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(Additional Counsel on Following Page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO**

DIEN TRUONG, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DS SERVICES OF AMERICA, INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: FCS054399

[Assigned to the Hon. E. Bradley Nelson, Dept. 4]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§ 1194, 1197, AND 1197.1;
- (2) VIOLATION OF CAL. LABOR CODE §§ 226.2 AND 226.7;
- (3) VIOLATION OF CAL. LABOR CODE §§ 226(a);
- (4) VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*; AND
- (5) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT, CAL. LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

ENDORSED FILED
Clerk of the Superior Court

MAR 26 2020

By J. WOOD
DEPUTY CLERK

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Attorneys for Plaintiff, the Class, and Aggrieved Employees

1 Plaintiff Dien Truong (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendants DS Services of America,
3 Inc. (“DSS”) and Does 1 through 50 (hereinafter collectively referred to as “Defendants”) as an
4 individual and on behalf of all other similarly situated current and former employees of
5 Defendants for minimum wages, penalties under the California Labor Code, and for restitution as
6 follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code §§ 201-203, 226, 226.7, 1194, 1197, 1197.1, and 2698, *et seq.*, and the
10 applicable Wage Orders of the California Industrial Welfare Commission (“IWC”), and the
11 California Unfair Competition Law (the “UCL”), Business and Professions Code § 17200, *et seq.*

12 2. This complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code and the UCL against individuals who worked for
14 Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees in receiving minimum wages for all hours worked and
18 accurate itemized wage statements.

19 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 have engaged in, among other things a system of willful violations of the California Labor Code
21 and the UCL by creating and maintaining policies, practices and customs that knowingly deny
22 employees the above stated rights and benefits.

23 5. The policies, practices and customs of defendants described above and below
24 have resulted in unjust enrichment of Defendants and an unfair business advantage over
25 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

26 **JURISDICTION AND VENUE**

27 6. The Court has jurisdiction over the violations of the California Labor Code §§
28 201-203, 226, 226.2, 226.7, 1194, 1197, 1197.1, and 2698, *et seq.*, and the UCL.

7. Venue is proper in this County because Plaintiff worked for Defendants in Vallejo, California, which is located in the County of Solano.

PARTIES

8. On or about March 27, 2004, Plaintiff was hired by Defendant. On or about October 28, 2019, Plaintiff was terminated. Plaintiff worked for Defendant as a route delivery driver.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 201-203, 226, 226.2, 226.7, 1194, 1197, 1197.1, and 2698, *et seq.*, and the UCL.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a Delaware corporation, which provides driver/delivery services throughout the United States, including locations in the State of California.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code §§ 201-203, 226, 226.2, 226.7, 1194, 1197, 1197.1, and 2698, *et seq.*, and the UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the

1 Defendants, and each of them, were the agents, servants and employees of each of the other
2 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
3 acting within the course and scope of said agency and employment.

4 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
6 joint venturer of, or working in concert with each of the other co-Defendants and was acting
7 within the course and scope of such agency, employment, joint venture, or concerted activity.
8 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
9 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
10 Defendants.

11 15. At all times herein mentioned, Defendants, and each of them, were members of,
12 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
13 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

14 16. At all times herein mentioned, the acts and omissions of various Defendants, and
15 each of them, concurred and contributed to the various acts and omissions of each and all of the
16 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
17 herein mentioned, Defendants, and each of them, ratified each and every act or omission
18 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
19 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
20 damages as herein alleged.

21 CLASS ACTION ALLEGATIONS

22 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
23 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes and Subclass:

24 a. All non-exempt employees who were employed by Defendants in the State of
25 California at any time from February 20, 2016, through the present and who were paid a
26 base rate less than the applicable minimum wage for all hours worked (the “Class”);

27 b. All non-exempt employees who were employed by Defendants in the State of
28 California at any time from February 20, 2016, through the present who were paid a base

1 rate less than the applicable minimum wage for all hours worked and who worked shifts
2 at least 3.5 hours or longer (the “Rest Period Minimum Wage Sub-Class”);

3 c. All non-exempt employees who were employed by Defendants in the State of
4 California and who were paid “Ad Ot Prm W1” wages at any time from February 20,
5 2019, through the present (the “Ad Ot Prm W1” Wage Statement Class”); and

6 d. All non-exempt employees who were employed by Defendants in the State of
7 California and who were paid on a piece rate and/or commission basis at any time from
8 February 20, 2019, through the present (the “Piece Rate Wage Statement Class”).

9 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
10 that joinder of all members would be impractical, if not impossible. The identity of the members
11 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
12 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay
13 employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197, and
14 1197.1; (b) failed to pay employees at least the minimum wage rate for paid rest periods in
15 violation of Labor Code §§ 226.2 and 226.7; (c) failed to provide accurate, itemized wage
16 statements in violation of Labor Code § 226; and (d) engaged in unfair business practices in
17 violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

18 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
19 necessary steps to represent fairly and adequately the interests of the class defined above.
20 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the
21 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
22 actions in the past and currently have a number of wage-and-hour class actions pending in
23 California state and federal courts.

24 19. Defendants uniformly administered a corporate policy, practice of: (a) failing to
25 pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197,
26 and 1197.1; (b) failing to pay employees at least the minimum wage rate for paid rest periods in
27 violation of Labor Code §§ 226.2 and 226.7; (c) failing to provide accurate, itemized wage
28 statements in violation of Labor Code § 226; and (d) engaging in unfair business practices in

1 violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

2 20. Plaintiff is informed and believes, and based thereon alleges, that this corporate
3 conduct is accomplished with the advance knowledge and designed intent to willfully and
4 intentionally fail to accurately record proper rates of pay, hours worked, net wages, and
5 deductions.

6 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
7 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
8 Code §§ 201-203, 226, 226.2, 226.7, 1194, 1197 and 1197.1, and the UCL.

9 22. **Common Question of Law and Fact:** There are predominant common questions
10 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
11 concerning Defendant's policy and practice of: (a) failing to pay employees minimum wages for
12 all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1; (b) failing to pay
13 employees at least the minimum wage rate for paid rest periods in violation of Labor Code §§
14 226.2 and 226.7; (c) failing to provide accurate, itemized wage statements in violation of Labor
15 Code § 226; and (d) engaging in unfair business practices in violation of the California Labor
16 Code, the applicable IWC Wage Orders, and the UCL.

17 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
18 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
19 as the Class members. As with other non-exempt employees, Plaintiff was not paid the
20 applicable minimum wage for all hours worked. For example, the effective minimum wage
21 starting on January 1, 2019, was \$12.00. Nevertheless, the Defendant paid Plaintiff and Class
22 Members less than the minimum wage. Specifically, Plaintiff was paid \$11.00 per hour in 2019.
23 Also, for this reason, Defendant violated Labor Code §§ 226.2 and 226.7, which require that
24 non-exempt employees be paid wages for their rest breaks at no less than the applicable
25 minimum wage. Given that Defendant paid Plaintiff and Class Members less than the applicable
26 minimum wage for their hourly rate, Plaintiff and Class Members' paid rest breaks were also
27 paid at this unlawful rate of pay less than the minimum wage. Further, given that Plaintiff was
28 paid at the incorrect hourly rate below the minimum wage, Plaintiff's wage statements provided

1 the incorrect hourly rate for Plaintiff's regular rate of pay. Defendant also violated Labor Code §
2 226(a) as to Plaintiff by not providing accurate, itemized wage statements to Plaintiff and Class
3 Members, including without limitation, by not accurately reflecting the hours worked and correct
4 applicable hourly rates. Specifically, Defendant violated Labor Code § 226(a)(9) as to Plaintiff
5 and Class Members by failing to list the hourly rates and hours worked for "Ad Ot Prm W1,"
6 which appears to be a form of overtime wages. For example, on Plaintiff's wage statement dated
7 September 27, 2019, the wage statement simply lists a lump sum of \$48.22 for "Ad Ot Prm W1,"
8 without any hours or hourly rates listed. Defendant also violated Labor Code § 226(a)(3) by
9 failing to list on the four corners of wage statements issued to Plaintiff and Class Members "the
10 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
11 piece-rate basis." Defendant only made such piece-rate information available to be printed at the
12 branch, instead of on the wage statements themselves. As such, Defendant violated Labor Code
13 § 226 as to Plaintiff and commissioned/piece-rate employees. Therefore, Plaintiff is a member
14 of the Class and have suffered the alleged violations of California Labor Code §§ 201-203, 226,
15 226.2, 226.7, 1194, 1197 and 1197.1, and the UCL.

16 24. The California Labor Code and upon which Plaintiff bases these claims are
17 broadly remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 25. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
28 member to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current
2 employer for real and justifiable fear of retaliation and permanent damage to their careers at
3 subsequent employment.

4 26. The prosecution of separate actions by the individual class members, even if
5 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
6 to individual Class members against the Defendants and which would establish potentially
7 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
8 individual Class members which would, as a practical matter, be dispositive of the interest of the
9 other Class members not parties to the adjudications or which would substantially impair or
10 impede the ability of the Class members to protect their interests. Further, the claims of the
11 individual members of the Class are not sufficiently large to warrant vigorous individual
12 prosecution considering all of the concomitant costs and expenses.

13 27. Such a pattern, practice and uniform administration of corporate policy regarding
14 illegal employee compensation described herein is unlawful and creates an entitlement to
15 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid minimum
16 wages, overtime wages, applicable penalties, liquidated damages, reasonable attorneys' fees, and
17 costs of suit according to the mandate of California Labor Code §§ 226, 1194, 1197 and 1197.1,
18 and Code of Civil Procedure § 1021.5.

19 28. Proof of a common business practice or factual pattern, which the named Plaintiff
20 experienced and is representative of, will establish the right of each of the members of the
21 Plaintiff Class to recovery on the causes of action alleged herein.

22 29. The Plaintiff Class is commonly entitled to a specific fund with respect to the
23 compensation illegally and unfairly retained by Defendants. The Plaintiff Class is commonly
24 entitled to restitution of those funds being improperly withheld by Defendants. This action is
25 brought for the benefit of the entire class and will result in the creation of a common fund.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 1194, 1197, AND 1197.1**

3 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

4 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as
5 though fully set forth herein.

6 31. This cause of action is brought pursuant to Labor Code §§ 1194, 1197, and
7 1197.1, which require an employer to pay employees minimum wages for all hours worked less
8 than eight hours in a day and/or less than 40 hours in a workweek.

9 32. As a pattern and practice, Defendants suffered and permitted employees to work
10 without payment of minimum wages for all hours worked in a workday and workweek.
11 Specifically, Defendants failed to pay employees for all hours worked at hourly rates which meet
12 the State of California's applicable minimum wage. For example, the effective minimum wage
13 starting on January 1, 2019, was \$12.00. Nevertheless, the Defendant paid Plaintiff and Class
14 Members less than the minimum wage. Specifically, Plaintiff was paid \$11.00 per hour in 2019.
15 Defendants had a uniform corporate pattern and practice and procedure regarding the above
16 practices in violation of Labor Code §§ 1194, 1197 and 1197.1.

17 33. Such a pattern, practice and uniform administration of corporate policy regarding
18 illegal employee compensation as described herein is unlawful and creates an entitlement to
19 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
20 damages owed, including interest thereon, liquidated damages, penalties, attorneys' fees, and
21 costs of suit according to the mandate of California Labor Code §§ 1194, 1197 and 1197.1.

22 34. Plaintiff is informed and believes and based thereon alleges that Defendant
23 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
24 informed and believes and based thereon alleges that Defendant's willful failure to provide all
25 wages due and owing them upon separation from employment results in a continued payment of
26 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
27 members of the Class who have separated from employment are entitled to compensation
28 pursuant to Labor Code § 203.

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226.7**

3 **(BY PLAINTIFF AND REST PERIOD MINIMUM WAGE SUB-CLASS AGAINST ALL**
4 **DEFENDANTS)**

5 35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34 as
6 though fully set forth herein.

7 36. This cause of action is brought pursuant to Labor Code § 226.7, which requires
8 employers to provide **paid** 10-minute off-duty rest breaks for every 4 hours worked, or major
9 fraction thereof. Further, pursuant to Labor Code § 226.2, the rest breaks shall be paid at a rate
10 no less than the applicable minimum wage. In the event that a rest break is not provided in
11 compliance with these laws, Defendant must pay the employee one hour of pay for each missed
12 rest break.

13 37. As a pattern and practice, Defendants paid Plaintiff and Class Members less than
14 the applicable minimum wage for rest periods. For example, the effective minimum wage
15 starting on January 1, 2019, was \$12.00. Nevertheless, the Defendant paid Plaintiff and Class
16 Members less than the minimum wage. Specifically, Plaintiff was paid \$11.00 per hour in 2019.
17 Thus, Plaintiff's paid rest breaks were also paid at this unlawful rate which is less than the
18 minimum wage. Plaintiff is informed and believes and based thereon alleges that Defendants
19 committed these violations class-wide to other employees.

20 38. Such a pattern, practice and uniform administration of corporate policy regarding
21 illegal employee compensation as described herein is unlawful and creates an entitlement to
22 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
23 damages owed, including interest thereon, penalties, and costs of suit.

24 39. Plaintiff is informed and believes and based thereon alleges that Defendant
25 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
26 informed and believes and based thereon alleges that Defendant's willful failure to provide all
27 wages due and owing them upon separation from employment results in a continued payment of
28 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other

1 members of the Class who have separated from employment are entitled to compensation
2 pursuant to Labor Code § 203.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 226**

5 **(BY PLAINTIFF AND THE WAGE STATEMENT CLASSES AGAINST ALL**
6 **DEFENDANTS)**

7 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as
8 though fully set forth herein.

9 41. Defendants failed in their affirmative obligation to provide accurate itemized
10 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
11 records in violation of Labor Code § 226 by failing as a matter of policy and practice to provide
12 accurate payroll records for Plaintiff and the Class.

13 42. Plaintiff and the Class were paid hourly. As such, the wage statements should
14 have reflected the correct applicable hourly rates, pursuant to Labor Code § 226(a). The wage
15 statements provided to Plaintiff and the Class failed to identify such information, including
16 without limitation, the correct hourly rate for regular hours at the applicable minimum wage. As
17 such, Defendant violated Labor Code § 226(a)(9). Defendant also violated Labor Code § 226(a)
18 as to Plaintiff and the Class by not providing accurate, itemized wage statements to Plaintiff and
19 Class Members, including without limitation, by not accurately reflecting the hours worked and
20 correct applicable hourly rates. Specifically, Defendant violated Labor Code § 226(a)(9) as to
21 Plaintiff and Class Members by failing to list the hourly rates and hours worked for “Ad Ot Prm
22 W1,” which appears to be a form of overtime wages. For example, on Plaintiff’s wage statement
23 dated September 27, 2019, the wage statement simply lists a lump sum of \$48.22 for “Ad Ot Prm
24 W1,” without any hours or hourly rates listed. Defendant also violated Labor Code § 226(a)(3)
25 by failing to list on the four corners of wage statements issued to Plaintiff and Class Members
26 “the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis.” Defendant only made such piece-rate information available to be printed at the
28 branch, instead of on the wage statements themselves. As such, Defendant violated Labor Code

§ 226 as to Plaintiff and commissioned/piece-rate employees.

43. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

FOURTH CAUSE OF ACTION

VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43 as though fully set forth herein.

45. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by: (a) failing to pay employees minimum wages for all hours worked; and (b) failing to pay employees at the correct minimum wage rate of pay for paid rest breaks.

46. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

47. Plaintiff seeks as an individual and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

48. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

3 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL**
4 **DEFENDANTS)**

5 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 as
6 though fully set forth herein.

7 50. Plaintiff brings this cause of action as a proxy for the State of California and in
8 this capacity, seeks penalties on behalf of all Aggrieved Employees from January 22, 2019,
9 through the present, for Defendants' violations of California Labor Code §§ 201-204, 226(a),
10 226.2, 226.7, 1194, 1197 and 1197.1, arising from the following misconduct alleged above: (a)
11 failing to pay Plaintiff and Aggrieved Employees minimum wages for all hours worked in
12 violation of Labor Code §§ 1194, 1197 and 1197.1; (b) failing to pay Plaintiff and Aggrieved
13 Employees at least the minimum wage rate for paid rest periods in violation of Labor Code §§
14 226.2 and 226.7; (c) failing to provide accurate, itemized wage statements to Plaintiff and
15 Aggrieved Employees in violation of Labor Code § 226(a); and (d) failing to pay Plaintiff and
16 Aggrieved Employees all wages owed upon separation of employment in violation of Labor
17 Code §§ 201-203.

18 51. On or about January 22, 2020, Plaintiff sent written notice to the California Labor
19 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
20 204, 226(a), 226.2, 226.7, 1194, 1197 and 1197.1, pursuant to Labor Code § 2698, *et seq.*, the
21 Private Attorneys General Act ("PAGA"). As of the date of the filing of this Complaint, the
22 LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the Labor
23 Code violations provided for in the written notice. Pursuant to Labor Code § 2699.3, Plaintiff
24 also sent written notice of Defendants' violations of Labor Code § 226(a) to Defendant DSS via
25 certified mail.

26 52. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
27 applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 226(a), 226.2,
28 226.7, 1194, 1197 and 1197.1, for the time periods described above, on behalf of himself and

1 other Aggrieved Employees.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
4 this suit is brought against Defendants, jointly and severally, as follows:

- 5 1. For an order certifying the proposed classes and subclasses;
- 6 2. For an order appointing Plaintiff as the representative of the classes and
7 subclasses as described herein;
- 8 3. For an order appointing Counsel for Plaintiff as class counsel;
- 9 4. Upon the First Cause of Action, for damages, liquidated damages and/or penalties
10 pursuant to statute as set forth in Labor Code §§ 201-203, 1194, 1197, and
11 1197.1, and for costs and attorneys' fees;
- 12 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
13 Labor Code §§ 201-203, and 226.7, and for costs;
- 14 6. Upon the Third Cause of Action, for penalties and/or damages pursuant to
15 California Labor Code § 226, and for costs and attorneys' fees;
- 16 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly
17 effected members of the general public of all funds unlawfully acquired by
18 Defendants by means of any acts or practices declared by this Court to be in
19 violation of Business and Professions Code § 17200, *et seq.*;
- 20 8. Upon the Fifth Cause of Action, for the full amount of civil penalties pursuant to
21 the PAGA, including without limitation, Labor Code §§ 226.3 and 2699, and for
22 costs and attorneys' fees;
- 23 9. On all causes of action for attorneys' fees and costs as provided by California
24 Labor Code §§ 218.5, 226, 1194, 1197, and 2699, and Code of Civil Procedure §
25 1021.5; and
- 26 10. For such other and further relief the Court may deem just and proper.

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2 DATED: March 25, 2020

DIVERSITY LAW GROUP, P.C.

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4 By: 
5 Larry W. Lee
6 Attorneys for Plaintiff, the Class, and Aggrieved
7 Employees
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On March 26, 2020, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.


Erika Mejia