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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 31 2021

BY Sandra Ortega
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9
10 WILLIE MARQUEZ, on behalf of the State
of California, as a private attorney
11 general,

12
13 Plaintiff,

14 vs.

15 ACCURATE DELIVERY SYSTEMS, INC.,
a California Corporation; and DOES 1
16 through 50, inclusive,

17
18 Defendants.

Case No. **CIV SB 2125174**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 227.3, 246 *et seq.*, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)



1 Plaintiff Willie Marquez ("PLAINTIFF") on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Accurate Delivery Systems, Inc.
8 (referred to as "DEFENDANT") seeking only to recover PAGA civil penalties for himself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does not seek to recover anything other than penalties as permitted by
11 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant Accurate Delivery Systems, Inc. ("DEFENDANT") is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT is the premier Hotshot delivery service of all goods, perishable and
27 in demand.
28

1 6. Plaintiff Marquez was employed by DEFENDANT as a Delivery Driver from
2 April of 2018 to September of 2020 and was at all times classified by DEFENDANT as a non-
3 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
4 periods and payment of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California as Delivery Drivers and other similar job titles ("AGGRIEVED EMPLOYEES")
10 during the time period of May 28, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD"). "AGGRIEVED EMPLOYEES" also refers to all individuals who are or previously
12 were employed by DEFENDANT in California and classified as non-exempt employees during
13 the PAGA PERIOD. PLAINTIFF, and such persons that may be added from time to time who
14 satisfy the requirements and exhaust the administrative procedures under the Private Attorney
15 General Act, also brings this Representative Action on behalf of the State of California with
16 respect to himself and all individuals who are or previously were employed by DEFENDANT
17 in California and classified as non-exempt employees during the PAGA PERIOD.

18 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
19 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
20 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
21 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
22 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
23 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
24 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
25 employees within the meaning of Labor Code § 2699, *et seq.*

26 9. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
28 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant

1 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
2 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
3 PLAINTIFF are informed and believe, and based upon that information and belief allege, that
4 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
5 responsible in some manner for one or more of the events and happenings that proximately
6 caused the injuries and damages hereinafter alleged.

7 10. The agents, servants and/or employees of the Defendants and each of them acting
8 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
9 agent, servant and/or employee of the Defendants, and personally participated in the conduct
10 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
11 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
12 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
14 agents, servants and/or employees.

15 THE CONDUCT

16
17 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
18 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
19 meaning the time during which an employee is subject to the control of an employer, including
20 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
21 and the AGGRIEVED EMPLOYEES to work from time to time while they were clocked out
22 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
23 and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time
24 they performed duties while on their meal break, specifically by failing to provide enough labor
25 hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the
26 AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. PLAINTIFF and the
27 AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing
28 mandatory drug testing or any other testing and/or examination required as a condition of

1 employment. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time
2 were not paid wages for all time worked, including overtime wages, such that in the aggregate
3 employees were underpaid wages as a result of DEFENDANT's pattern and practice of
4 unevenly rounding time worked by its employees. PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time only paid a piece rate for deliveries made during specific
6 pay periods. In these pay periods DEFENDANT failed to pay PLAINTIFF and other
7 AGGRIEVED EMPLOYEES for all their non-driving work tasks that included but were not
8 limited to, completing mandatory paperwork, loading and unloading the truck with goods,
9 waiting for goods to be ready for transport, cleaning the trucks and other non-driving related
10 work tasks. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
11 minimum wage and overtime compensation by from time to time working without their time
12 being accurately recorded and without compensation at the applicable minimum wage and
13 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
14 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
15 records.

16 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not
18 fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were from time to time required to perform work as ordered by DEFENDANT for more than
20 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
21 failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a second off-duty
22 meal period from time to time in which these employees were required by DEFENDANT to
23 work ten (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
25 accordance with DEFENDANT's corporate policy and practice. Industrial Welfare
26 Commission Wage Order 4-2001 provides: "Every employer shall pay to each employee, on the
27 established payday for the period involved, not less than the applicable minimum wage for all
28 hours worked in the payroll period, whether the remuneration is measured by time, piece,

1 commission, or otherwise.” “Hours worked” is defined in the Wage Order as “the time during
2 which an employee is subject to the control of an employer, and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so.” Here,
4 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to separate hourly compensation
5 for time spent performing other non-driving tasks directed by DEFENDANT during their work
6 shifts.

7 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
8 were also required from time to time to work in excess of four (4) hours without being provided
9 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
10 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
11 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
12 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
13 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
14 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
15 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
16 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
17 DEFENDANT and DEFENDANT’s managers. In addition, because of DEFENDANT’s
18 commission/piece rate pay plan described herein, DEFENDANT failed to compensate
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES for their rest periods as required by
20 the applicable Wage Order and Labor Code, and more specifically Cal. Lab. Code Section
21 226.2. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result, DEFENDANT’s failure
23 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally required paid
24 rest periods is evidenced by DEFENDANT’s business records.

25 14. State law provides that employees must be paid overtime and meal and rest break
26 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
28 tied to specific elements of an employee’s performance.

1 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
2 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
3 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
4 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
5 hourly basis with incentive compensation when the employees met the various performance
6 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
7 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
8 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
9 employees' "regular rate of pay" for purposes of calculating overtime pay and the correct meal
10 and rest break premium pay. Management and supervisors described the incentive program to
11 potential and new employees as part of the compensation package. As a matter of law, the
12 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
13 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
14 of overtime compensation and meal and rest break premium pay to PLAINTIFF and other
15 AGGRIEVED EMPLOYEES by DEFENDANT.

16 16. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES with complete and accurate wage statements which failed to show, among other
18 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
19 employer shall furnish each of his or her employees with an accurate itemized wage statement
20 in writing showing, among other things, gross wages earned and all applicable hourly rates in
21 effect during the pay period and the corresponding amount of time worked at each hourly rate.
22 Specifically, DEFENDANT violated Cal. Lab. Code Section 226(a)(2) by failing to list the total
23 hours worked. Aside, from the violations listed above, DEFENDANT failed to issue to
24 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
25 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
26 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

27 17. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
28 employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
2 requires employers to pay employees all wages owed within eleven (11) days of the close of the
3 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
4 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
5 the payroll period.

6 18. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
7 to collect or receive from an employee any part of wages theretofore paid by said employer to
8 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
9 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
10 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
11 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
12 and thereby failed to pay these employees all wages due at each applicable pay period and upon
13 termination. PLAINTIFF and the other AGGRIEVED EMPLOYEES seek recovery of all
14 illegal deductions from wages according to proof, related penalties, interest, attorney fees and
15 costs.

16 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
17 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
18 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
19 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
20 AGGRIEVED EMPLOYEES at their base rates of pay.

21 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
23 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that “an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
28 in direct consequence of the discharge of his or her duties, or of his or her obedience to the

1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

3 21. In the course of their employment PLAINTIFF and other AGGRIEVED
4 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
6 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
7 cost associated with the use of their personal cellular phones and personal vehicles for
8 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
9 were required by DEFENDANT to use their personal cellular phones to respond to managers
10 while off the clock (which also results in minimum wage and overtime violations). As a result,
11 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
13 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
14 of DEFENDANT.

15 22. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
17 a matter of company policy, practice and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
19 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
20 payment for all time worked as required by California law which allows DEFENDANT to
21 illegally profit and gain an unfair advantage over competitors who complied with the law. To
22 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
23 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

24 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
25 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
26 to accurately calculate and record all missed meal and rest periods and failed to pay all
27 minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The
28 proper recording of these employees' missed meal and rest breaks is the DEFENDANT's

1 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
2 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
3 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
4 regulations promulgated thereunder as herein alleged.

5 24. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
8 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
9 AJDAR 12157 (Certified for Publication 12/19/18).

10 **JURISDICTION AND VENUE**

11 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, reside
15 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
16 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
18 AGGRIEVED EMPLOYEES.

19 **FIRST CAUSE OF ACTION**

20 **For Violation of the Private Attorneys General Act**

21 **[Cal. Lab. Code §§ 2698, *et seq.*]**

22 **(By PLAINTIFF and Against All Defendants)**

23 27. PLAINTIFF realleges and incorporates by this reference, as though fully set
24 forth herein, the prior paragraphs of this Complaint.

25 28. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
27
28

1 the state's labor law enforcement agencies. An action to recover civil penalties under
2 PAGA is fundamentally a law enforcement action designed to protect the public and not to
3 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
4 but to create a means of "deputizing" citizens as private attorneys general to enforce the
5 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
6 public interest to allow aggrieved employees, acting as private attorneys general to recover
7 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
8 claims cannot be subject to arbitration.

9 29. PLAINTIFF, and such persons that may be added from time to time who
10 satisfy the requirements and exhaust the administrative procedures under the Private
11 Attorney General Act, brings this Representative Action on behalf of the State of California
12 with respect to himself and all individuals who are or previously were employed by
13 DEFENDANT in California as Delivery Drivers and other similar job titles ("AGGRIEVED
14 EMPLOYEES") during the time period of May 28, 2020 until a date as determined by the
15 Court (the "PAGA PERIOD"). "AGGRIEVED EMPLOYEES" also refers to all individuals
16 who are or previously were employed by DEFENDANT in California and classified as non-
17 exempt employees during the PAGA PERIOD. PLAINTIFF, and such persons that may be
18 added from time to time who satisfy the requirements and exhaust the administrative
19 procedures under the Private Attorney General Act, also brings this Representative Action
20 on behalf of the State of California with respect to himself and all individuals who are or
21 previously were employed by DEFENDANT in California and classified as non-exempt
22 employees during the PAGA PERIOD.

23 30. On May 28, 2021, PLAINTIFF gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
25 employer of the specific provisions of this code alleged to have been violated as required by
26 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
27 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
28 now commence a representative civil action under PAGA pursuant to Section 2699 as the

1 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
2 defined.

3 31. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
6 properly record and provide legally required meal and rest periods, (c) failed to pay
7 minimum wages, (d) failed to pay overtime and sick pay wages, (e) failed to reimburse
8 employees for required expenses, and (f) failed to provide wages when due, all in violation
9 of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*,
10 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
11 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
12 and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
13 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
14 Labor Code Private Attorney General Act of 2004 as the representative of the State of
15 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
16 EMPLOYEES.

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

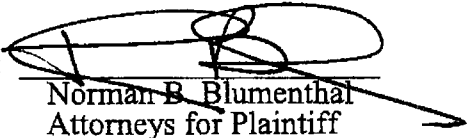
25 B) An award of attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §2699.

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 Dated: August 27, 2021

2 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
3 LLP

4 By:

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6 Norman B. Blumenthal
7 Attorneys for Plaintiff
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