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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF CONTRA COSTA**

MATTHEW C. ULRICKSEN, an individual,
 on behalf of himself and all others similarly
 situated; SHANE BARLOW, an individual,
 on behalf of himself and all others similarly
 situated, JAMES A. JONES, an individual, on
 behalf of himself and all others similarly
 situated; JOSHUA STUART, an individual,
 on behalf of himself and all others similarly
 situated,

Plaintiffs,

vs.

UNITED PARCEL SERVICE, INC., an Ohio
 Corporation, aka UPS; WILLIAM W.
 TURMAN; and DOES 1 through 100,
 inclusive,

Defendants.

CASE NO.

CLASS ACTION

**COMPLAINT AND DEMAND FOR
 JURY TRIAL FOR:**

- 1. FAILURE TO PAY MINIMUM
 WAGES (LAB. CODE §§ LABOR
 CODE §§ 558, 558.1, 1182.12, 1194,
 1197, 1197.1, IWC WAGE ORDER
 NO. 9-2001, § 4)**
- 2. FAILURE TO FURNISH
 ACCURATE ITEMIZED WAGE
 AND HOUR STATEMENTS
 (LABOR CODE §§ 226, 226.3,
 226.6, 558, ET SEQ., 1174, 1174.5,
 1198)**
- 3. UNFAIR AND UNLAWFUL
 BUSINESS ACTS AND
 PRACTICES (BUS. & PROF.
 CODE §§ 17200, ET SEQ.)**
- 4. PENALTIES PURSUANT TO
 LABOR CODE PRIVATE
 ATTORNEYS GENERAL ACT
 ("PAGA") (LABOR CODE §§
 2698, ET SEQ., *ATEMPA V.*
PEDRAZZANI (2018) 27
 CAL.APP.5TH 809)**

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Article 6, §10 of the California Constitution and Code of Civ. Proc. § 410.10 because Plaintiffs Matthew C. Ulricksen, Shane Barlow, James A. Jones, and Joshua Stuart are residents of the State of California, and Defendant William W. Turman is a resident of the State of California, and Defendant United Parcel Service, Inc., an Ohio company, and DOES 1 through 100, are qualified to do business in California and regularly conduct business in California.

2. Venue is proper in this court pursuant to Code of Civ. Proc. §§ 395 and 395.5 because Plaintiffs, and other persons similarly situated, performed work for Defendants in the County of Contra Costa, Defendants maintain offices and facilities and transact business in the County of Contra Costa, and because Defendants' unlawful policies and practices that are the subject of this action were applied, at least in part, to Plaintiffs, and other persons similarly situated, in the County of Contra Costa.

PLAINTIFFS

3. The Minimum Wage Class ("Subclass 1") comprises the following persons: All current and former non-exempt workers employed by United Parcel Services, Inc. throughout California whose job responsibilities, during the period four years prior to the filing of the instant complaint to the present, and/or earlier dates based on other class action cases which provide equitable tolling, included delivering or moving parcel packages by driving on road. Subclass 1 includes drivers designated by UPS as service providers, package car drivers, package delivery drivers, feeder drivers, combination drivers and utility drivers, preloaders, warehouse workers, or similar titles.

4. The Wage Statement Class ("Subclass 2") comprises the following persons: All current and former non-exempt workers employed by United Parcel Services, Inc. throughout California whose job responsibilities, during the period four years prior to the filing of the instant complaint to the present, and/or earlier dates based on other class action cases which provide equitable tolling, included delivering or moving parcel packages by driving on road. Subclass 2 includes drivers designated by UPS as service providers,

package car drivers, package delivery drivers, feeder drivers, combination drivers and utility drivers, preloaders, warehouse workers, or similar titles.

5. At all relevant times herein mentioned, Plaintiff Matthew C. Ulricksen (“Ulricksen”) is an individual residing in the State of California, is employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

6. At all relevant times herein mentioned, Plaintiff Shane Barlow (“Barlow”) is an individual residing in the State of California, is employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

7. At all relevant times herein mentioned, Plaintiff James A. Jones (“Jones”) is an individual residing in the State of California, is employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

8. At all relevant times herein mentioned, Plaintiff Joshua Stuart (“Stuart”) is an individual residing in the State of California, is employed by Defendants in California, and is a member of the Class identified in paragraphs one and two above.

9. Plaintiffs Ulricksen, Barlow, Jones, and Stuart are hereinafter collectively referred to as “Plaintiffs.”

CLASS ALLEGATIONS

10. The persons who comprise the Class are so numerous that joinder with all such persons is impracticable and the disposition of these claims will benefit the parties and the Court. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs do not have any interests that are antagonistic to the Class. Counsel for Plaintiffs are experienced, qualified, and generally able to conduct complex class action litigation.

11. This Court should permit this action to be maintained as a class action pursuant to *Code of Civ. Proc.* § 382 for the following reasons:

a. The questions of law and fact common to the Class predominate over any question affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;

d. Plaintiffs and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

e. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged herein, as well as in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

f. Without class certification, the prosecution of separate actions by individual members of the Class would create a substantial risk of the following:

i. Inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants, and/or

ii. Adjudications with respect to the individual members that would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and

g. Defendants have acted, or refused to act, on grounds that are generally applicable to the Class, thereby making final relief appropriate with respect to the Class as a whole.

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DEFENDANTS

12. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant United Parcel Service, Inc. (“UPS”), is, and at all relevant times herein mentioned:

- a. Was a duly organized Ohio corporation.
- b. Was duly qualified to conduct business, and was conducting business, in the State of California, including the County of Contra Costa; and
- c. Had its principal place of business in Atlanta, Georgia.

13. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant William W. Turman (“Turman”) is an individual residing in the State of California and is employed by Defendants in California.

14. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants Does 1 through 100, inclusive (“Doe Defendants”), are unknown to Plaintiffs who therefore sue these Doe Defendants by such fictitious names pursuant to *Code of Civ. Proc.* § 474. Plaintiffs will seek leave to amend this complaint to allege their true names and capacities when they are ascertained.

15. Defendant United Parcel Service, Inc., Defendant William W. Turman and Defendants Does 1 through 100 are hereinafter collectively referred to as “Defendants” and/or “UPS.”

16. Plaintiffs are informed and believe, and based on that information and belief alleges, that each of the Defendants named in this complaint, including each of the Doe Defendants, is responsible in some manner for one or more of the events and happenings, and proximately caused the injuries and damages, hereinafter alleged.

17. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the Defendants named in this complaint, including each of the Doe Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or employee of each of the other Defendants, and that each Defendant was acting within the course and scope of his, her, or its authority as the agent, servant, and/or employee of each

of the other Defendants. Consequently, each Defendant is jointly and severally liable to Plaintiffs and the other members of the Class for the damages sustained as a proximate result of their conduct.

18. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiffs and other non-party aggrieved employees. Each Defendant had the power to hire and fire Plaintiffs, supervised, and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs to work and/or “engaged” Plaintiffs so as to create a common-law employment relationship. As joint employers of Plaintiffs, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiffs under the law.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(By Plaintiffs and the Minimum Wage Class Against all Defendants)

(Labor Code §§ 558, 558.1, Labor Code 1182.12, 1194, 1197, 1197.1, IWC Wage

Order No. 9-2001, § 4)

19. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all the paragraphs of the complaint.

20. California Labor Code §1197, entitled “Pay of Less Than Minimum Wage” states:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

21. California Labor Code §558 (a) provides:

Any employer **or other person acting on behalf of an employer** who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.... [Emphasis added.]

22. California Labor Code §558.1 provides:

(a) Any employer **or other person acting on behalf of an employer**, who violates, or causes to be violated, any provision regulating **minimum wages** or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or **managing agent** of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. [Emphasis added.]

23. California Labor Code §1197.1 (a) provides:

Any employer **or other person acting either individually or as an officer, agent, or employee of another person**, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties.... [Emphasis added.]

24. As held by the Court in *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809:

With regard to violations of the state's minimum wage laws, “[a]ny ... person acting **either individually** or as an officer, agent, **or employee** of another person, who pays or causes to be paid to any employee” less than the minimum wage “shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203” as set forth elsewhere in the statute. (§ 1197.1, subd. (a), italics added.) Thus, . . . whereas for violations of minimum wage laws, there is no requirement that the “other person” liable for the civil penalties have any relationship to the employer, so long as that person pays or causes to be paid less than the prescribed minimum wage (§ 1197.1(a)). [Emphasis added.] (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.)

25. Effective January 1, 2020, the applicable minimum wage fixed by the commission for the Minimum Wage Class (IWC Wage Order 9) was set at not less than thirteen dollars (\$13.00) per hour for employers with 26 employees or more. (Labor Code 1182.12, IWC Wage Order No. 9-2001, § 4.) Effective January 1, 2021, the minimum

1 wage for employers with 26 employees or more was set at \$14.00 per hour. (Labor Code
2 1182.12, IWC Wage Order No. 9-2001, § 4.)

3 26. The minimum wage is an obligation of the employer and cannot be waived
4 by any agreement, including collective bargaining agreements. Any remedial legislation
5 written for the protection of employees may not be violated by agreement between the
6 employer and employee. (Civil Code §§ 1668 and 3513.)

7 27. The Defendants failed to pay minimum wages to Plaintiffs and the Minimum
8 Wage Class for all hours they worked. Within the four (4) years of the filing of the instant
9 complaint, Plaintiffs' directors, supervisors, managers, agents, and employees have
10 intentionally altered and modified Plaintiffs' the Minimum Wage Class' timecards to
11 reduce the hours they worked as shown on timecards and/or DIADs, and in so doing, have
12 committed wage theft. Defendants have paid, or caused to be paid, less than minimum
13 wage to Plaintiffs and the Minimum Wage Class. Some examples are set forth below.

14 28. Plaintiff Ulricksen is a driver who works out of the UPS Walnut Creek
15 Center. On February 4, 2021, Ulricksen's timecard was altered. His start times each day
16 that week were posted at 8:30 a.m. On that day as usual, Ulricksen punched in at 8:30 a.m.
17 and began working. Ulricksen was not advised of a start time change, and it is not common
18 to change schedules once posted. Later, Ulricksen noticed that his timecard was manually,
19 or otherwise, altered to depict that he had started working at 8:45 a.m. rather than his
20 punch-in time, i.e., 8:30 a.m. as reflected on his DIAD. Ulricksen asked Walnut Creek
21 Center Manager Turman who had altered his timecard. Turman stated: "it's my fault, I'll
22 change it back". Turman admitted that because he caused the change, it was his
23 responsibility, and that he would fix Ulricksen's punch-in time back to his actual start time.
24 Later, in the afternoon, Ulricksen noticed that his timecard was in fact changed back to his
25 original start time, 8:30 a.m. At the same time, another driver told Ulricksen that the exact
26 same thing had happened to him.

27 29. Turman failed to offer a solution to the recurring problem of altered
28 timecards. Ulricksen is informed and believes, and based on that information and belief

1 alleges, that his prior timecards, as well as those of the Minimum Wage Class, were
2 similarly altered without their knowledge and consent. In response, on February 9, 2021,
3 Ulrichsen made a formal ethics complaint to UPS. In response, Defendants advised
4 Ulrichsen that it would commence an “ethics investigation” into his complaint. On
5 February 16, 2021 UPS completed the “ethics investigation” and advised Ulrichsen that:
6 “appropriate action has been taken. Due to the confidential nature of any investigation,
7 findings must remain confidential and cannot be shared.”

8 30. On March 24, 2021, Ulricksen was asked by his supervisor to immediately
9 pull 30 stops out of his truck prior to leaving the building. He was given this assignment,
10 which is known or referred to as an “add/cut”, where 30 stops were cut from his truck, to
11 allow Ulricksen to go to another route. Following his supervisor’s direction, Ulricksen
12 punched-in at 8:35 a.m. as depicted on his DIAD. The next morning, Ulricksen checked
13 UPSers and noted that his timecard was altered to a fabricated “start time” of 8:45 a.m.
14 This change, and deletion to his time worked, was made without Ulricksen’s advanced
15 knowledge and consent. UPS and Defendants knowingly and willfully changed, or caused
16 to be changed, Ulricksen’s timecard thereby reducing his hours worked and wages earned,
17 including minimum wages.

18 31. Plaintiff Barlow is a driver who works out of the UPS Walnut Creek Center.
19 On February 11, 2021, Barlow was set to start work at 8:45 a.m. Shortly after 8:30 a.m.,
20 Turman engaged Barlow asking him work-related questions in front of other drivers
21 regarding the length of Barlow’s meal break taken a day earlier. Barlow usually arrives to
22 work before his start time yet waits to punch-in as UPS will typically not pay for early time
23 worked until the start time.

24 32. On February 11, 2021, as Turman explicitly “suffered or permitted” Barlow
25 to work by initiating a work-related conversation with him, Barlow punched-in at 8:36 a.m.
26 Barlow simultaneously advised Turman he was punching-in at that time. A day later,
27 Barlow checked his UPSers account, and noted that his time had been altered and changed
28 to reflect a fabricated 8:45 a.m. start. This change was made without Barlow’s consent.

1 Turman and Defendants knowingly and willfully changed, or caused to be changed,
2 Barlow's timecard thereby reducing his hours worked and wages earned, including
3 minimum wages. This alteration was made two days after the commencement of UPS'
4 February 9, 2011 "ethics investigation" into the Turman matter involving Ulricksen's
5 complaint.

6 33. On April 30, 2021, Turman asked Barlow to start work at 7:00 a.m. On that
7 day, as directed, Barlow punched in at 6:59 a.m. and began working. In the evening after
8 work, Barlow noticed that his timecard had been altered to reflect that he had punched in at
9 a fabricated start time of 7:30 a.m. instead of 6:59 a.m. This change was made without
10 Barlow's consent. Once again, Turman and Defendants knowingly and willfully changed,
11 or caused to be changed, Barlow's timecard thereby reducing his hours worked and wages
12 earned, including minimum wages. This alteration was made shortly after UPS completed
13 its "ethics investigation" in the Turman matter or on February 16, 2011 involving
14 Ulricksen's complaint.

15 34. Department of Transportation ("DOT") rules and regulations limit the
16 number of hours a driver can work in a single week at 60 hours. Within the last four years,
17 on numerous occasions, Barlow worked over 60 hours in a single week, and in response
18 Defendants altered his timecards by reducing his hours worked down to 60 hours. These
19 timecard changes were made without Barlow's consent and to apparently allow UPS to stay
20 in compliance with DOT rules and regulations.

21 35. Barlow is informed and believes and based on that information and belief
22 alleges that Defendants also altered timecards of the Minimum Wage Class thereby
23 reducing their hours worked over 60 per week, down to 60, to avoid penalty and to stay in
24 compliance with DOT rules and regulations. On such occasions, UPS and/or Turman,
25 and/or someone acting with their knowledge and under their control, willfully changed, or
26 caused to be changed, Barlow's, Plaintiffs', and the Minimum Wage Class' timecards by
27 reducing their hours worked and thereby minimum wages earned.

1 36. Plaintiff Jones is a driver who works out of the UPS Walnut Creek Center.
2 On multiple occasions in 2020 and again in 2021, his timecards were altered by Defendants
3 changing his start times. For example, on March 31, 2021, UPS' managers sent out a mass
4 message asking drivers to attend a work-related retirement function at 8:30 a.m. As
5 directed, on April 1, 2021, Jones punched-in and started working at 8:30 a.m. as reflected
6 on his DIAD. Thereafter, Thurman and/or Defendants entered the timekeeping system and
7 changed Jones' start time to 9:00 a.m. 30 minutes was taken from Jones work that day.
8 This was done without Jones' consent. UPS, Thurman, and/or its managers and employees
9 knowingly and willfully changed, or caused to be changed, Jones' timecard thereby
10 reducing his hours worked and his minimum wages earned.

11 37. Plaintiff Stuart is a pre-load warehouse employee working out of the UPS
12 Walnut Creek Center. Stuart's supervisor on the pre-load morning shift has been altering
13 his time cards and deleting his time thereby committing wage theft. This has happened to
14 Stuart several times in 2021 and Stuart is aware that this has been happening to other
15 employees he works with including the Minimum Wage Class.

16 38. In about early 2020, UPS implemented a modified punch-in system for
17 drivers. This modified punch-in system represents a class-wide UPS policy and practice
18 that requires all California drivers to suffer a lengthy punch-in process prior to their
19 scheduled start times. To punch-in, the drivers are asked to complete numerous fields or
20 screens, which takes approximately two to five minutes or more to complete (not including
21 the time to locate driver DIAD boards). If that process is not completed before the
22 scheduled start time an asterisk is posted on the timecard, indicating a late punch-in. That
23 occurs even when drivers begin punching-in at or before their start times. All California
24 drivers must complete the same lengthy punch-in process. While the time it takes Plaintiffs
25 and the Minimum Wage Class to punch-in accounts for time worked, it is not accounted
26 and paid, including minimum wages.

27 39. In particular, drivers clock-in or punch-in using a handheld data collector or
28 DIAD - acronym for Delivery Information Acquisition Device. The drivers use their DIAD

1 to record and transmit delivery information across a mobile cellular network. As described
2 hereinbelow, since early 2020, the process for clocking-in is tedious and time-consuming.

3 40. First, each driver must locate his/her DIAD device from the DIAD racks at
4 the Center(s). The driver must then turn-on and activate the DIAD. The driver must then
5 locate the "UPS Log-In screen". When in that screen, the driver then punches onto
6 miniature DIAD keys their seven-digit Employee ID number. The driver must then take
7 out the DIAD pen and punch onto a separate mini screen-keyboard his/her UPSers'
8 Password and then press enter. The "UPS Log-In screen" contains identifying information
9 including Center, Route, DPS Plan Date, Dispatch Date and Software Vers which must be
10 reviewed and verified by the driver as accurate before entering his his/her UPSers'
11 Password and submitting. After entering the Employee ID number and his/her UPSers'
12 Password and submitting, the DIAD then goes into an "Authenticating" mode and the
13 driver must wait for that process to complete. If successful, the DIAD board goes into a
14 "Login Processing Please Wait" mode, and the driver must then wait for this to process to
15 complete. When completed a "Verify Driver Information" screen will appear. The driver
16 must verify that all the information set forth on this screen matches the driver's
17 information. In particular, the driver must ensure that his/her name is correct, that his/her
18 employee ID number is correct, that the pay code is correct, that the correct supervisor is
19 displayed, then punch-in his/her scheduled start time, then identify whether they are a
20 driver or helper, that the driver's center is accurate (a four-digit number), and that the route
21 number is correct. All these steps must be taken before further proceeding to punch-in on
22 the DIAD. If any information is incorrect, the driver must type in the appropriate corrected
23 information. At that point, the driver punches the big arrow-up key, and then the driver is
24 asked "Do You Want To Punch-in (Y/N)?" If okay to proceed, the driver then punches in
25 "Yes." At that point a "Configure Employee ID and PIN" screen appears. The driver must
26 then re-enter his seven-digit Employee ID, a four-digit Define PIN and then re-enter his
27 four-digit Pin and then another screen will appear whereupon the driver must select among
28 one of eight tasks to be performed by driver: Predelivery, VehicleOVIR, InsideBldg,

ControlPkgs, Clerk Pkgs, InsideBldg, VehicleOVIR or Turn In. Once a task is selected, a safety message will appear for review such as “YELL AT EVERY INTERSECTION; YIELD THE RIGHT OF WAY; EXPECT THE UNEXPECTED; LOOK LEFT, RIGHT, LEFT; LEAVE YOURSELF AN OUT; and THANK YOU FOR YOUR HARD WORK.” The DIAD will then go into a processing mode and after that the clock-in process is finally completed.

41. As an example, on May 3, 2021, Plaintiff Jones began the punch-in process at his 8:30 a.m. scheduled start. It took Jones approximately six-minutes to punch-in to complete the process. As a result of the lengthy punch-in process, Jones’ timecard reflected a late start time of 8.60*,¹ or 8:36 a.m. Jones’ May 3, 2021 timecard punch was marked with both yellow block highlights as well as an asterisk (placed or marked at the start time) reflecting UPS’ executive decision that Jones was late for work that day. While Jones began work on time that day, he was, nevertheless, described as starting his shift late, and his pay was docked. UPS and Defendants knowingly and willfully docked Jones for time worked, thereby reducing his hours and minimum wages earned.

42. UPS has the duty to accurately record time worked (start times, stop times, total hours worked, etc.) by its drivers including the time it takes for them to punch-in for work on their hand-held DIAD devices. The DIAD boards precisely record the duration of the punch-in process for each driver every day they clock-in for work. DIAD devices are GPS and timekeeping systems. The DIADs record when drivers first switch on their devices at the start of their shifts to clock-in. It also records the time drivers first access the “UPS Log-In screen.” It also records when the clock-out process is complete. Thus, Defendants have perpetual round-the-clock access to the duration of the clocking-in/out process which may readily be added to Plaintiffs’ time and hours worked for payment of wages including minimum wages earned.

¹ This number represents a metric-decimal time punch.

1 43. Defendants willfully ignore the time Plaintiffs and the Minimum Wage Class
2 spend to punch-in. Instead, if drivers begin the punch-in process at the start of their
3 scheduled shifts because that process takes anywhere from two to five minutes-plus, UPS
4 records these drivers as late, subjecting them to discipline, and further fails to pay them for
5 their time worked, including minimum wages.

6 44. On April 15, 2021, UPS implemented a new variation to its timecard system.
7 This new variation automatically rolls-up every employees' early clocks-in or punch-in
8 times to "scheduled" start times, rather than their actual clock-in times, or when employees
9 actually commence work. The new variation kicks out all early punch-in times to
10 scheduled start times. For example, if an employee at the direction of his/her supervisor
11 punches in at 5:00 a.m. and begins working, if his scheduled start time is 8:00 a.m., the new
12 system will automatically deduct three hours from his/her time worked. In this
13 circumstance, UPS improperly places the burden on the employee to somehow notify
14 management that same calendar day of his/her early start time even though his early work
15 was performed at the supervisor's request. This is a method of intimidation which
16 improperly places the burden on employees to ensure that their hours are accurately
17 recorded.

18 45. Under the new variation to the timecard punch system UPS fails to accurately
19 record employee start times for Plaintiffs and the Minimum Wage Class. In such
20 circumstances, UPS and Defendants knowingly and willfully changed, or caused to be
21 changed, Plaintiffs' and the Minimum Wage Class' timecards thereby reducing their hours
22 worked and minimum wages earned.

23 46. On May 5, 2021, Ulricksen punched-in at his set start time, 8:30 a.m. The
24 new timecard variation displayed a prompt that automatically changed Ulricksen's punch-in
25 time to 8:45 a.m. Defendants failed to accurately record Ulricksen's actual start time. This
26 alteration was made without Ulricksen's consent. The new timecard system variation was
27 established and implemented by UPS as a companywide policy, practice, and procedure.
28 As such, UPS and Defendants knowingly and willfully changed, or caused to be changed,

1 Ulricksen's and the Minimum Wage Class' timecards thereby reducing their hours worked
2 and minimum wages earned.

3 47. Stuart is a pre-load warehouse employee. Stuart also recently noted that his
4 start times have been wrong and automatically reset in the computer at work. The start
5 times for Stuart and other warehouse employees on his shift have been 3:30 a.m. After
6 Stuart and these employees clock-in at 3:30 a.m., everybody's scheduled start time
7 automatically changes to 4:00 a.m. As such, UPS and Defendants knowingly and willfully
8 changed, or caused to be changed, Stuart and the Minimum Wage Class' timecards thereby
9 reducing their hours worked and minimum wages earned.

10 48. On May 10, 2021, Jones clocked-in right at 8:30 a.m. as depicted on his
11 DIAD. He left the building in his UPS vehicle at 8:44 a.m. On the night of May 10, 2021,
12 Jones' timecard showed that he punched-in at 8.52* or that he was late recorded at 8:31a.m.
13 His timecard was marked with both yellow block highlights as well as an asterisk (marked
14 at the start time) reflecting UPS' executive decision that Jones was late for work that day.
15 However, Jones was not late for work that day as exhibited on his DIAD record. The next
16 day his timecard was automatically changed, a second time, to an 8.75 start, or a start time
17 of 8:45 a.m. This second alteration to his timecard removed his "late" start but instead cut
18 15 minutes of Jones' time worked that day. Once again, UPS and Defendants knowingly
19 and willfully changed, or caused to be changed, Jones' and Plaintiffs' timecards thereby
20 reducing their hours worked and minimum wages earned.

21 49. UPS' and Defendants' variation to the timecard system always rounds
22 employee time clockings in a manner in its favor. For example, after Jones' lengthy punch-
23 in process on May 3, 2021, Jones' timecard first reflected a fictitious "late" start time of
24 8.60*, or 8:36 a.m. Thereafter, the next day, Jones' May 3, 2021 timecard was altered to a
25 fictitious 8.75 start, or a start time at 8:45 a.m. Both changes, made without Jones'
26 consent, worked in the favor of UPS and Defendants by reducing wage liability and wages
27 paid to Jones, including minimum wages.

1 50. Similarly, on May 3, 2021, Barlow punched-in at 7.10*, or 7:06 a.m.
2 Barlow's timecard punch is marked with both yellow block highlights as well as an asterisk
3 (marked at the start time) reflecting UPS' executive decision that Barlow was late for work
4 that day. Both Jones' and Barlow's "late" time punches were not rounded back in a neutral
5 manner to their scheduled start times. This is in contradistinction to Plaintiffs' early clock-
6 in times where UPS rounds time in its favor, so that Plaintiffs' and the Minimum Wage
7 Class' minimum wages are cut. To reiterate, when Plaintiffs arrive early and punch, under
8 the new variation to the timecard punch system, employee time is rounded in favor of UPS
9 and Defendants. On the other hand, when Plaintiffs arrive late, they are recorded and
10 disciplined as late, and furthermore their time is not rounded in reverse or in a neutral
11 manner to employer and employees. This is unlawful wage theft.

12 51. On May 10, 2021, Ulricksen began to punch-in prior to his 8:30 a.m.
13 scheduled start time. His timecard for May 10, 2021 shows a start time of 8.52* or 8:31
14 a.m. Even though Ulricksen was not "late" that day, due to the lengthy clock-in process he
15 was recorded a minute late, however, UPS did not round his time from 8:31 a.m. to 8:30
16 a.m. His timecard is marked with both yellow block highlights as well as an asterisk
17 (marked at the start time) reflecting UPS' executive decision that Ulricksen was late for
18 work that day.

19 52. Another example of UPS' "one-way" rounding policy in its favor occurred on
20 May 11, 2021. On this date Ulricksen completed his punch-in at 8:28 a.m. UPS' new
21 variation to the timecard system automatically kicked out Ulricksen's actual punch-in time
22 of 8:28 a.m. changing it to 8:30 a.m. UPS altered Ulricksen's timecard and cut and shaved
23 his time worked without his consent. UPS and Defendants knowingly and willfully
24 changed, or caused to be changed, Plaintiffs' and the Minimum Wage Class' timecards
25 thereby reducing hours worked and minimum wages earned. This is yet another example of
26 UPS' non-neutral, or one-way, rounding policy in its favor.

27 53. On March 4, 2020, Governor Newsom declared a state of emergency due to
28

1 COVID-19. On March 11, 2020, the WHO declared COVID-19 a pandemic. The White
2 House declared a national emergency within days of that announcement. About six months
3 later, on or about September 22, 2020, UPS implemented COVID-19 checks for all UPS
4 center drivers and warehouse employees including Plaintiffs and the Minimum Wage Class.

5 54. On or about September 22, 2020, this COVID-19 security screening check
6 applied to all employees and drivers entering UPS Centers prior to the start of their work
7 shifts. Every employee is required to queue-up and wait in line with their employee ID and
8 answer numerous questions related to COVID-19 symptoms prior to entering the building.
9 The COVID-19 security screening checks last anywhere from about one minute, if no other
10 employees are waiting in line, up to several minutes, if other employees are waiting in line
11 for screening. UPS and Defendants suffered or permitted Plaintiffs to work and/or
12 “engaged” them by requiring them to undergo COVID-19 security screenings. Plaintiffs
13 and the Minimum Wage Class are not paid for their time spent in these screenings
14 including minimum wages.

15 55. Additionally, Plaintiffs and the Minimum Wage Class are not paid, including
16 minimum wages, for their time spent from the time they commence work at the COVID-19
17 security screenings up the time they “punch-in” for work. This additional time can be
18 measured and is not insubstantial. Defendants willfully failed to record Plaintiffs’ and the
19 Minimum Wage Class’ time spent waiting in line for the COVID-19 screening checks, and
20 further failed to record time spent between COVID-19 checks up to the time employees’
21 clock-in for work. Thus, UPS failed to pay Plaintiffs’ and the Minimum Wage Class’ for
22 all hours worked, including minimum wages.

23 56. In *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 66 S.Ct. 1187,
24 90 L.Ed. 1515, the principal question was whether the employees should be compensated
25 for the time spent walking to and from their workstations and engaging in certain
26 preliminary and postliminary activities. The United States Supreme Court held that
27 generally such time is compensable: “Since the statutory workweek includes all time during
28 which an employee is necessarily required to be on the employer's premises, on duty or at a

1 prescribed workplace, the time spent in these activities must be accorded appropriate
2 compensation.” (*Id.* at pp. 690–691, 66 S.Ct. 1187.)

3 57. As a result of Defendants’ violations of minimum wage laws, by failing to
4 record and pay minimum wage for all hours worked, Defendants violated California Labor
5 Code §226(a), inaccurately stating gross wages earned, total hours worked, deductions, net
6 wages and other issues as described in this complaint.

7 58. Defendants have the ability to pay minimum wages for all time worked but
8 have willfully refused to pay such wages, intending to secure instead a discount upon their
9 indebtedness to Plaintiffs and the Minimum Wage Class for all hours worked, and
10 intending to annoy, oppress, hinder, delay or defraud Plaintiffs and the Minimum Wage
11 Class, in violation of California Labor Code §226.6.

12 59. California Labor Code §226.6 states:

13 Any employer who knowingly and intentionally violates the provisions of
14 Section 226, **or any officer, agent, employee, fiduciary, or other person**
15 who has the control, receipt, custody, or disposal of, or pays, the wages due
16 any employee, and who knowingly and intentionally participates or aids in
17 the violation of any provision of Section 226 **is guilty of a misdemeanor**
18 and, upon conviction thereof, shall be fined not more than one thousand
dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the
discretion of the court. That fine or imprisonment, or both, shall be in
addition to any other penalty provided by law. [Emphasis added.]

19 Defendants’ violation of §226 also constitutes a crime, pursuant to §226.6, a predicate
20 violation of California Business & Professions Code §§17200, *et seq.*, and a predicate
21 violation of Labor Code §§2698-2699.5, i.e., the Private Attorneys General Act (PAGA).

22 60. The Minimum Wage provisions of California Labor Code are enforceable by
23 private civil action pursuant to California Labor Code §1194(a), which states:

24 Notwithstanding any agreement to work for a lesser wage, any employee
25 receiving less than the legal **minimum wage** or the legal overtime
26 compensation applicable to the employee is entitled to recover in a civil
27 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney’s
fees, and costs of suit. [Emphasis added.]

1 61. As such, Plaintiffs and the Minimum Wage Class may bring this action for
2 minimum wages, interest, costs of suit and attorney fees pursuant to California Labor Code
3 §1194(a).

4 62. As described herein, this is an action under California Labor Code §1194 to
5 recover wages on account of Defendants' failure to pay minimum wages as described in
6 California Labor Code §§1197, 1194(a), and all applicable wage orders, including IWC
7 Wage Order No. 9-2001, § 4.

8 63. In California, "wage and hour claims are today governed by two
9 complementary and occasionally overlapping sources of authority: the provisions of the
10 Labor Code, enacted by the Legislature, and a series of 18 wage orders, adopted by the
11 IWC." (*Brinker Restaurant Corp. v. Superior Court* (2012) 1004, 1026, 139 Cal.Rptr.3d
12 315, 273 P.3d 513.) "The IWC is the state agency empowered to promulgate wage orders,
13 which are legislative regulations specifying minimum requirements with respect to wages,
14 hours, and working conditions." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
15 257, 262, fn. 5.) "The IWC's wage orders are to be accorded the same dignity as statutes.
16 They are 'presumptively valid' legislative regulations of the employment relationship
17 [citation], regulations that must be given 'independent effect' separate and apart from any
18 statutory enactments [citation]." (*Brinker Restaurant Corp. v. Superior Court* (2012), 53
19 Cal.4th at p. 1027, 139 Cal.Rptr.3d 315, 273 P.3d 513.)

20 64. "When construing the Labor Code and wage orders, we adopt the
21 construction that best gives effect to the purpose of the Legislature and the IWC.
22 [Citations.] Time and again, we have characterized that purpose as the protection of
23 employees—particularly given the extent of Legislative concern about working conditions,
24 wages, and hours when the Legislature enacted key portions of the Labor Code. [Citations.]
25 In furtherance of that purpose, we liberally construe the Labor Code and wage orders to
26 favor the protection of employees." (*ABM Security*, supra, 2 Cal.5th at p. 262.)

27 65. In violation of California law, Defendants have knowingly and willfully
28 refused to perform their obligations to compensate Plaintiffs and the Minimum Wage Class

1 for minimum wages earned for hours worked. As a proximate result, Plaintiffs and the
 2 Minimum Wage Class have suffered, and continue to suffer, substantial losses related to the
 3 use and enjoyment of such minimum wages, lost interest on such minimum wages, and
 4 expenses and attorneys' fees in seeking to compel Defendants to fully perform their
 5 obligations under state law, all to their respective damages in amounts according to proof at
 6 time of trial, and within the jurisdiction of this Court.

7 66. Wherefore, Plaintiffs and the Minimum Wage Class request relief as
 8 described herein and below.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE AND HOUR**

11 **STATEMENTS**

12 **(By Plaintiffs and the Wage Statement Class Against all Defendants)**

13 **(Labor Code §§ 226, 226.3, 226.6, 558 et seq., 1174, 1174.5, 1198,**

14 **IWC Wage Order No. 9-2001, §7)**

15 67. Plaintiffs reallege and incorporate by reference, as though fully set forth
 16 herein, all the paragraphs of the complaint.

17 68. California Labor Code section 226 (a) requires specific information be
 18 provided to employees on the wage statements which must be available with their periodic
 19 wage payment. This section requires that employers issue itemized wage statements with
 20 every paycheck, to show all of the following: (1) gross wages earned, (2) total hours
 21 worked by the employee, (3) the number of piece-rate units earned (for piece-rate workers),
 22 (4) all deductions taken, (5) net wages earned, (6) the inclusive dates of the period for
 23 which the employee is paid, (7) the name of the employee and either an employee ID
 24 number or the last four digits of the employee's social security number, (8) the name and
 25 address of the employer, and (9) all applicable hourly rates in effect during the pay period
 26 and the corresponding number of hours worked at each hourly rate. Failure to record any
 27 of these items could violate Section 226(a). (See, e.g., *Zavala v. Scott Bros. Dairy, Inc.*,
 28 143 Cal. App. 4th 585 (2006).)

69. “The Legislature enacted section 226 to ensure an employer documents the basis of the employee compensation payments **to assist the employee in determining whether he or she has been compensated properly.**” [Emphasis added.] (*Soto v. Motel 6 Operating, L.P.*, (2016) 4 Cal. App. 5th 385, 390.) As *Soto* recognized, however, § 226(a) contains “nine separate categories that must be included on wage statements.” *Id.* at 391. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)” may to recover the greater of actual damages or statutory penalties. (Cal. Lab. Code § 226(e)(1).).

70. An employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by § 226(a) and “the employee cannot promptly and easily determine” the required information from the wage statement alone. (Cal. Lab. Code § 226(e)(2)(B).) The statute defines “promptly and easily determine” to mean “a reasonable person would be able to readily ascertain the information without reference to other documents or information.” (Cal. Lab. Code § 226(e)(2)(C).) “For purposes of section 226(e), a plaintiff is ‘injured’ **if the accuracy of any of the items enumerated in § 226(a) cannot be ascertained from the four corners of the wage statement.**” [Emphasis added.] (*Raines v. Coastal Pac. Food Distributors, Inc.*, (2018) 23 Cal. App. 5th 667.)

71. California Labor Code Labor Code § 226.6 entitled: “Violation of § 226; persons having control or disposition of wages; penalty” provides:

Any employer who knowingly and intentionally violates the provisions of Section 226, **or any officer, agent, employee, fiduciary, or other person** who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is **guilty of a misdemeanor** and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law. [Emphasis added.]

72. According to an opinion letter from the DLSE “[T]he obligation to list the total hours worked during the pay period can only be satisfied by listing the precise, actual

number of hours worked.’ (Dept. of Industrial Relations, *592 DLSE, Opinion Letter 2002.05.17, p. 3.) ‘The failure to list the precise number of hours worked during the pay period conflicts with the express language of the statute and stands in the way of the statutory purpose.’ (Ibid.) ‘If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the precise total hours worked during the pay period, the requirements of section 226 would not be met.’” (*Id.* at p. 6.) (*Zavala v. Scott Bros. Dairy, Inc.*, at 591 citing *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 955.)

73. IWC Wage Order No. 9-2001, §7, contains these requirements:

(A) Every employer shall keep accurate information with respect to each employee including the following: [¶]

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall be recorded. [¶]

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. [Emphasis added.] “The IWC’s wage orders are to be accorded the same dignity as statutes. They are ‘presumptively valid’ legislative regulations of the employment relationship [citation], regulations that must be given ‘independent effect’ separate and apart from any statutory enactments [citation].” (*Brinker Restaurant Corp. v. Superior Court* (2012), 53 Cal.4th at p. 1027, 139 Cal.Rptr.3d 315, 273 P.3d 513.)

74. In 2013, the Legislature amended Section 226 to adopt a definition of “injury” for purposes of certain violations. An employee now is “deemed to suffer injury” if the employer (B) fails to provide accurate and complete information and the employee cannot promptly, without reference to other documents or information, determine the following from the wage statement alone: [¶]

(2) total hours worked; [¶]

(6) hourly rates and corresponding hours worked at each rates; [¶]

(Labor Code 226(e)(2)(B)(i).)

75. Following this amendment, an employer can no longer argue that employees must individually demonstrate that they suffered actual injury resulting from a violation of Labor Code section 226(a). It is the employer's responsibility to keep accurate records of the time that employees work. If the employer fails to maintain accurate time records, the employee's credible testimony or other credible evidence concerning his hours worked is sufficient to prove a wage claim. The burden of proof is then on the employer to show that the hours claimed by the employee were not worked. Time records must be kept whether it is customary in the area or industry. (*Anderson v. Mt. Clemens Pottery* (1946) 328 U.S. 680; 90 L.Ed. 1515; 66 S.Ct. 1187 (rehg. den. 329 U.S. 822).) The leading California case on this issue is *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, which follows the rationale set out in the *Anderson*.

76. A violation of Labor Code section 226(a) for failure to provide accurate itemized wage statements triggers PAGA civil penalties even though the plaintiff cannot satisfy the "injury" or "knowing and intentional" requirements to recover statutory penalties under Section 226(e). (*Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e) (1)."); *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667 (2018) (same); see also *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (judgment entered against defendant for PAGA penalties where violation under Section 226 is established; injury need not be shown).

77. The primary remedy for violations of Labor Code section 226(a) is a penalty set forth in Section 226(e). Section 226(e) provides that when an employer "knowingly and intentionally" violates Section 226(a), any employee "suffering injury" may sue and collect actual damages or a penalty of \$50 or \$100 (for repeat offenders), whichever is greater, up to a maximum of \$4,000 per employee.

78. Defendants issued uniform wage statements to Plaintiffs, the Wage Statement Class, which fail to correctly list the precise number of hours worked during the pay period,

including the precise total hours worked, all deductions made, net wages earned, gross wages earned, and all applicable hourly rates and corresponding hours worked at each rate(s) in effect during the pay period in violation of Labor Code section 226(a). Furthermore, the wage statements and time records also reflect that Defendants failed to keep accurate information with respect to Plaintiffs, the Wage Statement Class, and specifically when each employee begins and ends each work period, and the precise total daily hours worked each day in violation of IWC Wage Order No. 9-2001, §7.

79. Within the four years of the filing of the complaint to present, UPS and Defendants failed to keep and record accurate information (as well as maintain accurate itemized wage statements) with respect to Plaintiffs' and the Wage Statement Class' start times, stop times, total daily hours worked, gross wages earned, net wages earned, applicable rates of pay, inter alia, with respect to each of the following unlawful wage payment practices causing injury to Plaintiffs and the Wage Statement Class:

- ▶ Defendants intentionally altered and modified timecards to reflect fabricated late start times.
- ▶ Defendants intentionally altered and modified timecards to reduce hours worked down to 60 or less to stay in compliance with DOT rules and regulations.
- ▶ In early 2020, Defendants implemented a modified and time-consuming clock-in system for drivers, where time spent clocking-in was not accounted and paid.
- ▶ On or about April 15, 2021, UPS implemented a new variation to its timecard clock-in system which automatically rolls-up all employees' early clocks-ins to "scheduled" start times, but fails to round back employees late clockings, resulting in time worked but not paid.
- ▶ On or about September 22, 2020, UPS and Defendants implemented COVID-19 security screening checks for all employees and drivers entering UPS Centers, where time spent waiting and undergoing screenings was not accounted and paid.

1 ► On or about September 22, 2020, UPS and Defendants failed to record time
2 employees spent between COVID-19 checks up to the time they clocked-in for
3 work, which resulted in time worked and not paid.

4 80. Separately, because Defendants did not record the time Plaintiffs and the
5 Wage Statement Class, spent working off-the-clock, Defendants did not list the correct
6 amount of gross wages and net wages earned by Plaintiffs, the Wage Statement Class, in
7 compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason,
8 Defendants failed to accurately list the total number of the hours worked by Plaintiffs and
9 the Wage Statement Class, in violation of section 226(a)(2), and failed to list the applicable
10 hourly rates of pay in effect during the pay period and the corresponding accurate number
11 of hours worked at each hourly rate, in violation of section 226(a)(9).

12 81. California Labor Code Section 1174 provides inter alia, “Every person
13 employing labor in this state shall: (d) Keep, at a central location in the state or at the
14 plants or establishments at which employees are employed, payroll records **showing the**
15 **hours worked daily** by and the wages paid to . . . employees employed at the respective
16 plants or establishments.” [Emphasis added.] At all relevant times, and in violation of
17 Labor Code section 1174(d), Defendants willfully failed to maintain payroll records for
18 Plaintiffs, the Wage Statement Class, showing the hours worked daily, and the wages paid
19 thereto, which occurred because of its failing to record the precise hours that Plaintiffs, the
20 Wage Statement Class, actually worked.

21 82. Pursuant to Labor Code 1174.5, “Any person employing labor who willfully
22 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
23 complete records required by subdivision (d) of Section 1174, or to allow any member of
24 the commission or employees of the division to inspect records pursuant to subdivision (b)
25 of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”
26 Defendants’ violation of Labor Code Section 1174 further supports Plaintiffs PAGA claim
27 set forth below.
28

1 83. California Labor Code section 1198 provides that the maximum hours of work
2 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
3 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
4 employment of any employee for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
6 Wage Order, employers are required to keep accurate time records showing when the
7 employee begins and ends each work period and meal period. At all relevant times,
8 Defendants failed to keep accurate records of shift start and end times, and precise total
9 hours worked, for Plaintiffs and other putative class members in violation of section 1198.

10 84. Defendants’ payroll records, paycheck stubs and wage statements for its
11 Plaintiffs and the Wage Statement Class, knowingly and intentionally failed to accurately
12 list the precise total number of the hours worked by Plaintiffs and the Wage Statement
13 Class in violation of section 226(a)(2) and IWC Wage Order 7 (A)(3).

14 85. From four years prior to the filing of the complaint to the present,
15 Defendants were aware that their wage statements were not in compliance with Labor Code
16 Section 226 and have done nothing to remedy the problem. Defendants have knowingly
17 and intentionally failed to comply with the itemized wage statement requirements of Labor
18 Code Section 226 and IWC Wage Order 7 (A)(3) with respect to Plaintiffs and the Wage
19 Statement Class.

20 86. As a direct result of this willful conduct, Plaintiffs’ and the Wage Statement
21 Class’ wage statements did not accurately set forth the precise daily and precise weekly
22 total hours worked, all to Plaintiffs’ and the Wage Statement Class’ presumed injury,
23 damage and detriment in violation of Labor Code §§ 226, 1174 and 1198. Had Defendants
24 accurately recorded the precise daily and precise total actual hours worked pursuant to its
25 obligations under California law, Plaintiffs, and the Wage Statement Class, would not have
26 to present evidence in this case to support their hours worked and their minimum wage
27 claims. Defendants’ failure to do so gives rise to an inference of injury. The precise daily
28 and precise total hours worked, the hourly rates and corresponding hours worked at each

rate(s), and the amount of minimum wage owed to Plaintiffs and the Wage Statement Class, cannot be ascertained from the four corners of the wage statements and without performing arithmetic computations.

87. During the period covered by this lawsuit Defendants failed to provide the Plaintiffs, and the Wage Statement Class, with timely and accurate itemized wage statements showing gross wages earned, precise total hours worked, all deductions made, net wages earned, and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a). Additionally, during the period covered by this lawsuit, Defendants failed to maintain accurate and complete payroll records in violation of Labor Code § 1174. Damages are presumed pursuant to Labor Code Section 226(e)(2)(B)(i).

88. Because Defendants' violations of 226(a) and 1174(d) were committed against Plaintiffs and the Wage Statement Class are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 558, 1174.5, 1198, and/or 2699(a), (f), and (g), and other applicable provisions of California law.

THIRD CAUSE OF ACTION

UNFAIR AND UNLAWFUL BUSINESS ACTS AND PRACTICES

(By Plaintiffs, the Minimum Wage Class, and the Wage Statement Class, Against all Defendants)

(Bus. and Prof. Code § 17200, et seq.)

89. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all the paragraphs of the complaint.

90. Plaintiffs are suing Defendants pursuant to Business and Professions Code § 17200 et seq., on behalf of himself/herself as an individual.

91. By violating the statutes and regulations as alleged herein, Defendants' acts constitute unlawful business practices under California Business and Professions Code §§ 17200, et. seq. Within four (4) years of April 8, 2015, or an earlier date(s) based on other class actions which were filed and are to be discovered, until the present, Defendants violated and continue to violate the law, as expressed in Labor Code §§ 558, 558.1, 1194,

1 1197, 1197.1 with respect to the Minimum Wage Class; Labor Code §§ 226, 226.3, 226.6,
2 558 et seq., 1174, 1174.5, 1198 with respect to the Wage Statement Class; the applicable
3 IWC WAGE ORDERS and, Business & Professions Code §§ 17200, et seq., by failing to
4 pay minimum wages, failing to keep proper records and accurate itemized wage statements,
5 and other violations alleged herein and thereby deprived them of valuable rights and
6 benefits guaranteed by law, all to their detriment.

7 92. In addition to the above violations, on March 19, 2021 Governor Gavin
8 Newsom signed SB 95 into law, which provides for supplemental paid sick leave for
9 reasons related to COVID-19. The new law creates California Labor Code Section 248.2,
10 with respect to supplemental paid sick leave to employers generally. All private employers
11 that employ more than 25 employees are covered by Labor Code 248.2 and must provide
12 supplemental paid sick leave for certain COVID-19-related reasons to its employees.

13 93. A covered employee of a covered employer is entitled to supplemental paid
14 sick leave if they are unable to work or telework due to any of the following “covered
15 reasons”: 1) The covered employee is subject to a quarantine or isolation period related to
16 COVID-19; 2) The covered employee has been advised by a healthcare provider to self-
17 quarantine due to concerns related to COVID-19; 3) The covered employee is attending an
18 appointment to receive a vaccine for protection against contracting COVID-19; 4) The
19 covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent
20 the employee from being able to work or telework; 5) The covered employee is
21 experiencing symptoms of COVID-19 and seeking a medical diagnosis; 6) The covered
22 employee is caring for a family member who is subject to an order or guidelines described
23 in (1) or who has been advised to self-quarantine, as described in (2); and 7) The covered
24 employee is caring for a child whose school or place of care is closed or otherwise
25 unavailable for reasons related to COVID-19 on the premises. (California Labor Code §
26 248.2 (b)(1) (A)-(G).)

27 94. On April 12, 2021, April 13, 2021, and April 14, 2021, Ulricksen was
28 experiencing symptoms related to the COVID-19 vaccine that prevented him from being

1 able to work. On each day April 12, April 13, and April 14, he notified management of his
2 inability to work. On April 12, his pay code was “sick day-no pay”, and he was not paid a
3 sick day. On April 13, his pay code was “option day-no pay”, and he was not paid a sick
4 day. On April 14, his pay code was “option day-no pay”, and again he was not paid a sick
5 day. Ulricksen paycheck for the Period Begin 04/11/2021 thru Period End 04/17/2021 also
6 reflects that UPS and Defendants failed to pay Ulricksen his COVID-19 supplemental paid
7 sick leave. UPS and Defendants also failed to pay other covered employees their COVID-
8 19 supplemental paid sick leave for “covered reasons” as set forth in California Labor Code
9 § 248.2 (b)(1) (A)-(G).

10 95. The law further requires that employers with 25 or more employees display
11 the Department of Industrial Relations “2021 COVID-19 Supplemental Paid Sick Leave”
12 Poster in a conspicuous place in the workplace or must disseminate to the workforce
13 through electronic means if employees are telecommuting and do not physically report to
14 work. This requires UPS and Defendants provide notice to its employees of the
15 supplemental sick leave available to them (which can be accomplished by sending a copy
16 of the poster to employees via email) and to provide supplemental paid sick leave for
17 qualifying reasons. Defendants have failed to post in violation of California law including
18 Business and Professions Code § 17200, et seq.

19 96. Defendants’ violations of the statutes and regulations as alleged herein are
20 business practices done repeatedly over a significant period of time throughout California
21 and done in a systematic manner to the detriment of Plaintiffs.

22 97. The harm to Plaintiffs outweighs any utility of Defendants’ policies and
23 practices, as alleged herein, and consequently constitute unfair business acts or practices
24 within the meaning of Business and Professions Code §§ 17200 et seq. Defendants’
25 utilization of such unfair business practices constitutes unfair competition and provides an
26 unfair advantage over Defendants’ competitors.

27 98. As a direct and proximate result of the aforementioned acts by Defendants,
28 Defendants wrongfully retained and continues to retain funds earned by Plaintiffs, and

1 profits obtained as a result of Defendants' unlawful and unfair business acts and practices,
2 according to proof from Plaintiffs.

3 99. The unfair and unlawful business acts and practices described herein present
4 a continuing threat to Plaintiffs. Plaintiffs are informed and believes that Defendants has
5 engaged in such practices over a number of years and has failed to indicate, in any way,
6 that it plans to cease such activities any time in the future.

7 100. Within four (4) years of April 8, 2015, or an earlier date(s) based on other
8 class actions which were filed and are to be discovered, Plaintiffs have suffered damages
9 and request damages and/or restitution of all monies and profits to be disgorged from
10 Defendants in an amount according to proof at time of trial, and that Defendants be ordered
11 to disgorge all profits resulting from its unlawful and unfair business acts and practices, but
12 in excess of the Court's jurisdiction requirement.

13 101. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to
14 the equitable powers of this court, Defendants should be preliminarily and permanently
15 enjoined from its unfair and unlawful business acts and practices.

16 102. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to
17 the equitable powers of this court, Defendants should be ordered to restore to Plaintiffs all
18 funds Defendants retained by means of the unfair and unlawful business acts and practices
19 alleged herein.

20 103. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to
21 the equitable powers of this court, Defendants should be ordered to disgorge all funds and
22 profits Defendants obtained and retained by means of the unfair and unlawful business acts
23 and practices alleged herein.

24 104. Plaintiffs also seek interest pursuant to Business & Professions Code §
25 17203; *Ballard v. Equifax Check Servs., Inc.* (ED CA 2001) 158 F. Supp. 2d 1163, 1176-
26 1177; and *Irwin v. Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956 and costs of suit
27 pursuant to Code of Civil Procedure § 1032.
28

105. Pursuant to Labor Code § 218.6, in any action brought for the nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per annum], which shall accrue from the date that the wages were due and payable[.]” Plaintiffs are entitled to said interest.

106. In addition, Plaintiffs seek an award of reasonable attorney’s fees and costs pursuant to Labor Code §§ 1194.

FOURTH CAUSE OF ACTION
FOR CIVIL PENALTIES PURSUANT TO LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”)

(By Plaintiffs Against all Defendants)

(Labor Code §§ 2698, et seq., *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809)

107. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all the paragraphs of the complaint.

108. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code Labor Code §§ 2698, et seq. (hereinafter “PAGA” or “the Act”), which expressly establishes that any provision of the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards agencies or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

109. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

110. Plaintiffs are “aggrieved employees,” as defined by Labor Code § 2699, in that one or more of the violations alleged herein was committed against them, and each of them.

111. Within four (4) years of the filing of the complaint, or an earlier date(s) based on other class actions which were filed and are to be discovered, Plaintiffs were employed by Defendants.

112. Defendants failed to keep payroll records showing total hours worked and wages paid to employees, as required by California Labor Code § 1174 and IWC Wage Orders. Labor Code § 1174 requires Defendants to keep “payroll records showing the hours worked daily and the wages paid to . . . employees . . .”

113. California Labor Code § 1174.5 imposes civil penalties, in addition to any other civil or criminal penalty provided by law, upon any employer who violates California Labor Code § 1174. Pursuant to Labor Code § 1174.5, Defendants are subject to a civil penalty of five hundred dollars (\$500) for each aggrieved employee for the violation under Labor Code § 1174.

114. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiffs and the Minimum Wage Class with at least minimum wages for all hours worked as set forth herein;

(d) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete itemized wage statements to Plaintiffs and the Minimum Wage Class, as set forth herein;

(g) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth herein.

115. By committing the violations alleged in this First Amended Complaint against Plaintiffs and the other aggrieved employees, Defendants violated Labor Code §§ 226, 226.3, 226.6, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, and 1198, and the

applicable IWC WAGE ORDERS and deprived them of minimum wage compensation, and failed to provide accurate itemized wage statements and failed to keep accurate records. Accordingly, in their capacity as Private Attorneys General, on behalf of themselves and all other aggrieved employees, Plaintiffs seek all applicable penalties, attorney's fees, and costs available under the Act on behalf of themselves and the other aggrieved employees based on these violations.

116. On or about _____, Plaintiffs sent a PAGA Notice letter via certified mail to the LWDA and to Defendants as prescribed by the Labor Code. (A copy of Plaintiffs' PAGA Notice letter is attached hereto as **Exhibit A.**) On _____, the LWDA and Defendants were delivered and/or served with the PAGA Notice letter. (Copies of the United States Postal Service Certified Mail Return Receipts are attached hereto as **Exhibit B.**)

117. On _____, Plaintiffs filed their PAGA claim notices, including a copy of their May 14, 2020 letter, online with the LWDA. The claim was assigned LWDA Case No. LWDA -CM-797015-20 (Copies of the email from the LWDA confirming receipt of Plaintiffs' PAGA claim notices is attached hereto as **Exhibit C.**)

118. Because more than sixty-five (65) days have passed since Plaintiffs submitted their PAGA claim notice to Defendants and the LWDA without the LWDA having responded to the notice, Plaintiffs are entitled, as a matter of right, pursuant to Labor Code section 2699.3(a)(2)(A) and (C), to amend their Complaint to include a cause of action for penalties pursuant to PAGA.

PRAYER

WHEREFORE, Plaintiffs and the other members of the Class pray for judgment as follows:

FIRST CAUSE OF ACTION

1. That Defendants be ordered to pay Plaintiffs and the Minimum Wage Class for all hours worked, including minimum wages, but for which Plaintiffs and the Minimum Wage Class were unpaid, according to proof; plus penalties and

interest;

2. For interest pursuant to Labor Code § 218.6; and

3. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5 and attorney's fees, interest, and costs of suit pursuant to Labor Code § 1194.

SECOND CAUSE OF ACTION

4. For general damages, including interest, according to proof;

5. For all 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;

6. For statutory damages as set forth in the applicable Labor Code sections;

7. For all appropriate declaratory and equitable relief; and,

8. For all such other relief as is just and necessary under the circumstances.

THIRD CAUSE OF ACTION

9. For restitution of all monies due to Plaintiffs;

10. For reasonable attorney's fees as provided by Code of Civil Procedure §1021.5;

11. That Defendants be ordered to restore to Plaintiffs all funds Defendants retained by means of the unfair and unlawful business acts and practices alleged herein;

12. For appointment of a receiver to receive, manage and distribute any and all funds disgorged from the Defendants determined to have been wrongfully acquired by Defendants as a result of violations of Business and Professions Code §§17200 et seq.;

13. That Defendants disgorge all profits in an amount according to proof at the time of trial.

14. For enforcement of the civil penalties imposed by the Labor Code pursuant to Business & Professions Code § 17202;

15. For interest pursuant to Business & Professions Code § 17203; *Ballard v. Equifax Check Servs., Inc.* (ED CA 2001) 158 F. Supp. 2d 1163, 1176-1177; and *Irwin v. Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956;

16. For interest pursuant to Labor Code § 218.6; and
17. For reasonable attorney's fees and costs as provided by Labor Code § 1194.

FOURTH CAUSE OF ACTION

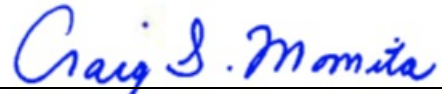
18. For all applicable penalties and relief under California Labor Code §§ Lab. Code §§ 2698, et seq.

ON ALL CAUSES OF ACTION

19. For compensatory damages in an amount to be ascertained at trial;
20. For penalties and interest as allowed by law;
21. For costs of suit herein alleged; and,
22. For such other and further relief as the court deems just and proper.

Dated: May 18, 2021

**ARIAS SANGUINETTI WANG
& TORRIJOS LLP**

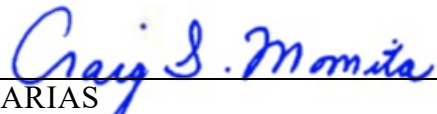
By: 
 MIKE ARIAS
 ALFREDO TORRIJOS
 CRAIG S. MOMITA
 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs and the other members of the Class hereby demand a trial by jury on all claims so triable.

Dated: May 18, 2021

**ARIAS SANGUINETTI WANG
& TORRIJOS LLP**

By: 
MIKE ARIAS
ALFREDO TORRIJOS
CRAIG S. MOMITA

Attorneys for Plaintiffs