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Superior Court of California
County of Los Angeles

SEP 10 2020

Sherri K. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
SUPERIOR COURT OF LOS ANGELES COUNTY**

RUDI VANEGAS, on behalf of himself and
others similarly situated

Plaintiff,

v.

DHL EXPRESS (USA), INC.; and DOES 1-
20, inclusive

Defendants.

Case No: 20STCV16014

**FIRST-AMENDED CLASS ACTION
COMPLAINT**

1. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
2. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
3. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
4. PENALTIES UNDER LABOR CODE § 210
5. UNFAIR BUSINESS PRACTICES
6. PAGA VIOLATIONS

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

1 PLAINTIFFS RUDI VANEGAS and JESUS OROZCO (“Plaintiffs”), individuals, on
2 behalf of themselves and all others similarly situated, as defined below, hereby alleges the
3 following facts and claims against Defendant DHL EXPRESS (USA), INC. and DOES 1-20
4 (collectively “Defendants”).

5 **INTRODUCTION**

6 1. This class action complaint challenges Defendants’ past and ongoing unlawful
7 employment practices and policies on behalf of Plaintiffs, and other similarly situated former and
8 current employees of Defendants, whose rights they violated and continue to violate under
9 California law.

10 2. Specifically, as to Plaintiffs and others similarly situated, Defendants have
11 uniformly and systematically:

- 12 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
13 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 14 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
15 Labor Code § 226.7, and the Applicable Wage Orders;
- 16 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
17 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
- 18 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in
19 accordance with Labor Code § 204 and in violation of Labor Code § 210; and
- 20 e. Committed and continue to commit unfair business practices in violation of
21 Business & Professions Code § 17200, et seq.

22 3. The acts complained of herein occurred and will occur, at least in part, within the
23 time-period of four (4) years preceding the filing of the original Complaint, up to and through
24 the time of trial.
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5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since at least some of the acts and omissions that are the subject matter of this Complaint occurred herein and/or each Defendant is found, maintains offices, transacts business, exists and/or has an agent herein.

6. Plaintiffs are, and at all times herein mentioned, were residents of California.

7. Upon information and belief, Defendant DHL Express (USA), Inc. is, and at all times herein mentioned was, a courier, parcel, and express mail service company domiciled in Ohio, and duly authorized to do business in California.

8. Upon information and belief, there is such a unity of interest and ownership among Defendants that the separate personalities between them do not exist; and that, if the acts complained of herein are treated as carried out by each of them alone, inequitable results will follow.

9. The true names or capacities, whether individual, associate or otherwise, of Does 1-20, inclusive, are unknown to Plaintiffs and, therefore, Plaintiffs sue these doe defendants by such fictitious names. Plaintiffs will seek leave of this Court to amend this Complaint to allege such names and capacities as soon as they are ascertained. Upon information and belief, each of these fictitiously named defendants is responsible in some manner for the occurrences alleged herein, and that Plaintiffs' injuries and damages as alleged and set forth herein were proximately caused by such fictitiously named defendants.

1 10. Upon information and belief, Plaintiffs allege that at all relevant times each of the
2 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
3 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
4 predecessor in interest of some or all of the other defendants, and was engaged with some or all
5 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
6 or all of the other defendants so as to be liable for the conduct of each of them.

7 11. Upon information and belief, Plaintiffs allege that each defendant acted pursuant
8 to and within the scope of the relationships alleged above, that each defendant knew or should
9 have known about, authorized, ratified, adopted, approved, controlled, aided and/or abetted the
10 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
11 agreement to do the things alleged herein.

12 **FACTUAL ALLEGATIONS**

13 12. In or around January 2018, Defendants hired Plaintiff Vanegas to work as a
14 service agent at the Los Angeles International Airport. In or around November 2018, DHL hired
15 Plaintiff Orozco to work as a service/warehouse agent also at the Los Angeles International
16 Airport. Among other things, Plaintiffs' job duties include handling and processing shipment and
17 containers coming in and out of LAX. Defendants routinely require Plaintiffs to work 8 to 12-
18 hour shifts and pay him on a biweekly basis.

19 **I. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks** 20 **and Their Failure to Pay the Required Premiums for Such Non-Complaint** 21 **Breaks**

22 13. During the applicable recovery period, Defendants have had policy and/or
23 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiffs,
24 to take lawful meal or rest breaks, and then failing to pay them the required premiums for such
25 non-compliant breaks as required under California law. For instance, Plaintiff Vanegas's
26 timesheet for April 7, 2020, shows that he worked from 4:55 pm to 5:38 am the following day.
27 Defendants did not authorize or permit Plaintiff Vanegas to take his first meal break until 10:33
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1 pm–5.63 hours into his shift—and also did not permit or authorize him to take a second meal break
2 or a third rest break at all, even though his shift lasted longer than 10 hours.

3 **II. Defendants’ Failure to Furnish Accurate Information Regarding Accrued**
4 **Paid Sick Leave**

5 14. Pursuant to the Healthy Workplace Family Act (“Act”), codified under Labor
6 Code §§ 245-249, all employees who work in California for 30 or more days within a year are
7 entitled to a minimum number of hours of paid sick leave. Among other things, Labor Code §
8 246(i) mandates that employers provide documentation to employees showing how many hours
9 of paid sick leave, or paid time off provided in lieu of paid sick leave, employees have accrued
10 for use under the Act.

11 15. During the applicable recovery period, Defendants have had policy and/or
12 practice of violating Labor Code § 246(i) by failing to furnish to their employees, including
13 Plaintiffs, the accurate amount of paid sick leave, or paid time off leave provided in lieu of paid
14 sick leave, they have accrued under California law. For instance, Plaintiff Vanegas’s April 10,
15 2020 paystub shows that he had 6.5 hours of accrued paid sick leave, while according to
16 Defendants’ “View Accruals Online” system Plaintiff Vanegas had 7.83 hours of accrued paid
17 sick leave as of that date.

18 **CLASS ALLEGATIONS**

19 16. This action is brought and may properly be maintained as a class action pursuant
20 to the provisions of Code of Civil Procedure § 382.

21 17. Plaintiffs reserve the right under California Rules of Court, Rule 1855 (b) to
22 amend or modify the description of the classes, as defined below, with greater specificity or
23 division into subclasses or limitation to certain issues.

24 18. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
25 because there is a well-defined community of interest in the litigation and the proposed classes
26 are easily ascertainable.

27 19. For the purposes of this Complaint, “Class Period” means any time from four
28 years prior to the filing of this Complaint until the date of class certification.

1 20. The putative classes Plaintiffs will seek to certify is currently composed of and
2 defined as follows:

3 **BREAK CLASS**

4 All of Defendants' non-exempt employees who worked inside California during the Class
5 Period (the "Break Class").

6 **SICK PAY CLASS**

7 All of Defendants' exempt and non-exempt employees who worked inside California
8 during the Class Period (the "Sick Pay Class").

9 21. Unless otherwise specified, the Break Class and the Sick Pay Class shall be
10 collectively referred to as the "Classes."

11 22. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the
12 Classes are so numerous that their individual joinder is impracticable. The precise number of
13 class members and their addresses will be known to Plaintiffs through discovery. Class members
14 may be notified of the pendency of this action by mail, electronic mail, the internet, or published
15 notice.

16 23. **Common Questions Predominate:** Common questions of law and fact exist as
17 to all members of the Classes and predominate over any questions that affect only individual
18 members of the Classes. The predominant common questions of law and fact, among other
19 things, include whether Defendants:

- 20 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
21 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 22 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
23 Labor Code § 226.7, and the Applicable Wage Orders;
- 24 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
25 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
- 26 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in
27 accordance with Labor Code § 204 and in violation of Labor Code § 210; and
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e. Committed and continue to commit unfair business practices in violation of Business & Professions Code § 17200, et seq.

24. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Classes they seek to represent because Plaintiffs, as an employee of Defendants, were exposed and subjected to the same unlawful business practices as the other members of the Classes. Thus, Plaintiffs and the members of the Classes they seek to represent sustained the same types of damages and losses.

25. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs' attorneys have experience in employment and class action matters and will adequately represent the Classes in this matter. Plaintiffs have no adverse interests to those in the Classes.

26. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of the Classes is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The relatively minor amount of individual damages in question coupled with the expenses and burdens of individual litigation would make it difficult or impossible for individual members of the Classes to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]

(Plaintiffs and the Break Class)

27. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

28. Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

29. Labor Code § 512(a) provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee 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 an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

30. During the applicable recovery period, Plaintiffs and the Break Class regularly worked in excess of 5-hour work periods without being authorized and/or permitted to take lawful meal breaks, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

31. During the applicable recovery period, Defendants failed to pay Plaintiffs and the Break Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

32. Plaintiffs and the Break Class are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted. Plaintiffs and the Break Class are also entitled to their break and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

SECOND CAUSE OF ACTION

[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]

(Plaintiffs and the Break Class)

33. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

1 34. California Labor Code § 226.7(a) provides, "No employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of the
3 Industrial Welfare Commission."

4 35. The Applicable Wage Orders require that employers authorize or permit non-
5 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
6 each work period. The rest break is based on the total hours worked daily and must be at the
7 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
8 thereof.

9 36. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
10 employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
11 the employee one additional hour of pay at the employee's regular rate of pay for each workday
12 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
13 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
14 employee reaches an area away from the work area that is appropriate for rest.

15 37. During the applicable recovery period, Defendants did not authorize and/or permit
16 pay Plaintiffs and the Break Class to take lawful rest breaks and failed to pay premium wages
17 mandated by Labor Code § 226.7(b) to this group of employees. As a result of violations of Labor
18 Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant
19 to Labor Code §§ 558 and 2698 et seq.

20 38. Plaintiffs and the Break Class are entitled to recover one additional hour of pay at
21 their regular rate of compensation with Defendants for each workday that a rest break was not
22 authorized and/or permitted. Plaintiffs and the Class are also entitled to their costs and reasonable
23 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
24 interest.

1 **THIRD CAUSE OF ACTION**

2 **[FAILURE TO FURNISH ACCURATE WAGE STATEMENTS]**

3 **(Plaintiffs and the Break Class)**

4 39. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 40. This claim is brought under Labor Code § 226(a), which sets forth reporting
7 requirements for employers when paying wages, including that every employer shall furnish each
8 of his or her employees an itemized statement in writing showing, among other things, (1) gross
9 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
10 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
11 each hourly rate, and (6) the name and address of the legal entity that is the employer.

12 41. Labor Code § 226(e) provides that an employee suffering injury as a result of a
13 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
14 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
15 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
16 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled
17 to an award of costs and reasonable attorney's fees.

18 42. During the applicable recovery period, Defendants knowingly and intentionally
19 failed to provide Plaintiffs and the Break Class with wage statements accurately displaying the
20 information required by Labor Code § 226(a).

21 43. As a direct and proximate result of Defendants conduct as alleged above, Plaintiffs
22 and the Break Class are each entitled to a civil penalty of \$50 for the initial pay period and \$100
23 for each subsequent pay period in which Defendants violated the reporting requirements of Labor
24 Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Defendants
25 are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
26 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails
27 to provide the employee a wage deduction statement or fails to keep the records required under
28 Labor Code § 226(a).

1 **FOURTH CAUSE OF ACTION**

2 **[PENALTIES UNDER LABOR CODE § 210]**

3 **(Plaintiffs and the Break Class)**

4 44. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 45. This claim is brought under Labor Code § 210, which relevantly provides:

7 (a) In addition to, and entirely independent and apart from, any other
8 penalty provided in this article, every person who fails to pay the wages
9 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2,
10 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

11 (1) For any initial violation, one hundred dollars (\$100) for each
12 failure to pay each employee.

13 (2) For each subsequent violation, or any willful or intentional
14 violation, two hundred dollars (\$200) for each failure to pay each
15 employee, plus 25 percent of the amount unlawfully withheld.

16 (b) The penalty shall either be recovered by the employee as a statutory
17 penalty pursuant to Section 98 or by the Labor Commissioner as a civil
18 penalty through the issuance of a citation or pursuant to Section 98.3...

19 46. Labor Code § 204(a) also pertinently provides:

20 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
21 or 204.2, earned by any person in any employment are due and payable
22 twice during each calendar month, on days designated in advance by the
23 employer as the regular paydays. Labor performed between the 1st and
24 15th days, inclusive, of any calendar month shall be paid for between the
25 16th and the 26th day of the month during which the labor was performed,
26 and labor performed between the 16th and the last day, inclusive, of any
27 calendar month, shall be paid for between the 1st and 10th day of the
28 following month...

1 47. As alleged above, during the applicable recovery period, Defendants failed to pay
2 Plaintiffs and the Break Class premium wages, owed to them for not being authorized and/or
3 permitted to take their lawful meal or rest breaks, on their regular paydays. By failing to pay the
4 premium wages owed to Plaintiffs and the Break Class on their regular paydays, Defendants
5 violated Labor Code § 204(a), and thus owe penalties of \$100 for the initial violation and \$200
6 for each subsequent violation, plus 25 percent of the premium wages they withheld from
7 Plaintiffs and the Break Class under Labor Code § 210.

8 **FIFTH CAUSE OF ACTION**
9 **[UNFAIR BUSINESS PRACTICES]**
10 **(Plaintiffs and the Classes)**

11 48. Plaintiffs hereby incorporate by reference all other allegations contained in this
12 Complaint as though fully set forth herein.

13 49. Defendants have engaged and continue to engage in unfair and unlawful business
14 practices in California by practicing, employing and utilizing the employment practices outlined
15 above, including: a) failing to permit and/or authorize Plaintiffs and the Break Class to take
16 lawful meal and rest breaks; b) failing to pay premium wages owed to Plaintiffs and the Break
17 Class for not permitting and/or authorizing them to take lawful meal and rest breaks on their
18 regular paydays; and c) failing to furnish documentation to Plaintiffs and the Sick Pay Class
19 showing how many hours of paid sick leave, or paid time off provided in lieu of paid sick leave,
20 they have accrued for use under the Act.

21 50. As alleged above, Defendants' failure to furnish Plaintiffs and the Sick Pay Class
22 accurate information regarding the correct number of hours of paid sick leave, or paid time off
23 provided in lieu of paid sick leave, they have accrued for use violates Labor Code § 246 (i).
24 Pursuant to Labor Code § 248.5(e), Plaintiffs and the Sick Pay Class are entitled to and do seek
25 equitable, injunctive and restitutionary relief, plus their reasonable attorneys' fees and costs.

26 51. Plaintiffs and the Break Class also seek full restitution and disgorgement of
27 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
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1 and/or converted by Defendants by means of the unfair practices complained of herein, plus their
2 reasonable attorneys' fees and costs.

3 52. Plaintiffs and the Classes further seek, on their own behalf and on behalf of the
4 general public, the appointment of a receiver, as necessary. The acts complained of herein
5 occurred, at least in part, within the last four (4) years preceding the filing of the original
6 Complaint in this action.

7 53. Plaintiffs and the Classes are further entitled to and do seek both a declaration that
8 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
9 relief restraining Defendants from engaging in any of such business practices in the future. Such
10 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
11 irreparable injury in that Defendants will continue to violate these California laws, represented
12 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
13 expectation of future violations will require current and future employees to repeatedly and
14 continuously seek legal redress in order to gain compensation to which they are entitled under
15 California law. Plaintiffs and the Classes have no other adequate remedy at law to ensure future
16 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
17 violated herein.

18 **SIXTH CAUSE OF ACTION**

19 **[PAGA VIOLATIONS]**

20 **(Plaintiffs and Aggrieved Employees)**

21 54. Plaintiff hereby incorporate by reference all other allegations contained in this
22 Complaint as though fully set forth herein.

23 55. Plaintiffs and those employees in the Classes who have worked during the
24 recovery period applicable under the Private Attorney General Act ("PAGA") are aggrieved
25 employees as defined under Labor Code § 2699(a) ("Aggrieved Employees"). Plaintiffs and the
26 Aggrieved Employees bring this cause on behalf of themselves as affected by the labor law
27 violations alleged in this Complaint.
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1 56. Defendants have committed violations of the Labor Code against Plaintiffs and
2 the Aggrieved Employees, as alleged in this Complaint, including, but not limited to, the
3 following:

- 4 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
5 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 6 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
7 Labor Code § 226.7, and the Applicable Wage Orders;
- 8 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
9 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
- 10 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in

11 57. On May 13, 2020, Plaintiff Vanegas sent a written notice to DHL Express (USA),
12 Inc. and the Labor and Workforce Development Agency (“LWDA”) notifying them of the
13 specific violations and the facts and theories supporting those violations. On June 11, 2020,
14 Plaintiff Orozco also sent a written notice to DHL Express (USA), Inc. and the LWDA notifying
15 them of the specific violations and the facts and theories supporting those violations. More than
16 65 days have passed since the date both notices were mailed to DHL Express (USA), Inc and the
17 LWDA. A true and correct copy of Plaintiff Vanegas’s written notice to DHL Express (USA),
18 Inc. and the LWDA is attached hereto as “Exhibit A”, which is incorporated by reference as
19 though fully set forth herein. A true and correct copy of Plaintiff Orozco’s written notice to DHL
20 Express (USA), Inc. and the LWDA is attached hereto as “Exhibit B”, which is incorporated by
21 reference as though fully set forth herein.

22 58. Plaintiffs and the Aggrieved Employees seek to recover all civil penalties and all
23 underpaid wages allowed under Labor Code §§ 558, 2698, 2699, 2699.3 and 2699.5 for which
24 DHL Express (USA), Inc is liable as a result of its violations of the Labor Code during the
25 applicable recovery period, all in an amount to be proven at trial. These include, but are not
26 limited to, penalties pursuant to Labor Code § 210 for violations of Labor Code §§ 201, 202, 203
27 and 204; penalties pursuant to Labor Code § 226.3 for violations Labor Code § 226 and the
28 Applicable Wage Orders; penalties and underpaid wages pursuant to Labor Code § 558, including

1 an amount sufficient to recover underpaid wages due for violations of the Labor Code §§ 226.7
2 and 558 and the Applicable Wage Orders; and penalties pursuant to Labor Code § 1197.1 for
3 violations Labor Code §§ 1182, 1182.12, and 1198 and the Applicable California Wage Orders.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
6 for relief and judgment against Defendants as follows:

7 1. Certification of this action as a class action on behalf of each of the Classes alleged
8 in this Complaint;

9 2. For general damages, according to proof, on each cause of action for which such
10 damages are available;

11 3. For compensatory damages, according to proof, on each cause of action for which
12 such damages are available;

13 4. For consequential damages, according to proof, on each cause of action for which
14 such damages are available

15 5. For restoration and restitution of lost wages, statutory penalties, and all other
16 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

17 6. For declaratory and injunctive relief as requested herein;

18 7. For prejudgment and post-judgment interest according to law;

19 8. For reasonable attorneys' fees incurred in this action on those causes of action for
20 which such fees are recoverable under the law;

21 9. For costs of suit incurred in this action;

22 10. Disgorgement of all gains unjustly gained by Defendants;

23 11. For all civil penalties recoverable under PAGA; and

24 12. Any other remedies, whether in law or equity, that the Court deems properly.
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1 Dated: September 9, 2020

Respectfully submitted,

2 SHAKOURI LAW FIRM

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4 By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiffs
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8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs demands a jury trial on issues triable to a jury.

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11 Dated: September 9, 2020

Respectfully submitted,

12 SHAKOURI LAW FIRM

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14 By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiffs
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EXHIBIT A

SHAKOURI LAW FIRM

Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor
Los Angeles, CA 90025
Tel: (310) 575-1827
Fax: (310) 575-1890
ash@shakourilawfirm.com
shakourilawfirm.com

May 13, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

DHL EXPRESS (USA), INC.
1210 South Pine Island Road, 1st Floor
Legal Dept.
Plantation, FL 33324

Via Certified U.S. Mail:

DHL EXPRESS (USA), INC.
c/o
CT CORPORATION SYSTEM
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: PAGA Notice Pursuant to California Labor Code § 2699
Claimant: Rudi Vanegas
Employer: DHL EXPRESS (USA), INC.

Dear Sir or Madam:

Claimant Rudi Vanegas (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent him, and all other aggrieved employees as that term is defined under Labor Code § 2699 (c) (“Aggrieved Employees”)¹, for wage and hour claims against DHL EXPRESS (USA), INC. (“DHL”).

¹ Labor Code § 2699 (c) defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

On April 24, Claimant filed a class action complaint in Los Angeles County Superior Court, on behalf of himself and all others similarly situated, a conformed copy of which is attached hereto as “Exhibit 1”, and incorporated by reference with the same force and effect as though fully set forth herein.

In or around January 2018, DHL hired Claimant to work as a service agent at the Los Angeles International Airport. Among other things, Claimant’s job duties include handling and processing shipment and containers coming in and out of Los Angeles International Airport. DHL routinely requires Claimant to work 8 to 12-hour shifts and pays him on a biweekly basis.

DHL has violated, and/or have caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §§ 558 & 2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

DHL’s Failure to Authorize and/or Permit Lawful Meal Breaks

During the applicable recovery period, DHL had had policy and/or practice of not authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful meal breaks under California law. For instance, Claimant’s timesheet for April 7, 2020, shows that he worked from 4:55 pm to 5:38 am the following day. DHL did not authorize or permit Claimant to take his first meal break until 10:33 pm—5.63 hours into his shift—and also did not permit or authorize him to take a second meal break or a third rest break at all, even though his shift lasted longer than 10 hours.

Labor Code § 226.7(a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

Labor Code § 512(a) provides, in relevant part, that: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee 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 an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

During the applicable recovery period, Claimant and other Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders. During the applicable recovery period, DHL failed to pay Claimant and other Aggrieved Employees premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular

rate of compensation for each workday that a meal period was not authorized and/or permitted by DHL. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

DHL's Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, DHL had had policy and/or practice of not authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The Applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the Applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, DHL did not authorize and/or permit pay Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b). Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation with DHL for each workday that a rest break was not authorized and/or permitted by DHL. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

DHL's Failure to Furnish Accurate Wage Statements

Labor Code § 226(a) sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5)

the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

DHL knowingly and intentionally failed to provide Claimant and the Aggrieved Employees with wage statement statements accurately displaying the information required by Labor Code § 226(a) because said wage statements do not accurately reflect the premiums owed to Claimant and the Aggrieved Employees for their non-complaint meals and/or rest breaks.

As a direct and proximate result of DHL'S conduct as alleged above, Claimant and the Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which DHL violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, DHL is subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required under Labor Code § 226(a).

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

DHL's Failure to Timely Pay Wages

As alleged above, during the applicable recovery period, DHL failed to pay Claimant and other Aggrieved Employees premium wages—owed to them for not being authorized and/or permitted to take their lawful meal or rest breaks—on their regular paydays. By failing to pay these premium wages on their regular paydays, DHL violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$ 100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et. seq.*

Penalties Sought

Without limitation, Claimant and other Aggrieved Employees will further seek any and all penalties and underpaid wages under Labor Code § 558 and PAGA. This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court on behalf of himself and other Aggrieved Employees.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri

Attorney for Claimant and all other
Aggrieved Employees

EXHIBIT 1

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

APR 24 2020

Sherri R. [Signature], Executive Officer/Clerk

By [Signature], Deputy
Steven Drew

SHAKOURI LAW FIRM

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES COUNTY

RUDI VANEGAS, on behalf of himself and
others similarly situated

Plaintiff,

v.

DHL EXPRESS (USA), INC.; and DOES 1-
20, inclusive

Defendants.

Case No:

20STCV16014

CLASS ACTION COMPLAINT

1. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
2. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
3. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
4. PENALTIES UNDER LABOR CODE § 210
5. UNFAIR BUSINESS PRACTICES

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

BY FAX

1 PLAINTIFF RUDI VANEGAS ("Plaintiff"), an individual, on behalf of himself and all
2 others similarly situated, as defined below, hereby alleges the following facts and claims against
3 Defendant DHL EXPRESS (USA), INC. and DOES 1-20 (collectively "Defendants").

4 INTRODUCTION

5 1. This class action complaint challenges Defendants' past and ongoing unlawful
6 employment practices and policies on behalf of Plaintiff, and other similarly situated former and
7 current employees of Defendants, whose rights they violated and continue to violate under
8 California law.

9 2. Specifically, as to Plaintiff and others similarly situated, Defendants have
10 uniformly and systematically:

- 11 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
12 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 13 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
14 Labor Code § 226.7, and the Applicable Wage Orders;
- 15 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
16 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
- 17 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in
18 accordance with Labor Code § 204 and in violation of Labor Code § 210; and
- 19 e. Committed and continue to commit unfair business practices in violation of
20 Business & Professions Code § 17200, et seq.

21 3. The acts complained of herein occurred and will occur, at least in part, within the
22 time-period of four (4) years preceding the filing of the original Complaint, up to and through
23 the time of trial.

24 JURISDICTION AND VENUE

25 4. This Court has jurisdiction over Defendants because they are entities or
26 individuals with sufficient minimum contacts in California, and/or because they intentionally
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1 availed themselves of the California market so as to render the exercise of jurisdiction over them
2 by the California courts consistent with traditional notions of fair play and justice.

3 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
4 at least some of the acts and omissions that are the subject matter of this Complaint occurred
5 herein and/or each Defendant is found, maintains offices, transacts business, exists and/or has an
6 agent herein.

7 **PARTIES**

8 6. Plaintiff is, and at all times herein mentioned, was a resident California.

9 7. Upon information and belief, Defendant DHL Express (USA), Inc. is, and at all
10 times herein mentioned was, a courier, parcel, and express mail service company domiciled in
11 Ohio, and duly authorized to do business in California.

12 8. Upon information and belief, there is such a unity of interest and ownership
13 among Defendants that the separate personalities between them do not exist; and that, if the acts
14 complained of herein are treated as carried out by each of them alone, inequitable results will
15 follow.

16 9. The true names or capacities, whether individual, associate or otherwise, of Does
17 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
18 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
19 such names and capacities as soon as they are ascertained. Upon information and belief, each of
20 these fictitiously named defendants is responsible in some manner for the occurrences alleged
21 herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately
22 caused by such fictitiously named defendants.

23 10. Upon information and belief, Plaintiff alleges that at all relevant times each of the
24 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
25 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
26 predecessor in interest of some or all of the other defendants, and was engaged with some or all
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1 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
2 or all of the other defendants so as to be liable for the conduct of each of them.

3 11. Upon information and belief, Plaintiff alleges that each defendant acted pursuant
4 to and within the scope of the relationships alleged above, that each defendant knew or should
5 have known about, authorized, ratified, adopted, approved, controlled, aided and/or abetted the
6 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
7 agreement to do the things alleged herein.

8 **FACTUAL ALLEGATIONS**

9
10 12. In or around January 2018, Defendants hired Plaintiff to work as a service agent
11 at the Los Angeles International Airport. Among other things, Plaintiff's job duties include
12 handling and processing shipment and containers coming in and out of LAX. Defendants
13 routinely require Plaintiff to work 8 to 12-hour shifts and pay him on a biweekly basis.

14 **I. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks** 15 **and Their Failure to Pay the Required Premiums for Such Non-Complaint** 16 **Breaks**

17 13. During the applicable recovery period, Defendants have had policy and/or
18 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiff, to
19 take lawful meal or rest breaks, and then failing to pay them the required premiums for such non-
20 compliant breaks as required under California law. For instance, Plaintiff's timesheet for April
21 7, 2020, shows that he worked from 4:55 pm to 5:38 am the following day. Defendants did not
22 authorize or permit Plaintiff to take his first meal break until 10:33 pm—5.63 hours into his shift—
23 and also did not permit or authorize him to take a second meal break or a third rest break at all,
24 even though his shift lasted longer than 10 hours.

25 **II. Defendants' Failure to Furnish Accurate Information Regarding Accrued** 26 **Paid Sick Leave**

27 14. Pursuant to the Healthy Workplace Family Act ("Act"), codified under Labor
28 Code §§ 245-249, all employees who work in California for 30 or more days within a year are

1 entitled to a minimum number of hours of paid sick leave. Among other things, Labor Code §
2 246(i) mandates that employers provide documentation to employees showing how many hours
3 of paid sick leave, or paid time off provided in lieu of paid sick leave, employees have accrued
4 for use under the Act.

5 15. During the applicable recovery period, Defendants have had policy and/or
6 practice of violating Labor Code § 246(i) by failing to furnish to their employees, including
7 Plaintiff, the accurate amount of paid sick leave, or paid time off leave provided in lieu of paid
8 sick leave, they have accrued under California law. For instance, Plaintiff's April 10, 2020
9 paystub shows that he had 6.5 hours of accrued paid sick leave, while according to Defendants'
10 "View Accurals Online" system Plaintiff had 7.83 hours of accrued paid sick leave as of that
11 date.

12 **CLASS ALLEGATIONS**

13 16. This action is brought and may properly be maintained as a class action pursuant
14 to the provisions of Code of Civil Procedure § 382.

15 17. Plaintiff reserves the right under California Rules of Court, Rule 1855 (b) to
16 amend or modify the description of the classes, as defined below, with greater specificity or
17 division into subclasses or limitation to certain issues.

18 18. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
19 because there is a well-defined community of interest in the litigation and the proposed classes
20 are easily ascertainable.

21 19. For the purposes of this Complaint, "Class Period" means any time from four
22 years prior to the filing of this Complaint until the date of class certification.

23 20. The putative classes Plaintiff will seek to certify is currently composed of and
24 defined as follows:

25 **BREAK CLASS**

26 All of Defendants' non-exempt employees who worked inside California during the Class
27 Period (the "Break Class").
28

1 **SICK PAY CLASS**

2 All of Defendants' exempt and non-exempt employees who worked inside California
3 during the Class Period (the "Sick Pay Class").

4 21. Unless otherwise specified, the Break Class and the Sick Pay Class shall be
5 collectively referred to as the "Classes."

6 22. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the
7 Classes are so numerous that their individual joinder is impracticable. The precise number of
8 class members and their addresses will be known to Plaintiff through discovery. Class members
9 may be notified of the pendency of this action by mail, electronic mail, the internet, or published
10 notice.

11 23. **Common Questions Predominate:** Common questions of law and fact exist as
12 to all members of the Classes and predominate over any questions that affect only individual
13 members of the Classes. The predominant common questions of law and fact, among other
14 things, include whether Defendants:

- 15 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
16 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
17 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
18 Labor Code § 226.7, and the Applicable Wage Orders;
19 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
20 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
21 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in
22 accordance with Labor Code § 204 and in violation of Labor Code § 210; and
23 e. Committed and continue to commit unfair business practices in violation of
24 Business & Professions Code § 17200, et seq.

25 24. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
26 Classes he seeks to represent because Plaintiff, as an employee of Defendants, was exposed and
27 subjected to the same unlawful business practices as the other members of the Classes. Thus,
28

1 Plaintiff and the members of the Classes he seeks to represent sustained the same types of
2 damages and losses.

3 25. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Classes.
4 Plaintiff's attorneys have experience in employment and class action matters and will adequately
5 represent the Classes in this matter. Plaintiff has no adverse interests to those in the Classes.

6 26. **Superiority:** A class action is superior to other available means for the fair and
7 efficient adjudication of this controversy. Because individual joinder of all members of the
8 Classes is impractical, class action treatment will permit a large number of similarly situated
9 persons to prosecute their common claims in a single forum simultaneously, efficiently and
10 without the unnecessary duplication of effort and expense that numerous individual actions
11 would engender. The relatively minor amount of individual damages in question coupled with
12 the expenses and burdens of individual litigation would make it difficult or impossible for
13 individual members of the Classes to redress the wrongs done to them, while important public
14 interests will be served by addressing the matter as a class action. The cost to and burden on the
15 court system of adjudication of individualized litigation would be substantial and substantially
16 more than the costs and burdens of a class action. Individualized litigation would also present the
17 potential for inconsistent or contradictory judgments.

18 **FIRST CAUSE OF ACTION**

19 **[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]**

20 **(Plaintiff and the Break Class)**

21 27. Plaintiff hereby incorporates by reference all other allegations contained in this
22 Complaint as though fully set forth herein.

23 28. Labor Code § 226.7(a) provides, "No employer shall require any employee to
24 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
25 Commission."

26 29. Labor Code § 512(a) provides, in relevant part, that: "An employer may not
27 employ an employee for a work period of more than five hours per day without providing the
28 employee with a meal period of not less than 30 minutes, except that if the total work period per

1 day of the employee is no more than six hours, the meal period may be waived by mutual consent
2 of both the employer and employee. An employer may not employ an employee for a work period
3 of more than 10 hours per day without providing the employee with a second meal period of not
4 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
5 meal period may be waived by mutual consent of the employer and the employee only if the first
6 meal period was not waived.”

7 30. During the applicable recovery period, Plaintiff and the Break Class regularly
8 worked in excess of 5-hour work periods without being authorized and/or permitted to take lawful
9 meal breaks, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

10 31. During the applicable recovery period, Defendants failed to pay Plaintiff and the
11 Break Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.
12 As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders,
13 Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

14 32. Plaintiff and the Break Class are entitled to recover one additional hour of pay at
15 their regular rate of compensation for each workday that a meal period was not authorized and/or
16 permitted. Plaintiff and the Break Class are also entitled to their break and reasonable attorneys’
17 fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

18 **SECOND CAUSE OF ACTION**

19 **[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]**

20 **(Plaintiff and the Break Class)**

21 33. Plaintiff hereby incorporates by reference all other allegations contained in this
22 Complaint as though fully set forth herein.

23 34. California Labor Code § 226.7(a) provides, "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the
25 Industrial Welfare Commission.”

26 35. The Applicable Wage Orders require that employers authorize or permit non-
27 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
28 each work period. The rest break is based on the total hours worked daily and must be at the

1 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
2 thereof.

3 36. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
4 employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
5 the employee one additional hour of pay at the employee's regular rate of pay for each workday
6 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
7 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
8 employee reaches an area away from the work area that is appropriate for rest.

9 37. During the applicable recovery period, Defendants did not authorize and/or permit
10 pay Plaintiff and the Break Class to take lawful rest breaks and failed to pay premium wages
11 mandated by Labor Code § 226.7(b) to this group of employees. As a result of violations of Labor
12 Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant
13 to Labor Code §§ 558 and 2698 et seq.

14 38. Plaintiff and the Break Class are entitled to recover one additional hour of pay at
15 their regular rate of compensation with Defendants for each workday that a rest break was not
16 authorized and/or permitted. Plaintiff and the Class are also entitled to their costs and reasonable
17 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
18 interest.

19 **THIRD CAUSE OF ACTION**

20 **[FAILURE TO FURNISH ACCURATE WAGE STATEMENTS]**

21 **(Plaintiff and the Break Class)**

22 39. Plaintiff hereby incorporate by reference all other allegations contained in this
23 Complaint as though fully set forth herein.

24 40. This claim is brought under Labor Code § 226(a), which sets forth reporting
25 requirements for employers when paying wages, including that every employer shall furnish each
26 of his or her employees an itemized statement in writing showing, among other things, (1) gross
27 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
28

1 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
2 each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

9 42. During the applicable recovery period, Defendants knowingly and intentionally
10 failed to provide Plaintiff and the Break Class with wage statements accurately displaying the
11 information required by Labor Code § 226(a).

12 43. As a direct and proximate result of Defendants conduct as alleged above, Plaintiff
13 and the Break Class are each entitled to a civil penalty of \$50 for the initial pay period and \$100
14 for each subsequent pay period in which Defendants violated the reporting requirements of Labor
15 Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Defendants
16 are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
17 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails
18 to provide the employee a wage deduction statement or fails to keep the records required under
19 Labor Code § 226(a).

20 **FOURTH CAUSE OF ACTION**

21 **[PENALTIES UNDER LABOR CODE § 210]**

22 **(Plaintiff and the Break Class)**

23 44. Plaintiff hereby incorporates by reference all other allegations contained in this
24 Complaint as though fully set forth herein.

25 45. This claim is brought under Labor Code § 210, which relevantly provides:

26 (a) In addition to, and entirely independent and apart from, any other
27 penalty provided in this article, every person who fails to pay the wages
28

of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3...

46. Labor Code § 204(a) also pertinently provides:

All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...

47. As alleged above, during the applicable recovery period, Defendants failed to pay Plaintiff and the Break Class premium wages, owed to them for not being authorized and/or permitted to take their lawful meal or rest breaks, on their regular paydays. By failing to pay the premium wages owed to Plaintiff and the Break Class on their regular paydays, Defendants violated Labor Code § 204(a), and thus owe penalties of \$100 for the initial violation and \$200 for each subsequent violation, plus 25 percent of the premium wages they withheld from Plaintiff and the Break Class under Labor Code § 210.

FIFTH CAUSE OF ACTION
[UNFAIR BUSINESS PRACTICES]
(Plaintiff and the Classes)

48. Plaintiff hereby incorporates by reference all other allegations contained in this Complaint as though fully set forth herein.

49. Defendants have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, including: a) failing to permit and/or authorize Plaintiff and the Break Class to take lawful meal and rest breaks; b) failing to pay premium wages owed to Plaintiff and the Break Class for not permitting and/or authorizing them to take lawful meal and rest breaks on their regular paydays; and c) failing to furnish documentation to Plaintiff and the Sick Pay Class showing how many hours of paid sick leave, or paid time off provided in lieu of paid sick leave, they have accrued for use under the Act.

50. As alleged above, Defendants' failure to furnish Plaintiff and the Sick Pay Class accurate information regarding the correct number of hours of paid sick leave, or paid time off provided in lieu of paid sick leave, they have accrued for use violates Labor Code § 246 (i). Pursuant to Labor Code § 248.5(e), Plaintiff and the Sick Pay Class are entitled to and do seek equitable, injunctive and restitutionary relief, plus their reasonable attorneys' fees and costs.

51. Plaintiff and the Break Class also seek full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein, plus their reasonable attorneys' fees and costs.

52. Plaintiff and the Classes further seek, on their own behalf and on behalf of the general public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the original Complaint in this action.

53. Plaintiff and the Classes are further entitled to and do seek both a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive

1 relief restraining Defendants from engaging in any of such business practices in the future. Such
2 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
3 irreparable injury in that Defendants will continue to violate these California laws, represented
4 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
5 expectation of future violations will require current and future employees to repeatedly and
6 continuously seek legal redress in order to gain compensation to which they are entitled under
7 California law. Plaintiff and the Classes have no other adequate remedy at law to ensure future
8 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
9 violated herein.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for
12 relief and judgment against Defendants as follows:

13 1. Certification of this action as a class action on behalf of each of the Classes alleged
14 in this Complaint;

15 2. For general damages, according to proof, on each cause of action for which such
16 damages are available;

17 3. For compensatory damages, according to proof, on each cause of action for which
18 such damages are available;

19 4. For consequential damages, according to proof, on each cause of action for which
20 such damages are available

21 5. For restoration and restitution of lost wages, statutory penalties, and all other
22 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

23 6. For declaratory and injunctive relief as requested herein;

24 7. For prejudgment and post-judgment interest according to law;

25 8. For reasonable attorneys' fees incurred in this action on those causes of action for
26 which such fees are recoverable under the law;

27 9. For costs of suit incurred in this action;

28 10. Disgorgement of all gains unjustly gained by Defendants; and

11. Any other remedies, whether in law or equity, that the Court deems properly.

Dated: April 23, 2020

Respectfully submitted,
SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on issues triable to a jury.

Dated: April 23, 2020

Respectfully submitted,
SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff

EXHIBIT B

SHAKOURI LAW FIRM

Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor
Los Angeles, CA 90025
Tel: (310) 575-1827
Fax: (310) 575-1890
ash@shakourilawfirm.com
shakourilawfirm.com

June 11, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

DHL EXPRESS (USA), INC.
1210 South Pine Island Road, 1st Floor
Legal Dept.
Plantation, FL 33324

Via Certified U.S. Mail:

DHL EXPRESS (USA), INC.
c/o
CT CORPORATION SYSTEM
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: PAGA Notice Pursuant to California Labor Code § 2699
Claimant: Jesus Orozco
Employer: DHL EXPRESS (USA), INC.

Dear Sir or Madam:

Claimant Jesus Orozco (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent him, and all other aggrieved employees as that term is defined under Labor Code § 2699 (c) (“Aggrieved Employees”)¹, for wage and hour claims against DHL EXPRESS (USA), INC. (“DHL”).

¹ Labor Code § 2699 (c) defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

In or around November 2018, DHL hired Claimant to work as a service/warehouse agent at the Los Angeles International Airport. Among other things, Claimant's job duties include handling and processing shipment and containers coming in and out of Los Angeles International Airport. DHL routinely requires Claimant to work 8 to 12-hour shifts and pays him on a biweekly basis.

DHL has violated, and/or have caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §§ 558 & 2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

On April 24, 2020, Claimant's coworker Rudi Vanegas filed a class action complaint in Los Angeles County Superior Court, on behalf of himself and all others similarly situated, a conformed copy of which is attached hereto as "Exhibit 1." Claimant plans on joining that lawsuit as a class and PAGA representative, and allege the claims asserted herein, as well as other claims, in said lawsuit after the PAGA notice period has expired.

DHL's Failure to Authorize and/or Permit Lawful Meal Breaks

During the applicable recovery period, DHL had had policy and/or practice of not authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful first and second meal breaks under California law.

Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

Labor Code § 512(a) provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee 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 an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

During the applicable recovery period, Claimant and other Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders. During the applicable recovery period, DHL failed to pay Claimant and other Aggrieved Employees premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted by DHL. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable

attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

DHL's Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, DHL had had policy and/or practice of not authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The Applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the Applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, DHL did not authorize and/or permit pay Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b). Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation with DHL for each workday that a rest break was not authorized and/or permitted by DHL. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

DHL's Failure to Furnish Accurate Wage Statements

Labor Code § 226(a) sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5) the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

DHL knowingly and intentionally failed to provide Claimant and the Aggrieved Employees with wage statement statements accurately displaying the information required by Labor Code § 226(a) because said wage statements do not accurately reflect the premiums owed to Claimant and the Aggrieved Employees for their non-complaint meals and/or rest breaks.

As a direct and proximate result of DHL'S conduct as alleged above, Claimant and the Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which DHL violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, DHL is subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required under Labor Code § 226(a).

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

DHL's Failure to Timely Pay Wages

As alleged above, during the applicable recovery period, DHL failed to pay Claimant and other Aggrieved Employees premium wages—owed to them for not being authorized and/or permitted to take their lawful meal or rest breaks—on their regular paydays. By failing to pay these premium wages on their regular paydays, DHL violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$ 100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, DHL is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et. seq.*

Penalties Sought

Without limitation, Claimant and other Aggrieved Employees will further seek any and all penalties and underpaid wages under Labor Code § 558 and PAGA. This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court on behalf of himself and other Aggrieved Employees.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees

EXHIBIT 1

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

APR 24 2020

Sherri R. [Signature], Executive Officer/Clerk

By [Signature], Deputy
Steven Drew

SHAKOURI LAW FIRM

Ashkan Shakouri, Esq. [SBN 242072]

ash@shakourilawfirm.com

11601 Wilshire Blvd., Fifth Floor

Los Angeles, California 90025

Telephone: (310) 575-1827

Fax: (310) 575-1872

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES COUNTY

RUDI VANEGAS, on behalf of himself and
others similarly situated

Plaintiff,

v.

DHL EXPRESS (USA), INC.; and DOES 1-
20, inclusive

Defendants.

Case No:

20STCV16014

CLASS ACTION COMPLAINT

1. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
2. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
3. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
4. PENALTIES UNDER LABOR CODE § 210
5. UNFAIR BUSINESS PRACTICES

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

BY FAX

1 PLAINTIFF RUDI VANEGAS ("Plaintiff"), an individual, on behalf of himself and all
2 others similarly situated, as defined below, hereby alleges the following facts and claims against
3 Defendant DHL EXPRESS (USA), INC. and DOES 1-20 (collectively "Defendants").

4 INTRODUCTION

5 1. This class action complaint challenges Defendants' past and ongoing unlawful
6 employment practices and policies on behalf of Plaintiff, and other similarly situated former and
7 current employees of Defendants, whose rights they violated and continue to violate under
8 California law.

9 2. Specifically, as to Plaintiff and others similarly situated, Defendants have
10 uniformly and systematically:

- 11 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
12 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 13 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
14 Labor Code § 226.7, and the Applicable Wage Orders;
- 15 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
16 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
- 17 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in
18 accordance with Labor Code § 204 and in violation of Labor Code § 210; and
- 19 e. Committed and continue to commit unfair business practices in violation of
20 Business & Professions Code § 17200, et seq.

21 3. The acts complained of herein occurred and will occur, at least in part, within the
22 time-period of four (4) years preceding the filing of the original Complaint, up to and through
23 the time of trial.

24 JURISDICTION AND VENUE

25 4. This Court has jurisdiction over Defendants because they are entities or
26 individuals with sufficient minimum contacts in California, and/or because they intentionally
27
28

1 availed themselves of the California market so as to render the exercise of jurisdiction over them
2 by the California courts consistent with traditional notions of fair play and justice.

3 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
4 at least some of the acts and omissions that are the subject matter of this Complaint occurred
5 herein and/or each Defendant is found, maintains offices, transacts business, exists and/or has an
6 agent herein.

7 **PARTIES**

8 6. Plaintiff is, and at all times herein mentioned, was a resident California.

9 7. Upon information and belief, Defendant DHL Express (USA), Inc. is, and at all
10 times herein mentioned was, a courier, parcel, and express mail service company domiciled in
11 Ohio, and duly authorized to do business in California.

12 8. Upon information and belief, there is such a unity of interest and ownership
13 among Defendants that the separate personalities between them do not exist; and that, if the acts
14 complained of herein are treated as carried out by each of them alone, inequitable results will
15 follow.

16 9. The true names or capacities, whether individual, associate or otherwise, of Does
17 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
18 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
19 such names and capacities as soon as they are ascertained. Upon information and belief, each of
20 these fictitiously named defendants is responsible in some manner for the occurrences alleged
21 herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately
22 caused by such fictitiously named defendants.

23 10. Upon information and belief, Plaintiff alleges that at all relevant times each of the
24 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
25 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
26 predecessor in interest of some or all of the other defendants, and was engaged with some or all
27
28

1 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
2 or all of the other defendants so as to be liable for the conduct of each of them.

3 11. Upon information and belief, Plaintiff alleges that each defendant acted pursuant
4 to and within the scope of the relationships alleged above, that each defendant knew or should
5 have known about, authorized, ratified, adopted, approved, controlled, aided and/or abetted the
6 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
7 agreement to do the things alleged herein.

8 **FACTUAL ALLEGATIONS**

9
10 12. In or around January 2018, Defendants hired Plaintiff to work as a service agent
11 at the Los Angeles International Airport. Among other things, Plaintiff's job duties include
12 handling and processing shipment and containers coming in and out of LAX. Defendants
13 routinely require Plaintiff to work 8 to 12-hour shifts and pay him on a biweekly basis.

14 **I. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks** 15 **and Their Failure to Pay the Required Premiums for Such Non-Complaint** 16 **Breaks**

17 13. During the applicable recovery period, Defendants have had policy and/or
18 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiff, to
19 take lawful meal or rest breaks, and then failing to pay them the required premiums for such non-
20 compliant breaks as required under California law. For instance, Plaintiff's timesheet for April
21 7, 2020, shows that he worked from 4:55 pm to 5:38 am the following day. Defendants did not
22 authorize or permit Plaintiff to take his first meal break until 10:33 pm—5.63 hours into his shift—
23 and also did not permit or authorize him to take a second meal break or a third rest break at all,
24 even though his shift lasted longer than 10 hours.

25 **II. Defendants' Failure to Furnish Accurate Information Regarding Accrued** 26 **Paid Sick Leave**

27 14. Pursuant to the Healthy Workplace Family Act ("Act"), codified under Labor
28 Code §§ 245-249, all employees who work in California for 30 or more days within a year are

1 entitled to a minimum number of hours of paid sick leave. Among other things, Labor Code §
2 246(i) mandates that employers provide documentation to employees showing how many hours
3 of paid sick leave, or paid time off provided in lieu of paid sick leave, employees have accrued
4 for use under the Act.

5 15. During the applicable recovery period, Defendants have had policy and/or
6 practice of violating Labor Code § 246(i) by failing to furnish to their employees, including
7 Plaintiff, the accurate amount of paid sick leave, or paid time off leave provided in lieu of paid
8 sick leave, they have accrued under California law. For instance, Plaintiff's April 10, 2020
9 paystub shows that he had 6.5 hours of accrued paid sick leave, while according to Defendants'
10 "View Accruals Online" system Plaintiff had 7.83 hours of accrued paid sick leave as of that
11 date.

12 **CLASS ALLEGATIONS**

13 16. This action is brought and may properly be maintained as a class action pursuant
14 to the provisions of Code of Civil Procedure § 382.

15 17. Plaintiff reserves the right under California Rules of Court, Rule 1855 (b) to
16 amend or modify the description of the classes, as defined below, with greater specificity or
17 division into subclasses or limitation to certain issues.

18 18. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
19 because there is a well-defined community of interest in the litigation and the proposed classes
20 are easily ascertainable.

21 19. For the purposes of this Complaint, "Class Period" means any time from four
22 years prior to the filing of this Complaint until the date of class certification.

23 20. The putative classes Plaintiff will seek to certify is currently composed of and
24 defined as follows:

25 **BREAK CLASS**

26 All of Defendants' non-exempt employees who worked inside California during the Class
27 Period (the "Break Class").
28

1 **SICK PAY CLASS**

2 All of Defendants' exempt and non-exempt employees who worked inside California
3 during the Class Period (the "Sick Pay Class").

4 21. Unless otherwise specified, the Break Class and the Sick Pay Class shall be
5 collectively referred to as the "Classes."

6 22. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the
7 Classes are so numerous that their individual joinder is impracticable. The precise number of
8 class members and their addresses will be known to Plaintiff through discovery. Class members
9 may be notified of the pendency of this action by mail, electronic mail, the internet, or published
10 notice.

11 23. **Common Questions Predominate:** Common questions of law and fact exist as
12 to all members of the Classes and predominate over any questions that affect only individual
13 members of the Classes. The predominant common questions of law and fact, among other
14 things, include whether Defendants:

- 15 a. Failed and continue to fail to authorize and/or permit meal breaks in violation of
16 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
17 b. Failed and continue to fail to authorize and/or permit rest breaks in violation of
18 Labor Code § 226.7, and the Applicable Wage Orders;
19 c. Failed and continue to fail to timely furnish complete and accurate itemized wage
20 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
21 d. Willfully failed and continue to fail to pay all owed wages on regular paydays in
22 accordance with Labor Code § 204 and in violation of Labor Code § 210; and
23 e. Committed and continue to commit unfair business practices in violation of
24 Business & Professions Code § 17200, et seq.

25 24. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
26 Classes he seeks to represent because Plaintiff, as an employee of Defendants, was exposed and
27 subjected to the same unlawful business practices as the other members of the Classes. Thus,
28

1 Plaintiff and the members of the Classes he seeks to represent sustained the same types of
2 damages and losses.

3 25. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Classes.
4 Plaintiff's attorneys have experience in employment and class action matters and will adequately
5 represent the Classes in this matter. Plaintiff has no adverse interests to those in the Classes.

6 26. **Superiority:** A class action is superior to other available means for the fair and
7 efficient adjudication of this controversy. Because individual joinder of all members of the
8 Classes is impractical, class action treatment will permit a large number of similarly situated
9 persons to prosecute their common claims in a single forum simultaneously, efficiently and
10 without the unnecessary duplication of effort and expense that numerous individual actions
11 would engender. The relatively minor amount of individual damages in question coupled with
12 the expenses and burdens of individual litigation would make it difficult or impossible for
13 individual members of the Classes to redress the wrongs done to them, while important public
14 interests will be served by addressing the matter as a class action. The cost to and burden on the
15 court system of adjudication of individualized litigation would be substantial and substantially
16 more than the costs and burdens of a class action. Individualized litigation would also present the
17 potential for inconsistent or contradictory judgments.

18 **FIRST CAUSE OF ACTION**

19 **[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]**

20 **(Plaintiff and the Break Class)**

21 27. Plaintiff hereby incorporates by reference all other allegations contained in this
22 Complaint as though fully set forth herein.

23 28. Labor Code § 226.7(a) provides, "No employer shall require any employee to
24 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
25 Commission."

26 29. Labor Code § 512(a) provides, in relevant part, that: "An employer may not
27 employ an employee for a work period of more than five hours per day without providing the
28 employee with a meal period of not less than 30 minutes, except that if the total work period per

1 day of the employee is no more than six hours, the meal period may be waived by mutual consent
2 of both the employer and employee. An employer may not employ an employee for a work period
3 of more than 10 hours per day without providing the employee with a second meal period of not
4 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
5 meal period may be waived by mutual consent of the employer and the employee only if the first
6 meal period was not waived.”

7 30. During the applicable recovery period, Plaintiff and the Break Class regularly
8 worked in excess of 5-hour work periods without being authorized and/or permitted to take lawful
9 meal breaks, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

10 31. During the applicable recovery period, Defendants failed to pay Plaintiff and the
11 Break Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.
12 As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders,
13 Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

14 32. Plaintiff and the Break Class are entitled to recover one additional hour of pay at
15 their regular rate of compensation for each workday that a meal period was not authorized and/or
16 permitted. Plaintiff and the Break Class are also entitled to their break and reasonable attorneys’
17 fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

18 **SECOND CAUSE OF ACTION**

19 **[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]**

20 **(Plaintiff and the Break Class)**

21 33. Plaintiff hereby incorporates by reference all other allegations contained in this
22 Complaint as though fully set forth herein.

23 34. California Labor Code § 226.7(a) provides, "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the
25 Industrial Welfare Commission.”

26 35. The Applicable Wage Orders require that employers authorize or permit non-
27 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
28 each work period. The rest break is based on the total hours worked daily and must be at the

1 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
2 thereof.

3 36. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
4 employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
5 the employee one additional hour of pay at the employee's regular rate of pay for each workday
6 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
7 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
8 employee reaches an area away from the work area that is appropriate for rest.

9 37. During the applicable recovery period, Defendants did not authorize and/or permit
10 pay Plaintiff and the Break Class to take lawful rest breaks and failed to pay premium wages
11 mandated by Labor Code § 226.7(b) to this group of employees. As a result of violations of Labor
12 Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant
13 to Labor Code §§ 558 and 2698 et seq.

14 38. Plaintiff and the Break Class are entitled to recover one additional hour of pay at
15 their regular rate of compensation with Defendants for each workday that a rest break was not
16 authorized and/or permitted. Plaintiff and the Class are also entitled to their costs and reasonable
17 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
18 interest.

19 **THIRD CAUSE OF ACTION**

20 **[FAILURE TO FURNISH ACCURATE WAGE STATEMENTS]**

21 **(Plaintiff and the Break Class)**

22 39. Plaintiff hereby incorporate by reference all other allegations contained in this
23 Complaint as though fully set forth herein.

24 40. This claim is brought under Labor Code § 226(a), which sets forth reporting
25 requirements for employers when paying wages, including that every employer shall furnish each
26 of his or her employees an itemized statement in writing showing, among other things, (1) gross
27 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
28

1 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
2 each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

9 42. During the applicable recovery period, Defendants knowingly and intentionally
10 failed to provide Plaintiff and the Break Class with wage statements accurately displaying the
11 information required by Labor Code § 226(a).

12 43. As a direct and proximate result of Defendants conduct as alleged above, Plaintiff
13 and the Break Class are each entitled to a civil penalty of \$50 for the initial pay period and \$100
14 for each subsequent pay period in which Defendants violated the reporting requirements of Labor
15 Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Defendants
16 are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
17 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails
18 to provide the employee a wage deduction statement or fails to keep the records required under
19 Labor Code § 226(a).

20 **FOURTH CAUSE OF ACTION**

21 **[PENALTIES UNDER LABOR CODE § 210]**

22 **(Plaintiff and the Break Class)**

23 44. Plaintiff hereby incorporates by reference all other allegations contained in this
24 Complaint as though fully set forth herein.

25 45. This claim is brought under Labor Code § 210, which relevantly provides:

26 (a) In addition to, and entirely independent and apart from, any other
27 penalty provided in this article, every person who fails to pay the wages
28

of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3...

46. Labor Code § 204(a) also pertinently provides:

All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...

47. As alleged above, during the applicable recovery period, Defendants failed to pay Plaintiff and the Break Class premium wages, owed to them for not being authorized and/or permitted to take their lawful meal or rest breaks, on their regular paydays. By failing to pay the premium wages owed to Plaintiff and the Break Class on their regular paydays, Defendants violated Labor Code § 204(a), and thus owe penalties of \$100 for the initial violation and \$200 for each subsequent violation, plus 25 percent of the premium wages they withheld from Plaintiff and the Break Class under Labor Code § 210.

FIFTH CAUSE OF ACTION
[UNFAIR BUSINESS PRACTICES]
(Plaintiff and the Classes)

48. Plaintiff hereby incorporates by reference all other allegations contained in this Complaint as though fully set forth herein.

49. Defendants have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, including: a) failing to permit and/or authorize Plaintiff and the Break Class to take lawful meal and rest breaks; b) failing to pay premium wages owed to Plaintiff and the Break Class for not permitting and/or authorizing them to take lawful meal and rest breaks on their regular paydays; and c) failing to furnish documentation to Plaintiff and the Sick Pay Class showing how many hours of paid sick leave, or paid time off provided in lieu of paid sick leave, they have accrued for use under the Act.

50. As alleged above, Defendants' failure to furnish Plaintiff and the Sick Pay Class accurate information regarding the correct number of hours of paid sick leave, or paid time off provided in lieu of paid sick leave, they have accrued for use violates Labor Code § 246 (i). Pursuant to Labor Code § 248.5(e), Plaintiff and the Sick Pay Class are entitled to and do seek equitable, injunctive and restitutionary relief, plus their reasonable attorneys' fees and costs.

51. Plaintiff and the Break Class also seek full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein, plus their reasonable attorneys' fees and costs.

52. Plaintiff and the Classes further seek, on their own behalf and on behalf of the general public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the original Complaint in this action.

53. Plaintiff and the Classes are further entitled to and do seek both a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive

1 relief restraining Defendants from engaging in any of such business practices in the future. Such
2 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
3 irreparable injury in that Defendants will continue to violate these California laws, represented
4 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
5 expectation of future violations will require current and future employees to repeatedly and
6 continuously seek legal redress in order to gain compensation to which they are entitled under
7 California law. Plaintiff and the Classes have no other adequate remedy at law to ensure future
8 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
9 violated herein.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for
12 relief and judgment against Defendants as follows:

13 1. Certification of this action as a class action on behalf of each of the Classes alleged
14 in this Complaint;

15 2. For general damages, according to proof, on each cause of action for which such
16 damages are available;

17 3. For compensatory damages, according to proof, on each cause of action for which
18 such damages are available;

19 4. For consequential damages, according to proof, on each cause of action for which
20 such damages are available

21 5. For restoration and restitution of lost wages, statutory penalties, and all other
22 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

23 6. For declaratory and injunctive relief as requested herein;

24 7. For prejudgment and post-judgment interest according to law;

25 8. For reasonable attorneys' fees incurred in this action on those causes of action for
26 which such fees are recoverable under the law;

27 9. For costs of suit incurred in this action;

28 10. Disgorgement of all gains unjustly gained by Defendants; and

11. Any other remedies, whether in law or equity, that the Court deems properly.

Dated: April 23, 2020

Respectfully submitted,
SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on issues triable to a jury.

Dated: April 23, 2020

Respectfully submitted,
SHAKOURI LAW FIRM

By: Ashkan Shakouri
Ashkan Shakouri
Attorneys for Plaintiff

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
4

5 I am employed in the County of Los Angeles, State of California, I am over the age of 18 and
6 not a party to the within action; my business address is 11601 Wilshire Boulevard, Fifth Floor, Los Angeles, California 90025. I served the foregoing document(s) described as:

7 **FIRST-AMENDED CLASS ACTION COMPLAINT**
8

9 by mailing said document(s) in a sealed envelope with postage fully prepaid, as follows:

10 X BY ELECTRONIC MAIL VIA CASEANYWHERE: I submitted an electronic version of the above-
11 entitled document(s) via file transfer protocol (FTP) to CaseAnywhere through the upload feature at
12 www.casehomepage.com. I caused the above-entitled document (s) to be sent to the recipients on the
13 service list as maintained by CaseAnywhere in this action. The file transmission was reported as
14 complete and a copy of the CaseAnywhere Filing Receipt Page/ Conformation will be maintained with
15 the original document(s) in this office.

16 d. Place of deposit: Los Angeles, California

17 e. Addressed to:

18 **Shaun J. Voigt**
19 **Fisher & Phillips LLP**
20 **444 South Flower Street, Suite 1500**
21 **Los Angeles, CA 90071**
22 **svoigt@fisherphillips.com**

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

25 Date: September 9, 2020

26 *Ashkan Shakouri*
27 _____
28 Ashkan Shakouri