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Kern County Superior Court
By Vanesa Jackson, Deputy

Attorneys for Plaintiff Diana Foy and Raymond Ybarra, individually,
and on behalf of all others similarly situated. *[Additional Counsel on Following Page]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

DIANA FOY; RAYMOND YBARRA; and
RAYMOND HARRIS; individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL, INC. DBA DHL SUPPLY CHAIN;
and DOES 1 through 20, inclusive,

Defendants.

Case No. BCV-20-102463

Assigned for All Purposes to:
Hon. David R. Lampe, Dept. 11

**THIRD AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB. CODE
§§ 2698, ET SEQ.)**

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13 Attorneys for Plaintiff Raymond Harris, individually,
14 and on behalf of all others similarly situated.
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1 Plaintiffs Diana Foy, Raymond Ybarra, and Raymond Harris individually, and on behalf
2 of others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Diana Foy, Raymond Ybarra, and Raymond Harris (“Plaintiffs”) bring
5 this representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab.
6 Code. § 2698 *et seq.*, against defendants Exel, Inc. dba DHL Supply Chain, and DOES 1
7 through 20, inclusive (collectively, “Defendants”), on behalf of themselves individually and on
8 behalf of California citizens who are and were employed by Defendants as non-exempt
9 employees throughout California.

10 2. Defendants are in the business of supply chain management.

11 3. Through this action, Plaintiffs allege that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime
18 wages);
- 19 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (c) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (d) failing to provide accurate itemized wage statements;
- 23 (e) failing to pay all wages due upon separation of employment.

24 5. Plaintiffs bring this representative action against Defendants on behalf of
25 themselves and other aggrieved employees to recover, among other things, civil penalties,
26 attorney’s fees and costs and expenses pursuant to the Private Attorneys General Act of 2004,
27 Labor Code §§ 2698, *et seq.* (“PAGA”).

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JURISDICTION AND VENUE

6. This is a representative action, pursuant to PAGA. The civil penalties sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiffs are residents of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

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1 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
2 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
3 at all relevant times.

4 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, Defendants in all respects acted as
8 the employer and/or joint employer of Plaintiffs and the aggrieved employees.

9 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
10 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
11 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
12 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
13 the official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein.
16 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
17 each and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiffs are informed and believe, and thereon allege, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **GENERAL ALLEGATIONS**

22 18. At all relevant times mentioned herein, Defendants employed Plaintiffs and
23 other California residents as non-exempt employees at Defendants' California business
24 location(s).

25 19. Defendants employed Plaintiffs as non-exempt employees at Defendants'
26 California business location(s).

27 20. Defendants continue to employ non-exempt employees within California.

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1 21. Plaintiffs are informed and believe, and thereon allege, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
3 who were knowledgeable about California's wage and hour laws, employment and personnel
4 practices, and the requirements of California law.

5 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and aggrieved employees were entitled to receive wages for
7 all time worked (including minimum wages and overtime wages) and that they were not
8 receiving all wages earned for work that was required to be performed. In violation of the
9 Labor Code and IWC Wage Orders, Plaintiffs and aggrieved employees were not paid all
10 wages (including minimum wages and overtime wages) for all hours worked at the correct rate
11 due to requirements to work off-the-clock and Defendants' failure to correctly include shift
12 premiums or other incentive pay in the overtime rate, among other issues.

13 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and aggrieved employees were entitled to receive all required
15 meal periods or payment of one (1) additional hour of pay at Plaintiffs' and aggrieved
16 employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
17 In violation of the Labor Code and IWC Wage Orders, Plaintiffs and aggrieved employees did
18 not receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and
19 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
20 meal period.

21 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and aggrieved employees were entitled to receive all rest
23 breaks or payment of one (1) additional hour of pay at Plaintiffs' and aggrieved employees'
24 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
25 Wage Orders, Plaintiffs and aggrieved employees did not receive all rest breaks or payment of
26 one (1) additional hour of pay at Plaintiffs' and aggrieved employees' regular rate of pay when
27 a rest break was missed.

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1 25. During Plaintiffs' respective employments with Defendants, Plaintiffs and
2 aggrieved employees were paid on a piece-rate basis, regardless of the time it actually took
3 them to perform such tasks. Although for at least a portion of the relevant time period,
4 Defendants' piece-rate compensation plan separately compensated Plaintiffs and aggrieved
5 employees for required rest periods, Defendants did not separately compensate Plaintiffs and
6 other aggrieved employees at the proper rate of pay for rest periods. As a result, Plaintiffs and
7 aggrieved employees were not paid the correct wages for all hours worked, and Defendants'
8 separate compensation for rest periods and/or rest period premium payments were deficient.

9 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and aggrieved employees were entitled to receive itemized
11 wage statements that accurately showed the following information pursuant to the Labor Code:
12 (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate
13 units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
14 deductions, provided that all deductions made on written orders of the employee may be
15 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
16 for which the employee is paid; (7) the name of the employee and only the last four digits of his
17 or her social security number or an employee identification number other than a social security
18 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at
20 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and aggrieved
21 employees were not provided with accurate itemized wage statements.

22 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and aggrieved employees were entitled to timely payment of
24 wages due upon separation of employment. In violation of the Labor Code, Plaintiffs and
25 aggrieved employees did not receive payment of all wages within permissible time periods.

26 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known they had a duty to compensate Plaintiffs and aggrieved employees, and
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1 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
2 intentionally failed to do so in order to increase Defendants' profits.

3 29. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
4 against Defendants on behalf of themselves and all aggrieved employees to recover, among
5 other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
6 period premium payments, unpaid rest period premium payments, interest, attorneys' fees,
7 penalties, costs, and expenses.

8 **FIRST CAUSE OF ACTION**

9 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

10 30. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as
11 though fully set forth herein.

12 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
13 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
14 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
15 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
16 an aggrieved employee on behalf of himself or herself and other current or former employees
17 pursuant to the procedures specified in Labor Code § 2699.3.

18 32. For all provisions of the Labor Code except those for which a civil penalty is
19 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
20 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
21 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
22 period in which Defendants violated these provisions of the Labor Code.

23 33. Defendants' conduct violates numerous Wage Order and Labor Code sections,
24 including, but not limited to, the following:

- 25 a. violation of Labor Code §§ 201-204, 210, 510, and 1198 for failure to
26 timely pay all earned wages owed to Plaintiffs and other aggrieved
27 employees during employment and upon separation of employment as
28 herein alleged;

- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- c. violation of Labor Code §§ 226.2, 226.7 516, and 558 for failure to authorize and permit rest breaks to Plaintiffs and other aggrieved employees, failure to separately compensate for rest periods at the proper rate of pay, and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged; and
- e. violation of Labor Code §§ 1174,1174.5, and 1198 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

34. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore are properly suited to represent the interests of all other aggrieved employees.

35. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

37. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1 1. For civil penalties against Defendants on behalf of all aggrieved employees and
2 the LWDA pursuant to Labor Code § 2698, *et seq.*;

3 2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
4 by law, including, but not limited to, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e),
5 1194, and 2698 *et seq.*; and

6 3. For such other relief as the Court deems just and proper.
7

8 Dated: November 19, 2021

AEGIS LAW FIRM, PC

9
10 By: 
Chelsea D. Hollins
11 Attorneys for Plaintiff Diana Foy and Raymond
12 Ybarra, individually, and on behalf of all others
similarly situated.

13 Dated: November 19, 2021

HAINES LAW GROUP, APC

14
15 By: 
16 Fletcher W. Schmidt
17 Attorneys for Plaintiff Raymond Harris,
18 individually, and on behalf of all others similarly
situated.
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On November 19, 2021, I served the foregoing document entitled:

- 5 • **THIRD AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA LABOR**
6 **CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE §§**
7 **2698, ET SEQ.)**

8 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
9 copy thereof on the party(ies) addressed below as follows:

10 Boris Sorsher
11 Fisher & Phillips LLP
12 2050 Main Street, Suite 1000
Irvine, CA 92614
bsorsher@fisherphillips.com

13 *Counsel for:*
14 EXEL, INC. DBA DHL SUPPLY CHAIN

15 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

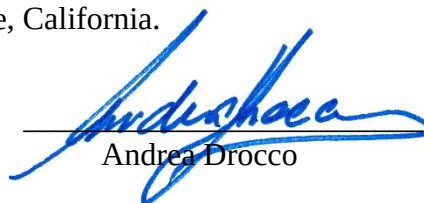
17 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
18 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

19 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
20 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

21 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
22 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc.*
23 *5(b)(2)(A).*)

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

26 Executed on November 19, 2021, at Irvine, California.

27 
28 Andrea Drocco