating RCW 49.52.060 and WAC 296-126-028.

1 10.9 By requiring Plaintiffs and Class members to pay, as a condition of
2 employment, a portion of their wages to third parties to pay for
3 HomeDeliveryLink’s own business expenses, including for the cost of delivery
4 vehicles, fuel, and insurance, without first getting Plaintiffs and Class member’s
5 consent to the deductions in writing, HomeDeliveryLink is violating RCW
6 49.52.060 and WAC 296-126-028.

7 10.10 By failing to identify and record all wage deductions openly and
8 clearly in Plaintiffs and Class members’ records, HomeDeliveryLink is violating
9 RCW 49.52.060 and WAC 296-126-028.

10 10.11 As a result of the unlawful acts of Defendants, Plaintiffs and Class
11 members have been deprived of compensation in amounts to be determined at trial,
12 and Plaintiffs and members of the Class are entitled to the recovery of such
13 damages, including interest thereon, as well as attorneys’ fees and costs under
14 RCW 49.46.090 RCW 49.52.070, and RCW 49.48.030.

15 **X. SIXTH CLAIM FOR RELIEF**
16 **(Violation of RCW 49.52.050(2) — Willful Refusal to Pay Wages)**

17 11.1 Plaintiffs reallege and incorporate by reference each and every
18 allegation set forth in the preceding paragraphs.

19 11.2 RCW 49.52.050(2) provides that any employer or agent of any
20 employer who, “[w]ilfully and with intent to deprive the employee of any part of
21 his wages, shall pay any employee a lower wage than the wage such employer is

1 obligated to pay such employee by any statute, ordinance, or contract” shall be
2 guilty of a misdemeanor.

3 11.3 HomeDeliveryLink’s violations of RCW 49.46.130, RCW 49.46.090,
4 RCW 49.12.020, WAC 296-126-092, RCW 49.52.050, RCW 49.52.060, and WAC
5 296-126-028 were willful and constitute violations of RCW 49.52.050(1).

6 11.4 RCW 49.52.070 provides that any employer who violates the
7 provisions of RCW 49.52.050 shall be liable in a civil action for twice the amount
8 of wages withheld, attorneys’ fees, and costs.

9 11.5 By the actions alleged above, HomeDeliveryLink has violated the
10 provisions of RCW 49.52.050.

11 11.6 As a result of the willful, unlawful acts of HomeDeliveryLink,
12 Plaintiffs and the Class have been deprived of compensation in amounts to be
13 determined at trial and pursuant to RCW 49.52.070, Plaintiffs and the Class are
14 entitled to recovery of twice such damages, including interest thereon, as well as
15 attorneys’ fees and costs.

16 **XI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members
18 of the Class, pray for judgment against HomeDeliveryLink, as follows:

19 A. Certification of the proposed Plaintiff Class for the claims against
20 HomeDeliveryLink;

1 B. A declaration that HomeDeliveryLink is financially responsible for
2 notifying all Class members of its wage and hour violations;

3 C. Appoint Plaintiffs as representatives of the Class;

4 D. Appoint the undersigned counsel as counsel for the Class;

5 E. Declare that HomeDeliveryLink's actions complained of herein
6 violate RCW 49.46.090, RCW 49.46.130, RCW 49.52.050, RCW 49.12.020, and
7 WAC 296-126-092;

8 F. Enjoin HomeDeliveryLink and their officers, agents, successors,
9 employees, representatives, and any and all persons acting in concert with
10 HomeDeliveryLink, as provided by law, from engaging in the unlawful and
11 wrongful conduct set forth herein;

12 G. Award Plaintiffs and the Class compensatory and exemplary damages,
13 as allowed by law;

14 H. Award Plaintiffs and the Class attorneys' fees and costs, as allowed by
15 law;

16 I. Award Plaintiffs and the Class prejudgment and post-judgment
17 interest, as provided by law;

18 J. Permit Plaintiffs and the Class leave to amend the Complaint to
19 conform to the evidence presented at trial; and
20
21

1 K. Grant such other and further relief as the Court deems necessary, just,
2 and proper.

3 RESPECTFULLY SUBMITTED AND DATED this 1st day of March,
4 2018.

5 TERRELL MARSHALL LAW GROUP PLLC

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