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10 Attorneys for Plaintiffs JASMINE BLAKE
11 and RICK HINOJOS, individually, and on
12 behalf of others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15 JASMINE BLAKE and RICK HINOJOS
16 individually, and on behalf of others similarly
17 situated,

18 Plaintiffs,

19 vs.

20 EXEL, INC. d/b/a DHL SUPPLY CHAIN, a
21 corporation; KELLY SERVICES USA, LLC, a
22 limited liability company; KELLY SERVICES,
23 Inc., a corporation; KELLY SERVICES
24 GLOBAL, LLC, a limited liability company;
25 KELLY GLOBAL BUSINESS SERVICES,
26 LLC, a limited liability company; and DOES 1
27 through 50, inclusive,

28 Defendants

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 12 2021

CLERK OF THE SUPERIOR COURT
By *Jamie Thomas*
JAMIE THOMAS, Deputy

CASE NO.:

RG21101295

COMPLAINT

CLASS ACTION:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Wage Statements
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

10. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

DEMAND FOR JURY TRIAL

Filed By Fax

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1 bring this class action to recover, among other things, wages and penalties from unpaid wages
2 earned and due, including but not limited to unpaid minimum wages, unpaid and illegally
3 calculated overtime compensation, illegal meal and rest period policies, failure to pay all wages
4 due to discharged and quitting employees, failure to indemnify employees for necessary
5 expenditures and/or losses incurred in discharging their duties, failure to provide accurate
6 itemized wage statements, failure to maintain required records, and interest, attorneys' fees, costs,
7 and expenses.

8 6. PLAINTIFF HINOJOS brings this action on behalf of himself and the following
9 similarly situated class of individuals ("CLASS MEMBERS"): all current and former non-
10 exempt employees of DEFENDANTS in the State of California at any time within the period
11 beginning four (4) years prior to the filing of this action including those days which the Court
12 has declared as holidays and ending at the time this action settles or proceeds to final judgment
13 (the "CLASS PERIOD"). Moreover, the statute of limitations for this matter was tolled
14 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9. PLAINTIFF HINOJOS
15 reserves the right to name additional class representatives.

16 7. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
17 KELLY SERVICES USA, LLC is, and at all times relevant hereto was, a Michigan limited
18 liability company. PLAINTIFFS are further informed and believe, and thereon allege, that
19 DEFENDANT KELLY SERVICES USA, LLC is authorized to conduct business in the State of
20 California, and does conduct business in the State of California. Specifically, DEFENDANT
21 KELLY SERVICES USA, LLC maintains offices and facilities and conducts business in, and
22 engages in illegal payroll practices or policies in, the County of Alameda, State of California.

23 8. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
24 KELLY SERVICES, INC. is, and at all times relevant hereto was, a corporation organized and
25 existing under the laws of the State of Delaware. PLAINTIFFS are further informed and believe,
26 and thereon allege, that DEFENDANT KELLY SERVICES, INC. is authorized to conduct
27 business in the State of California, and does conduct business in the State of California.
28 Specifically, DEFENDANT KELLY SERVICES maintains offices and facilities and conducts

1 business in, and engages in illegal payroll practices or policies in, the County of Alameda, State
2 of California.

3 9. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
4 KELLY SERVICES GLOBAL, LLC is, and at all times relevant hereto was, a Michigan limited
5 liability company. PLAINTIFFS are further informed and believe, and thereon allege, that
6 DEFENDANT KELLY SERVICES GLOBAL, LLC is authorized to conduct business in the
7 State of California, and does conduct business in the State of California. Specifically,
8 DEFENDANT KELLY SERVICES USA, LLC maintains offices and facilities and conducts
9 business in, and engages in illegal payroll practices or policies in, the County of Alameda, State
10 of California.

11 10. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
12 KELLY GLOBAL BUSINESS SERVICES, LLC is, and at all times relevant hereto was, a
13 Michigan limited liability company. PLAINTIFFS are further informed and believe, and thereon
14 allege, that DEFENDANT KELLY SERVICES USA, LLC is authorized to conduct business in
15 the State of California, and does conduct business in the State of California. Specifically,
16 DEFENDANT KELLY SERVICES USA, LLC maintains offices and facilities and conducts
17 business in, and engages in illegal payroll practices or policies in, the County of Alameda, State
18 of California

19 11. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
20 EXEL, INC. d/b/a DHL SUPPLY CHAIN is, and at all times relevant hereto was, a corporation
21 organized and existing under the laws of the State of Ohio. PLAINTIFFS are further informed
22 and believe, and thereon allege, that DEFENDANT EXEL, INC. d/b/a DHL SUPPLY CHAIN is
23 authorized to conduct business in the State of California, and does conduct business in the State
24 of California. Specifically, DEFENDANT EXEL, INC. d/b/a DHL SUPPLY CHAIN maintains
25 offices and facilities and conducts business in, and engages in illegal payroll practices or policies
26 in, the County of Alameda, State of California.

27 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
28 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such DOE Defendants under fictitious

1 names. PLAINTIFFS are informed and believe, and thereon allege, that each Defendant
2 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
3 that PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein, were
4 proximately caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave of the
5 court to amend this Complaint to allege their true names and capacities of such DOE Defendants
6 when ascertained.

7 13. At all relevant times herein, DEFENDANTS were the joint employers of
8 PLAINTIFFS and CLASS MEMBERS. PLAINTIFFS are informed and believe, and thereon
9 allege, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
10 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,
11 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
12 ostensible, of each other. Each DEFENDANT was completely dominated by his, her or its co-
13 DEFENDANT, and each was the alter ego of the other. At least 30 days prior to the filing of this
14 Complaint, DEFENDANTS were provided written notice of alleged violations pursuant to Labor
15 Code § 1028.3(d). DEFENDANTS are liable as client employers pursuant to Labor Code §§
16 1028.3, 1028.3(b).

17 14. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS were
18 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
19 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
20 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
21 PLAINTIFFS and CLASS MEMBERS all wages earned and due, through methods and schemes
22 which include, but are not limited to, failing to pay overtime premiums; failing to provide rest and
23 meal periods; failing to properly maintain records; failing to provide accurate itemized statements
24 for each pay period; failing to properly compensate PLAINTIFFS and CLASS MEMBERS for
25 necessary expenditures; and requiring, permitting or suffering the employees to work off the
26 clock, in violation of the California Labor Code and the applicable Welfare Commission ("IWC")
27 Orders.

28 15. PLAINTIFFS are informed and believes, and thereon allege, that each and every

1 one of the acts and omissions alleged herein were performed by, and/or attributable to, all
2 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
3 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
4 and scope of said agency, employment and/or direction and control.

5 16. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
6 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
7 provision regulating minimum wages or hours and days of work in any order of the Industrial
8 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

9 17. As a direct and proximate result of the unlawful actions of DEFENDANTS,
10 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of
11 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
12 of this Court.

13 **CLASS ACTION DESIGNATION**

14 18. This action is appropriately suited for a Class Action because:

15 a. The potential class is a significant number. Joinder of all current and
16 former employees individually would be impractical.

17 b. This action involves common questions of law and fact to the potential
18 class because the action focuses on DEFENDANTS' systematic course of illegal payroll practices
19 and policies, which was applied to all non-exempt employees in violation of the Labor Code, the
20 applicable IWC wage order, and the Business and Professions Code which prohibits unfair
21 business practices arising from such violations.

22 c. The claims of PLAINTIFF HINOJOS are typical of the class because
23 DEFENDANTS subjected all non-exempt employees to identical violations of the Labor Code,
24 the applicable IWC wage order, and the Business and Professions Code.

25 d. PLAINTIFF HINOJOS is able to fairly and adequately protect the interests
26 of all members of the class because it is in his best interests to prosecute the claims alleged herein
27 to obtain full compensation due to them for all services rendered and hours worked.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

4 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

5 19. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
6 set forth, the allegations in the foregoing paragraphs.

7 20. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
8 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
9 required, permitted or otherwise suffered PLAINTIFF HINOJOS and CLASS MEMBERS to
10 take less than the 30-minute meal period, or to work through them, and have failed to otherwise
11 provide the required meal periods to PLAINTIFF HINOJOS and CLASS MEMBERS pursuant
12 to California Labor Code § 226.7, 512 and IWC Order No. 9-2001, § 11.

13 21. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
14 Order No. 9-2001, § 11 by failing to compensate PLAINTIFF HINOJOS and CLASS
15 MEMBERS who were not provided with a meal period, in accordance with the applicable wage
16 order, one additional hour of compensation at each employee's regular rate of pay for each
17 workday that a meal period was not provided.

18 22. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197,
19 and IWC Wage Order No. 9-2001 by failing to compensate PLAINTIFF HINOJOS and CLASS
20 MEMBERS for all hours worked during their meal periods.

21 23. As a proximate result of the aforementioned violations, PLAINTIFF HINOJOS
22 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
23 all wages earned and due, interest, penalties, expenses, and costs of suit.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Required Rest Periods**

3 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

4 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

5 24. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
6 set forth, the allegations in the foregoing paragraphs.

7 25. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
8 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
9 failed to provide rest periods to PLAINTIFF HINOJOS and CLASS MEMBERS as required
10 under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 12.

11 26. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
12 Order No. 9-2001, § 12 by failing to pay PLAINTIFF HINOJOS and CLASS MEMBERS who
13 were not provided with a rest period, in accordance with the applicable wage order, one
14 additional hour of compensation at each employee's regular rate of pay for each workday that a
15 rest period was not provided.

16 27. As a proximate result of the aforementioned violations, PLAINTIFF HINOJOS
17 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
18 all wages earned and due, interest, penalties, expenses, and costs of suit.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages**

21 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

22 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

23 28. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
24 set forth, the allegations in the foregoing paragraphs.

25 29. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
26 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF HINOJOS and CLASS
27 MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate
28 of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,

1 and for the first eight (8) hours on the seventh consecutive workday, with double time for all
2 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess
3 of eight (8) hours on the seventh consecutive day of work in any workweek.

4 30. PLAINTIFF HINOJOS and CLASS MEMBERS are current and former non-
5 exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC
6 Wage Order No. 9-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
7 PLAINTIFF HINOJOS and CLASS MEMBERS for all overtime hours worked as required
8 under the foregoing provisions of the California Labor Code and IWC Wage Order by, among
9 other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay
10 as provided by California Labor Code §§ 510, 1194 and 1198, and IWC Wage Order No. 5-
11 2001, § 3 (including but not limited to, by failing to properly factor in all forms of remuneration,
12 including, e.g., the value of non-discretionary bonuses, commission, incentive payments, and
13 other forms of remuneration when calculating the regular rate of pay for purposes of paying
14 overtime); requiring, permitting or suffering PLAINTIFF HINOJOS and CLASS MEMBERS to
15 work off the clock; requiring, permitting or suffering PLAINTIFF HINOJOS and CLASS
16 MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in
17 which PLAINTIFF HINOJOS and CLASS MEMBERS worked; failing to properly maintain
18 PLAINTIFF HINOJOS' and CLASS MEMBERS' records; failing to provide accurate itemized
19 wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.

20 31. In violation of California law, DEFENDANTS have knowingly and willfully
21 refused to perform their obligations to compensate PLAINTIFF HINOJOS and CLASS
22 MEMBERS for all wages earned and all hours worked. As a proximate result, PLAINTIFF
23 HINOJOS and CLASS MEMBERS have suffered, and continue to suffer, substantial losses
24 related to the use and enjoyment of such wages, lost interest on such wages, and expenses and
25 attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations under
26 state law, all to their respective damages in amounts according to proof at time of trial, and
27 within the jurisdiction of this Court.

1 32. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
2 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor
3 Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California
4 Labor Code and IWC Wage Orders, PLAINTIFF HINOJOS and CLASS MEMBERS are
5 entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest,
6 penalties, attorneys' fees, expenses, and costs of suit.

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Pay Minimum Wages**

9 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

10 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

11 33. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
12 set forth, the allegations in the foregoing paragraphs.

13 34. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-
14 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
15 worked in a payroll period is unlawful.

16 35. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF
17 HINOJOS and CLASS MEMBERS minimum wages for all hours worked by, among other
18 things: requiring, permitting or suffering PLAINTIFF HINOJOS and CLASS MEMBERS to
19 work off the clock; requiring, permitting or suffering PLAINTIFF HINOJOS and CLASS
20 MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in
21 which PLAINTIFF HINOJOS and CLASS MEMBERS worked; failing to properly maintain
22 PLAINTIFF HINOJOS' and CLASS MEMBERS' records; failing to provide accurate itemized
23 wage statements to PLAINTIFF HINOJOS and CLASS MEMBERS for each pay period; and
24 other methods to be discovered.

25 36. DEFENDANTS' conduct described herein violates California Labor Code §§
26 1194, 1197, and IWC Wage Order No. 9-2001, § 4. As a proximate result of the aforementioned
27 violations, PLAINTIFF HINOJOS and CLASS MEMBERS have been damaged in an amount
28 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,

1 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders,
2 PLAINTIFF HINOJOS and CLASS MEMBERS are entitled to recover the unpaid balance of
3 wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and
4 costs of suit.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

7 **[Cal. Labor Code §§ 201, 202, 203]**

8 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

9 37. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
10 set forth, the allegations in the foregoing paragraphs.

11 38. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
12 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
13 Code § 201 mandates that if an employer discharges an employee, the employee's wages
14 accrued and unpaid at the time of discharge are due and payable immediately.

15 39. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
16 required to pay all accrued wages due to an employee no later than 72 hours after the employee
17 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
18 intention to quit, in which case the employee is entitled to his or her wages at the time of
19 quitting.

20 40. California Labor Code § 203 provides that if an employer willfully fails to pay, in
21 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
22 discharged or who quits, the employer is liable for waiting time penalties in the form of
23 continued compensation to the employee at the same rate for up to 30 workdays.

24 41. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
25 wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance with
26 California Labor Code §§ 201 and 202.

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42. As a result, PLAINTIFF HINOJOS and CLASS MEMBERS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

43. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF HINOJOS and CLASS MEMBERS have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code §§ 1194 and 2699.

SIXTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]

(PLAINTIFF HINOJOS against all DEFENDANTS)

44. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

45. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and practices to deprive PLAINTIFF HINOJOS and CLASS MEMBERS of all wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 9-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

46. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF HINOJOS and CLASS MEMBERS have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF HINOJOS and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]**

4 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

5 47. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
6 set forth, the allegations in the foregoing paragraphs.

7 48. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
8 PLAINTIFF HINOJOS and CLASS MEMBERS with timely, accurate, and itemized wage
9 statements in writing showing each employee's gross wages earned, total hours worked, all
10 deductions made, net wages earned, the name and address of the legal entity or entities
11 employing PLAINTIFF HINOJOS and CLASS MEMBERS, and all applicable hourly rates in
12 effect during each pay period and the corresponding number of hours worked at each hourly rate,
13 in violation of California Labor Code § 226 and IWC Wage Order No. 9-2001, § 7.

14 49. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
15 to provide PLAINTIFF HINOJOS and CLASS MEMBERS with timely, accurate, and itemized
16 wage statements in accordance with California Labor Code § 226(a).

17 50. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFF HINOJOS and CLASS MEMBERS have been damaged in an amount according to
19 proof at trial, and seek all wages earned and due, plus interest thereon. Additionally,
20 PLAINTIFF HINOJOS and CLASS MEMBERS are entitled to all available statutory penalties,
21 including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3,
22 and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not
23 limited to those provided in California Labor Code § 226(e), as well as other available remedies.

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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**
3 **Duties**

4 **[Cal. Labor Code § 2802]**

5 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

6 51. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
7 set forth, the allegations in the foregoing paragraphs.

8 52. California Labor Code § 2802(a) requires an employer to indemnify an employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of his or her duties, or of his or her obedience to the directions of the employer.

11 53. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
12 indemnify PLAINTIFF HINOJOS and CLASS MEMBERS for all business expenses and/or
13 losses incurred in direct consequence of the discharge of their duties while working under the
14 direction of DEFENDANTS, including but not limited to expenses for cell phone, internet, or
15 computer usage, and other employment-related expenses, in violation of California Labor Code
16 § 2802.

17 54. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFF HINOJOS and CLASS MEMBERS have been damaged in an amount according to
19 proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon
20 pursuant to California Labor Code § 2802(b). Additionally, PLAINTIFF HINOJOS and CLASS
21 MEMBERS are entitled to all available statutory penalties and an award of costs, expenses, and
22 reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well
23 as other available remedies.

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1 **NINTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

3 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

4 **(PLAINTIFF HINOJOS against all DEFENDANTS)**

5 55. PLAINTIFF HINOJOS incorporates herein by specific reference, as though fully
6 set forth, the allegations in the foregoing paragraphs.

7 56. Each and every one of DEFENDANTS' acts and omissions in violation of the
8 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
9 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
10 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure
11 and refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum
12 wages, DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting
13 employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;
14 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and
15 refusal to indemnify PLAINTIFF HINOJOS and CLASS MEMBERS for necessary expenditures
16 and/or losses incurring in discharging their duties, constitutes an unfair and unlawful business
17 practice under California Business and Professions Code § 17200 et seq.

18 57. DEFENDANTS' violations of California wage and hour laws constitute a business
19 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over
20 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF
21 HINOJOS and CLASS MEMBERS.

22 58. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
23 rest periods, and other benefits as required by the California Labor Code, the California Code of
24 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
25 record, report, and pay the correct sums of assessment to the state authorities under the
26 California Labor Code and other applicable regulations.

27 59. As a result of DEFENDANTS' unfair and unlawful business practices,
28 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the

1 expense of PLAINTIFFS, CLASS MEMBERS, and members of the public. DEFENDANTS
2 should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFF HINOJOS
3 and CLASS MEMBERS.

4 60. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF
5 HINOJOS and CLASS MEMBERS to seek preliminary and permanent injunctive relief,
6 including but not limited to orders that DEFENDANTS account for, disgorge, and restore to
7 PLAINTIFF HINOJOS and CLASS MEMBERS the wages and other compensation unlawfully
8 withheld from them. PLAINTIFF HINOJOS and CLASS MEMBERS are entitled to restitution
9 of all monies to be disgorged from DEFENDANTS in an amount according to proof at the time
10 of trial, but in excess of the jurisdiction of this Court.

11 **TENTH CAUSE OF ACTION**

12 **Representative Action for Civil Penalties**

13 **[Cal. Labor Code §§ 2698–2699.5]**

14 **(PLAINTIFF HINOJOS and PLAINTIFF BLAKE Against All DEFENDANTS)**

15 61. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
16 allegations in all preceding paragraphs, with exception of the allegations in paragraph 18 and the
17 subparagraphs thereto. All factual allegations previously alleged on behalf of PLAINTIFF
18 HINOJOS are hereafter alleged on behalf on PLAINTIFFS.

19 62. PLAINTIFFS are “aggrieved employees” within the meaning of California Labor
20 Code § 2699(c), and proper representatives to bring a civil action on behalf of themselves and
21 other current and former employees of DEFENDANTS pursuant to the procedures specified in
22 California Labor Code § 2699.3, because PLAINTIFFS and CLASS MEMBERS were employed
23 by DEFENDANTS and the alleged violations of the California Labor Code were committed
24 against PLAINTIFFS and CLASS MEMBERS.

25 63. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
26 Code §§ 2698–2699.5, PLAINTIFFS and CLASS MEMBERS seeks to recover civil penalties,
27 including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558,
28 1174.5, 1197.1, and IWC Wage Order No. 9-2001, § 20, from DEFENDANTS in a

1 representative action for the violations set forth above, including but not limited to violations of
2 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
3 2802. PLAINTIFFS and CLASS MEMBERS are also entitled to an award of reasonable
4 attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

5 64. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF HINOJOS gave written
6 notice on December 8, 2020 by online filing to the California Labor and Workforce
7 Development Agency ("LWDA") and by certified mail to DEFENDANTS of the specific
8 provisions of the California Labor Code and IWC Wage Orders alleged to have been violated,
9 including the facts and theories to support the alleged violations. More than sixty-five (65) days
10 have passed and the LWDA has not provided notice to PLAINTIFF HINOJOS that it intends to
11 investigate the alleged violations.

12 65. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF BLAKE gave written
13 notice on January 12, 2021 by online filing to the California Labor and Workforce Development
14 Agency ("LWDA") and by certified mail to DEFENDANT EXEL, INC. d/b/a DHL SUPPLY
15 CHAIN of the specific provisions of the California Labor Code and IWC Wage Orders alleged
16 to have been violated, including the facts and theories to support the alleged violations. More
17 than sixty-five (65) days have passed and the LWDA has not provided notice to PLAINTIFF
18 BLAKE that it intends to investigate the alleged violations.

19 66. Therefore, PLAINTIFFS have complied with all of the requirements set forth in
20 California Labor Code § 2699.3 to commence a representative action under PAGA.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 9-2001;
4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action as a class action;
12. For an order appointing PLAINTIFF HINOJOS as class representatives, and PLAINTIFF HINOJOS' counsel as class counsel; and

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1 13. For such further relief that the Court may deem just and proper.

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3 DATED: May 12, 2021

Respectfully submitted,

4 **MATERN LAW GROUP, PC**

5
6 By: _____



7 Matthew J. Matern
8 Tagore O. Subramaniam
9 Attorneys for Plaintiffs
10 JASMINE BLAKE and RICK HINOJOS,
11 individually, and on behalf of others
12 similarly situated

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DATED: May 12, 2021

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