

1/11/2021  
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8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF RIVERSIDE**

11 RAYMOND HARRIS, as an individual and  
12 on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 EXEL INC., dba DHL SUPPLY CHAIN  
16 (USA), a Massachusetts corporation; and  
17 DOES 1 through 100,

18 Defendants.

Case No.: CVRI2000034

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

- (1) **REST PERIOD VIOLATIONS**  
(LABOR CODE §§ 226.2, 226.7, 516,  
558);
- (2) **WAGE STATEMENT VIOLATIONS**  
(LABOR CODE §§ 226, *et seq.*);
- (3) **UNFAIR COMPETITION (BUS. &  
PROF. CODE § 17200 *et seq.*); AND**
- (4) **CIVIL PENALTIES UNDER THE  
PRIVATE ATTORNEYS  
GENERAL ACT (LABOR CODE §  
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL  
UNLIMITED CIVIL CASE**

1 Plaintiff Raymond Harris (hereinafter “Plaintiff”), on behalf of himself and all others  
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint  
3 (“Complaint”) against Exel Inc., dba DHL Supply Chain (USA), a Massachusetts corporation; and  
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as  
5 follows:

#### 6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this  
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions  
9 Code § 17200 *et. seq.*, Labor Code §§ 226, 226.2, 226.7, 516, 558, and 2698 *et seq.*, and Industrial  
10 Welfare Commission Wage Order 9 (“Wage Order 9”), in addition to seeking declaratory relief  
11 and restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382.  
12 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the  
13 amount in controversy exceeds this Court's jurisdictional minimum.

#### 14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil  
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein  
17 occurred in the County of Riverside. Defendants own, maintain offices, transact business, have  
18 an agent or agents within the County of Riverside, and/or otherwise are found within the County  
19 of Riverside, and Defendants are within the jurisdiction of this Court for purposes of service of  
20 process.

#### 21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding  
24 the filing of the Complaint in this action and within the statute of limitations periods applicable  
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt  
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of  
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code  
28

§§ 226, 226.2, 226.7, 516, 558 and 2698 *et seq.*; California Business and Professions Code § 17200 *et seq.*; and Wage Order 9, which sets employment standards for the transportation industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by transporting and delivering tires, and employed Plaintiff and other, similarly-situated non-exempt employees within Riverside County and the state of California and, therefore, were (and are) doing business in Riverside County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 13) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all  
2 members of the Classes.

### 3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff began his employment with Defendants on February 25, 2019, in the non-  
5 exempt position of driver. Plaintiff's primary job duties consisted of loading, transporing,  
6 delivering delivering tires to various vendors.

7 10. During Plaintiff's employment with Defendants, Plaintiff was paid on a piece-rate  
8 basis, whereby Plaintiff was paid a certain rate per each mile he drove, per each delivery he  
9 completed, per each tire he delivered, etc. Plaintiff was paid the assigned piece-rate per task,  
10 regardless of the time it actually took her to perform such tasks. Although for at least a portion  
11 of the relevant time period, Defendants' piece-rate compensation plan separately compensated  
12 Plaintiff for required rest periods, Defendants did not separately compensate Plaintiff and other  
13 non-exempt employees the proper rate of pay for rest periods. As a result, Plaintiff was not paid  
14 the correct wages for all hours worked, and Defenadants' rest period premium payments were  
15 deficient.

16 11. As a result of Defendants' failure to correctly separately compensate rest periods,  
17 Defendants maintained inaccurate payroll records and issued inaccurate wage statements.  
18 Moreover, Defendants failed to separately list on the wage statement the number of piece-rate  
19 units earned and any applicable piece rates, as well as the number of hours worked, all in violation  
20 of Labor Code section 226.

21 12. Per Emergency Rule of Court 9, all statutes of limitations in civil cases that are  
22 more than 180 days (including statutes of limitation relevant to the causes of action alleged herein)  
23 have been tolled from April 6, 2020 through October 1, 2020. Thus, Plaintiff alleges the statute  
24 of limitations for each cause of action pled herein should be tolled accordingly.

### 25 **CLASS ACTION ALLEGATIONS**

26 13. **Class Definitions:** Plaintiff brings this action on behalf of herself and the  
27 following Classes pursuant to § 382 of the Code of Civil Procedure:  
28

1 a. The Rest Period Class consists of all of Defendants' current and former non-  
2 exempt employees in California who worked at least one shift in excess of 3.5  
3 hours and performed work that was compensated on a piece-rate basis, during the  
4 four years immediately preceding the filing of this action through the present.

5 b. The Wage Statement Class consists of all formerly employed members of the Rest  
6 Period Class who received a wage statement from Defendants during the one year  
7 immediately preceding the filing of this action through the present.

8 14. **Numerosity/Ascertainability:** The members of the Classes are so numerous that  
9 joinder of all members would be unfeasible and not practicable. The membership of the Classes  
10 are unknown to Plaintiff at this time; however, it is estimated that the members of each of the  
11 Classes number greater than one hundred (100) individuals. The identity of such membership is  
12 readily ascertainable via inspection of Defendants' employment records.

13 15. **Common Questions of Law and Fact Predominate/Well Defined Community**  
14 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly  
15 situated employees, which predominate over questions affecting only individual members  
16 including, without limitation to:

17 i. Whether Defendants paid rest preimums at the proper rate pursuant to Labor Code  
18 §§ 226.7 and 516; and

19 ii. Whether Defendants furnished legally compliant wage statements to members of  
20 the Wage Statement Class pursuant to Labor Code § 226.

21 16. **Predominance of Common Questions:** Common questions of law and fact  
22 predominate over questions that affect only individual members of the Classes. The common  
23 questions of law set forth above are numerous and substantial and stem from Defendants' policies  
24 and/or practices applicable to each individual class member, such as Defendants' uniform rest  
25 period policies/practices. As such, the common questions predominate over individual questions  
26 concerning each individual class member's showing as to their eligibility for recovery or as to the  
27 amount of their damages.

28 ///

1           17.     **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because  
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the  
3 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged  
4 herein, Plaintiff, like the members of the Classes, was not paid the proper premium for all rest  
5 periods, and was furnished with inaccurate and incomplete wage statements.

6           18.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps  
7 to represent fairly and adequately the interests of the members of the Classes. Moreover,  
8 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of  
9 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-  
10 and-hour class actions in state and federal courts in the past and are committed to vigorously  
11 prosecuting this action on behalf of the members of the Classes.

12           19.     **Superiority:** The California Labor Code is broadly remedial in nature and serves  
13 an important public interest in establishing minimum working conditions and standards in  
14 California. These laws and labor standards protect the average working employee from  
15 exploitation by employers who have the responsibility to follow the laws and who may seek to  
16 take advantage of superior economic and bargaining power in setting onerous terms and  
17 conditions of employment. The nature of this action and the format of laws available to Plaintiff  
18 and members of the Classes make the class action format a particularly efficient and appropriate  
19 procedure to redress the violations alleged herein. If each employee were required to file an  
20 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they  
21 would be able to exploit and overwhelm the limited resources of each individual plaintiff with  
22 their vastly superior financial and legal resources. Moreover, requiring each member of the  
23 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by  
24 employees who would be disinclined to file an action against their former and/or current employer  
25 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent  
26 employment. Further, the prosecution of separate actions by the individual class members, even  
27 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications  
28 with respect to the individual class members against Defendants herein; and which would

1 establish potentially incompatible standards of conduct for Defendants; and/or legal  
2 determinations with respect to individual class members which would, as a practical matter, be  
3 dispositive of the interest of the other class members not parties to adjudications or which would  
4 substantially impair or impede the ability of the class members to protect their interests. Further,  
5 the claims of the individual members of the Class are not sufficiently large to warrant vigorous  
6 individual prosecution considering all of the concomitant costs and expenses attending thereto.  
7 As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

8 **FIRST CAUSE OF ACTION**

9 **REST PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 21. Wage Order 9, § 12 and Labor Code §§ 226.7 and 516, establish the right of  
13 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour  
14 period worked, or major fraction thereof.

15 22. As alleged herein, Defendants failed to properly compensate Plaintiff and  
16 members of the Rest Period Class for each rest period premium payment to which they were  
17 entitled while working on a piece-rate compensation plan.

18 23. The foregoing violations create an entitlement to recovery by Plaintiff and  
19 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums  
20 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according  
21 to Labor Code §§ 226.2, 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

22 **SECOND CAUSE OF ACTION**

23 **WAGE STATEMENT VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
27 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff  
28 and the Wage Statement Class with accurate and complete itemized wage statements that

1 included, among other requirements, rest period premium wages, and separated piece-rate  
2 payment calculations in violation of Labor Code § 226.

3 26. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class  
4 with complete and accurate itemized wage statements resulted in actual injury, as said failures led  
5 to, among other things, the non-payment of all rest period premium wages, and deprived them of  
6 the information necessary to identify the discrepancies in Defendants' reported data.

7 27. Defendants' failures create an entitlement to recovery by Plaintiff and members of  
8 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor  
9 Code § 226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of  
10 suit according to California Labor Code §§ 226 and 226.3.

11 **THIRD CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(AGAINST ALL DEFENDANTS)**

14 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 29. Defendants have engaged and continue to engage in unfair and/or unlawful  
16 business practices in California in violation of Business and Professions Code § 17200 *et seq.*, by  
17 failing to properly pay all rest period premium wages, and by issuing inaccurate wage statements.

18 30. Defendants' utilization of these unfair and/or unlawful business practices deprived  
19 Plaintiff and continues to deprive members of the Classes of compensation to which they are  
20 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage  
21 over Defendants' competitors who have been and/or are currently employing workers and  
22 attempting to do so in honest compliance with applicable wage and hour laws.

23 31. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged  
24 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of  
25 monies, as necessary and according to proof, to restore any and all monies withheld, acquired,  
26 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

27 32. Plaintiff was compelled to retain the services of counsel to file this court action to  
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the  
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,  
3 which she is entitled to recover under Code of Civil Procedure § 1021.5.

4 **FOURTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 34. Defendants have committed several Labor Code violations against Plaintiff,  
9 members of the Classes, and other aggrieved employees. Plaintiff, as an "aggrieved employee"  
10 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved  
11 employees, brings this representative action against Defendants to recover the civil penalties due  
12 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California  
13 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited  
14 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for  
15 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for  
16 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for  
17 each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per  
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent  
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each  
20 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per  
21 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each  
22 subsequent violation per employee per pay period for those violations of the Labor Code for  
23 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 24 a. Failing to authorize and permit Plaintiff and other aggrieved employees all  
25 required rest periods and failing to pay rest period premiums to Plaintiff and  
26 other aggrieved employees at these employees' respective regular rates of  
27 compensation for rest period violations in violation of Labor Code §§ 226.2,  
28 226.7, 516, and 558;

- b. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- c. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- d. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

35. On or around November 6, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 34 (a)-(d). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

36. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between November 6, 2019 and the present.

37. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699.

### **PRAYER**

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1           4.       Upon the First Cause of Action, for compensatory, consequential, general and  
2 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516 and 558.

3           5.       Upon the Second Cause of Action, for statutory penalties pursuant to Labor Code  
4 § 226;

5           6.       Upon the Third Cause of Action, for restitution to Plaintiff and members of the  
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or  
7 practices declared by this Court to be in violation of Business & Professions Code § 17200 *et*  
8 *seq.*;

9           7.       Upon the Fourth Cause of Action, for civil penalties due to Plaintiff, other  
10 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§  
11 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for  
12 each failure to pay each employee and \$200.00 for each subsequent violation or willful or  
13 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus  
14 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each  
15 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for  
16 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1  
17 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each  
18 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)  
19 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay  
20 period for those violations of the Labor Code for which no civil penalty is specifically provided,  
21 based on the violations of Labor Code sections identified in Paragraph 34 (a)-(d) above.

22           8.       Prejudgment interest on all due and unpaid wages pursuant to California Labor  
23 Code § 218.6 and Civil Code §§ 3287 and 3289;

24           9.       On all causes of action, for attorneys' fees and costs as provided by Labor Code §  
25 1194 *et seq.*, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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1           10.     For such other and further relief the Court may deem just and proper.

2  
3     Dated: January 11, 2021

Respectfully submitted,  
HAINES LAW GROUP, APC

4  
5     By:



Paul K. Haines  
Attorneys for Plaintiff

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8                     **DEMAND FOR JURY TRIAL**

9           Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10  
11     Dated: January 11, 2021

Respectfully submitted,  
HAINES LAW GROUP, APC

12  
13     By:



Paul K. Haines  
Attorneys for Plaintiff

**PROOF OF SERVICE**

*Raymond Harris v. Exel Inc. dba DHL Supply Chain (USA)*  
Riverside County Superior Court Case No. CVR12000034

STATE OF CALIFORNIA                    )  
                                                          ) ss.  
COUNTY OF LOS ANGELES            )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On January 11, 2021, I served the foregoing document(s) described as:

**FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

on the interested party(ies) in this action as follows:

Boris Sorsher (SBN 251718)  
Email: bsorsher@fisherphillips.com

**FISHER & PHILLIPS LLP**

2050 Main Street, Suite 1000

Irvine, California 92614

Telephone: (949) 851-2424

Fascimile: (949) 851-0152

Attorneys for Defendant EXEL INC. DBA DHL SUPPLY CHAIN (USA).

[X] (VIA ELECTRONIC MAIL) Based on court order or an agreement of the parties to accept electronic service, I caused the document described above to be sent to the persons at the electronic service addresses listed above via third party cloud service One Legal.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 11, 2021, at El Segundo, California.

  
Jonathan Ramirez