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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FELIX DIAZ, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

DANIEL'S WESTERN MEAT
PACKERS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 21STCV11476

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Violation of Cal. Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Cal. Labor Code § 226.7 (Rest Period Violations);
4. Violation of Cal. Labor Code § 226 (Failure to Provide Accurate Itemized Wage Statements);
5. Violation of Cal. Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
6. Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties);
7. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practice); and
8. Violation of the Private Attorneys General Act ("PAGA")

REQUEST FOR JURY TRIAL

1 Plaintiff FELIX DIAZ (“Plaintiff” or “Mr. Diaz”), on behalf of himself and all employees
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein (“Plaintiff Class”) by
6 Defendant DANIEL’S WESTERN MEAT PACKERS, INC. (“Defendant”), as well as on behalf
7 of the state of California as a Private Attorney General pursuant to the Private Attorney General
8 Act (2004), and more specifically, Labor Code §2698 et seq., as a result of one or more of the
9 violations of the California Labor Code alleged herein by Defendant. The term “Relevant Time
10 Period” or “Time Period” is defined as four (4) years prior to the filing of the original Complaint.
11 Plaintiff, as a Private Attorney General, reserves the right to amend this complaint to reflect a
12 different “Time Period” as further discovery is conducted.

13 2. Plaintiff, individually and on behalf of the Plaintiff Class, seeks relief against
14 Defendant for its: (1) failure to pay all wages due, including minimum, regular, overtime, and
15 double-time wages; (2) failure to provide meal periods or premium compensation in lieu thereof;
16 (3) failure to provide rest periods or premium compensation in lieu thereof; (4) failure to provide
17 accurate itemized wage statements; (5) failure to pay wages due upon termination of employment;
18 (6) failure to provide reimbursement for necessary business expenditures; and (7) unfair business
19 practices.

20 3. These violations concern current and past employees of Defendant.

21 4. At all relevant times herein, Defendant has consistently maintained and enforced
22 the following unlawful policies and practices against Plaintiff and the Plaintiff Class:

- 23 a. Willfully refusing to pay all hours worked, including regular, overtime
24 and double-time, and minimum wages;
- 25 b. Willfully refusing to permit off-duty meal periods or providing
26 compensation in lieu thereof;
- 27 c. Willfully refusing to permit rest periods or providing compensation in lieu
28 thereof;

- d. Willfully refusing to furnish accurate itemized wage statements upon payment of wages;
- e. Willfully refusing to pay all wages due upon separation of employment;
- f. Willfully refusing to provide reimbursement for necessary business expenditures; and
- g. Willfully engaging in unfair business practices.

5. Plaintiff further brings this action as a representative of the State of California and the Labor and Workforce Development Agency ("LWDA") to recover civil penalties pursuant to the Private Attorneys General Act ("PAGA"), Labor Code sections 2698, *et seq.*, for violations of numerous Labor Code provisions, including, but not limited to, sections 201-204, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802.

THE PARTIES

The Plaintiff

5. Mr. Diaz is, and at all times herein mentioned was, a resident of the County of Los Angeles. Mr. Diaz began his employment with Defendant on or about January 2006, as a driver. Mr. Diaz was terminated from his employment on or around March 24, 2020. Throughout the Relevant Time Period, Plaintiff's duties included driving and making deliveries and pickups.

The Defendant

6. Plaintiff is informed and believes, and based thereon alleges, that Defendant Daniel's Western Meat Packers, Inc. ("Daniel's Meat" or "Defendant") is a California corporation which provides quality meat and wholesale food distribution in Southern California, and is and/or was the employer of Plaintiff and similarly situated employees during the Relevant Time Period.

7. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant

1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
2 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
3 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
4 venture and/or single business enterprise, integrated enterprise and/or are agents of one another,
5 are alter egos, joint employers and conspire with one another to increase profits by engaging in
6 the conduct described in this complaint.

7 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
9 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
10 below was acting, at least in part, within the course and scope of that authority as such agent,
11 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
12 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
13 are legally attributable to the other Defendants.

14 **JURISDICTION AND VENUE**

15 10. This Court has subject matter jurisdiction over the causes of action alleged in this
16 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
17 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
18 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
19 collectively amongst Plaintiff Class do not exceed five million dollars (\$5,000,000.00.)

20 11. Plaintiff is a resident of the State of California. Defendant is a California
21 corporation doing business in the State of California, with headquarters located at 5220 Van
22 Norman Rd., Pico Rivera, California 90660. Daniel's Meat is thus a resident of and/or domiciled
23 in the State of California.

24 12. Venue is proper in the County of Los Angeles, because Defendant conducts
25 business in the County of Los Angeles, and the acts and omissions set forth herein occurred in
26 the County of Los Angeles.

27 **PAGA ADMINISTRATIVE PREREQUISITES**

28 13. Plaintiff brings this case as private Attorney General pursuant to the Private

1 Attorney General Act (2004), and mores specifically, Labor Code §2698 et seq. seeking penalties,
2 as provided by the Private Attorney General Act, Labor Code section 2698 et seq. (“PAGA”).

3 14. Prior to filing this complaint, on March 22, 2021, Plaintiff gave written notice by
4 certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
5 Defendant of the specified provisions alleged to have been violated, including the facts and
6 theories to support the alleged violation as required by Labor Code section 2699.3. This written
7 notice was given via certified mail to Defendant and to the LWDA by electronically filing the
8 notice via the Department of Industrial Relations website. Plaintiff was given a LWDA case
9 number of LWDA-CM-826676-21. A true and correct copy of Plaintiff’s original letter sent to
10 the LWDA is attached hereto as “Exhibit A.”

11 15. More than sixty-five (65) days have passed since Plaintiff submitted his March 22,
12 2021, notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the
13 LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations.
14 Plaintiff further has received no notice of Defendant’s intent to cure any of the alleged violations.
15 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action as a Private
16 Attorney General with regard to his March 22, 2021, PAGA notice.

17 **FACTUAL ALLEGATIONS**

18 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
19 employees the benefits due under California’s wage and hour laws for work performed in
20 California. Defendant wrongfully refused to provide Plaintiff and the Plaintiff Class minimum
21 wages, overtime compensation, meal and rest periods, and other statutory benefits mandated by
22 California.

23 17. During the Relevant Time Period, Defendant employed Plaintiff and the Plaintiff
24 Class in non-exempt, hourly-paid positions throughout Southern California.

25 18. Defendant failed to provide Plaintiff and the Plaintiff Class with meal periods in
26 violation of the Labor Code and IWC Wage Orders. Plaintiff and the Plaintiff Class were entitled
27 to timely, uninterrupted, thirty (30) minute meal periods with the first (5) hours worked.
28 However, these meal breaks were either not provided, were interrupted, or were provided late. In

1 fact, Plaintiff would be instructed by his supervisor, Jaime Argueta, not to take a meal period
2 because Plaintiff was a driver and could take a meal period whenever he had time and was not
3 too busy. For example, when Plaintiff was assigned to work at Defendant's warehouse, he was
4 assigned to drive and move trucks. When it was time for Plaintiff's meal period, he was instructed
5 to stay working and would not be provided with a meal period until later on, if at all. Defendant
6 would automatically deduct a meal period for Plaintiff and the Plaintiff Class even when it did
7 not in fact provide a meal period. Furthermore, Defendant utilized a practice of disciplining
8 employees that made complaints about not being provided with their meal periods. Oftentimes,
9 employees that complained would have their hours cut and they would be transferred to working
10 at the warehouse instead of driving delivery routes.

11 19. Defendant also failed to make reasonably available legally compliant rest periods.
12 Mr. Diaz is informed and believes that Defendant did not have either written or verbal policies
13 regarding meal and rest breaks. This resulted in employees taking meal and rest breaks only
14 sporadically. Defendant failed to provide adequate coverage to relieve employees to take their
15 rest breaks. In addition, Defendant subjected Plaintiff and Plaintiff Class to pressure to complete
16 work on time, thus discouraging employees from taking their lawful meal and rest breaks. Due to
17 Defendant's policy and practices which prioritized work tasks over rest and meal period
18 compliance, Plaintiff and Plaintiff Class missed meal and rest periods, or received them untimely.

19 20. Mr. Diaz alleges he and the Plaintiff Class were not compensated with premium
20 pay for every meal period and rest period that was not provided, was provided late, or was
21 interrupted, as required by Labor Code sections 226.7 and 512 and the applicable IWC Wage
22 Order.

23 21. Mr. Diaz further alleges that Defendant failed to compensate him and the Plaintiff
24 Class at the legally mandated wage rates for all hours worked. Mr. Diaz and Plaintiff Class
25 performed work off-the-clock, during overtime periods and during meal periods and regularly
26 and frequently worked beyond the eighth (8th) hour of their shifts. For example, Mr. Diaz and
27 Plaintiff Class routinely worked shifts from 3:00 a.m. until their work was done, Monday through
28 Friday and occasionally on Saturdays as well. On a regular basis, Plaintiff and Plaintiff Class

1 worked approximately twelve (12) hours per day. However, when Plaintiff worked twelve (12)
2 to fourteen (14) hours in a shift, Defendant would only pay him at his regular rate and not at the
3 proper overtime rate or double-time rate.

4 22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
5 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
6 times the employee's base rate of pay. Similarly, all excess hours over twelve (12) hours in a day
7 were required to be compensated at a rate of two times the employee's base rate of pay.
8 Defendant's failure to provide Plaintiff and the Plaintiff Class any pay whatsoever for off-the-
9 clock hours worked therefore necessarily resulted in overtime violations as well.

10 23. Defendant failed to keep accurate time records reflecting the time Mr. Diaz and
11 Plaintiff Class started their shifts, the time they began and ended their meal periods, and the time
12 they ended their shifts. Defendant required the employees to work before and/or after clocking-
13 in and out and deducted meal period times even when no meal period was actually taken. As a
14 result, the timekeeping by Defendant was non-compliant as required under the Labor Code and
15 Code of Regulations.

16 24. By failing to include on Plaintiff and the Plaintiff Class's paystubs all owed meal
17 and rest premium pay, and all minimum wage and overtime and double-time owed, Defendant
18 failed to keep accurate payroll records and failed to provide Plaintiff and the Plaintiff Class with
19 complete and accurate wage statements.

20 25. In addition, Defendant willfully failed to reimburse Plaintiff and Plaintiff Class for
21 necessary business expenses incurred during their employment with Defendant. Specifically,
22 Defendant required, and on information and belief continues to require, its employees to
23 communicate with one another through their personal cellular phones. Defendant required, and
24 on information and belief continues to require, its management to contact employees to convey
25 schedules, job duties, and other items to employees using their personal cellular phones.
26 Defendant also required Plaintiff and Plaintiff Class to wear uniforms and to be personally
27 responsible for the maintenance of said uniforms. Defendant failed to reimburse its employees
28 for the expense of using their personal cellular phones for business purposes and for the cost of

1 maintenance of their work uniforms all in violation of the Labor Code and the IWC Wage Orders.

2 26. Further, to the extent the above violations caused outstanding wages to be owed
3 to Plaintiff and the Plaintiff Class, Defendant failed to pay all wages earned to Plaintiff and the
4 Plaintiff Class upon the termination of their employment.

5 **CLASS ALLEGATIONS**

6 27. Plaintiff brings this action on behalf of himself, the general public, and the Plaintiff
7 Class, as a class action pursuant to Code of Civil Procedure section 382.

8 28. The proposed class consists of and is defined as follows: all non-exempt, hourly-
9 paid employees who work or worked for Defendant in California during the Relevant Time
10 Period. Plaintiff reserves the right under Rules of Court, rule 3.765, to amend or modify the class
11 description(s) with greater specificity or further division into subclasses or limitation to particular
12 issues.

13 29. This action has been brought and may be maintained as a class action pursuant to
14 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
15 litigation, and because the Plaintiff Class is easily ascertained by Defendant's personnel and
16 payroll records.

17 **Numerosity**

18 30. The potential members of the class as defined are so numerous that joinder of all
19 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
20 Plaintiff is informed and believes that Defendant employed over fifty (50) employees during the
21 Relevant Time Period within the state of California, and alleges on information and belief that a
22 large enough portion of those so-employed held non-exempt positions so as to be part of the
23 Plaintiff Class.

24 **Commonality**

25 31. There are common questions of law and fact arising out of Defendant's conduct
26 as described herein, including, but not limited to:

- 27 a. Whether Defendant failed to pay all wages, including minimum, overtime
28 and double-time wages, due to Plaintiff and the Plaintiff Class;

1 other method available for both the fair and efficient adjudication of the rights of each class
2 members inasmuch as joinder of individual relatively small claims of each member of the Plaintiff
3 Class is not practical, and if each employee were required to file an individual lawsuit, the
4 Defendant would necessarily gain an unconscionable advantage since they would be able to
5 exploit and overwhelm the limited resources of each individual plaintiff. Requiring each member
6 of the Plaintiff Class to pursue an individual remedy would also discourage the assertion of lawful
7 claims by employees fearful of retaliation and permanent damage to their careers at present and/or
8 subsequent employment. Further, the substantial risk of inconsistent or varying verdicts or
9 adjudications with respect to the individual members of the Plaintiff Class against Defendant
10 herein further support class certification.

11 **FIRST CAUSE OF ACTION**

12 **Failure to Pay All Wages Owed, Including Minimum Wage and Overtime**
13 **(Plaintiff Against Defendants)**

14 35. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
15 fully alleged herein.

16 36. Labor Code section 1182.12 provides that for employers who employed twenty-
17 six (26) or more people from January 1, 2017 to December 31, 2017, the minimum wage rate in
18 California was ten dollars and fifty cents (\$10.50) per hour. From January 1, 2018 to December
19 31, 2018, the minimum wage rate in California was eleven dollars (\$11.00) per hour. From
20 January 1, 2019 to December 31, 2019, the minimum wage rate in California was twelve dollars
21 (\$12.00) per hour. From January 1, 2020, through December 31, 2020, the minimum wage rate
22 in California was thirteen dollars (\$13.00) per hour. From January 1, 2021, through December
23 31, 2021, the minimum wage rate in California is fourteen dollars (\$14.00) per hour. Plaintiff is
24 informed and believes Defendant employs more than twenty-six (26) employees and thus falls
25 within all requirements of section 1182.12.

26 37. Additionally, many California cities and counties impose a separate minimum
27 wage higher than that set by section 1182.12, which may be applicable to Plaintiff and the Plaintiff
28 Class. For example, Los Angeles County, where Plaintiff was employed, had a minimum wage

1 of twelve dollars (\$12.00) effective July 1, 2017, thirteen dollars and twenty-five cents (\$13.25)
2 effective July 1, 2018, fourteen dollars and twenty-five cents (\$14.25) effective as of July 1, 2019,
3 and fifteen dollars (\$15.00) effective as of July 1, 2020 (County of Los Angeles Minimum Wage
4 Ordinance, *available at* <http://lacounty.gov/minimum-wage/>.)

5 38. Notwithstanding any other provision of the Labor Code, hourly minimum wage
6 rates are set for all industries according to statute. (Labor Code § 1182.12). Employers must pay
7 employees no less than minimum wage for each hour worked. (Labor Code § 1194; IWC Wage
8 Order 5-2001, Sect. 4.)

9 39. Any work in excess of eight hours in any workday and any work in excess of forty
10 (40) hours in a workweek shall be compensated at a rate of no less than one and one-half times
11 the regular rate of pay for an employee. (Labor Code § 510(a).) Any work in excess of twelve
12 (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay for an
13 employee.

14 40. Any employee receiving less than the legal minimum wage or legal overtime
15 compensation is entitled to recover in a civil action, the amount of unpaid wages and interests
16 thereon, attorneys' fees, and costs of suit. (Labor Code § 1194(a).)

17 41. All wages earned in employment are due and payable twice during each calendar
18 month on dates designated in advance by the employer. (Labor Code § 204.)

19 42. Plaintiff and the Plaintiff Class regularly worked over eight (8) hours per day and
20 forty (40) hours per week. Defendant failed to pay Plaintiff and the Plaintiff Class all minimum
21 wage, overtime premiums, and/or double-time premiums for all hours worked in excess of eight
22 (8) hours per day and/or forty (40) hours per week for work performed for Defendant. Pursuant
23 to Labor Code sections 510, 1182.12, 1194, and the applicable IWC Wage Order, Plaintiff and
24 the Plaintiff Class seek the payment of all minimum wage, overtime, and/or double-time
25 compensation, and reporting time pay earned and accrued beginning four (4) years prior to filing
26 this complaint, according to proof.

27 43. Plaintiff and the Plaintiff Class routinely worked shifts in excess of twelve (12)
28 hours, but Defendant failed to pay any overtime or double-time rates. All hours were paid at the

employees' regular rate of pay.

44. Plaintiff and the Plaintiff Class were also frequently required to work through meal periods for which Defendant required at least thirty (30) minutes be deducted from the time recorded, resulting in additional unpaid wages. Additional time was worked by Plaintiff and the Plaintiff Class that employees were not permitted to record on time records also resulting in unpaid wages.

45. Plaintiff and the Plaintiff Class are entitled to liquidated damages, attorneys' fees, and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Premium Compensation in Lieu thereof

(Plaintiff against Defendants)

46. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

47. Labor Code sections 226.7 and 512 and the applicable IWC Wage Order, provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

48. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

49. At all relevant times, Plaintiff and the Plaintiff Class have worked shifts of more than five (5) hours in a workday.

1 50. Pursuant to Labor Code section 226.7, Plaintiff and the Plaintiff Class are entitled
2 to damages equal to one (1) hour of wages at their regular rate of pay for each missed meal break,
3 in an amount according to proof.

4 51. At varying times relevant hereto, Plaintiff and the Plaintiff Class have worked
5 shifts of more than ten (10) hours in a workday.

6 52. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
7 meal period premium compensation pursuant to Labor Code section 226.7 which they are owed
8 beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory
9 penalties against the Defendant, and each of them, in a sum as provided by the Labor Code and/or
10 other statutes.

11 53. Pursuant to Labor Code sections 218.5, Code of Civil Procedure section 1021.5
12 and any other applicable provision of law, Plaintiff requests the court award reasonable attorneys'
13 fees and costs incurred in this action.

14 **THIRD CAUSE OF ACTION**

15 **Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof**

16 **(Plaintiff against Defendants)**

17 54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
18 fully set forth herein.

19 55. Labor Code section 226.7 provides that employers authorize and permit all
20 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
21 major fraction thereof.

22 56. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
23 provide and employee rest periods in accordance with this section, the employer shall pay the
24 employee one (1) hour of pay at the employees' regular rate of compensation for each workday
25 that the rest period is not provided. Plaintiff and the Plaintiff Class consistently worked over four
26 (4) hours per shift with no rest breaks, due to Defendant's uniform policies and practices.

27 57. Defendant failed to reasonably make available rest breaks to Plaintiff and the
28 Plaintiff Class during the Relevant Time Period. In fact, Plaintiff's supervisor, Jaime Argueta,

1 would instruct Plaintiff to continue working through his rest breaks because there was insufficient
2 coverage.

3 58. Plaintiff and the Plaintiff Class are entitled to damages in an amount equal to one
4 (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Labor Code
5 section 218.5, Code of Civil Procedure section 1021.5 and any other applicable provision of law,
6 Plaintiff requests the court award reasonable attorneys' fees and costs incurred in this action.

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Provide Accurate Itemized Wage Statements and Maintain Records**

9 **(Plaintiff against Defendants)**

10 59. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
11 fully set forth herein.

12 60. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage
13 Orders, provide that employers must keep records and provide employees with itemized wage
14 statements showing all hours worked and each applicable rate of pay in effect during the pay
15 period with the corresponding number of hours worked at each hourly rate.

16 61. Labor Code section 1174, subdivision (d), requires employers to keep at a central
17 location in California or at the plant or establishment at which the employees are employed,
18 payroll records showing the hours worked daily, and the wages paid to, each employee.

19 62. Labor Code section 226, subdivision (a), requires employers to provide employees
20 – either as a detachable part of the check, draft, or voucher paying the employee's wages, or
21 separately when wages are paid by personal check or cash – an accurate itemized wage statement
22 in writing including specified information, including but not limited to: (1) gross wages earned;
23 (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4)
24 all deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
25 paid; (7) the name of the employee and only the last four digits of his or his social security number
26 or an employee identification number other than a social security number; (8) the name and
27 address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect
28 during the pay period and corresponding number of hours worked at each hourly rate by the

1 employee...

2 63. Labor Code section 226, subdivision (e), provides that if an employer knowingly
3 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
4 the total hours worked by the employee and the applicable hourly overtime rates, causing the
5 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
6 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
7 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
8 Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

9 64. IWC Wage Orders require that every employer shall keep accurate information
10 with respect to each employee, including time records showing when each employee begins and
11 ends each work periods, the total daily hours worked by each employee and the total hours worked
12 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that
13 Defendant willfully and intentionally failed to make and/or keep records which accurately reflect
14 the hours worked by Plaintiff and the Plaintiff Class. Specifically, Plaintiff believes that
15 Defendant did not maintain records for Plaintiff and the Plaintiff Class reflecting their time
16 actually worked and applicable rate of pay.

17 65. An employee is deemed to suffer injury if the employer fails to provide a wage
18 statement containing all of the required information set forth in Labor Code section 226,
19 subdivision (a). (Labor Code § 226(e)(2).) In addition, the omission of time worked, proper rates
20 of pay, records of missed meal and rest breaks and/or premium pay make it difficult for employees
21 to determine whether they were paid all wages due without complicated calculations and/or
22 reconstruction of records required to be maintained by the employer.

23 66. For each employee suffering an injury as a result of Defendant's knowing and
24 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
25 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
26 a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a
27 subsequent pay period.

28 67. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll

1 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
2 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
3 Code section 2699, subdivision (f)(2). Plaintiff and the Plaintiff Class are entitled to penalties of
4 one hundred (\$100.00) for the initial violation, and two hundred (\$200.00) for each subsequent
5 violation for every pay period during which these records and information were not kept by
6 Defendant.

7 68. Plaintiff is informed and believes that Defendant's failure to keep and maintain
8 accurate records and information and provide to Plaintiff and the Plaintiff Class itemized wage
9 statements containing all of the information mandated by the Labor Code, as described above,
10 was knowing and intentional, and Plaintiff and the Plaintiff Class are entitled to statutory penalties
11 for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys'
12 fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted
13 by law.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Pay Wages Due upon Termination of Employment**

16 **(Plaintiff against Defendants)**

17 69. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
18 fully set forth herein.

19 70. Plaintiff is informed and believes, and based thereon alleges, that as part of
20 Defendant's ongoing unfair business practices, Defendant failed to pay all employees all wages
21 earned during their employment at the time of their separation in violation of Labor Code sections
22 201, 202, and 203.

23 71. Labor Code section 201 provides that employers are required to pay an employee
24 whose employment is terminated by the employer all wages earned throughout their employment
25 and unpaid immediately upon termination.

26 72. Labor Code section 202 requires employers to pay an employee who quits his or
27 her employment all wages earned and unpaid no later than seventy-two (72) hours thereafter.

28 73. Labor Code section 203 provides that when an employer who fails to pay all wages

1 earned and due to an employee who is discharged or quits within the appropriate timeframes set
2 forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the
3 employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up
4 to thirty (30) days.

5 74. Plaintiff and members of the Plaintiff Class whose employment was severed
6 within four (4) years of the filing of this complaint until the date of entry of judgment, without
7 being paid the proper payments, are entitled to up to thirty (30) days of pay at their regular rate
8 of pay as waiting time penalties, as appropriate to Plaintiff and each member of the Plaintiff Class.

9 **SIXTH CAUSE OF ACTION**

10 **Indemnification for Expenditures or Losses in Discharge of Duties**

11 **(Plaintiff against All Defendants)**

12 75. Plaintiff realleges and incorporates by reference all preceding paragraphs herein
13 as if fully alleged herein.

14 76. Defendant failed to indemnify Plaintiff and the Plaintiff Class for all necessary
15 expenditures or losses incurred in direct consequence of the discharge of their duties. Specifically,
16 Defendant failed to indemnify Plaintiff and the Plaintiff Class for expenditures including, without
17 limitation, a reasonable percentage of their cellular phone bills for purposes of utilizing personal
18 cell phones in direct consequence of the discharge of their duties to Defendants. In addition,
19 Defendant failed to indemnify Plaintiff and the Plaintiff Class for the cost of cleaning and
20 maintenance of their work uniforms.

21 77. Defendant has not reimbursed Plaintiff and the Plaintiff Class for all expenditures.
22 Plaintiff and the Plaintiff Class are therefore entitled to be paid damages, attorneys' fees, costs,
23 and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory
24 penalties, against Defendant in accordance with Labor Code section 2802, subdivision (d).

25 **SEVENTH CAUSE OF ACTION**

26 **Unfair or Unlawful Business Practices**

27 **(Plaintiff against Defendants)**

28 78. Plaintiff realleges and incorporates by reference all preceding paragraphs herein

1 as if fully alleged herein.

2 79. Plaintiff brings this claim individually and on behalf of the Plaintiff Class.

3 80. Business and Professions Code sections 17200, *et seq.*, known as California's
4 Unfair Competition Law ("UCL"), prohibits unfair competition in the form of any unlawful,
5 unfair, or fraudulent business act or practice.

6 81. Business and Professions Code section 17204 allows "any person who has
7 suffered injury in fact and has lost money or property as a result of such unfair competition" to
8 prosecute a civil action for violation of the UCL.

9 82. Labor Code section 90.5, subdivision (a), states it is the public policy of California
10 to vigorously enforce minimum labor standards in order to ensure employees are not required to
11 work under substandard and unlawful conditions, and to protect employers who comply with the
12 law from those who attempt to gain competitive advantage at the expense of their workers by
13 failing to comply with minimum labor standards.

14 83. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
15 years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
16 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
17 business practices and acts described in this complaint, including but not limited to violations of
18 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1182.12, 1194, 1197,
19 and 2802, as well as other statutes as described above.

20 84. The violations of these laws and regulations, as well as of the fundamental
21 California public policies protecting workers, serve as unlawful predicate acts and practices for
22 purposes of Business and Professions Code sections 17200 *et seq.*

23 85. As a result of these actions, Plaintiff, on information and belief, alleges that
24 Defendant is able to unfairly compete with other comparable companies in the State of California
25 in violation of Business & Professions Code sections 17000 *et. Seq.* Due to these unlawful, unfair
26 and/or fraudulent business practices, Defendant has gained a competitive advantage over other
27 comparable companies doing business in the State of California.

28 86. The victims of these unlawful, unfair and/or fraudulent business practices include,

1 but are not limited to, Plaintiff, the Plaintiff Class, competing cleaning and janitorial service
2 companies in the State of California, and the general public. Plaintiff is informed and believes,
3 and based thereon alleges, that Defendant performed the above-mentioned acts with the intent of
4 gaining an unfair competitive advantage and thereby injuring Plaintiff, the Plaintiff Class, other
5 competitors, and the general public.

6 87. Plaintiff's success in this action will enforce important rights affecting the public
7 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
8 of himself.

9 88. Business and Professions Code section 17203 provides that a court may make such
10 orders or judgments as may be necessary to prevent the use or employment by any person of any
11 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
12 prevent Defendant from repeating their unlawful, unfair, and fraudulent business acts and
13 business practices alleged above.

14 89. Business and Professions Code section 17203 provides that the Court may restore
15 to any person in interest any money or property that may have been acquired by means of such
16 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and
17 Professions Code section 17203 for wages and payments unlawfully withheld from employees,
18 including the fair value of the meal and rest periods and other losses alleged herein, during the
19 four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to
20 Business and Professions Code section 17205.

21 90. Business and Professions Code section 17202 provides: "Notwithstanding Section
22 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
23 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled
24 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
25 Professions Code section 17202.

26 91. Plaintiff requests injunctive relief pursuant to Business and Professions Code
27 section 17203 to enjoin Defendants from continuing the unfair/unlawful business practices
28 alleged herein.

1 92. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
2 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
3 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
4 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
5 Code of Civil Procedure section 1021.5 and otherwise.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of the California Private Attorneys General Act of 2004 (PAGA)**

8 **(Labor Code §§ 2698 *et seq.*)**

9 **(Plaintiff against Defendants)**

10 93. Plaintiff realleges and incorporates by reference all preceding paragraphs herein
11 as if fully alleged herein.

12 94. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
13 General Act of 2004 ("PAGA.") (Labor Code sections 2698 *et seq.*)

14 95. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
15 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
16 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
17 not to investigate, or after sixty-five (65) days have passed without notice from the LWDA.

18 96. On March 22, 2021, prior to the filing of the original complaint, Plaintiff gave
19 written notice of the specified provisions alleged to have been violated, including the facts and
20 theories to support the alleged violations, as required by Labor Code section 2699.3. This written
21 notice was given via certified mail to Defendant(s), and to the LWDA by electronically filing the
22 notice via the Department of Industrial Relations website. Plaintiff was given a LWDA case
23 number of LWDA-CM-826676-21. A true and correct copy of Plaintiff's notice to the LWDA
24 and Defendant(s), dated March 22, 2021, is attached hereto as Exhibit A.

25 97. Under Labor Code section 2699.3, subdivision (a)(2)(C), "Notwithstanding any
26 other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a
27 cause of action arising under this part at any time within 60 days of the time periods specified in
28 this part."

1 98. More than sixty-five (65) days have passed without notice from the LWDA.

2 99. Pursuant to court order, this matter was stayed during the entire time period
3 specified by section 2699.3, subdivision (a)(2)(C). Plaintiff alleges he may invoke this right
4 following the Court's lift of the pleadings stay.

5 100. PAGA permits an "aggrieved employee" to recover penalties on behalf of
6 himself/herself and other employees subject to violations of the Labor Code, including violations
7 of sections 201-204, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802, as well as the applicable
8 Wage Order.

9 101. Plaintiff is informed and believes Defendant at all relevant times employed one or
10 more employees.

11 102. For those code sections that provide for the recovery of civil penalties, Plaintiff
12 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
13 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
14 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
15 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
16 subsequent violation pursuant to Labor Code section 2699, subdivision (f). The "initial violation"
17 occurs during the first pay period following notice of such violations served on Defendant through
18 the letter to the LWDA.

19 103. Section 2699, subdivision (a) provides that civil penalties may be "recovered
20 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
21 current or former employees." (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
22 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
23 award of reasonable attorneys' fees and costs.

24 104. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
25 to civil penalties, attorneys' fees and costs, according to proof.

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
2. That the Court appoint Plaintiff as Class Representative;
3. That the Court appoint Mahoney Law Group, APC as class counsel;
4. For compensatory and statutory damages;
5. For waiting time penalties pursuant to Labor Code section 203, on behalf of the terminated or resigned employees;
6. For interest accrued to date;
7. For restitution of all monies due to Plaintiff and the Plaintiff Class from the unlawful business practices of Defendant;
8. For statutory and civil penalties according to proof;
9. For injunctive relief, enjoining Defendant from engaging in the unlawful and unfair business practices complained herein;
10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
11. For reasonable attorneys' fees and costs pursuant to Labor Code sections 226, subdivision (e), 218.5, and 1194, Code of Civil Procedure section 1021.5, and/or other applicable laws and/or statutes; and
12. For all such other and further relief as the Court may deem just and proper.

Dated: August 29, 2022

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.

Atoy H. Wilson, Esq.

Attorneys for Plaintiff FELIX DIAZ, as an
individual and on behalf of all employees similarly
situated

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Dated: August 29, 2022

By:

Attorneys for Plaintiff FELIX DIAZ, as an individual and on behalf of all employees similarly situated

EXHIBIT A



Atoy H. Wilson, Esq.
(562) 590-5550 phone
(562) 590-8400 fax
awilson@mahoney-law.net

March 22, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL # 7019 2970 0000 2983 0979

Return Receipt Requested

Daniel's Western Meat Packers, Inc.
Attn: Alfred Santos
5220 Van Norman Rd.
Pico Rivera, CA 90660

Re: Felix Diaz v. Daniel's Western Meat Packers, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency and Daniel's Western Meat Packers, Inc.

From: Felix Diaz, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Felix Diaz ("Mr. Diaz" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Daniel's Western Meat Packers, Inc. (hereinafter "Daniel's Meat" and/or "Employer") is in the business of providing quality meat and wholesale food distribution Southern California. Mr. Diaz was an hourly-paid, non-exempt employee for Employer.

Mr. Diaz alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, and 2802, by failing to provide Mr. Diaz and all other aggrieved employees with all wages for all hours worked, including, but not limited to, regular and minimum wage, overtime and double-time hours, meal and rest period premium pay, and reimbursement for necessary business expenditures. Mr. Diaz and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Daniel's meat Failed to Provide Mr. Diaz and Other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in Lieu Thereof, in Violation of California Law

Mr. Diaz alleges that he and other aggrieved employees were routinely not provided with timely, 30-minute off-duty meal periods, as required by the Labor Code. Mr. Diaz and other aggrieved employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) In fact, Mr. Diaz estimates on average he was not provided with a meal period, or was provided with a late meal period or had his meal periods interrupted at least three times per week. When employees failed to receive their meal break, they did not receive premium pay as compensation for the missed meal breaks.

Mr. Diaz further alleges that he and other aggrieved employees did not receive duty-free, uninterrupted rest periods for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Employer prevented Mr. Diaz and other aggrieved employees from taking rest breaks throughout their shifts. This was due in part to Employer's policy and practice of providing inadequate coverage to allow for breaks to be taken. Further, due to the pressure from Employer, Mr. Diaz and other aggrieved employees were not authorized and permitted to take a second rest period, on shifts exceeding six hours of work, and/or third rest breaks, on shifts exceeding ten hours of work. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest breaks. Employer's conduct, which is in violation of the Labor Code, is also actionable under PAGA.

B. Daniel's Meat Failed to Pay Mr. Diaz and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage and Overtime, in Violation of California Law

Employer failed to pay Mr. Diaz and other aggrieved employees for all hours worked at the legally mandated wage rates for all hours worked. Specifically, Mr. Diaz and other aggrieved employees regularly worked beyond the eighth (8th) hour of their shifts, but Employer only compensated Mr. Diaz and aggrieved employees for eight (8) hours at their regular rate of pay and did not compensate Mr. Diaz and similarly aggrieved employees for time worked beyond the eighth hour of their scheduled shifts. Employer did not properly calculate Mr. Diaz's and other aggrieved employees' overtime and double-time rates. For example, Mr. Diaz's regular work schedule was Monday through Friday from 3:00 a.m. until he was done with his work. Mr. Diaz

did not have a scheduled end time to his work shifts. As a result, Mr. Diaz regularly worked fourteen (14) hours per day. Employer was obligated to pay Mr. Diaz and other aggrieved employees overtime compensation for all hours worked in excess of eight (8) hours of work in one (1) day or forty (40) hours in one (1) week, and double-time compensation for hours worked in excess of twelve (12) in one (1) day. Employer also failed to pay Mr. Diaz and other aggrieved employees, proper overtime and/or double-time rates for hours worked off-the-clock, as required by law. Employer's conduct is in violation of Labor Code sections 510, 1194 and 1197, and is actionable under PAGA.

C. Daniel's Meat Failed to Provide Mr. Diaz and Other Aggrieved Employees with Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

Based on currently available information and records, Employer did not keep accurate time records in violation of the Labor Code, the applicable Wage Order, and is actionable under PAGA. By failing to include on Mr. Diaz's and other aggrieved employees' pay stubs all rest and meal break premium wages and full compensation for all hours worked including proper overtime and double-time wages, Employer failed to keep accurate payroll records and failed to provide Mr. Diaz and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203, and 204 due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

D. Daniel's Meat Failed to Reimburse Mr. Diaz and Other Aggrieved Employees for Necessary Business Expenditures, in Violation of California Law

Based on currently available information and records, Employer did not reimburse Mr. Diaz and other aggrieved employees for necessary business expenditures, including, but not limited to, the cost of maintenance for their work uniforms, as well as the required use of their personal cellular phones for work-related purposes, which is in violation of Labor Code section 2802, the applicable Wage Order, and is actionable under PAGA. Specifically, Employer implemented a practice where employees with two or more years of employment with Employer, would not be charged for the upkeep and maintenance of their work uniforms, however, employees with less than two year of employment with Employer would still e charged for this uniform maintenance.

E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Diaz becomes aware of additional compensation owed or losses incurred by Mr. Diaz or by any other aggrieved employee of the Employer, Mr. Diaz expressly reserves the right to revise these facts and/or add any new

LABOR AND WORKFORCE DEVELOPMENT AGENCY

March 22, 2021

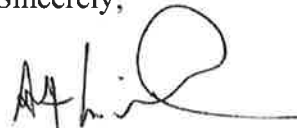
Page 4 of 4

claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney
Atoy H. Wilson
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: awilson@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to read 'Atoy H. Wilson', with a large, stylized loop at the end.

Atoy H. Wilson, Esq.

MAHONEY LAW GROUP, APC

PROOF OF SERVICE
Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, 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 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **August 29, 2022**, I served [X] true copies [] originals of the following document(s): **FIRST AMENDED COMPLAINT FOR DAMAGES**. I served the document(s) on the person(s) below as follows:

Tony Blain, Esq. BLAIN & ASSOCIATES, A.P.C. 8840 Wilshire Boulevard Beverly Hills, CA 90211-2606	Attorneys for Defendant DANIEL'S WESTERN MEAT PACKERS, INC. Telephone: (310) 358-3111 Facsimile: (310) 358-3181 Email: tblain@tblainlaw.com
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The document(s) were served by the following means:

☒ **By electronic service:** Based on a court order, I caused the document(s) to be sent to the persons at the electronic service addresses listed above by transmission through CASE ANYWHERE.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 29, 2022**, at Long Beach, California.



Rosa Saucedo