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8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **MYRICA SMITH, an individual,**
11 **And KEVIN OCHONMA, an individual,**
12 **Plaintiff,**

13 **vs.**

14 **DI LOGISTICS, LLC, a California limited-**
15 **liability corporation; DI OVERNITE, LLC, a**
16 **Nevada limited liability company; DI**
17 **OVERNITE INVESTMENTS, LLC, a**
18 **California limited liability company,**
19 **Defendants.**

Case No.: 2:20-cv-03734-PSG-AGR

THIRD AMENDED CLASS, COLLECTIVE,
AND REPRESENTATIVE ACTION
COMPLAINT

1. **FAILURE TO PAY MINIMUM WAGE**
2. **FAILURE TO PAY OVERTIME**
3. **FAILURE TO PAY WAGES**
4. **FAILURE TO PROVIDE MEAL PERIODS**
5. **FAILURE TO PROVIDE REST PERIODS**
6. **FAILURE TO PROPERLY PAY SICK LEAVE**
7. **FAILURE TO REIMBURSE FOR ALL BUSINESS EXPENSES**
8. **FAILURE TO PAY ALL WAGES DUE AND OWING AT END OF EMPLOYMENT**
9. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
10. **UNLAWFUL BUSINESS PRACTICES**
11. **PRIVATE ATTORNEYS GENERAL ACT**

25 Plaintiffs Myrica Smith and Kevin Ochonma bring this class action against DI Logistics, LLC,
26 DI Overnite, LLC, and DI Overnite Investments, LLC for violations of the California Labor Code, Fair
27 Labor Standards Act, and the Business and Professions Code.

28 **PARTIES**

1 1. Myrica Smith (“Smith”) is and at all times relevant herein was employed in Stanislaus
2 County, California, and was an “employee” as defined by the California Labor Code (“Labor Code”),
3 the Fair Labor Standards Act, and the applicable California Industrial Wage Commission (“IWC”)
4 Order(s).

5 2. Kevin Ochonma (“Ochonma”) is and at all times relevant herein was employed in
6 Stanislaus County, California, and was an “employee” as defined by the California Labor Code (“Labor
7 Code”) and the applicable California Industrial Wage Commission (“IWC”) Order(s).

8 3. DI Logistics, LLC (“Logistics”) is a California limited-liability company with its
9 principal place of business located at 14043 Stage Road, Santa Fe Springs, California and which does
10 business in California and throughout the United States.

11 4. At all times relevant herein, Logistics has been an “employer” and employed Plaintiffs
12 as defined by the Labor Code, the Fair Labor Standards Act, and the applicable IWC Order(s).

13 5. DI Overnite, LLC (“Overnite”) is a limited-liability company organized and existing
14 under the laws of the state of Nevada, with its principal place of business located at 12612 Alondra
15 Blvd. Cerritos, California and which does business in California and throughout the United States.

16 6. At all times relevant herein, Overnite has been an “employer” and employed Plaintiffs as
17 defined by the Labor Code, the Fair Labor Standards Act, and the applicable IWC Order(s).

18 7. DI Overnite Investments, LLC (“Investments”) is a limited-liability company organized
19 and existing under the laws of the state of California, with its principal place of business located at
20 12612 Alondra Blvd. Cerritos, California and which does business in California and throughout the
21 United States.

22 8. At all times relevant herein, Investments has been an “employer” and employed
23 Plaintiffs as defined by the Labor Code, the Fair Labor Standards Act, and the applicable IWC
24 Order(s).

25 9. Smith and Ochonma are collectively referred to as Plaintiffs.

26 10. Logistics, Overnite, and Investments are collectively referred to as Defendants.

27 11. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants
28 is responsible in some manner for the occurrences herein alleged and that Plaintiffs’ injuries and

1 damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each
2 Defendant was acting within the course and scope of said agency and/or employment, with the
3 knowledge and/or consent of said co-Defendant.

4 12. Plaintiffs are informed and believe and thereupon allege that at all times mentioned
5 herein, each of the Defendants was acting as the agent, servant, employee, partner and/or joint venturer
6 of and was acting in concert with each of the remaining Defendants in doing the things herein alleged,
7 while at all times acting within the course and scope of such agency, service, employment partnership,
8 joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting
9 both individually and within the course and scope of such agency and/or employment, with the
10 knowledge and/or consent of the remaining Defendants.

11 JURISDICTION AND VENUE

12 13. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as it includes claims arising
13 under the laws of the United States. The Court also has supplemental jurisdiction under the state law
14 claims pursuant to 28 U.S.C. § 1367 because those claims are related such that they form part of the
15 same case and controversy under Article III of the United States Constitution. Venue is proper in this
16 court pursuant to 28 U.S.C. § 1391(b) because Logistics, Overnite, and Investments all have their
17 principal places of business within in Los Angeles County, California, which is within this Central
18 District. Plaintiffs hereby demand a jury trial.

19 GENERAL ALLEGATIONS

20 14. Smith was hired by Logistics in or around August 2018. Throughout her employment,
21 Smith typically reported to either Logistics' Manteca or Dublin facility to start her day. Logistics was
22 the entity identified on all of Smith's wage statements.

23 15. Throughout her employment, Smith was a non-exempt employee. As such, she was
24 entitled to be paid for every hour worked and overtime as appropriate. See **Exhibit 1**.¹

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26
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28 ¹ **Exhibits 1-6** are incorporated by this reference as though fully set forth herein. Some Exhibits
have been reduced and/or redacted due to their size and content.

1 16. Ochonma was hired by Logistics in or around February 2018. Throughout his
2 employment, Ochonma typically reported to either Logistics' Manteca or Dublin facility to start his
3 day. Logistics was the entity identified on all of Ochonma's wage statements as well.

4 17. At or near the time he was hired, however, Ochonma was issued a Notice to Employer
5 as required by California Labor Code section 2810.5. That notice specifically and expressly identified
6 "DI Overnite" as the "legal name of hiring employee."

7 18. In December 2018, Ochonma was asked to sign an Employee Handbook
8 Acknowledgment that specifically identifies Ochonma as "an employee of Deliver-It Overnite, LLC."
9 There is no registered LLC with the name "Deliver-It Overnite, LLC", but Plaintiffs are informed and
10 believe that "DI" is an abbreviation for "Deliver-It" and thus DI Overnite, LLC is simply another way
11 of saying Deliver-It Overnite, LLC.

12 19. Ochonma was also asked to sign an Employee Handbook Acknowledgment in April
13 2019 that identified him as an employee of Logistics. He was further given a number of policy
14 documents, including attendance policies, uniform and appearance policies, and various other policies
15 identifying the name Logistics.

16 20. Plaintiffs are informed and believe that Overnite is the parent company of Logistics and
17 that Logistics is Overnite's wholly owned subsidiary. Overnite facilitates the payment of wages to all
18 of its and Logistics' employees.

19 21. In an around April 2020 Investments applied for, and was granted, a Paycheck
20 Protection Program ("PPP") loan that was used for the sole purpose of paying the salary and wages of
21 the employees of Logistics and Overnite.

22 22. Plaintiffs are informed and believe Investments held itself out as the "employer" of
23 Plaintiffs and other Class Members in order to obtain the PPP loan.

24 23. Plaintiffs are informed and believe that Logistics, Overnite, and Investments were joint
25 employers of them and other Class Members at all relevant times.

26 24. In addition, Overnite, Investments, and Logistics all have common management, namely
27 Michael Martin and Philip Nader, and are believed to operate from the same physical facilities
28

1 25. Throughout his employment, Ochonma was a non-exempt employee. As such, he was
2 entitled to be paid for every hour worked and overtime as appropriate.

3 26. Throughout their employment, however, Plaintiffs and Defendants' other non-exempt
4 California employees were not properly paid for all hours worked, including overtime.

5 27. Specifically, because of issues with Defendants' timekeeping practices, Plaintiffs and
6 Defendants' other non-exempt California employees were routinely credited for less hours than they
7 actually worked.

8 28. Additionally, when required to travel to different facilities, Plaintiffs and Defendants'
9 other non-exempt California employees were often not paid for all of the time spent traveling between
10 those facilities.

11 29. Smith and Defendants' other non-exempt California employees were also eligible for
12 and at times received non-discretionary bonuses, commissions, and other items of compensation. See
13 **Exhibits 1 and 2.**

14 30. Pursuant to Defendants' standard employment agreement, Smith and Defendants' other
15 non-exempt California employees were entitled to earn, among other things, "per-stop" pay. **Exhibit 1.**

16 31. Nonetheless, Smith and Defendants' other non-exempt California employees did not
17 receive per-stop pay. **Exhibit 2.**

18 32. The non-discretionary bonuses, commissions, and other items of compensation to which
19 Smith and Defendants' other non-exempt California employees were entitled included, but were not
20 limited to, additional pay for certain stops and deliveries made and "STEM" payments.

21 33. Defendants failed to include these non-discretionary bonuses, commissions, and other
22 items of compensation when calculating Smith and its other non-exempt California employees' regular
23 rate of pay for purposes of overtime. See **Exhibit 2.**

24 34. Plaintiffs and Defendants' other non-exempt California employees were also entitled for
25 reimbursement of business expenses they incurred performing their job duties. These reimbursements
26 included, but were not limited to mileage, tolls, and insurance. See **Exhibit 3.**

27 35. Notwithstanding the foregoing, Defendants failed and refused to reimburse Plaintiffs
28 and its other non-exempt California employees for all of their business expenses.

1 36. For instance, at times Defendants deducted Smith and its other non-exempt California
2 employees' non-discretionary bonuses, commissions, and other items of compensation from their
3 reimbursable expenses.

4 37. Defendants also failed and refused to reimburse Plaintiffs and its other non-exempt
5 California employees for all of their mileage when they had to travel to different facilities, even though
6 they were required to use their personal vehicles.

7 38. Further, those mileage reimbursements paid by Defendants were paid at rates which
8 were insufficient to adequately compensate Plaintiffs and its other non-exempt California employees
9 for the expenses they actually incurred. See **Exhibits 3 and 4.**

10 39. Plaintiffs and Defendants' other non-exempt California employees were also not
11 consistently authorized or permitted to take meal and rest breaks as required by California law.

12 40. Defendants required Plaintiffs and its other non-exempt California employees to work
13 through meal and rest breaks due to understaffing and work demands.

14 41. On the occasions that Plaintiffs and Defendants' other non-exempt California employees
15 were able to take their meal breaks, they routinely occurred after 5 hours of work.

16 42. Further, Defendants frequently failed to relieve Plaintiffs and its other non-exempt
17 California employees of employer control during their meal and rest breaks.

18 43. When Smith and Defendants' other non-exempt California employees were not provided
19 compliant meal and rest breaks, Defendants did not pay premiums as required by California law.
20 Specifically, Defendants either (a) failed to pay the premiums in their entirety or (b) paid the
21 premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without
22 accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including
23 shift premiums and differentials).

24 44. Defendants also failed and refused to allow Plaintiffs and its other non-exempt
25 California employees to use their sick pay.

26 45. Further, Defendants failed to incorporate non-discretionary bonuses, commissions, and
27 other items of compensation into its non-exempt California employees' regular rate of pay when paying
28 sick pay.

1 46. Because of the violations set forth above, and as evidenced in the sample of Plaintiffs’
 2 wage statement attached hereto as **Exhibits 2-4, 6** the wage statements furnished by Defendants to its
 3 non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to
 4 accurately show:

- 5 a. The gross wages earned, in violation of section 226(a)(1);
- 6 b. The total hours worked, in violation of section 226(a)(2)
- 7 c. The net wages earned, in violation of section 226(a)(5); and
- 8 d. All applicable hourly rates in effect during the pay period and the corresponding
 number of hours worked at each hourly rate in violation of section 226(a)(9).

9 47. Separate and independent of the foregoing allegations, the wage statements that
 10 Defendants furnishes to their California employees violate California Labor Code section 226(a)(8)
 11 insofar as they fail to accurately show the name and address of the entity that is the employer. See
 12 **Exhibits 2 and 5.**

13 48. Because Defendants fails to pay its non-exempt California employees for all the hours
 14 they worked, overtime at the correct rate of pay, sick pay at the correct rate of pay, and because they are
 15 not provided compliant meal and rest breaks, or the premiums associated with missing the same, they
 16 are not timely paid all wages due and owing to them during each pay period and at the end of their
 17 employment.

18 49. Smith and Defendants other former non-exempt California employees have not been
 19 paid all such wages due and owing to the when their employment with Defendants ended.

20 50. From at least four years prior to the filing of this action, Defendants has adopted and
 21 employed unfair business practices. These unfair business practices include, but are not limited to,
 22 failing to properly pay all minimum and overtime wages due, failing to provide compliant meal and rest
 23 breaks, failing to properly compensate employees for statutorily required sick leave, and failing to
 24 reimburse employees for all business expresses.

25 **CLASS ACTION ALLEGATIONS**

26 51. Plaintiffs seek to maintain this action as a class action as to the First through Tenth
 27 Causes of Action. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,

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1 as a class action pursuant to Code of Civil Procedure 382. The putative classes which Plaintiffs seek to
2 represent consist of the following:

- 3 a. All current and former non-exempt California employees of Defendants who worked
4 from April 23, 2016 through the date of trial (the “Minimum Wage Class”);
- 5 b. All current and former non-exempt California employees of Defendants who worked
6 overtime during one or more pay periods from April 23, 2016 through the date of
7 trial (the “Overtime Class”);
- 8 c. All current and former non-exempt California employees of Defendants who worked
9 from April 23, 2016 through the date of trial (the “Unpaid Wage Class”);
- 10 d. All current and former non-exempt California employees of Defendants who worked
11 one or more shift of longer than five hours from April 23, 2016 through the date of
12 trial (the “Meal Break Class”);
- 13 e. All current and former non-exempt California employees of Defendants who worked
14 one or more shift of longer than three and one-half hours from April 23, 2016
15 through the date of trial (the “Rest Break Class”);
- 16 f. All current and former non-exempt California employees of Defendants who (a)
17 were prevented from using their sick leave or (b) received commissions, non-
18 discretionary bonuses and/or other items of compensation and used sick leave during
19 at least one pay period from April 23, 2016 through the date of trial (the “Sick Pay
20 Class”);
- 21 g. All current and former non-exempt California employees of Defendants who
22 incurred business expenses in the performance of their duties from April 23, 2016
23 through the date of trial (“Business Expense Class”);
- 24 h. All current and former non-exempt California employees of Defendants who worked
25 from June 17, 2019 through the date of trial (the “Wage Statement Class”);
- 26 i. All current and former California employees of Defendants who worked from June
27 17, 2019 through the date of trial (the “226(a)(8) Class”); and

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1 j. All members of the Minimum Wage Class, Overtime Class, Unpaid Wage Class,
2 Meal Break Class, Rest Break Class, and Sick Pay Class whose employment ended
3 April 23, 2017 through the date of trial (the “Waiting Time Penalty Class”)

4 The Minimum Wage Class, Overtime Class, Unpaid Wage Class, Meal Break Class, Rest
5 Break Class, Business Expense Class, Sick Pay Class, Wage Statement Class, 226(a)(8) Class,
6 and Waiting Time Penalty Class are collectively referred to as the “Class”.

7 52. The class of persons is so numerous that joinder of all members is impracticable, and the
8 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
9 informed and believes, and based thereon alleges, that Defendants employ more than 600 employees
10 who satisfy the class definition. Although the exact number and identity of class members is not
11 presently known, they can be identified in Defendants’ records through coordinated discovery pursuant
12 to this class action.

13 53. This action may be maintained as a class because the questions of law and fact which are
14 common to class members clearly predominate over any questions affecting only individual members
15 and because a class action is superior to other available methods for adjudicating the controversy.

16 54. There are numerous common questions of law and fact arising out of Defendants’
17 conduct. This class action focuses on Defendants’: (a) systematic failure to properly pay employees for
18 all hours worked, including overtime; (b) systemic failure to authorize and permit meal and rest breaks
19 or to pay the requisite premiums in lieu of providing said breaks; (c) systematic failure to properly pay
20 sick pay; (d) systematic failure to reimburse employees for all business expenses; (e) systematic failure
21 to provide accurate itemized wage statements, and (f) systematic failure to pay all wages due and owing
22 at the end of employment.

23 55. Furthermore, common questions of fact and law predominate over any questions
24 affecting only individual members of the class. The predominating common or class-wide questions of
25 law and fact include the following:

26 a. Whether Defendants failed to pay all their non-exempt California employees for
27 all hours worked;

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- b. Whether Defendants failed to pay their non-exempt California employees for all overtime worked;
- c. Whether Defendants failed to properly calculate and pay their non-exempt California employees' overtime pay;
- d. Whether Defendants failed to properly calculate and pay their non-exempt California employees' sick pay;
- e. Whether Defendants failed to provide compliant meal and breaks to their non-exempt California employees;
- f. Whether Defendants failed to pay all earned wages to their non-exempt California employees;
- g. Whether Defendants failed to pay premiums to their non-exempt California employees as a result of non-compliant meal and rest breaks;
- h. Whether Defendants failed to reimburse their non-exempt California employees for business expenses incurred in the performance of their duties;
- i. Whether the Defendants failed to furnish accurate itemized wage statements;
- j. Whether Defendants failed to pay all wages due and owing at end of their non-exempt California employees' employment;
- k. Whether the alleged violations constitute unfair business practices;
- l. Whether the Class is entitled to injunctive relief; and
- m. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

56. Plaintiffs' claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Plaintiffs' claims are typical of those of the Class because Defendants subjected Plaintiffs and each member of the Class to the same violations alleged herein.

57. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

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1 58. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and
2 have retained attorneys with extensive experience in litigation, including class and representative
3 actions. Plaintiffs have no interests that conflict with those of the Class. Plaintiffs are able to fairly and
4 adequately protect the interests of all members of the class because it is in her best interest to prosecute
5 the claims alleged herein in order to obtain the full compensation due herself and the other class
6 members.

7 59. A class action is superior to any other method available for fairly and efficiently
8 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
9 litigating the claims of individual class members would be unnecessarily costly and burdensome and
10 would deter individual claims, 3) litigating the claims of individual class members would create a risk
11 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
12 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
13 bring individual claims, 5) class members would be discouraged from pursuing individual claims
14 because the damages available to them are relatively small, and 6) public policy encourages the use of
15 the class actions to enforce employment laws and protect individuals who, by virtue of their
16 subordinate position, are particularly vulnerable.

17 60. Judicial economy will be served by maintenance of this lawsuit as a class action. To
18 process numerous virtually identical individual cases will significantly increase the expense on the
19 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
20 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
21 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
22 to, efficiency, economy, and uniform adjudication with consistent results.

23 61. Notice of a certified class action and any result or resolution of the litigation can be
24 provided to class members by mail, email, publication, or such other methods of notice as deemed
25 appropriate by the Court.

26 **COLLECTIVE ACTION ALLEGATIONS**

27 62. Plaintiffs seeks to maintain the second cause of action as an “opt-in” collective
28 action pursuant to 29 U.S.C. § 216(b) as to claims for overtime, liquidated damages (or,

1 alternatively, interest) and attorneys' fees under the FLSA. In addition to Plaintiffs, numerous
2 other current and former hourly, non-exempt employees of Defendants were not paid all the
3 overtime they are owed. Plaintiffs are representatives of those other current and former employees
4 and are acting on behalf of their interests as well as their own in bringing this action. These
5 similarly situated employees are known to Defendants, are readily identifiable, and may be located
6 through Defendants' records. These similarly situated employees may be readily notified of this
7 action, and allowed to opt in pursuant to 29 U.S.C. § 216(b), for purpose of collectively
8 adjudicating their claims for overtime compensation, liquidated damages (or, alternatively,
9 interest), and attorneys' fees under the FLSA.

10 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

11 63. The Private Attorney General Act ("PAGA"), as set forth at California Labor Code
12 § 2698 et seq., is and at all times relevant herein was applicable to Rodriguez's employment by
13 Defendants.

14 64. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides
15 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
16 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
17 action brought by an aggrieved employee on behalf of himself or herself and other current or
18 former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor
19 Code § 2699(a).

20 65. Pursuant to PAGA, an "aggrieved employee" is "any person who was employed by
21 the alleged violator and against whom one or more of the alleged violations was committed."
22 Labor Code § 2699(c).

23 66. Ochonma was employed by Defendants and the alleged violations were committed
24 against him during his time of employment. Ochonma is therefore an aggrieved employee as
25 defined by Labor Code § 2699(c). Other current and former employees are also aggrieved
26 employees in that one or more of the alleged violations were also committed against them during
27 their time of employment with Defendants.

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1 67. As is outlined herein, Defendants violated the Labor Code as to Ochonma and other
2 current and former employees it employed and/or employs within California. Specifically,
3 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512,
4 1182.12 et seq., 1194, 1197, 1198, 2802 and the applicable IWC Wage Orders.

5 68. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
6 that which is provided for by the by the Labor Code. When the Labor Code does not provide a
7 civil penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay
8 period and \$200 for each subsequent violation per employee per pay period.

9 69. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee
10 may recover the civil penalty on behalf of himself or herself and other current or former employees
11 against whom one or more of the alleged violations was committed. Furthermore, any employee
12 who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

13 70. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Ochonma, may
14 pursue a civil action arising under PAGA after the following requirements have been met:

- 15 a. The aggrieved employee shall give written notice by certified mail to the LWDA
16 and the employer (hereinafter "Employee's Notice") of the specific provisions
17 of California Labor Code alleged to have been violated, including the facts and
18 theories to support the alleged violations;
- 19 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
20 employer and the aggrieved employee by certified mail that it does not intend to
21 investigate the alleged violation within 60 days of the postmark date of the
22 Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does
23 not provide notice with 65 calendar days of the postmark date of the Employee's
24 Notice, the aggrieved employee may commence a civil action pursuant to
25 California Labor Code § 2699 to recover civil penalties in addition to any other
26 penalties to which the employee may be entitled.
- 27 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer
28 is given thirty-three (33) days to cure and notify the aggrieved employee by

1 certified mail that the violation has been cured. If the violation is not cured, the
2 aggrieved employee may commence a civil action pursuant to California Labor
3 Code § 2699 to recover civil penalties in addition to any other penalties to which
4 the employee may be entitled.

5 71. On June 17, 2020, Ochonma provided written notice by certified mail to DI
6 Logistics and by online filing to the LWDA of the specific provisions of the Labor Code alleged to
7 have been violated, including the facts and theories to support the alleged violations.

8 72. As of the filing of the First Amended Class, Collective, and Representative Action
9 Complaint, which was more than thirty-three (33) days after June 25, 2020, DI Logistics has not
10 furnished any notification reflecting that any of the violations alleged in the June 25, 2020
11 notification letter have been cured pursuant to California Labor Code section 2699.3, subdivision
12 (c).

13 73. As of the filing of the Second Amended Class, Collective, and Representative
14 Action Complaint, which is more 65 days after June 17, 2020, the LWDA has not responded to
15 Ochonma's notification or otherwise indicated an intention to investigate his claims. Ochonma has
16 satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to
17 recover penalties against Defendants, in addition to other remedies, for violations of California
18 Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194,
19 1197, 1198, 2802 and the applicable IWC Wage Orders.

20 **FIRST CAUSE OF ACTION**
21 **VIOLATION OF CALIFORNIA LABOR CODE § 1182.12 et seq.**
22 **(Failure to Pay Minimum Wage)**
Against Defendants

23 74. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
24 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 75. California Labor Code section 1182.12 establishes the minimum wage for California
27 employees from July 1, 2014, to present.

28 76. Labor Code Section 1194 provides, in relevant part:

1 Notwithstanding any agreement to work for a lesser wage, any employee
 2 receiving less than the legal minimum wage ... applicable to the employee
 3 is entitled to recover in a civil action the unpaid balance of the full amount
 4 of this minimum wage ... including interest thereon, reasonable attorney's
 5 fees, and costs of suit.

6 77. Labor Code section 1194.2 provides, in relevant part:

7 In any action under ... Section 1194 to recover wages because of the
 8 payment of a wage less than the minimum wage fixed by an order of the
 9 commission, an employee shall be entitled to recover liquidated damages
 10 in an amount equal to the wages unlawfully unpaid and interest thereon.

11 78. Labor Code section 1197 provides that the minimum wage for employees fixed by the
 12 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
 13 unlawful

14 79. Pursuant to California Labor Code section 1198, the maximum hours of work and
 15 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
 16 standard conditions of labor for employees and the employment of any employee for longer hours than
 17 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

18 80. During the relevant time period, Defendants intentionally and willfully failed to pay
 19 Plaintiffs and the other members of the Minimum Wage Class for every hour worked.

20 81. Wherefore, Plaintiffs and the other members of the Minimum Wage Class have been
 21 injured as set forth above and request relief as hereafter provided.

22 **SECOND CAUSE OF ACTION**
 23 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198 AND THE FAIR LABOR**
 24 **STANDARDS ACT**
 25 **(Failure to Pay Overtime)**
 26 **Against Defendants**

27 82. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
 28 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 29 allegations of this cause of action.

30 83. Pursuant to California Labor Code section 510, any work in excess of eight hours in one
 31 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on
 32 the seventh day of work in any one workweek shall be compensated at the rate of no less than one and

1 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall
2 be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
3 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate
4 of no less than twice the regular rate of pay of an employee.

5 84. Pursuant to California Labor Code section 1198, the maximum hours of work and
6 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
7 standard conditions of labor for employees and the employment of any employee for longer hours than
8 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

9 85. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq.,
10 requires time-and-a-half pay for the time an employee works over forty hours a week.

11 86. The “regular rate of pay” includes all remuneration for employment paid to the
12 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
13 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e);
14 DLSE Enforcement Policies and Interpretations Manual Section 49.

15 87. During the relevant time period, Plaintiffs and Defendants’ other non-exempt California
16 employees regularly worked overtime.

17 88. During the relevant time period, Defendants intentionally and willfully failed to pay
18 Plaintiffs and other members of the Overtime Class the proper overtime wages due to them.

19 89. During the relevant time period, Defendants intentionally and will fully failed to
20 properly calculate and pay overtime wages due to Plaintiffs and the other members of the Overtime
21 Class.

22 90. Wherefore, Plaintiffs and the other members of the other members of the Overtime Class
23 have been injured as set forth above and request relief as hereafter provided.

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THIRD CAUSE OF ACTION
LABOR CODE § 218
(Failure to Pay Wages)
Against Defendants

91. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

92. Labor Code section 218 permits an individual to bring an action to recover unpaid wages, which include any and all compensation owed for labor performed by an employee, whether that amount is calculated by time, task, piece, commission, or some other method and additionally includes bonuses, profit-sharing, and commissions. *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302.

93. As set forth above, during the relevant time period, Defendants failed to pay Plaintiffs and the members of the Unpaid Wage Class all wages earned by them, including all wages earned for all time they worked for Defendants, including earned overtime wages, all bonuses earned, all piece-rates earned (such as per-stop pay), and all sick pay owed.

94. Wherefore, Plaintiffs and the other members of the Unpaid Wage Class have been harmed and request relief as hereafter provided.

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Meal Periods)
Against Defendants

95. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

96. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

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b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

97. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

98. During the relevant time period, Plaintiffs and the other members of the Meal Break Class were not provided with compliant meal breaks, nor did they receive an additional hour of premium pay for each missed meal break.

99. Wherefore, Plaintiffs and the other members of the Meal Break Class have been injured as set forth above and request relief as hereafter provided.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Rest Periods)
Against Defendants

100. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

101. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

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- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided

102. The applicable Wage Order(s) provides that every "employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." The applicable Wage Order further provides that "[i]f an employer fails to provide an employee rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

103. During the relevant time period, Plaintiffs and other members of the Rest Break Class were not provided with compliant rest breaks, nor did they receive an additional hour of premium pay for each missed rest break

104. Wherefore, Plaintiffs and the other members of the Rest Break Class have been injured as set forth above and request relief as hereafter provided.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 218, 233, 246 et seq.
(Failure to Properly Pay Sick Leave)
Against Defendants

105. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

106. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

1 107. The “regular rate of pay” includes all remuneration for employment paid to the
2 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift
3 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29
4 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

5 108. During the relevant time period, Defendants failed to include commissions,
6 incentive payments, non-discretionary bonuses, and/or other items of compensation when
7 determining the “regular rate of pay” for Smith and their other non-exempt California employees
8 for purposes of sick time pay.

9 109. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
10 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

11 110. Labor Code section 233 provides that “any employer who provides sick leave for
12 employees shall permit an employee to use in any calendar year the employee's accrued and
13 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
14 during six months at the employee's then current rate of entitlement, for the reasons specified in
15 subdivision (a) of Section 246.5.”

16 111. During the relevant time period, Defendants intentionally and willfully failed and
17 refused to allow Plaintiffs and the other members of the Sick Pay Class to use their sick pay.

18 112. During the relevant time period, Defendants also intentionally and willfully failed to
19 pay Smith and the other members of the Sick Pay Class their sick pay at the rate of pay required by
20 law. Accordingly, Smith and the other members of the Sick Pay Class did not receive the full
21 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
22 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

23 113. Any employer who violates Labor Code section 233 is liable to employees for the
24 greater of one days’ pay or actual damages, reasonable equitable relief, and reasonable attorneys’
25 fees and costs. Labor Code §233(d), (e).

26 114. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
27 wages.

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1 115. Wherefore, Smith and the other members of the Sick Pay Class have been injured as set
2 forth above and request relief as hereafter provided.

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE § 2802**
5 **(Failure to Reimburse Business Expenses)**
6 **Against Defendants**

7 116. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 117. Pursuant to California Labor Code § 2802(a), “an employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
12 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
13 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
14 unlawful.”

15 118. As set forth above, Defendants intentionally and willfully failed to reimburse Plaintiffs
16 and the other members of the Business Expense Class for all necessary expenditures or losses incurred
17 in the direct consequence of the discharge of their job duties in violation of Labor Code section 2802.

18 119. Wherefore, Plaintiffs and the other members of the Business Expense Class have been
19 injured as set forth above and request relief as hereafter provided.

20 **EIGHTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE §§ 201, ET SEQ.**
22 **(Failure to Pay All Wages Due and Owing at End of Employment)**
23 **Against Defendants**

24 120. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
25 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
26 allegations of this cause of action.

27 121. California Labor Code section 201 provides that if an employer discharges an employee,
28 the wages earned and unpaid at the time of discharge are due and payable immediately.

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122. California Labor Code section 202 requires an employer to pay an employee all earned wages within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting if the employee has given 72 hours previous notice of his or her intention to quit.

123. As set forth above, Smith and the other members of the Waiting Time Penalty Class Class were not timely paid all of their earned but unpaid wages, including minimum wage, overtime, meal and rest break premiums and improperly compensated sick pay, when their employment with Defendants ended

124. Wherefore, Smith and the other members of the Waiting Time Penalty Class have been injured as set forth above and request relief as hereafter provided.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants

125. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

126. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

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1 127. An employee suffering injury as a result of the knowing and intentional failure by an
 2 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
 3 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
 4 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
 5 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
 6 fees. Labor Code § 226(e)(1).

7 128. An employee is deemed to suffer injury if the employer fails to provide a wage
 8 statement or if the employer fails to provide accurate and complete information as required by any one
 9 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
 10 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
 11 during the pay period or any of the other information required to be provided pursuant to Labor Code
 12 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
 13 and address of the employer and iv) the name of the employee and the last four digits of his or her
 14 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
 15 "Promptly and easily determine" means a reasonable person would be able to readily ascertain the
 16 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

17 129. As set forth above, Defendants intentionally and willfully failed to furnish accurate
 18 itemized wage statements which complied with Labor Code section 226.

19 130. Wherefore, Ochonma and the other members of the Waiting Time Penalty Class have
 20 been injured as set forth above and request relief as hereafter provided.

21 **TENTH CAUSE OF ACTION**
 22 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.**
 23 **(Unfair Business Practices)**
 Against Defendants

24 131. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
 25 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 26 allegations of this cause of action.

27 132. The statutory violations, as alleged above, are unfair business practices within the
 28 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and

1 include, but are not limited to failing to properly pay minimum and overtime wages, failing to pay meal
 2 and rest break premiums, failing to properly compensate employees for statutorily required sick leave,
 3 and failing to reimburse employees for business expenses incurred while performing their duties.

4 133. Wherefore, Plaintiffs and the other members of the Class have been damaged as set forth
 5 above and request relief as hereafter provided.

6 **ELEVENTH CAUSE OF ACTION**
 7 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**
 8 **(“PAGA”)**
 9 **Against Defendants**

10 134. Ochonma hereby reallege and incorporate by reference each and every allegation set
 11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 12 allegations of this cause of action.

13 135. Ochonma is an “aggrieved employee” under the PAGA as he was employed by DI
 14 Logistics during the applicable statutory period and suffered one or more of the Labor Code violations
 15 outlined herein. Other current and former employees are also aggrieved employees in that one or more
 16 of the alleged violations were also committed against them during their time of employment with DI
 17 Logistics.

18 136. Ochonma seeks to recover, on behalf of and as a proxy for the Labor and Workforce
 19 Development Agency (the “LWDA”), the civil penalties provided by the PAGA through a
 20 representative action permitted by the PAGA and *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969. Class
 21 certification of the PAGA claims is not required.

22 137. Ochonma seeks to enforce the California Labor Code and related regulations and
 23 Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of
 24 violations which include, but are not limited to, all of the following: Labor Code 201, 202, 203, 204,
 25 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194, 1197, 1198, 2802 and the applicable IWC Wage
 26 Orders.

27 138. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
 28 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one

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1 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
 2 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

3 139. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
 4 recover the civil penalty on behalf of himself or herself and other current or former employees against
 5 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
 6 in any such action shall be entitled to an award of reasonable attorney's fees and costs

7 140. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set
 8 forth above, Ochonma seeks recovery of civil penalties, attorneys' fees and costs pursuant to the
 9 PAGA as set forth below

10 141. Wherefore, Ochonma and the other members of the Class have been damaged as set
 11 forth above and request relief as hereafter provided.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs prays judgment against Defendants as follows:

14 **As to the First through Tenth Causes of Action:**

- 15 1. That this Court certify the Class;
- 16 2. That this Court appoint Plaintiffs as representatives of the Class;
- 17 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 18 4. That this Court award actual, compensatory, special, and general damages as well as
 19 restitutionary relief to Plaintiff and the members of the Class;
- 20 5. That this Court award injunctive relief, including that available under 29 U.S.C. § 217,
 21 Labor Code sections 226(h) and 248.5(e), as well as Business and Professions Code
 22 Section 17203;
- 23 6. That this Court award penalties and liquidated damages including, but not limited to,
 24 those available under Labor Code sections 203, 226, 226.7, 512 and 1194.2, as well as
 25 29 U.S.C. § 216;
- 26 7. That this Court award statutory attorneys' fees and costs, including those available under
 27 29 U.S.C. § 216(b), Labor Code sections 218.5, 226(e)(1), 248.5(e), 1194, and 2802, 29
 28 U.S.C. § 216, as well as Code of Civil Procedure section 1021.5;

1 8. That this Court award prejudgment and post-judgment interest according to any
2 applicable provision of law or as otherwise permitted by law; and

3 9. That this Court award such other and further relief as the court deems just and proper.

4 **As to the Eleventh Cause of Action:**

5 1. For civil penalties, including but not limited to those available under Labor Code §§
6 226.3, 256, 558 and 2699(f);

7 2. For statutory attorneys' fees and costs, including but not limited to those available
8 under Labor Code § 2699(g);

9 3. For prejudgment and post-judgment interest according to any applicable provision of
10 law or as otherwise permitted by law, including those available under Civil Code §§
11 3287(a) and 3289(b), and Labor Code § 218.6; and

12 4. For such other and further relief as the court deems just and proper.

13
14 **DATED:** January 4, 2022

MAYALL HURLEY P.C.

15
16 By /s / Robert J. Wasserman
17 ROBERT J. WASSERMAN
18 JENNY D. BAYSINGER
19 Attorneys for Plaintiffs and the Putative Class
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EXHIBIT 1



Date: 2/6/2019

Dear Myrica Smith

On behalf of Deliver-It Overnite, I am pleased to offer you a position as a distribution route driver for CEN525. Which covers the greater Tracy area. As we discussed, in this position your starting compensation will be \$2.25/stop. The route also includes a \$15.00 STEM per day for as long as you are in this specific area. This position is considered a non-exempt position for purposes of federal wage-hour law, which means that you will be eligible for overtime time pay for hours actually worked in excess of 40 hour in a week, more than 8 hours a day, and the first 8 hours on the seventh (7th) consecutive day worked.

In addition to your compensation, you may be eligible to receive the benefits which are offered to eligible employees. Please reference company handbook for further details. We also have enclosed a copy of the employee handbook, which describes the Company's policies and procedures that will govern certain aspects of your employment. Please be sure to review the handbook and sign and return the acknowledgement of receipt page at the end of the handbook.

This offer of employment, if not previously accepted by you, will expire seven days from the date of this letter, although additional time for consideration of the offer can be made available if you find it necessary. If you wish to accept the offer, please sign in the place provided below and return it to me within the prescribed time.

We greatly look forward to having you join our Company and become a member of our team. However, we recognize that you retain the option, as does the Company, of ending your employment with the Company at any time, with or without notice and with or without cause. As such, your employment with the Company is at-will and neither this letter nor any other oral or written representations may be considered a contract for any specific period of time.

Should you have any questions about starting with the Company, please do not hesitate to contact me or a representative from the Human Resources Department.

The provisions of this offer of employment have been read, are understood, and the offer is herewith accepted. I understand that my employment is contingent upon a clear background check, drug test, and execution of an employment agreement.

Sincerely,

Shannon Butler

I agree to the terms of the employment set forth above.

Signature

Date

A handwritten signature in dark ink, appearing to read 'Myrica Smith', is written over a horizontal line. The signature is fluid and cursive.

EXHIBIT 2

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
U04915	Myrica Smith	[REDACTED]	2/1/19 - 2/15/19	2/25/19	10903	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	13.00	47.62	619.06	Gross	622.96	3,595.55
Overtime	19.50	0.20	3.90	MileageReim	535.68	1,663.68
Doubletime	26.00			Fed_Income	-11.46	-127.78
Bonus	1.00			Soc_Sec	-38.62	-222.93
				MEDICARE	-9.03	-52.14
				St_Dis_Ins	-6.23	-35.96
				SICK_Accrue		48.00
				SICK_Remain		48.00
1270						
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
2	47.82	622.96	3,595.55	\$1,093.30	10903	

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
U04915	Myrica Smith	[REDACTED]	2/16/19 - 2/28/19	3/8/19	11096	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	12.00	39.37	472.44	Gross	472.44	4,067.99
Overtime	18.00			MileageReim	503.04	2,166.72
Doubletime	24.00			Fed_Income		-127.78
Bonus	1.00			Soc_Sec	-29.29	-252.22
				MEDICARE	-6.85	-58.99
				St_Dis_Ins	-4.72	-40.68
				SICK_Accrue		48.00
				SICK_Remain		48.00
1270						
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
2	39.37	472.44	4,067.99	\$934.62	11096	

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
U04915	Myrica Smith	[REDACTED]	3/1/19 - 3/15/19	3/14/19	11375	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	13.00	16.43	213.59	Gross	213.59	1,257.62
Overtime	19.50			MileageReim	264.16	264.16
Doubletime	26.00			Fed_Income		-56.20
				Soc_Sec	-13.24	-77.97
				MEDICARE	-3.10	-18.24
				St_Dis_Ins	-2.14	-12.58
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
2	16.43	213.59	1,257.62	\$459.27	11375	

EXHIBIT 3



Employee Driver Agreement

Vehicle Requirements

DI Logistics dba Deliver-It (hereinafter called the Company) is in the package delivery business. As an employee driver you are required to provide a dependable and reliable vehicle to utilize for deliveries.

Your vehicle registration must be current and in good standing with the Department of Motor Vehicles including state smog emissions certification now and in the future. Vehicles with temporary non-operational registration may not be used to perform your job duties. Vehicles that have been issued a Salvage or Nonrepairable Vehicle Certificate as ownership documents are not allowed.

All vehicles utilized during business must be well maintained and in safe operating condition. No motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order. You are responsible for regular and scheduled service as well as any repairs resulting from malfunction and/or accident damage. Each driver is advised to set up a preventative maintenance program and inspect your vehicle before every trip. All vehicles will be maintained in accordance with the U.S. Department of Transportation Federal Motor Carrier Safety Administration Part 396.

No motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order:

- a. Brakes
- b. Steering mechanism
- c. Lighting devices and reflectors
- d. Tires
- e. Horn
- f. Windshield wipers
- g. Rear view mirrors
- h. Hoses
- i. Security of load including windows, doors, hatches, trunks, and/or storage boxes.
- j. Fluid levels such as oil, transmission, battery, alternator, brakes, and power.

Tires must be inspected regularly and maintained in compliance with the inflation guidelines. Tread wear must be monitored closely and excessively worn tires must be replaced promptly. All vehicle lights and signaling devices must be operational. Proper restraint systems such as safety belts and air bags and locking mechanisms must be operational and used properly. The vehicle must remain clean and orderly inside and out while performing your route.

Fueling your vehicle sufficiently to perform your route is your responsibility. The Company may provide some assistance through the WEX Fuel Program. Please see the WEX Fuel Program Policy or speak to your supervisor for more information.

Insurance Requirements

Each driver must maintain adequate insurance acceptable to the Company. This insurance must have a minimum liability limit of \$300,000 single limit or \$100,000/300,000/50,000 split limits. All drivers must obtain their insurance from an "A" rated insurance company. Proof of insurance must be presented at time of hire and subsequently at renewal time and/or upon request of verification. Failure to obtain or maintain adequate insurance with the proper carrier will result in disciplinary action up to and including termination.

License Requirements

Employee drivers operating their personal vehicle are required to maintain a valid, unrestricted and current Class C driver's license in good standing with the Department of Motor Vehicles. Those that operate Company vehicles may be required to have a Class B license.

Motor vehicle reports will be pulled periodically to verify the status of your license. Drivers with 3 or more points on their record may be subject to disciplinary action. A DUI or DWI conviction and subsequent license suspension or revocation will result in immediate termination. A single at fault accident resulting in severe property damage, bodily injury or death is enough for grounds for dismissal.

Safety and Security

The Company places the utmost importance on the safety and security of our work force and our clients' shipments. We encourage safe habits and defensive driving tactics. No delivery is so important as to jeopardize safety and/or security. It is expected that employees will utilize smart driving techniques such as keeping abreast of the traffic situation and taking alternate, less busy or congested routes to reach destinations. It is the intent of the Company to ensure that the driver's vehicle is operated in a manner to provide proper service to our customers without imposing a threat or loss to our clients, employees or general public.

The Company reviews safety and security activities and conducts required education at a minimum, annually.

Sound business practice requires the elimination of accidents or theft causing injury or loss to persons or property or causing damage or loss of equipment or cargo. These activities should concern all members of our organization. Following are the Company's requirements.

1. Wear safety belts at all times.
2. Observe and obey all local traffic laws.
3. Locate your next delivery address and enter into mapping systems before leaving the previous stop.
4. Physically inspect your auto regularly as outlined above in the Vehicle Requirements section.
5. Do not talk on the phone, text, use social media or search the internet while driving. Pull to a complete stop in a safe place before answering or placing a call or text.
6. Place cargo in safe and secure compartments in your vehicle and comply with all security requirements as outlined in the Theft and Security Policy.
7. Only lift what you are physically able to handle. Ask for assistance when needed.
8. Obey parking and other traffic laws. Do not park in restricted areas, block driveways or double park at any time.
9. You must secure and lock your vehicle while it is unattended. Never leave your vehicle running while unattended.
10. No unauthorized persons may ride in your vehicle during business hours.
11. You may not pick up, carry or deliver packages, people or other items while performing your route for DI Logistics. Performing work for other package delivery or other transportation companies simultaneously is considered a conflict of interest and is grounds for dismissal.

Duties and Responsibilities

Drivers are required to execute pick up and deliveries in accordance with the Company's policies and procedures. Providing quality service to our customers is a top priority. You are required to maintain the highest level of professionalism and courtesy on the road and during face to face interaction with the public. You are expected to behave respectfully and courteously when engaging with internal and external customers. You will be trained on DI Logistics standard operating procedures or SOPs and best practices and are expected to follow them.

On-time delivery percentage goals will be established by the organization and communicated to you by your supervisor. You will be required to consistently meet and/or exceed the on-time delivery percentage goals while complying with the shippers' delivery instructions. All shipments must be scanned to route as out for delivery each day. You are expected to attempt each shipment and pick up assigned to your route. Do not leave packages behind or miss a pick up without discussing it with your dispatcher or supervisor.

Proof of Delivery photos (VPODs) must be obtained for all shipments. You must collect the recipient's signature on each package for signature required shipments. Then enter the

recipient's full name and take a picture of the shipment and transmit. For okay to leave or OTL shipments, you must follow the directions provided such as leave under the mat or in the mail slot. The package must be visible in the VPOD and the picture must clearly demonstrate that the shipment was left at the correct address. The quality of your VPODs will be measured regularly and feedback provided. It is your responsibility to maintain the proper VPOD quality.

All shipments scanned out for delivery must be attempted properly each day. There may be some shipments that you are unable to execute delivery due to an address, access or signature requirement issue. When this happens, you must scan and enter the proper reason for the service problem and report the attempt to your dispatcher. If your dispatcher can resolve the issue you may be required to re-attempt the same day. All attempted shipments must be returned to the hub at the end of your route.

Additional duties may be assigned by management. Management reserves the right to change routes as detailed the Route Assignment Policy. Drivers are required to cooperate with route changes in support of the business needs. Failure to perform the job duties and responsibilities as outlined above will result in disciplinary action up to and including termination.

Time Off and Reliability

Attendance requirements are outlined in the Attendance Policy. An unreasonable amount of unscheduled days off will not be tolerated. All scheduled requests for time off must be submitted in compliance with the policy and are subject to approval. The Company will make every effort honor time off requests however our ability to approve will be determined by customer need and staffing levels. Poor attendance and/or a pattern of unreliability are sufficient reasons for dismissal.

Uniform and Appearance

Drivers sell business every time they walk into someone's door. Clean, well groomed, and professional appearance is required. Uniform requirements are detailed in the Uniform and Appearance Policy. Compliance with the policy is a requirement of the job and failure meet the requirements will result in disciplinary action up to and including termination.

Payroll and Mileage Reimbursement

Drivers will be compensated bi-monthly. You will be paid for deliveries made between the 1st through the 15th of the month on the 25th and for the 16th through the last day of the month on the 10th of the following month. If a pay date falls on a weekend checks will be distributed on the previous Friday. For example, 1/1/19-1/15/19 will be paid on 1/25/19 and 1/16/19-1/31/19 will be paid 2/8/18.

Mileage reimbursement may be paid as part of your distribution route pay or in addition to an hourly rate for rover drivers only. Details are outlined in your Employment Offer Letter and the

Driver Pay Plan Worksheet. You must record your mileage daily. Rover drivers must submit mileage reports to their supervisor for approval at the end of each pay period. Approved mileage reports will be submitted to the Payroll Department for reimbursement. Failure to turn in mileage reports or late mileage reports will result in delayed payments.

Direct deposit may be available to you. The process requires that you submit banking information along with properly completed and authorized forms. It may take up to three pay cycles for direct deposit to be effective and you will be issued a live paycheck until then.

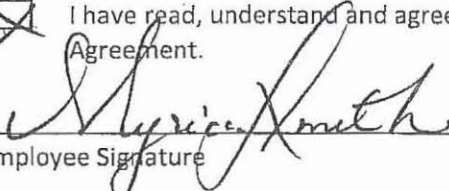
Pay discrepancies must be submitted in writing to the Driver Management Department. Discrepancies will be reviewed and confirmed errors will be corrected in a timely manner. A live check will be issued for payroll corrections.

Hold Harmless

Driver will indemnify and hold harmless Company and any customers of Company, from and against any and all liability, by reason of accident, injuries, or negligence of any kind that may result from the act of Courier driver while making deliveries for or on behalf of Company.



I have read, understand and agree to the provisions outlined in the DI Logistics Driver Agreement.


Employee Signature

Date

10/02/2018

EXHIBIT 4

D.I. Logistics

15012

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE
M03637	Ochonma, Kevin		xxx-xx-1798	7/1/19 - 7/15/19	7/25/19

ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	67.67	1,015.05	Gross	1,197.98	13,889.72
Overtime	22.50	8.13	182.93	MileageReim	672.00	7,886.00
				Fed Income	-116.67	-1,382.48
				Soc_Sec	-74.27	-861.17
				MEDICARE	-17.37	-201.40
				St_Income	-22.16	-288.12
				St_Dis_Ins	-11.98	-138.91
				SICK_Accrue		48.00
				SICK_Remain		48.00

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

1292 miles @ .52

WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET <i>wages</i>	CHECK NO.
2	75.80	1,197.98	13,889.72	\$1,627.53	15012

PRODUCT SSLM341

USE WITH 91584 ENVELOPE

Deluxe Corporation 1-800-328-0304 or www.deluxe.com/shop

PRINTED IN U.S.A.

88505119001

D.I. Logistics

15958

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE
M03637	Ochonma, Kevin		xxx-xx-1798	8/1/19 - 8/15/19	8/23/19

ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	62.43	936.45	Gross	1,110.53	16,326.33
Overtime	22.50	7.07	159.08	MileageReim	692.00	9,520.00
Training	15.00	1.00	15.00	Fed Income	-106.18	-1,620.71
				Soc_Sec	-68.85	-1,012.24
				MEDICARE	-16.10	-236.73
				St_Income	-18.31	-334.23
				St_Dis_Ins	-11.11	-163.28
				SICK_Accrue		48.00
				SICK_Remain		48.00

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

1331 miles @ .52

WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET <i>wages</i>	CHECK NO.
2	70.50	1,110.53	16,326.33	\$1,581.98	15958

PRODUCT SSLM341

USE WITH 91584 ENVELOPE

Deluxe Corporation 1-800-328-0304 or www.deluxe.com/shop

PRINTED IN U.S.A.

88505119001

7/1/19

Sick Time: Allocated	Used	Balance
Hours: 48	0	6
Vacation: Accrued	Used	Balance
Hours: n/a		

8/1/19

Sick Time: Allocated	Used	Balance
Hours: 48	0	6
Vacation: Accrued	Used	Balance
Hours: n/a		

EXHIBIT 5

021882

Kevin C. Ochonma
[REDACTED]DATE
1/24/2020AMOUNT
*****1,813.86*

*ONE THOUSAND EIGHT HUNDRED THIRTEEN AND 86 / 100

Employee		Time Off	Accrued	Taken	Balance	Period End	Pay Rate	Check Number
20-M03637 Ochonma, K		Vacation:	0.00	0.00	0.00	1/15/2020	\$15.00 HS	021882
Social Security Number		Sick Time:	3.60	0.00	3.60			
***-**-1798								
Earnings		Hours	Pay Rate	Amount	YTD Deduction	Amount	YTD	
Regular		63.98	\$15.00	959.70	1,622.40 Federal W/H	103.28	156.03	
Overtime		1.33	\$15.00	29.93	33.76 Social Security Tax	67.43	108.75	
Mileage-Reimb - Dist		0.00	\$15.00	940.00	1,584.00 Medicare Tax	15.77	25.43	
Parkin/Toll Reim		0.00	\$15.00	0.00	11.00 CA State W/H	16.36	22.83	
Holiday		6.53	\$15.00	97.95	97.95 CA Disability Tax	10.88	17.55	
Cellphone Reim		0.00	\$15.00	0.00	10.00			
Fuel Offset		0.00	\$15.00	0.00	20.00			

Name: Ochonma, Kevin

Amount: \$4.00

Days worked:10

Total pay: \$40.00

Period: 1/1/20-1/15/20

Date paid: 1/25/20

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

Gross Earnings:	2,027.58	3,379.11	Total Deductions:	213.72	330.59
Net Wages	1,813.86				

Ochoma, Kevin
Miles: 2350 Rate Paid @ .40 = 940.00

EXHIBIT 6

Case 2:20-cv-03734-PSG-AGR Document 42-6 Filed 01/07/22 Page 2 of 2

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
03637	Ochonma, Kevin	xxx-xx-1798	7/16/19 - 7/31/19	8/9/19		
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	79.48	1,192.20	Gross	1,326.08	15,215.80
Overtime	22.50	5.95	133.88	MileageReim	942.00	8,828.00
				Fed_Income	-132.05	-1,514.53
				Soc_Sec	-82.22	-943.39
				MEDICARE	-19.23	-220.63
				St_Income	-27.80	-315.92
				St_Dis_Ins	-13.26	-152.17
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
2	85.43	1,326.08	15,215.80	\$1,993.52	15440	

D.I. Logistics

16334

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE	
M03637	Ochonma, Kevin		xxx-xx-1798	8/16/19 - 8/31/19	9/10/19	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	85.42	1,281.30	Gross	1,811.78	18,138.11
Overtime	22.50	22.95	516.38	MileageReim	1,080.00	10,600.00
Doubletime	30.00	0.47	14.10	Fed_Income	-191.20	-1,811.91
Training	15.00			Soc_Sec	-112.33	-1,124.57
				MEDICARE	-26.27	-263.00
				St_Income	-55.69	-389.92
				St_Dis_Ins	-18.12	-181.40
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE	NET CHECK	CHECK NO.
2	108.84	1,811.78		18,138.11	\$2,488.17	16334

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE	
M03637	Ochonma, Kevin		xxx-xx-1798	9/1/19 - 9/15/19	9/25/19	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	68.52	1,027.80	Gross	1,438.88	19,576.99
Overtime	22.50	18.27	411.08	MileageReim	810.00	11,410.00
Doubletime	30.00			Fed_Income	-145.58	-1,957.49
Training	15.00			Soc_Sec	-89.21	-1,213.78
				MEDICARE	-20.86	-283.86
				St_Income	-32.76	-422.68
				St_Dis_Ins	-14.39	-195.79
				SICK_Accrue		48.00
				SICK_Remain		43.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE	NET CHECK	CHECK NO.
2	86.79	1,438.88		19,576.99	\$1,946.08	16841

D.I. Logistics

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
M03637	Ochonma, Kevin	xxx-xx-1798	8/1/19 - 8/15/19	8/23/19		
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
				Gross	1,110.53	16,326.33
Regular	15.00	62.43	936.45	MileageReim	692.00	9,520.00
Overtime	22.50	7.07	159.08	Fed_Income	-106.18	-1,620.71
Training	15.00	1.00	15.00	Soc_Sec	-68.85	-1,012.24
				MEDICARE	-16.10	-236.73
				St_Income	-18.31	-334.23
				St_Dis_Ins	-11.11	-163.28
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
	70.50	1,110.53	16,326.33	\$1,581.98	15958	

Lindsay Riley

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Friday, January 7, 2022 2:48 PM
To: noreply@ao.uscourts.gov
Subject: Activity in Case 2:20-cv-03734-PSG-AGR Myrica Smith v. DI Logistics et al Amended Complaint/Petition

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Wasserman, Robert on 1/7/2022 at 2:48 PM PST and filed on 1/7/2022

Case Name: Myrica Smith v. DI Logistics et al

Case Number: [2:20-cv-03734-PSG-AGR](#)

Filer: Myrica Smith
Kevin Ochonma

Document Number: [42](#)

Docket Text:

THIRD AMENDED COMPLAINT against Defendants All Defendants amending Amended Complaint/Petition, [39], filed by Plaintiffs Myrica Smith, Kevin Ochonma (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Notice of Interested Parties)(Wasserman, Robert)

2:20-cv-03734-PSG-AGR Notice has been electronically mailed to:

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William J Gorham , III wgorham@mayallaw.com, jzeyen@mayallaw.com

2:20-cv-03734-PSG-AGR Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\Third Amended Complaint - Final.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=1/7/2022] [FileNumber=33220593-0]
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Document description:Exhibit 1

Original filename:C:\fakepath\Exhibit 1.pdf

Electronic document Stamp:

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Original filename:C:\fakepath\Exhibit 2.pdf

Electronic document Stamp:

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Document description:Exhibit 3

Original filename:C:\fakepath\Exhibit 3.pdf

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Original filename:C:\fakepath\Exhibit 4.pdf

Electronic document Stamp:

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Document description:Exhibit 5

Original filename:C:\fakepath\Exhibit 5.pdf

Electronic document Stamp:

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Document description:Exhibit 6

Original filename:C:\fakepath\Exhibit 6.pdf

Electronic document Stamp:

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Document description: Notice of Interested Parties

Original filename:C:\fakepath\Notice of Interested Parties.pdf

Electronic document Stamp:

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