

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 17 2020

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BY FAX

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behalf of himself and all others similarly situated

Additional Counsel on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO - COMPLEX

TAI HANG and ROBERT CANALES,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

OLD DOMINION FREIGHT LINE,
INC., a Virginia corporation; and DOES
1 to 100, inclusive,

Defendants.

CLASS ACTION

Case No.: CIV SB 2025678

COMPLAINT FOR:

1. FAILURE TO PROVIDE LEGALLY-COMPLIANT REST PERIODS;
2. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS;
3. INDEPENDENT FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;
4. DERIVATIVE FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;
5. VIOLATIONS OF LABOR CODE §203;
6. PENALTIES PURSUANT TO LABOR CODE §2699; AND
7. UNFAIR BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

Honorable David Cohn
Department S-26

Action filed: November 6, 2020
Trial Date: None Set

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DEC 17 2020

SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO COUNTY

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9 behalf of himself and all others similarly situated

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1 Plaintiffs TAI HANG and ROBERT CANALES, individuals on behalf of themselves and
2 all others similarly situated (hereinafter collectively referred to as "Plaintiffs"), hereby file this
3 First Amended Complaint against Defendant OLD DOMINION FREIGHT LINE, INC. and
4 DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and
5 believe, and on the basis of that information and belief, allege as follows:

6 I.

7 **INTRODUCTION**

8 1. This is a civil action seeking recovery for Defendants' violations of the California
9 Labor Code ("Labor Code"), California Business and Professions Code ("B&PC"), the
10 applicable Wage Orders issued by the California Industrial Welfare Commission (hereinafter, the
11 "IWC Wage Orders") and related common law principles.

12 2. Plaintiffs' action seeks monetary damages, including full restitution from
13 Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

14 3. The acts complained of herein occurred, occur and will occur, at least in part,
15 within the time period from four (4) years preceding the filing of the original Complaint herein,
16 up to and through the time of trial for this matter although this should not automatically be
17 considered the statute of limitations for any cause of action herein.

18 **RELEVANT JOB TITLES**

19 4. For introductory and general information only (and not to be considered a
20 proposed class definition), the relevant individuals in this action are Defendants' hourly-paid,
21 non-exempt "dock worker" employees who were subjected to Defendants' policies and practices
22 as described herein. Any differences in job activities between the different individuals in these
23 positions were and are legally insignificant to the issues presented by this action.

24 **SUMMARY OF CLAIMS**

25 5. With regard to Defendants' hourly-paid, non-exempt "dock worker" employees,
26 Defendants have:

- 27 a. Failed to provide legally-compliant rest periods;
28 b. Failed to authorize and permit all paid legally-requisite rest periods;

- c. Independently failed to timely furnish accurate itemized wage statements;
- d. Derivatively failed to timely furnish accurate itemized wage statements;
- e. Violated Labor Code §203;
- f. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- g. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF TAI HANG

6. Plaintiff TAI HANG is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff TAI HANG worked for Defendants as an hourly-paid, non-exempt "dock worker" employee from approximately August 2007 to August 11, 2020 in Rialto, California, which is in San Bernardino County, California.

8. Plaintiff TAI HANG seeks recovery herein from Defendants because with regard to Plaintiff TAI HANG, while acting for Defendants in his capacity as an hourly-paid, non-exempt "dock worker" employee, Defendants have:

- a. Failed to provide legally-compliant rest periods;
- b. Failed to authorize and permit all paid legally-requisite rest periods;
- c. Independently failed to timely furnish accurate itemized wage statements;
- d. Derivatively failed to timely furnish accurate itemized wage statements;
- e. Violated Labor Code §203;
- f. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- g. Conducted unfair business practices.

PLAINTIFF ROBERT CANALES

9. Plaintiff ROBERT CANALES is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

10. Plaintiff ROBERT CANALES worked for Defendants as an hourly-paid, non-exempt "dock worker" employee from approximately January 28, 2018 to October 2, 2020 in

1 Rialto, California, which is in San Bernardino County, California.

2 11. Plaintiff ROBERT CANALES seeks recovery herein from Defendants because
3 with regard to Plaintiff ROBERT CANALES, while acting for Defendants in his capacity as an
4 hourly-paid, non-exempt "dock worker" employee, Defendants have:

- 5 a. Failed to provide legally-compliant rest periods;
- 6 b. Failed to authorize and permit all paid legally-requisite rest periods;
- 7 c. Independently failed to timely furnish accurate itemized wage statements;
- 8 d. Derivatively failed to timely furnish accurate itemized wage statements;
- 9 e. Violated Labor Code §203;
- 10 f. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- 11 g. Conducted unfair business practices.

12 DEFENDANT, OLD DOMINION FREIGHT LINE, INC.

13 12. Defendant OLD DOMINION FREIGHT LINE, INC. is now and/or at all times
14 mentioned in this Complaint was a Virginia corporation and the owner and operator of an
15 industry, business and/or facility(/ies) licensed to do business and actually doing business in the
16 State of California.

17 DOES 1 TO 100, INCLUSIVE

18 13. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this
19 Complaint were licensed to do business and/or actually doing business in California.

20 14. Plaintiffs do not know the true names or capacities, whether individual, partner or
21 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such
22 fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

23 15. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
24 capacities as soon as they are ascertained.

25 ALL DEFENDANTS

26 16. Defendants, and each of them, are now and/or at all times mentioned in this
27 Complaint were in some manner legally responsible for the events, happenings and circumstances
28 alleged in this Complaint.

1 17. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
2 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

3 18. Defendants, and each of them, are now and/or at all times mentioned in this
4 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
5 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
6 mentioned in this Complaint were acting within the course and scope of that agency, servitude
7 and/or employment.

8 19. Defendants, and each of them, are now and/or at all times mentioned in this
9 Complaint were members of and/or engaged in a joint venture, partnership and common
10 enterprise, and were acting within the course and scope of, and in pursuance of said joint
11 venture, partnership and common enterprise.

12 20. Defendants, and each of them, at all times mentioned in this Complaint concurred
13 and contributed to the various acts and omissions of each and every one of the other Defendants
14 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

15 21. Defendants, and each of them, at all times mentioned in this Complaint approved
16 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
17 this Complaint.

18 22. Defendants, and each of them, at all times mentioned in this Complaint aided and
19 abetted the acts and omissions of each and every one of the other Defendants thereby
20 proximately causing the damages alleged in this Complaint.

21 III.

22 JURISDICTION AND VENUE

23 23. The California Superior Court has jurisdiction in this matter due to Defendants'
24 aforementioned violations of California statutory law and/or related common law principles.

25 24. The California Superior Court also has jurisdiction in this matter because both the
26 individual and aggregate monetary damages and restitution sought herein exceed the minimal
27 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

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25. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiffs TAI HANG and ROBERT CANALES and the members of the putative Classes herein were all California citizens. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

IV.

27. CCP §382 provides in pertinent part: “...[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” Plaintiffs bring this suit as a class action pursuant to CCP §382.

- a. All California citizens employed by Defendants as hourly-paid, non-exempt “dock worker” employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding providing legally-compliant rest periods as specifically described herein (hereinafter, the “Legal Rest Period Class”);
- b. All California citizens employed by Defendants as hourly-paid, non-exempt “dock worker” employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding paid rest periods as specifically described herein (hereinafter, the “Rest Period Class”);
- c. All California citizens employed by Defendants as hourly-paid, non-exempt “dock worker” employees during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding

itemized wage statements as specifically described herein (hereinafter, the
“Independent Wage Statement Class”);

d. All California citizens employed by Defendants as hourly-paid, non-exempt
“dock worker” employees during the appropriate time period who were
derivatively subjected to Defendants’ policies and practices regarding
itemized wage statements as specifically described herein (hereinafter, the
“Derivative Wage Statement Class”);

e. All formerly-employed California citizens employed by Defendants as hourly-
paid, non-exempt “dock worker” employees during the appropriate time
period who were subjected to Defendants’ policies and practices regarding
Labor Code §203 and the payment of final wages as specifically described
herein (hereinafter, the “LC 203 Class”); and

f. All California citizens employed by Defendants as hourly-paid, non-exempt
“dock worker” employees during the appropriate time period regarding whom
Defendants have engaged in unlawful, unfair and/or fraudulent business acts
or practices prohibited by B&PC §17200, et seq. as specifically described
herein (hereinafter, the “17200 Class”).

29. The Legal Rest Period Class, Rest Period Class, Independent Wage Statement
Class, Derivative Wage Statement Class, LC 203 Class and 17200 Class are herein collectively
referred to as the “Classes.”

30. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a
class definition at such time when Plaintiffs seek to certify the Classes alleged herein

31. Numerosity (CCP §382):

a. The potential quantity of members of the Classes as defined is so numerous
that joinder of all members is unfeasible and impractical;

b. The disposition of the claims of the members of the Classes through this class
action will benefit both the parties and this Court;

- 1 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
2 however, it is estimated that the membership of the Classes numbers greater
3 than 100 individuals; and
4 d. The quantity and identity of such membership is readily ascertainable via
5 inspection of Defendants' records.

6 32. Superiority (CCP §382): The nature of this action and the nature of the laws
7 available to Plaintiffs make the use of the class action format particularly efficient and the
8 appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- 9 a. California has a public policy which encourages the use of the class action
10 device;
11 b. By establishing a technique whereby the claims of many individuals can be
12 resolved at the same time, the class suit both eliminates the possibility of
13 repetitious litigation and provides small claimants with a method of obtaining
14 redress for claims which would otherwise be too small to warrant individual
15 litigation;
16 c. This case involves large corporate Defendants and a large number of
17 individual Class members with many relatively small claims and common
18 issues of law and fact;
19 d. If each individual member of the Classes was required to file an individual
20 lawsuit, the large corporate Defendants would necessarily gain an
21 unconscionable advantage because Defendants would be able to exploit and
22 overwhelm the limited resources of each individual member of the Classes
23 with Defendants' vastly superior financial and legal resources;
24 e. Requiring each individual member of the Classes to pursue an individual
25 remedy would also discourage the assertion of lawful claims by the members
26 of the Classes who would be disinclined to pursue an action against
27 Defendants because of an appreciable and justifiable fear of retaliation and
28 permanent damage to their lives, careers and well-being;

- 1 f. Proof of a common business practice or factual pattern, of which the members
2 of the Classes experienced, is representative of the Classes herein and will
3 establish the right of each of the members of the Classes to recover on the
4 causes of action alleged herein;
- 5 g. Absent class treatment, the prosecution of separate actions by the individual
6 members of the Classes, even if possible, would likely create:
- 7 i) a substantial risk of each individual plaintiff presenting in separate,
8 duplicative proceedings the same or essentially similar arguments and
9 evidence, including expert testimony;
- 10 ii) a multiplicity of trials conducted at enormous expense to both the
11 judicial system and the litigants;
- 12 iii) inconsistent or varying verdicts or adjudications with respect to the
13 individual members of the Classes against Defendants;
- 14 iv) potentially incompatible standards of conduct for Defendants; and
15 v) potentially incompatible legal determinations with respect to
16 individual members of the Classes which would, as a practical matter,
17 be dispositive of the interest of the other members of the Classes who
18 are not parties to the adjudications or which would substantially
19 impair or impede the ability of the members of the Classes to protect
20 their interests.
- 21 h. The claims of the individual members of the Classes are not sufficiently large
22 to warrant vigorous individual prosecution considering all of the concomitant
23 costs and expenses attendant thereto;
- 24 i. Courts seeking to preserve efficiency and other benefits of class actions
25 routinely fashion methods to manage any individual questions; and
- 26 j. The Supreme Court of California urges trial courts, which have an obligation
27 to consider the use of innovative procedural tools to certify a manageable
28 class, to be procedurally innovative in managing class actions.

1 33. Well-defined Community of Interest: Plaintiffs also meet the established
2 standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29
3 Cal.4th 1096), as follows:

4 34. Typicality: The claims of Plaintiffs TAI HANG and ROBERT CANALES are
5 typical of the claims of all members of the Classes they seek to represent because all members of
6 the Classes sustained injuries and damages arising out of Defendants' common course of conduct
7 in violation of law and the injuries and damages of all members of the Classes were caused by
8 Defendants' wrongful conduct in violation of law, as alleged herein.

9 35. Adequacy: Plaintiffs TAI HANG and ROBERT CANALES:

- 10 a. are adequate representatives of the Classes they seek to represent;
- 11 b. will fairly protect the interests of the members of the Classes;
- 12 c. have no interests antagonistic to the members of the Classes; and
- 13 d. will vigorously pursue this suit via attorneys who are competent, skilled and
14 experienced in litigating matters of this type.

15 36. Predominant Common Questions of Law or Fact: There are common questions of
16 law and/or fact as to the members of the Classes which predominate over questions affecting
17 only individual members of the Classes, including, without limitation:

- 18 a. Whether Defendants failed and continue to fail to provide legally-compliant
19 rest periods to the members of the Legal Rest Period Class in violation of the
20 Labor Code and Section 12 of the IWC Wage Orders;
- 21 b. Whether Defendants failed and continue to fail to authorize and permit paid
22 legally-requisite rest periods to the members of the Rest Period Class in
23 violation of the Labor Code and Section 12 of the IWC Wage Orders;
- 24 c. Whether Defendants independently failed to timely furnish accurate, itemized
25 and legal wage statements to the members of the Independent Wage Statement
26 Class;
- 27 d. Whether Defendants independently failed to timely furnish accurate, itemized
28 and legal wage statements to the members of the Independent Wage Statement

Class;

- e. Whether Defendants are liable pursuant to Labor Code §203 to the members of the LC 203 Class;
- f. Whether Defendants' conduct constitutes unfair competition within the meaning of B&PC §17200, et seq.;
- g. Whether Defendants' conduct constitutes unfair business practices within the meaning of B&PC §17200, et seq.;
- h. Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- i. Whether the members of the Classes are entitled to injunctive relief;
- j. Whether the members of the Classes are entitled to restitution; and
- k. Whether Defendants are liable for attorneys' fees and costs.

37. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232, 238).

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE LEGALLY-COMPLIANT REST PERIODS

(On Behalf of the Legal Rest Period Class)

(Against All Defendants)

38. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

39. Labor Code §226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

1 40. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
2 amend working condition orders with respect to break periods, meal periods, and days of rest for
3 any workers in California consistent with the health and welfare of those workers.”

4 41. In Augustus v. ABM Security Services, Inc. (2016) 2 Cal.5th 257, 269, the
5 California Supreme Court held that “during rest periods employers must relieve employees of all
6 duties and relinquish control over how employees spend their time.” The court further held that a
7 policy that “tethered by time and policy to particular locations” is inconsistent with the required
8 relinquishment of control. (Id.) The court noted that employees must be free to “[take
9 a] brief walk,” or “take care of other personal matters ...like pumping breast milk ...or
10 completing a phone call to arrange child care.” (Id. at 270.)

11 42. Section 12(A) of the IWC Wage Order states: “Every employer shall authorize
12 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
13 of each work period. The authorized rest period time shall be based on the total hours worked
14 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
15 However, a rest period need not be authorized for employees whose total daily work time is less
16 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
17 worked for which there shall be no deduction from wages.”

18 43. Section 12(B) of the IWC Wage Order states: “If an employer fails to provide an
19 employee a rest period in accordance with the applicable provisions of this order, the employer
20 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
21 each workday that the rest period is not provided.”

22 44. The members of the Legal Rest Period Class sometimes worked over four (4)
23 hours per shift. Further, the members of the Legal Rest Period Class sometimes worked over six
24 (6) hours per shift, and in some cases over ten (10) hours per shift.

25 45. The members of the Legal Rest Period Class were entitled to a rest period of not
26 less than ten (10) minutes prior to exceeding four (4) hours of employment.

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1 46. Defendants' rest period policy states:

2 "Hourly employees may not leave OD premise while on a paid rest break and are
3 expected to be at their work station at the conclusion of the paid rest break, unless
4 prohibited by applicable law, including state and local laws."

5 47. As such, the members of the Legal Rest Period Class were prohibited from taking
6 legally-compliant breaks in violation of Brinker Restaurant Corp. v. Superior Court (2012) 53
7 Cal.4th 1004, 1040 ["The wage orders and governing statute do not countenance an employer's
8 exerting coercion against the taking of, creating incentives to forgo, or otherwise encouraging the
9 skipping of legally protected breaks."].

10 48. As a matter of Defendants' established company policy, Defendants failed to
11 provide legally-compliant rest periods established by Labor Code §226.7 and Labor Code §516
12 and Section 12 of the IWC Wage Order, because Defendants prohibited the taking of legally
13 protected rest periods by using Defendants' rest period policy to prevent the members of the
14 Legal Rest Period Class from taking rest periods outside of Defendants' premises, and forbade
15 the members of the Legal Rest Period Class from leaving Defendants' facilities for legally-
16 compliant rest periods.

17 49. These policies violate Brinker's prohibition on "otherwise encouraging the
18 skipping of legally protected breaks."

19 50. The California State of California Department of Industrial Relations, regarding
20 an employer's obligation to provide off premise rest periods, even states on its website
21 (https://www.dir.ca.gov/dlse/faq_restperiods.htm):

22 **Can my employer require that I stay on the work premises during**
23 **my rest period?**

24 No, your employer cannot impose any restraints not inherent in the rest
25 period requirement itself. In Augustus v. ABM Security Services, Inc.,
26 (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the
27 rest period requirement "obligates employers to permit-and authorizes
28 employees to take-off-duty rest periods. That is, during rest periods

1 employers must relieve employees of all duties and relinquish control
2 over how employees spend their time.” (citation omitted) As a
3 practical matter, however, if an employee is provided a ten minute rest
4 period, the employee can only travel five minutes from a work post
5 before heading back to return in time.

6 51. Defendants’ written policies and actual practices clearly and unmistakably have
7 language definitively requiring employees to remain on premises - “Hourly employees **may not**
8 **leave OD premise while on a paid rest break...**” (emphasis added). This policy language
9 violates California rest period laws. When an employer instructs an employee not to do
10 something, the employee generally interprets the instruction as a requirement despite any
11 conditional language. Here, employees indeed interpreted this policy to mean that they were
12 required to stay on Defendants’ premises during rest periods.

13 52. Pursuant to Section 12 of the IWC Wage Order and Labor Code §226.7(b) which
14 states “if an employer fails to provide an employee a meal or rest period in accordance with an
15 applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
16 additional hour of pay at the employee’s regular rate of compensation for each work day that the
17 meal or rest period is not provided,” the members of the Legal Rest Period Class are entitled to
18 damages in an amount equal to one (1) additional hour of pay at each employee’s regular rate of
19 compensation for each work day that the rest period was not so provided.

20 53. Pursuant to Labor Code §218.6 and CC §3287, the members of the Legal Rest
21 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

22 SECOND CAUSE OF ACTION

23 FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS

24 (On Behalf of the Rest Period Class)

25 (Against All Defendants)

26 54. Plaintiffs incorporate by reference and reallege each and every one of the
27 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
28 forth herein.

1 55. Labor Code §226.7(b) provides that “An employer shall not require an employee
2 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
4 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

5 56. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
6 amend working condition orders with respect to break periods, meal periods, and days of rest for
7 any workers in California consistent with the health and welfare of those workers.”

8 57. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize
9 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
10 of each work period. The authorized rest period time shall be based on the total hours worked
11 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
12 However, a rest period need not be authorized for employees whose total daily work time is less
13 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
14 worked for which there shall be no deduction from wages.”

15 58. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide
16 an employee a rest period in accordance with the applicable provisions of this order, the
17 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
18 compensation for each workday that the rest period is not provided.”

19 59. The members of the Rest Period Class sometimes worked over four (4) hours per
20 shift. Further, the members of the Rest Period Class sometimes worked over six (6) hours per
21 shift, and in some cases over ten (10) hours per shift.

22 60. The members of the Rest Period Class were entitled to a rest period of not less
23 than ten (10) minutes for every four (4) hours of work, or major fraction thereof.

24 61. As a matter of Defendants’ established company policy, Defendants failed to
25 always authorize and permit all required rest periods established by Labor Code §226.7 and
26 Labor Code §516 and Section 12 of the IWC Wage Order(s), including but not limited to
27 because of the huge size of Defendants’ facilities and the large amount of time it took for the
28 members of the Rest Period Class to travel from their work stations to the break room (where

1 they were required to go) and back to their work stations.

2 62. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b)
3 which states "if an employer fails to provide an employee a meal or rest period in accordance
4 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
5 employee one additional hour of pay at the employee's regular rate of compensation for each
6 work day that the meal or rest period is not provided," the members of the Rest Period Class are
7 entitled to damages in an amount equal to one (1) additional hour of pay at each employee's
8 regular rate of compensation for each work day that one or more rest periods were not so
9 provided.

10 63. Pursuant to Labor Code §218.6 and CC §3287, the members of the Rest Period
11 Class seek recovery of pre-judgment interest on all amounts recovered herein.

12 **THIRD CAUSE OF ACTION**
13 **INDEPENDENT FAILURE TO TIMELY**
14 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(On Behalf of the Independent Wage Statement Class)**
16 **(Against All Defendants)**

17 64. Plaintiffs incorporate by reference and reallege each and every one of the
18 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
19 forth herein.

20 65. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly
21 or at the time of each payment of wages, furnish each of his or her employees, either as a
22 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
23 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
24 gross wages earned, (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3)
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
28 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the

1 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
2 dates of the period for which the employee is paid, (7) the name of the employee and only the
3 last four digits of his or her social security number or an employee identification number other
4 than a social security number, (8) the name and address of the legal entity that is the employer
5 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the
6 name and address of the legal entity that secured the services of the employer, and (9) all
7 applicable hourly rates in effect during the pay period...”.

8 66. As a pattern and practice, in violation of Labor Code §226(a), Defendants did not
9 and still do not furnish each of the members of the Independent Wage Statement Class with
10 accurate itemized wage statements in writing, including but not limited not always including all
11 applicable hourly rates for straight time, overtime 1.5 and overtime 2.0 and/or the accurate
12 hourly pay rates in effect during the pay period.

13 67. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
14 employee suffers injury if the employer fails to provide accurate and complete information as
15 required by any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot
16 promptly and easily ascertain requisite information without reference to other documents or
17 information.

18 68. Here, the members of Independent Wage Statement Class suffered injury because
19 Defendants failed to provide accurate and complete information as required by one or more items
20 listed in Labor Code §226(a)(1)-(9) and the Independent Wage Statement Class members could
21 not and cannot promptly and easily ascertain requisite information without reference to other
22 documents or information.

23 69. In addition, the members of the Independent Wage Statement Class have suffered
24 injury as a result of Defendants’ failure to maintain accurate records for the members of the
25 Independent Wage Statement Class in that the members of the Independent Wage Statement
26 Class were not timely provided written accurate itemized statements showing all requisite
27 information, including but not limited to all applicable and/or accurate hourly pay rates in effect
28 during the pay period, in violation of Labor Code §226, such that the members of the

1 Independent Wage Statement Class were misled by Defendants as to the correct information
2 regarding various items, including but not limited to all applicable and/or accurate hourly pay
3 rates in effect during the pay period.

4 70. The actual injuries suffered by the members of the Independent Wage Statement
5 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for
6 the members of the Independent Wage Statement Class include but are not limited to:

- 7 a. That such practice prevents the members of the Independent Wage Statement
8 Class from being able to effectively challenge information on their wage
9 statements; and/or
10 b. The difficulty and expense of filing and maintaining this lawsuit, and the
11 discovery required to collect and analyze the very information that California
12 law requires.

13 71. Pursuant to Labor Code §226(e), the members of the Independent Wage
14 Statement Class are entitled to fifty dollars (\$50.00) per employee for the initial pay period in
15 which a violation hereunder occurs and one hundred dollars (\$100.00) per employee for each
16 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
17 (\$4,000.00).

18 72. Pursuant to Labor Code §226(g), the currently-employed members of the
19 Independent Wage Statement Class are entitled to injunctive relief to ensure Defendants'
20 compliance with Labor Code §226.

21 73. Pursuant to Labor Code §226(e) and/or §226(g), the members of the Independent
22 Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

23 **FOURTH CAUSE OF ACTION**

24 **DERIVATIVE FAILURE TO TIMELY**

25 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

26 **(On Behalf of the Derivative Wage Statement Class)**

27 74. Plaintiffs incorporate by reference and reallege each and every one of the
28 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set

1 forth herein.

2 75. Labor Code §226(a) states in pertinent part: “Every employer shall, semimonthly
3 or at the time of each payment of wages, furnish each of his or her employees, either as a
4 detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
5 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
6 gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages
7 earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and
8 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
9 each the pay period and the corresponding number of hours worked at each hourly rate by the
10 employee....”.

11 76. Further, the IWC Wage Orders §7(A) states in pertinent part: “(A) Every
12 employer shall keep accurate information with respect to each employee including the following:
13 (3) Time records showing when the employee begins and ends each work period. Meal periods,
14 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
15 in the payroll period and applicable rates of pay....”

16 77. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A),
17 California employers are required to maintain accurate records pertaining to the total hours
18 worked for Defendants by the members of the Derivative Wage Statement Class, including but
19 not limited to, beginning and ending of each work period, meal period and split shift interval, the
20 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

21 78. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage
22 Orders §7(A), Defendants did not and still do not furnish each of the members of the Derivative
23 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
24 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
25 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
26 number of hours worked at each hourly rate by each respective individual.

27 79. As set forth herein in prior causes of action, Defendants allegedly failed to pay the
28 members of the Derivative Wage Statement Class all wages due and owing.

1 80. As a derivative result of this failure to pay wages and as a pattern and practice in
2 violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do
3 not maintain accurate records pertaining to the total hours worked for Defendants by the
4 members of the Derivative Wage Statement Class, including but not limited to, beginning and
5 ending of each work period, meal period interval, total daily hours worked, total hours worked
6 per pay period, and the applicable rates of pay.

7 81. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
8 employee suffers injury if the employer fails to provide accurate and complete information as
9 required by any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot
10 promptly and easily ascertain requisite information without reference to other documents or
11 information.

12 82. Here, the members of Derivative Wage Statement Class suffered injury because,
13 due to Defendants' failure to pay all wages due and owing, Defendants derivatively failed to
14 provide accurate and complete information as required by one or more items listed in Labor
15 Code §226(a)(1)-(9).

16 83. In addition, the members of the Derivative Wage Statement Class have suffered
17 injury as a result of Defendants' failure to maintain accurate records for the members of the
18 Derivative Wage Statement Class in that the members of the Derivative Wage Statement Class
19 were not timely provided written accurate itemized statements showing all requisite information,
20 including but not limited to total hours worked by the employee, net wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate, in violation of Labor Code §226 and the IWC Wage Orders §7(A),
23 such that the members of the Derivative Wage Statement Class were misled by Defendants as to
24 the correct information regarding various items, including but not limited to total hours worked
25 by the employee, net wages earned and all applicable hourly rates in effect during the pay period
26 and the corresponding number of hours worked at each hourly rate.

27 84. The actual injuries suffered by the members of the Derivative Wage Statement
28 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for

1 the members of the Derivative Wage Statement Class include but are not limited to:

- 2 a. Confusion over whether they received all wages owed them by Defendants;
- 3 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 4 c. Being forced to engage in mathematical computations to analyze whether
- 5 Defendants' wages in fact compensated for all hours worked;
- 6 d. The inability to accurately calculate wage rates complicated by the fact that
- 7 wage statement information required by Labor Code §226 is missing;
- 8 e. That such practice prevents the members of the Derivative Wage Statement
- 9 Class from being able to effectively challenge information on their wage
- 10 statements; and/or
- 11 f. The difficulty and expense of filing and maintaining this lawsuit, and the
- 12 discovery required to collect and analyze the very information that California
- 13 law requires.

14 85. Pursuant to Labor Code §226(e), the members of the Derivative Wage Statement
15 Class are entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a
16 violation hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in
17 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
18 (\$4,000.00).

19 86. Pursuant to Labor Code §226(g), the currently-employed members of the
20 Derivative Wage Statement Class are entitled to injunctive relief to ensure Defendants'
21 compliance with Labor Code §226.

22 87. Pursuant to Labor Code §226(e) and/or §226(g), the members of the Derivative
23 Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

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FIFTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE §203
(On Behalf of the LC 203 Class)
(Against All Defendants)

88. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

89. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

90. The members of the LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

91. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, according to amendment or proof.

92. Defendants willfully failed to pay the members of the LC 203 Class their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

93. Defendants' willful failure to pay wages to the members of the LC 203 Class violates Labor Code §203 because Defendants knew or should have known wages were due to the members of the LC 203 Class, but Defendants failed to pay them.

94. Thus, the members of the LC 203 Class are entitled to recovery pursuant to Labor Code §203.

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SIXTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE §2699
(On Behalf of the Aggrieved Employees)
(Against All Defendants)

95. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

96. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, board agencies or employees, such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, as follows:

- a. As applicable, for civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;
- b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§500-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid;

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- c. As applicable, for civil penalties under Labor Code §1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid, and \$250 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed;
- d. As applicable, for civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation; and
- e. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

97. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to Plaintiff and all other similarly situated aggrieved employees.

98. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

99. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

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1 100. Labor Code §2699.3(a) further states in pertinent part: “(2)(A) The agency shall
2 notify the employer and the aggrieved employee or representative by certified mail that it does
3 not intend to investigate the alleged violation within 60 calendar days of the postmark date of the
4 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
5 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
6 aggrieved employee may commence a civil action pursuant to Section 2699.”

7 101. Labor Code §2699.3(c)(1) states in pertinent part: “A civil action by an aggrieved
8 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
9 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
10 commence only after the following requirements have been met: (1) (A) The aggrieved
11 employee or representative shall give written notice by online filing with the Labor and
12 Workforce Development Agency and by certified mail to the employer of the specific provisions
13 of this code alleged to have been violated, including the facts and theories to support the alleged
14 violation.”

15 102. Labor Code §2699.3(c) further states in pertinent part: “(2)(A) The employer may
16 cure the alleged violation within 33 calendar days of the postmark date of the notice. The
17 employer shall give written notice by certified mail within that period of time to the aggrieved
18 employee or representative and the agency if the alleged violation is cured, including a
19 description of actions taken, and no civil action pursuant to Section 2699 may commence. If the
20 alleged violation is not cured within the 33-day period, the employee may commence a civil
21 action pursuant to Section 2699.”

22 103. Here, Plaintiffs’ civil action alleges violations of provisions listed in Labor Code
23 §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such,
24 Labor Code §2699.3(a) and §2699.3(c) apply to this action.

25 104. On October 5, 2020, Plaintiff TAI HANG complied with Labor Code §2699.3(a)
26 and Labor Code §2699.3(c) in that Plaintiff TAI HANG gave written notice by online filing with
27 the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code
28 alleged to have been violated, including the facts and theories to support the alleged violations.

1 Attached hereto as Exhibit "1" is Plaintiff TAI HANG'S LWDA letter.

2 105. Further, on October 14, 2020, Plaintiff ROBERT CANALES complied with
3 Labor Code §2699.3(a) and Labor Code §2699.3(c) in that Plaintiff ROBERT CANALES gave
4 written notice by online filing with the LWDA and by certified mail to Defendants of the specific
5 provisions of the Labor Code alleged in this lawsuit to have been violated, including the facts
6 and theories to support the alleged violations. Attached hereto as Exhibit "2" is Plaintiff
7 ROBERT CANALES' October 14, 2020 LWDA letter.

8 106. As of December 16, 2020 (65 calendar days after Plaintiff ROBERT CANALES'
9 October 14, 2020 LWDA letter was filed online), Plaintiffs had not received any notification that
10 the LWDA intended to investigate the alleged violations. As such, Plaintiffs have complied with
11 Labor Code §2699.3(a) and have been given authorization therefrom to commence a civil action
12 which includes a cause of action pursuant to Labor Code §2699.

13 107. Further, as of November 16, 2020 (33 calendar days after Plaintiff ROBERT
14 CANALES' October 14, 2020 LWDA letter was mailed to Defendants via certified mail),
15 Plaintiffs have not received from Defendants written notice by certified mail that the alleged
16 violations have been cured, including a description of actions taken. As such, Plaintiffs have
17 complied with Labor Code §2699.3(c) and have been given authorization therefrom to
18 commence a civil action which includes a cause of action pursuant to Labor Code §2699.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR BUSINESS PRACTICES**

21 **(On Behalf of the 17200 Class)**

22 **(Against All Defendants)**

23 108. Plaintiffs incorporate by reference and reallege each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
25 forth herein.

26 109. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and
27 include any unlawful, unfair or fraudulent business act...".

28 ///

1 110. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
2 penalties provided for unfair competition “are cumulative to each other and to the remedies or
3 penalties available under all other laws of this state.”

4 111. B&PC §17204 provides that an action for any relief from unfair competition may
5 be prosecuted by any person who has suffered injury in fact and has lost money or property as a
6 result of such unfair competition.

7 112. Defendants have engaged in unlawful, unfair and fraudulent business acts or
8 practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing
9 paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum
10 working standards and conditions due to them under the Labor Code and/or the IWC Wage
11 Orders, as specifically described herein.

12 113. Defendants have engaged in unfair business practices in California by practicing,
13 employing and utilizing the employment practices outlined in the preceding paragraphs,
14 specifically, by requiring employees to perform the labor services complained of herein without
15 the requisite compensation.

16 114. Defendants’ use of such practices constitutes an unfair business practice, unfair
17 competition and provides an unfair advantage over Defendants’ competitors.

18 115. Plaintiffs have suffered injury in fact and have lost money or property as a result
19 of such unfair competition.

20 116. Plaintiffs seek full restitution from Defendants, as necessary and according to
21 proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means
22 of the unfair practices complained of herein.

23 117. Further, if Defendants are not enjoined from the conduct set forth above,
24 Defendants will continue to practice, employ and utilize the employment practices outlined in the
25 preceding paragraphs.

26 118. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
27 injunction prohibiting Defendants from engaging in the foregoing conduct.

28 ///

1 119. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
2 monetary relief sought from Defendants.

3 VI.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray:

6 a. That the Court issue an Order certifying the Classes herein, appointing all named
7 Plaintiffs as representative of all others similarly situated, and appointing all law firms
8 representing all named Plaintiffs as counsel for the members of the Classes;

9 As to the First Cause of Action for Failure to Provide Legally-Compliant Rest Periods:

10 b. For one (1) hour of pay at the regular rate of compensation for each member of
11 the Legal Rest Period Class for each workday that a legally-compliant rest period was not
12 provided;

13 c. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

14 As to the Second Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

15 d. For one (1) hour of pay at the regular rate of compensation for each member of
16 the Rest Period Class for each workday that a meal or rest period was not provided;

17 e. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

18 As to the Third Cause of Action for Independent Failure to Timely Furnish Accurate Itemized

19 Wage Statements:

20 f. For recovery as authorized by Labor Code §226(e);

21 g. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
22 §226(e) and/or §226(g);

23 As to the Fourth Cause of Action for Derivative Failure to Timely Furnish Accurate Itemized

24 Wage Statements:

25 h. For recovery as authorized by Labor Code §226(e);

26 i. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
27 §226(e) and/or §226(g);

28 ///

1 As to the Fifth Cause of Action for Violations of Labor Code §203:

2 j. For recovery as authorized by Labor Code §203;

3 As to the Sixth Cause of Action for Penalties Pursuant to Labor Code §2699:

4 k. As applicable, for civil penalties pursuant to Labor Code §2699(f), in addition to
5 and entirely independent and apart from other penalties in the Labor Code and for Labor Code
6 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
7 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
8 subsequent violation;

9 l. As applicable, for civil penalties pursuant to Labor Code §558, in addition to and
10 entirely independent and apart from other penalties in the Labor Code, as follows:

11 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
12 employee for each pay period for which the employee was underpaid; and

13 ii. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
14 underpaid employee for each pay period for which the employee was
15 underpaid;

16 m. As applicable, for civil penalties pursuant to Labor Code §1197.1, in addition to
17 and entirely independent and apart from other penalties in the Labor Code, as follows:

18 i. For any initial violation that is intentionally committed, \$100 for each
19 aggrieved underpaid employee for each pay period for which the employee
20 was underpaid; and

21 ii. For each subsequent violation, regardless of whether the initial violation is
22 intentionally committed, \$250 for each aggrieved underpaid employee for
23 each pay period for which the employee was underpaid;

24 n. As applicable, for civil penalties pursuant to Labor Code §226.3, in addition to
25 and entirely independent and apart from other penalties in the Labor Code, in the amount of \$250
26 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved
27 employee per pay period for each subsequent violation;

28 ///

1 o. As applicable, for reasonable attorneys' fees and costs incurred pursuant to Labor
2 Code §§2699(g)(1) and any other applicable statute; and

3 p. For such relief as this Court may deem just and proper.

4 As to the Sixth Cause of Action for Unfair Business Practices:

5 q. For an accounting, under administration of Plaintiffs and/or the receiver and
6 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
7 to be refunded to members of the Classes who are owed monies by Defendants;

8 r. For an Order requiring Defendants to identify each of the members of the Classes
9 by name, home address, home telephone number and email address;

10 s. For an Order requiring Defendants to make full restitution and payment pursuant
11 to California law;

12 t. For an Order for a preliminary and/or permanent injunction prohibiting
13 Defendants from engaging in the acts complained of herein;

14 u. For the creation of an administrative process wherein each injured member of the
15 Classes may submit a claim in order to receive his/her money;

16 v. For all other appropriate injunctive, declaratory and equitable relief;

17 w. For interest to the extent permitted by law;

18 x. For an award of attorneys' fees and costs incurred in the investigation, filing and
19 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194
20 and/or any other applicable provision of law;

21 As to All Causes of Action:

22 y. For such relief as this Court may deem just and proper, including reasonable
23 attorneys' fees and costs incurred.

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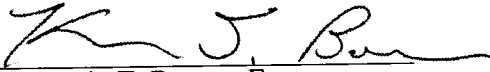
VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: December 17, 2020

LAW OFFICES OF KEVIN T. BARNES

By: 
Kevin T. Barnes, Esq.
Gregg Lander, Esq.
Attorneys for Plaintiff TAI HANG

Dated: December 17, 2020

STONEBROOK LAW

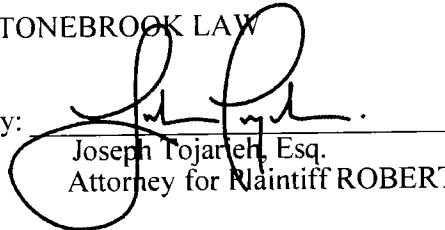
By: 
Joseph Tojarich, Esq.
Attorney for Plaintiff ROBERT CANALES

EXHIBIT 1

LAW OFFICES OF
KEVIN T. BARNES

KEVIN T. BARNES
GREGG LANDER

OF COUNSEL:
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October 5, 2020

VIA ELECTRONIC MAIL (\$75 filing fee to follow by mail)

PAGA Administrator
California Labor and Workforce Development Agency
PAGAFilings@dir.ca.gov

Re: OLD DOMINION FREIGHT LINE, INC. (hereafter, the "Employer")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency and the Employer

From: TAI HANG (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, the Employer employed the Employee and all other similarly situated aggrieved employees as hourly-paid, non-exempt "dock workers," and utilized consistent policies and procedures regarding the Employee and all such other similarly situated aggrieved employees, as follows:

First, the Employer failed to provide legally requisite paid off premises rest breaks to the Employee and all other similarly situated aggrieved employees. Here, the Employer's rest break policy states in pertinent part: "Hourly employees may not leave OD premise while on a paid rest break and are expected to be at their work station at the conclusion of the paid rest break, unless prohibited by applicable law, including state and local laws." Because the Employee and all other similarly situated aggrieved employees were not allowed to leave the premises for their rest breaks, the Employee and all other similarly situated aggrieved employees were not always provided legally compliant rest breaks. Augustus v ABM Security Services, Inc. (2016) 2 Cal 5th 257. Because the Employer did not pay a rest period penalty for these violations, the Employer violated Labor Code §§226.7 and 516 and the applicable Industrial Wage Order, ¶12(A)/(B), and owes rest period wages and penalties pursuant to Labor Code §§2699(f) and/or 558.

Second, in addition to the aforementioned allegations regarding off premise rest break violations, the Employer also failed to always authorize and permit paid rest breaks to the Employee and all other similarly situated aggrieved employees. The Employee and all other similarly situated aggrieved employees did not always get full ten minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and all other similarly situated aggrieved employees were not always authorized and permitted legally compliant rest breaks. The Employer did not pay a rest period penalty for any of these violations. As such, the Employer violated Labor Code §§226.7 and 516, and the applicable Industrial Wage Order, ¶12(A)/(B), and owes rest period wages and penalties pursuant to Labor Code §§2699(f) and/or 558.

Third, regarding wage statements, pursuant to Labor Code §226(a) and the applicable Industrial Wage Order, the Employer is required to include certain information on an employee's wage statement. Here, the Employer issued improper wage statements to the Employee and all other similarly situated aggrieved employees because the Employer's wage statements did not always contain all requisite information, including but not limited to all applicable accurate hourly rates in effect during the pay period. As such, the Employer independently violated Labor Code §226, and owes penalties pursuant to Labor Code §§2699(f) and/or 226.3.

PAGA Administrator
Re: Old Dominion Freight Line, Inc.
October 5, 2020
Page 2

Fourth, also regarding wage statements, and in addition to the independent violations of Labor Code §226 alleged above, because of the Employer's illegal wage and hour policies as set forth above, all wages earned were not reflected on the wage statements provided by the Employer to the Employee and all other similarly situated aggrieved employees, and the Employer issued improper wage statements. As such, the Employer derivatively violated Labor Code §226, and owes penalties pursuant to Labor Code §§2699(f) and/or 226.3.

Fifth, and finally, regarding waiting time penalties, pursuant to Labor Code §203, the Employee and all other similarly situated aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. Here, because of the Employer's illegal wage and hour policies as set forth above, the Employer derivatively violated Labor Code §§201-202, and owes penalties pursuant to Labor Code §§2699(f) and/or 201-203.

Pursuant to Labor Code §2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, pursuant to Labor Code §2699.3(c)(2)(A), the Employer may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, pursuant to the Labor Code, PAGA and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,



Kevin T. Barnes
Gregg Lander

cc: (via Certified Mail)
Old Dominion Freight Line, Inc.
500 Old Dominion Way
Thomasville, NC 27360

cc: (via U.S. Mail)
Raphael A. Katri, Esq.
LAW OFFICES OF RAPHAEL A. KATRI
8549 Wilshire Boulevard, Suite 200
Beverly Hills, CA 90211-3104

EXHIBIT 2



10250 Constellation Boulevard, Suite 100
Los Angeles, California 90067
Telephone: (310) 553-5533
Facsimile: (310) 553-5536
www.stonebrooklaw.com

Writer's Email Address:
jft@stonebrooklaw.com

Writer's Extension:
1001

October 14, 2020

Via online submission to

Attn: PAGA Administrator
California Department of Industrial Relations
Labor and Workforce Development Agency

Re: Violations of Labor Code § 2699, et seq. – PAGA Claim Notice

To Whom It May Concern:

This office represents Robert Canales ("Plaintiff"). Plaintiff, on behalf of himself and all other similarly aggrieved employees, intends to seek civil penalties under Labor Code section 2699, et seq., also known as the Private Attorneys General Act of 2004 ("PAGA"), against Old Dominion Freight Line Inc. ("Defendant") for violations of various laws, which are outlined below. Defendant's violations harmed Plaintiff, along with Defendant's other non-exempt California employees ("Aggrieved Employees"). Additional investigation and formal discovery may uncover additional ways Plaintiff and Aggrieved Employees were harmed, additional damages they sustained, and other individuals who were harmed by Defendant's violations.

The \$75 PAGA filing fee was submitted concurrently with the submission of this letter. If for any reason the fee was not received, please advise our office immediately so we can issue a new payment.

Facts and Legal Theories Underlying This Dispute

The facts underlying Plaintiff's pursuit of civil penalties under PAGA are explained below.

Employment Background

Defendant is a freight company based in North Carolina with 18 service centers in California. Its Rialto service center alone employs about 200 dock workers, 200 truck drivers and 100 office workers. Plaintiff was hired as a dock worker from about January 28, 2018 to October 2, 2020. Prior to his termination, he was paid at an hourly rate of \$27.35. Plaintiff worked five days a week and was usually scheduled to work from 5:30 p.m. to 2:00 a.m. On occasion, Plaintiff was scheduled to work until 4:00 a.m.

Unpaid Wages

Plaintiff and Aggrieved Employees were not paid wages for all hours worked. Specifically, these employees were subject to mandatory security checks upon entering and leaving Defendant's premises. However, they did not receive wages while undergoing these security checks.

Moreover, after entering the premises and undergoing the security check, Plaintiff and Aggrieved Employees performed work-related tasks before heading to the designated dock area to clock in. Dock workers like Plaintiff, for example, spent approximately 5-15 minutes walking to the dock, searching for an available forklift, and riding it to the dock area.

After clocking out, Plaintiff and Aggrieved Employees performed work-related tasks before reaching the security checkpoint. Dock workers like Plaintiff, for example, spent approximately five minutes walking towards the checkpoint.

As a result, Defendant failed to pay Plaintiff and Aggrieved Employees all earned wages, including minimum wages and overtime compensation, for the time these employees spent performing off-the-clock work.

Failure to Authorize and Permit Compliant Rest Periods

At relevant times, Defendant did not authorize and permit Plaintiff and Aggrieved Employees to take timely, duty-free, and uninterrupted rest periods of at least 10 minutes net for each four hours of work or major fraction thereof, and failed to pay premium wages of one hour's pay in lieu of providing such rest periods. Plaintiff and Aggrieved Employees were prohibited from leaving the premises during their ten-minute rest periods. Defendant failed to relinquish control over how they spent their rest breaks. Moreover, at relevant times, Defendant did not provide these employees with a third compliant rest period when they worked over ten hours in a shift.

Failure to Provide Compliant Meal Periods

At relevant times, Defendant did not provide Plaintiff and Aggrieved Employees with timely, duty-free, and uninterrupted meal periods of at least 30 minutes for each five hours of work, and failed to pay premium wages of one hour's pay in lieu of providing such meal periods. On days when they worked over ten hours, Plaintiff and Aggrieved Employees did not receive a second compliant meal break.

Failure to Pay Overtime Compensation

At relevant times, Defendant failed to pay Plaintiff and Aggrieved Employees one and a half times their regular rate for work performed over 40 hours in a workweek, over 8 hours in a workday, or up to 8 hours on the seventh consecutive day of work.

At least some of the unpaid hours worked by Plaintiff and Aggrieved Employees constituted overtime, for which they were not compensated.

Failure to Pay Minimum Wages

During periods when Plaintiff and Aggrieved Employees worked but were not paid, Defendant failed to pay these employees at least minimum wages.

Failure to Indemnify for Business Expenses

Defendant failed to reimburse Plaintiff and Aggrieved Employees for business expenses. For example, Plaintiff and other dock workers had to pay for their own pens, clipboards, and safety boots.

Failure to Pay Earned Wages Upon Separation

Defendant willfully failed to pay Plaintiff and Aggrieved Employees all earned wages immediately upon discharge or within 72 hours of resignation.

Failure to Provide Timely and Accurate Wage Statements

Defendant knowingly failed to provide Plaintiff and Aggrieved Employees with timely and accurate wage statements that included all of the following: (1) gross wages earned, (2) total hours worked, (3) all deductions, (4) net wages earned, (5) the pay period, (6) the employee name and social security number or employee number, (7) the name and address of the legal entity employer, and (8) all applicable hourly rates in effect and corresponding hours worked at each rate.

California Labor Code § 2699, et seq., Violations

Plaintiff, on behalf of himself and Aggrieved Employees, intends pursue civil penalties under PAGA against Defendant for violations of the following California laws:

- **Labor Code sections 510 and 1194** for Defendant's failure to pay overtime and double time compensation.
- **Labor Code sections 510, 1194, 1194.2, and 1197** for Defendant's failure to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
- **Labor Code section 226.7** for Defendant's failure to provide proper rest periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the mandated rest period required under the Labor Code.
- **Labor Code sections 226.7 and 512** for Defendant's failure to provide proper meal periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the mandated meal period required under the Labor Code.

- **Labor Code section 226** for Defendant's failure to provide timely and accurate wage statements.
- **Labor Code sections 201, 202, and 203** for Defendant's failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- **Labor Code section 204** for Defendant's failure to pay all earned wages within the time prescribed in subsections 204(a) and 204(b).
- **Labor Code section 206** for Defendant's failure to pay all undisputed wages.
- **Labor Code section 226.3** for Defendant's violation of Labor Code section 226(a).
- **Labor Code section 210** for Defendant's failure to pay wages as provided in Labor Code sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and/or 1197.5.
- **Labor Code section 1174** for Defendant's failure to maintain compliant employee and payroll records.
- **Labor Code section 221** for Defendant collecting and receiving owed wages.
- **Labor Code section 1197.1** for Defendant paying, or causing to be paid, a wage less than the minimum wage.
- **Labor Code section 558** for Defendant violating, or causing to be violated, a section of the chapter of the Labor Code starting with Labor Code section 500, et seq. or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.
- **Labor Code section 1199** for Defendant violating, or causing to be violated, the provisions of the order of the Industrial Welfare Commission.
- **Labor Code section 1198** for Defendant employing employees for longer hours than those fixed by the Industrial Welfare Commission or under conditions of labor prohibited by the Industrial Welfare Commission, including, but not limited to:
 - **Wage Order 9-2001 (or other applicable Wage Order), Section 12**, requiring Defendant to provide its employees with adequate rest periods and an additional hour of pay at the regular rate of compensation in lieu of the mandated rest periods.
 - **Wage Order 9-2001 (or other applicable Wage Order), Section 11**, requiring Defendant to provide its employees with adequate meal periods and an additional hour of pay at the regular rate of compensation in lieu of the mandated rest periods.

- **Wage Order 9-2001 (or other applicable Wage Order), Section 3**, requiring Defendant to pay overtime and double time compensation.
- **Wage Order 9-2001 (or other applicable Wage Order), Section 4**, requiring Defendant to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
- **Labor Code section 2802** for Defendant's failure to indemnify for all necessary business expenditures or losses.

Conclusion

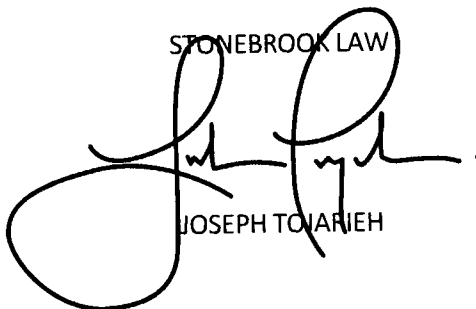
Please be advised that this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code sections 2699, et seq. It is the intention of this office to bring the appropriate claims under Labor Code section 2699, et seq., should your office not address these matters within the proscribed time.

If you require any additional facts or theories to support Plaintiff's allegations, please do not hesitate to contact our office. We believe, however, that this letter provides sufficient basis for the alleged violations. Further, Plaintiff is willing to engage in reasonable settlement discussions before filing a civil action. By way of this letter, Plaintiff is providing Defendant an opportunity to settle this dispute.

We write this letter subject to and without waiver of Plaintiff's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Very truly yours,

STONEBROOK LAW

A handwritten signature in black ink, appearing to read 'Joseph Toiarieh', is written over the printed name. The signature is stylized with large loops and a long horizontal stroke.

JOSEPH TOIARIEH

JT/sp
cc (via certified mail):

Old Dominion Freight Line Inc.
500 Old Dominion Way
Thomasville, NC 27360

Old Dominion Freight Line Inc.
2180 South Willow
Bloomington, CA 92316

Article No.: 7017 3040 0000 4425 4078

Article No.: 7017 3040 0000 4425 4085

Old Dominion Freight Line Inc.
October 14, 2020
Page 6 of 6

CT Corporation System
Agent for Service of Process for
Old Dominion Freight Line Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Article No.: 7017 3040 0000 4425 4092

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document/s:

FIRST AMENDED COMPLAINT

on the interested parties in this action, addressed as follows:

For Defendant:

Old Dominion Freight Line, Inc.
CT Corporation
500 Old Dominion Way
Thomasville, NC 27360

Attorneys for Plaintiff Tai Hang:

Raphael A. Katri, Esq.
LAW OFFICES OF RAPHAEL A. KATRI
8549 Wilshire Boulevard, Suite 200
Beverly Hills, CA 90211-3104
Tel.: (310) 940-2034 / Fax: (310) 733-5644
Email: RKatri@socallaborlawyers.com

Attorneys for Plaintiff Robert Canales:

Joseph Tojarieh, Esq.
STONEBROOK LAW
10250 Constellation Boulevard, Suite 100
Los Angeles, CA 90067
Tel: (310) 553-5533 / Fax: (310) 553-5536
Email: JFT@stonebrooklaw.com

using the following service method:

X **VIA MAIL:** I caused the document(s) to be served to be deposited at: 1635 Pontius Avenue, Second Floor, Los Angeles, CA, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **December 17, 2020**, at Los Angeles, California.



Cindy Rivas