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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

GEOFFREY WILLIAMS, an individual, on behalf of himself and other similarly aggrieved employees and the State of California,

Plaintiff,

vs.

DAWSON DELIVERY LLC, a California limited liability company; and **DOES 1-50,**

Defendants.

Unlimited Jurisdiction

Case No.: 21CHCV00755

CLASS ACTION

FIRST AMENDED COMPLAINT:

1. PENALTIES PURSUANT TO PRIVATE ATTORNEY GENERAL ACT OF 2004 (Lab. Code §§ 2698 *et seq.* (“PAGA”)
2. FAILURE TO PROVIDE MEAL PERIODS AND PAY ALL MEAL PERIOD PREMIUM WAGES
3. FAILURE TO MAKE AVAILABLE REST PERIODS AND PAY ALL REST PERIOD PREMIUM WAGES
4. FAILURE TO PAY ALL OVERTIME WAGES
5. FAILURE TO PAY ALL MINIMUM WAGES
6. FAILURE TO PAY TIMELY WAGES UPON CESSATION OF EMPLOYMENT
7. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
8. UNFAIR COMPETITION (Bus. & Prof. Code. §§ 17200 *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff Geoffrey Williams ("Plaintiff"), on behalf of himself and all other similarly aggrieved employees and the State of California, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this lawsuit as a class action on behalf of other similarly situated persons who work or worked for Dawson Delivery LLC ("Defendant" or "Dawson") and, as a proxy for the State of California, brings a representative law enforcement action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code Section 2698 et seq., to recover civil penalties against Defendants. Plaintiff's claims are premised on Defendants' failure to provide legally compliant meal and rest periods, failure to pay all meal and rest break premiums, failure to factor all forms of pay when calculating the regular rate for payment of meal and rest period premiums, failure to pay all minimum and overtime wages, failure to reimburse for business expenses, failure to provide accurate wage statements, failure to timely pay all wages during employment, failure to maintain complete and accurate records, and failure to timely pay all wages upon cessation of employment.

JURISDICTION AND VENUE

2. Venue is proper in the County of Los Angeles because work was performed by Plaintiff and aggrieved employees for Defendants in the County of Los Angeles, California, and the legal obligations of Defendants to Plaintiff and other aggrieved employees were breached throughout California, including in Los Angeles County.

3. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, Defendants are qualified to do business in California and Defendants regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

4. This Court has jurisdiction over this action under Article 6 of the California Constitution and California Code of Civil Procedure § 410.10.

5. This Court has jurisdiction over Plaintiff's and Class Members' claims under California Code of Civil Procedure §§ 201-203, 218, 1174, 1194, 2802.

6. This Court has jurisdiction over Plaintiff's and the Class Members' claims for restitution of unpaid wages and other ill-gotten benefits arising from Defendants' unlawful and/or unfair business practices under California Business & Professions Code §§17200 *et seq*

THE PARTIES

A. Plaintiff

7. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was a resident of California. During the one-year period preceding the notification of his claims under PAGA to Defendants and Labor Workforce and Development Agency (the "LWDA"), Plaintiff was employed by Defendant Dawson Delivery LLC in California as an hourly paid non-exempt employee performing Amazon deliveries from approximately August through December 2020.

8. Plaintiff seeks to represent similarly situated persons who are Aggrieved Employees. Aggrieved Employees are persons who, at any time since the date one year before the date of Plaintiff's letter notifying Defendants and the LWDA of the alleged violations, were employed by Defendants as delivery drivers and subjected to the following violations of California law: Labor Code Sections 201-204, 226, 226.7, 510, 512, 1174(d), 1174.5, 1194, 1197, 2802 and the applicable Industrial Welfare Commission ("IWC") Wage Orders, including sections 3, 4, 7, 11 and 12 of IWC Wage Order 9-2001.

9. As such, Plaintiff appears in this action on behalf of himself and on behalf of all other similarly situated aggrieved employees and the State of California.

B. Defendants

10. Defendant Dawson Delivery LLC is a California limited liability company that does business in California, including in Los Angeles County. Dawson employees non-exempt hourly-paid drivers to perform deliveries for Amazon.Com Services, LLC ("Amazon").

11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will

amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained. Dawson and DOE Defendants are referred to herein as "Defendants."

12. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of one or more of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to one or more of the other Defendants.

FACTS RELEVANT TO PLAINTIFF'S CLAIMS

13. Facts Relevant to Plaintiff's Claim Based on Defendants' Failure to Pay All Minimum and Overtime Wages Owed: At all relevant times, Defendants employed Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 510, 1194, 1197 and IWC Wage Order 9-2001. Defendants failed to pay all wages for all hours worked in violation of Labor Code Sections 510, 1194, 1197 and Sections 3 and 4 of Wage Order 9-2001.

14. During the relevant period, Plaintiff and other aggrieved employees regularly earned overtime pay for working more than 8 hours in a day or more than 40 hours in a week. In addition, Plaintiff and other aggrieved employees received various forms of non-discretionary incentive pay, such as (1) incentive bonuses (like the $500 Step Van bonus paid in two $250 installments contingent upon the employee remaining with the company for set periods of time and $100 monthly bonuses for perfect attendance called a FICO bonus) and shift differentials, each of which were indicated on the employee's wage statement, that are not excludable under California law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").

15. Despite Defendants' payment of Incentive Pay to Plaintiff and other aggrieved employees, Defendants failed to correctly factor all forms of Incentive Pay when calculating Plaintiff's regular rate of pay for the payment of overtime and double time wages, thereby causing Plaintiff to be underpaid all of his required wages in periods during which Plaintiff earned Incentive Pay and overtime or double time.

16. As alleged below, Plaintiff and other aggrieved employees were required to work

through mandated meal periods. However, because that work was performed off-the-clock, Plaintiff and other aggrieved employees were not paid for that work time. However, as alleged below, Defendants knew the work was being performed. On the rare occasion that Plaintiff or another aggrieved employee worked a shift less than 8 hours, Defendants owe the employee for the unpaid work time at minimum wage. On shifts of 8 or more hours or in weeks in which Plaintiff or the other aggrieved employees worked 40 or more hours, Defendants owe them for their unpaid work at the employee's overtime rate.

17. Facts Relevant to Plaintiff's Claim Based on Meal Period Violations: Under Labor Code sections 226.7 and 512, and Wage Order 9-2001(11), Plaintiff and other similarly aggrieved employees were entitled to a meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday and a second meal period of at least 30 minutes for each workday they worked more than 10 hours. Additionally, they were entitled to one additional hour of pay for every day that a timely meal period was not provided.

18. Plaintiff regularly worked shifts lasting longer than 8 hours and often more than 10 hours, entitling him to at least one meal period and often two. Because of the workload and the press of time to deliver packages, Plaintiff and other aggrieved employees had to work through parts or all of their meal periods. After Plaintiff began working for Defendants, he clocked back in less than 30 minutes after beginning a meal period when the press of work did not permit him to take a full meal period. As a result, Defendants were required to pay Plaintiff the additional hour of premium pay and did so at first. However, because he and other aggrieved employees incurred multiple meal violations under these same conditions, Defendants changed the clocking system so that the drivers could not clock back in less than 31 minutes after clocking out for a meal period, even if they were unable to take a full 30 minutes for their meal period. Because the Amazon devices provided to Plaintiff and the other aggrieved employees would not allow them to scan packages while they were clocked out for a meal period, during the holiday season when it was particularly busy Dawson's owner instructed Plaintiff and the other drivers to use the time that they were clocked out for meal periods as driving time as there was often much traffic getting to

their delivery destinations. Thus, Dawson knew that drivers were not taking these breaks because the owner had instructed the drivers to work through them and Defendants were able to track the drivers progress through GPS and knew that the drivers were still driving during these periods. Despite this knowledge, Defendants did not pay meal period premium wages, as required by California Labor Code sections 512, 226.7 and Section 11 of Wage Order 9-2001

19. Facts Relevant to Plaintiff's Claim Based on Rest Period Violations: California law requires that employers must authorize and permit non-exempt employees to take a paid rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. *Id*. at 1029.

20. Similar to meal periods, Plaintiff and other similarly aggrieved employees were not able to take their mandated rest periods due to the press of work and the time within which they were required to complete their delivery routes. As noted above, Defendants were able to track the drivers progress through GPS and had constructive knowledge that Plaintiff and the other aggrieved employees did not take rest periods. Despite this knowledge, Defendants did not pay rest period premium wages, as required by California Labor Code sections 512, 226.7 and Section 12 of Wage Order 9-2001.

21. Facts Relevant to Plaintiff's Claim for Failure to Factor in All Forms of Pay When Calculating the Regular Rate for Payment of Meal and Rest Period Premiums: On the two occasions when Defendants actually paid Plaintiff premiums for meal period violations, Defendants failed to pay Plaintiff the additional one hour of pay at the correct regular rate of pay.

22. Labor Code section 226.7 and Section 11(D) of the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 9-2001, require Defendants to pay

employees, when their rights to meal breaks and rest breaks are violated, "one additional hour of pay at the employee's regular rate of compensation" for each workday that the meal or rest period is not provided. Defendants' policy and practice of paying missed break premiums has been to pay the break premium at the employee's base hourly rate without factoring in other wages paid for the labor performed, including in periods when the employees earned Incentive Pay required to be factored into an employee's regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (Cal. July 15, 2021) --- P.3d ---- (holding that when employers pay one-hour meal and rest period premiums to employees who report that they were not provided compliant meal or rest periods, the pay is not at the employee's normal "base" hourly rate but must be at the same FLSA "regular rate" that is used to calculate overtime premiums).

23. <u>Facts Relevant to Plaintiff's PAGA Claim for Defendants' Failure to Provide Accurate Wage Statements</u>: Plaintiff and other aggrieved employees of Defendants received wage statements that did not list all wages earned, including the minimum, overtime and premium wages alleged above. As the above infractions explain, Plaintiff and other aggrieved employees were entitled to minimum, overtime and premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code section 226.

24. <u>Facts Relevant to Plaintiff's Claim for Defendants' Failure to Pay All Wages at the Cessation of Employment</u>: Plaintiff and other aggrieved employees have ceased their employment with Defendants. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees (including Plaintiff) did not receive all of their minimum and overtime wages due to Defendants' failure to include Incentive Pay in the calculation of their regular rate of pay and due to Defendants' making Plaintiff and others work through their mandated meal periods while off-the-clock. Plaintiff and the other aggrieved employees, upon termination, did not receive all owed wages on the date of termination. Therefore, Defendants have violated and continue to violate Labor Code sections 201 and 202, because even if they pay employees timely, they have not paid the aforementioned wages and wage penalties. Likewise, Defendants have violated Section 203 by not paying the waiting time penalties

for failure to comply with Sections 201 and 202.

25. Facts Relevant to Plaintiff's PAGA Claim for Defendants' Failure to Timely Pay All Wages During Employment: California Labor Code section 204, subdivision (a), states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employers. Defendants did not correctly pay Plaintiff and other aggrieved employees their minimum, overtime and premium wages (as alleged above) in conformity with Section 204. Defendants willfully failed to timely pay Plaintiff and other aggrieved employees all wages due for work performed and this failure continued through the time in which they were employed by Defendants. As a result, Defendants violated California Labor Code section 204.

26. Facts Relevant to Plaintiff's PAGA Claim for Defendants' Violations of Their Record Keeping Obligations: Labor Code section 1174 states, "[e]very person employing labor in this state shall…(d) [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, …, employees employed at the respective plants or establishments." The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 9-2001(7).

27. Defendants failed to keep accurate information with respect to Plaintiff's and other aggrieved employees' payroll, including the applicable rates of pay and total wages earned (such as non-discretionary renumeration when determining the regular rate of compensation for the payment of overtime and break premiums) each payroll period as required by the "Records" section of the applicable IWC Wage Order. Therefore, Defendants knowingly and intentionally failed to keep and maintain accurate records as required by Labor Code section 1174.

28. Facts Relevant to Plaintiff's Claim for Defendants' Failure to Reimburse Business Expenses: As alleged above, Defendants requires their delivery drivers, including Plaintiff, to use

their personal cell phones to perform their work for Dawson at the employee's own expense. During training, Defendants required Plaintiff and other aggrieved employees to load the Amazon Chime app on their personal phones to participate in the training. While Amazon provides a phone to connect to its services, Dawson required its delivery drivers, including Plaintiff, to load additional apps, such as Paycom and others, on their personal phones in order to connect to Defendants' Human Resources applications, including clocking in and out to begin and end their shifts and meal periods. Defendants paid Plaintiff based on the time clock entries submitted through the app Dawson ordered Plaintiff to load onto his personal phone. During the period that Plaintiff worked for Defendants, Plaintiff's cell phone bill was approximately $122 per month for the use of his cell phone. Defendants did not reimburse Plaintiff for any portion of his monthly cell phone charges.

29. Pursuant to California Labor Code Section 2802, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"

30. Wage Order 9, at Section 9(B), also states that an employer shall provide necessary tools or equipment, except in cases where the employee is paid two times the minimum wage.

31. At the time he was laid off, Plaintiff was paid $16 per hour. On information and belief, the other similarly aggrieved employees of Defendants were also paid less than two times the minimum wage. As such, Defendants are required to provide all necessary tools and equipment. Moreover, pursuant to Labor Code section 2802, Defendants are required to reimburse all necessary expenditures. Here, Defendants were required to indemnify Plaintiff and all other aggrieved employees for use of their personal cell phones used in direct consequence of the discharge of their duties. Therefore, Defendants have violated Labor Code section 2802 by requiring its employees to expend money on the purchase and use of personal cell phones and failing to reimburse the expense.

32. As a result of these violations, Plaintiff seeks on behalf of himself and all other

similarly aggrieved employees, civil penalties under PAGA.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

33. Plaintiff brings this action on behalf of himself, on behalf of all others similarly situated, and as a member of Class and Subclasses defined as follows:

a. The Class: All current and former non-exempt employees of Dawson Delivery LLC in California employed by Defendants in California as delivery drivers during the four years preceding the filing of Plaintiff's First Amended Complaint through the date Notice is mailed to the members of the Class.

b. Break Premium Subclass: All members of the class to whom Defendants paid premium pay pursuant to Labor Code section 226.7 or Sections 11 or 12 of the applicable Wage Orders.

c. Waiting Time Penalty Subclass: All members of the Class whose employment by Defendants ended during the three years preceding the filing of Plaintiff's First Amended Complaint through the date Notice is mailed to the members of the Class.

34. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

35. **Numerosity:** Code of Civil Procedure § 382: members of the Classes are so numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less than 50 persons in each of the classes. The precise number of Class members and their addresses are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be obtained from Defendants' records. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

36. **Existence of Predominance of Common Questions of Fact and Law:** Code of Civil Procedure § 382: Common questions of law and fact exist as to all members of the Classes. These questions predominate over any questions effecting only individual members of the classes. These common factual and legal questions include:

(a) Whether Defendants' failed to factor non-discretionary remuneration into the payment of overtime and double time;

(b) Whether Defendants' failure to factor non-discretionary remuneration into the payment of premium wages for break violations violated Labor Code § 226.7(c) and the applicable IWC Wage Orders;

(c) Whether Defendants' failed to provide meal periods in compliance with Labor Code §§ 512, 226.7 and the applicable IWC Wage Orders;

(d) Whether Defendants failed to make available rest periods in compliance with Labor Code § 226.7 and the applicable IWC Wage Orders;

(e) Whether Defendants failed to pay class members all wages for working through meal periods;

(f) Whether Defendants failed to make available mandated rest periods;

(g) Whether Defendants failed to reimburse class members for necessary business expenses;

(h) Whether Defendants failed to provide class members who ceased employment with Defendants all wages owed at the time of the cessation of the employee-employer relationship;

(i) Whether Defendants committed unlawful business practices or acts within the meaning of Business & Professions Code Sects. 17200 *et seq.*;

(j) Whether, as a consequence of Defendants' unlawful conduct, the members of the Classes are entitled to restitution, and/or equitable relief;

(k) Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and the class members as a whole.

37. **Typicality:** Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business practices as the members of the classes. Plaintiff sustained the same types of injuries and losses

that the class members sustained. Plaintiff is subject to the same affirmative defenses as the members of the class.

38. **<u>Adequacy</u>:** Plaintiff will adequately and fairly protect the interests of the members of the Classes. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

39. **<u>Superiority</u>:** A class action is superior to other available means for fair and efficient adjudication of the claims of the Classes and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Classes to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

<u>FIRST CAUSE OF ACTION</u>

CIVIL PENALTIES UNDER PAGA

(By Plaintiff, Aggrieved Employees and the State of California against Defendants)

40. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

41. At all times relevant to this action, Plaintiff and other Aggrieved Employees were "aggrieved employees" within the meaning of Labor Code Section 2699.

42. Defendants' conduct as described herein, arising from Defendants' failure to provide legally compliant meal and rest breaks, failure to pay rest and meal break premiums, failure to pay rest and meal break premiums and the correct regular rate of compensation, failure

to pay all minimum and overtime wages, failure to reimburse for business expenses, failure to provide accurate wage statements, failure to timely pay all wages during employment, failure to maintain complete and accurate records and failure to timely pay all wages upon cessation of employment, constitute violations of Labor Code Sections 201-204, 226, 226.7, 510, 512, 1174(d), 1174.5, 1194, 1197, 2802 and the applicable Wage Orders, including, Wage Order 9-2001.

43. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

44. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated July 21, 2021, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") via its online filing system and by certified mail to Defendant Dawson Delivery LLC of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the July 21, 2021, letter is attached hereto as **Exhibit 1**. To date, more than 65 days after the postmark date of July 21, 2021, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff's allegations.

45. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendants' violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 9-2001, in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

46. Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil

penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

47. Defendants' failure to maintain accurate and complete records constitutes an injury as defined under Labor Code section 1174. Therefore, Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor Code sections 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and 2699 per violation.

48. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS AND PAY ALL MEAL PERIOD PREMIUM WAGES

(By Plaintiff and Members of the Class and Break Premium Subclass against Defendants)

49. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

50. At all relevant times, Plaintiff and the other members of the Class were employees of Defendants covered by Labor Code Sections 226.7 and 512, and the applicable IWC Wage Orders, including Wage Order 9-2001.

51. Pursuant to Labor Code Sections 226.7 and 512, and the applicable IWC Wage Orders, Plaintiff and the other members of the Class were entitled to a meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday, and one additional hour of pay for every day that a timely meal period was not provided.

52. As alleged above, Defendants failed to provide Plaintiff and other members of the Class failed meal periods full 30 minutes for a meal period for each workday that they worked more than 5 hours in accordance with Labor Code Section 226.7 and 512, and the applicable IWC Wage Orders.

53. Plaintiff is informed and believes and thereon alleges that during the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of not providing compliant meal periods to members of the Class as required by law.

54. Defendants failed to pay Plaintiff and members of the Class premium payments in the amount of one additional hour of pay at the employee's regular rate of pay for every day that a compliant meal period was not made available in violation of California law.

55. Based on the conduct alleged herein, pursuant to Labor Code section 226.7 and the applicable Wage Order(s), Plaintiff and the Class are entitled, and therefore seek, the recovery of all meal break premium wages from Defendants in an amount equal to one (1) hour of wages per late meal period in a sum to be proven at trial.

56. When Defendants paid premiums to Plaintiff and members of the Break Premium Subclass for Defendants' failure to comply with the meal and/or rest periods requirements in Labor Code Section 226.7 and Wage Order 9-2001, Defendants maintained a policy or practice of paying break premiums at amounts that only included "base hourly wages" and did not factor in other non-discretionary wages earned for an hour's work owed to members of the Break Premium Subclass as required by Labor Code Section 226.7 and Wage Order 9-2001. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021).

57. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Break Premium Class have suffered damages in an amount, subject to proof, to the extent they were not paid all premiums owed for meal period violations

58. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Class have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for non-compliant meal periods or were not paid all premiums owed for meal period violations.

59. Pursuant to Labor Code Section 218, Plaintiff and other members of the Class and Break Premium Subclass are entitled to recover the full amount of their unpaid additional pay for meal period violations. Pursuant to Labor Code Section 218.5, Plaintiff and other members of the

Class and Break Premium Subclass are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Class and Break Premium Subclass are entitled to recover prejudgment interest on the additional pay owed for meal period violations.

THIRD CAUSE OF ACTION

FAILURE TO MAKE AVAILABLE REST PERIODS AND PAY ALL REST PERIOD PREMIUM WAGES

(By Plaintiff and Members of the Class and Break Premium Subclass against Defendants)

60. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

61. At all relevant times, Plaintiff and the other members of the Class were employees of Defendant covered by Labor Code Section 226.7 and the applicable IWC Wage Orders, including Wage Order 9-2001.

62. Pursuant to Labor Code Section 226.7 and Wage Order 9-2001, Plaintiff and the other members of the Class were entitled to rest periods of at least 10 minutes for each four-hour period of work, or major fraction thereof, and one hour of additional pay for every day a required rest period was not provided.

63. Defendants failed to allow Plaintiff and other members of the Class to take rest periods in accordance with Labor Code Section 226.7 and the applicable IWC Wage Orders, including Wage Order 9-2001. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of failing to provide to members of the Class 10-minute rest periods for each four hours of work or major fraction thereof in accordance with Labor Code Section 226.7 and Wage Order 9-2001.

64. Defendants failed to provide Plaintiff and other members of the Class the additional hour of pay required by Labor Code Section 226.7 and Wage Order 9-2001. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable

limitations period, Defendants maintained and continue to maintain a policy or practice of denying employees two separate ten (10) minute rest periods, or requiring employees to combine their rest periods with their meal period, of failing to provide a third ten (10) minute rest period on shifts over ten (10) hours, and of not paying additional pay to employees for missed or non-compliant rest periods.

65. When Defendants paid premiums to Plaintiff and members of the Break Premium Subclass for Defendants' failure to comply with the meal and/or rest periods requirements in Labor Code Section 226.7 and Wage Order 9-2001, Defendants maintained a policy or practice of paying break premiums at amounts that only included "base hourly wages" and did not factor in other non-discretionary wages earned for an hour's work owed to members of the Break Premium Subclass as required by Labor Code Section 226.7 and Wage Order 9-2001. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021).

66. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Break Premium Class have suffered damages in an amount, subject to proof, to the extent they were not paid all premiums owed for rest period violations

67. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Class have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for non-compliant rest periods or were not paid all premiums owed for rest period violations.

68. Pursuant to Labor Code Section 218, Plaintiff and other members of the Class and Break Premium Subclass are entitled to recover the full amount of their unpaid additional pay for rest period violations. Pursuant to Labor Code Section 218.5, Plaintiff and other members of the Class and Break Premium Subclass are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Class and Break Premium Subclass are entitled to recover prejudgment interest on the additional pay owed for rest period violations.

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(By Plaintiff and Class Members against Defendants)

69. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

70. At all relevant times, Plaintiff and the other members of the Class were employees of Defendants covered by Labor Code Section 1194, and the applicable IWC Wage Orders, including Wage Order 9-2001.

71. Plaintiff is informed and believes and, based thereon, alleges that Defendants regularly and systematically, as a policy and practice, miscalculated the overtime rate of pay by failing to properly include Incentive Pay paid to Plaintiff and members of the Class, which is not statutorily excludable when calculating an employee's regular rate of pay. Rather, Plaintiff and members of the Class were only paid one and one half times their base rate, which was not equal to the regular rate, as Defendants failed to include the Incentive Pay earned during the corresponding periods that were required to be included in the regular rate, but were not. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate class members for all wages earned and all hours worked.

72. Defendants also failed to pay Plaintiff and members of the Class all overtime on shifts of 8 hours or more during which Plaintiff and other members of the Class were required to work during their meal periods.

73. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Class have suffered damages in an amount, subject to proof, to the extent they were not paid all overtime wages for all hours actually worked.

74. Pursuant to Labor Code Sections 1194, as a result of the unlawful acts of Defendants, Plaintiff and other members of the Class are entitled to recover the full amount of

unpaid overtime wages in amounts to be determined at trial, prejudgment interest, reasonable attorney's fees and costs of suit.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES

(By Plaintiff and Class Members against Defendants)

75. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

76. At all relevant times, Plaintiff and the other members of the Class were employees of Defendants covered by Labor Code Section 1197 and Wage Order 9-2001.

77. Pursuant to Labor Code Section 1197 and Wage Order 9-2001, Plaintiff and the other members of the Class were entitled to receive minimum wages for all hours worked.

78. On shifts of less than 8 hours when Plaintiff and other members of the class were required to work through their meal periods, Defendants failed to pay Plaintiff and other members of the Class minimum wages for all hours worked in violation of Labor Code Section 1197 and Wage Order 9-2001. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of requiring putative class members to perform various duties off-the-clock without compensating them for all their hours actually worked.

79. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours actually worked.

80. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiff and other members of the Class are entitled to recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, reasonable attorney's fees and costs of suit.

<u>SIXTH CAUSE OF ACTION</u>

FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT

(By Plaintiff and Members of the Waiting Time Penalty Subclass against Defendants)

81. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

82. Plaintiff and the other members of the Waiting Time Penalty Subclass were employees of Defendants covered by Labor Code Sections 201 or 202 whose employment with Defendants ended during the relevant class period.

83. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members of the Waiting Time Penalty Subclass were entitled upon cessation of employment with Defendants to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

84. As alleged above, Defendants failed to pay Plaintiff and other members of the Waiting Time Penalty Subclass all wages earned and unpaid prior to termination, including all minimum, overtime and premium wages owed at the time of the cessation of the employee-employer relationship in accordance with Labor Code Section 201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of not paying terminated employees all their final wages, including sick pay wages and break premium wages, earned before termination due under Labor Code Section 201 or 202.

85. Defendants' failure to pay Plaintiff and members of the Waiting Time Penalty Subclass all wages earned prior to termination in accordance with Labor Code Sections 201 or 202 was willful. Defendants had the ability to pay all wages earned by employees prior to

termination in accordance with Labor Code Sections 201 or 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code Sections 201 or 202.

86. Pursuant to Labor Code Section 201 or 202, Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to all wages earned prior to termination that Defendants failed to pay them.

87. Pursuant to Labor Code Section 203, Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon termination until paid, up to a maximum of 30 days.

88. As a result of Defendants' conduct, Plaintiff and other members of the Waiting Time Penalty Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to termination.

89. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Penalty Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code Section 203.

90. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Waiting Time Penalty Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid continuation wages.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(By Plaintiff and Class Members against Defendants)

91. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

92. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence

of the discharge of his or her duties."

93. As alleged above, Defendants required their delivery drivers, including Plaintiff, to use their personal cell phones to perform their work for Dawson at the employee's own expense, including loading certain apps on their personal cell phones to to participate in the training and to connect to Defendants' Human Resources applications.

94. Plaintiff and the other members of the Class are entitled to reimbursement for these necessary expenditures, plus interest under Labor Code § 2802.

95. As a result of Defendants' violations of Labor Code § 2802, Defendants are also liable for attorneys' fees and costs under Labor Code § 2802(c).

96. Plaintiff, on behalf of himself and the other members of the Class, requests relief as described below.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(By Plaintiff and Class Members against Defendants)

97. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

98. Defendants are "persons" as defined under Business and Professions Code § 17021.

99. Plaintiff alleges that Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof. Code § 17200, et seq., by violating the laws alleged to have been violated in this Complaint and which allegations are incorporated herein by reference as though set forth herein, which allegations include, but are not limited to:

a. Failing to pay Plaintiff and Class Members all overtime wages due in violation of state law;

b. Failing to pay Plaintiff and Class Members all minimum wages due in violation of state law

c. Failing to provide meal and rest periods to Plaintiff and the Class consistent with California law;

d. Failing to properly calculate the regular rate of compensation for the payment of meal and rest period premiums to Plaintiff and the Class;

e. Failing to pay final wages upon cessation of employment consistent with California law;

f. Failing to reimburse necessary business expenses to Plaintiff and the Class;

100. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other members of the Class have suffered injury in fact and lost money or property. Plaintiff and members of the Class have been deprived of their rights to minimum and overtime wages for all hours worked; meal periods, rest periods, additional pay for missed meal periods, additional pay for missed rest periods; timely payment of all earned wages each pay period; and/or timely payment of all earned wages due upon termination of employment.

101. Pursuant to Business and Professions Code Section 17203, Plaintiff and other class members are entitled to restitution of all wages and other monies owed and belonging to them, including interest thereon, that Defendants wrongfully withheld from them and retained for itself by means of its unlawful and unfair business practices.

102. Plaintiff and class members are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all others similarly aggrieved employees, prays for relief and judgment against Defendants as follows:

CLASS CERTIFICATION:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be certified as the representative of the Classes;
3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION:

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION:

1. Damages for unpaid additional pay owed for late and missed meal periods;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

1. Damages for unpaid additional pay owed for rest period violations.
2. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION:

1. Damages for unpaid overtime wages;
2. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Damages for unpaid minimum wages;
2. Prejudgment interest;
3. Liquidated damages;

ON THE SIXTH CAUSE OF ACTION:

1. Damages for unpaid wages earned prior to termination of employment;
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

ON THE SEVENTH CAUSE OF ACTION:

1. Damages for unreimbursed business expenses;
2. Prejudgment interest;

ON THE EIGHTH CAUSE OF ACTION:

1. Restitution of all unpaid wages and other monies owed and belonging to Class members that Defendants unlawfully withheld from them and retained for itself;

2. Prejudgment interest;

ON ALL CAUSES OF ACTION:

1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;

2. Reasonable attorney's fees;

3. Costs of suit; and

4. Such other relief as the Court deems just and proper.

Dated: February 3, 2022

MOSS BOLLINGER, LLP

By: ______________________

Jeremy F. Bollinger
Attorneys for Plaintiff GEOFFREY WILLIAMS

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the Classes on all claims so triable.

Dated: February 3, 2022

MOSS BOLLINGER, LLP

By: ______________________

Jeremy F. Bollinger
Attorneys for Plaintiff GEOFFREY WILLIAMS

Exhibit 1

to

First Amended Complaint

Williams v. Dawson Delivery LLC

Moss Bollinger LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 818.963.5954
jeremy@mossbollinger.com

July 21, 2021

VIA PAGA ONLINE FILING

Secretary Julie Su
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dawson Delivery LLC
c/o David Dawson, Agent for Service of Process
5864 Spring Street
Buena Park, CA 90621

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer: Dawson Delivery LLC

Employee: Geoffrey Williams, on behalf of himself and on behalf of all current and former employees of Dawson Delivery LLC who were employed as a delivery driver

Dear Secretary Su:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Geoffrey Williams ("Mr. Williams"), on behalf of himself and all other similarly situated persons who are or were employed as a delivery driver by Dawson Delivery LLC ("Dawson" or "Defendant"), alleges that Dawson violated the California Labor Code throughout Mr. Williams's employment and within the one year prior to the mailing of this letter.

General Facts

During the relevant one year period before the date Mr. Williams submitted this letter to the Labor & Workforce Development Agency ("LWDA"), Mr. Williams worked for Dawson as a delivery driver performing Amazon deliveries in Los Angeles County. Defendant is a delivery service provider for Amazon. Defendant employed Mr. Williams as a delivery driver from approximately August 2020 through December 2020. During his employment by Defendant, Mr. Williams and similarly employed individuals were regularly subjected to the following violations of California law for which they are entitled to PAGA penalties.

Failure to Pay Minimum and Overtime Wages

At all relevant times, Defendant employed Mr. Williams and other similarly employed individuals subject to Labor Code Sections 510, 1194, 1197 and Industrial Welfare Commission ("IWC") Wage Order 9-2001. Defendant failed to pay all wages for all hours worked in violation of Labor Code Sections 510, 1194, 1197 and Sections 3 and 4 of Wage Order 9-2001.

1) Failure to Include Incentive Pay in Calculation of Regular Rate of Pay

During the one year prior to the date of this letter, Mr. Williams and other similarly situated hourly employees regularly earned overtime pay for working more than 8 hours in a day or more than 40 hours in a week. In addition, Mr. Williams and other similarly situated employees received various forms of non-discretionary incentive pay, such as (1) incentive bonuses (like the $500 Step Van bonus paid in two $250 installments contingent upon the employee remaining with the company for set periods of time and $100 monthly bonuses for perfect attendance called a FICO bonus) and shift differentials, each of which were indicated on the employee's wage statement, that are not excludable under California law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").

Despite Defendant's payment of Incentive Pay to Mr. Williams and other similarly situated hourly employees, Defendant failed to correctly factor all forms of Incentive Pay when calculating Mr. Williams's regular rate of pay for the payment of overtime and double time wages, thereby causing Mr. Williams to be underpaid all of his required wages in periods during which Mr. Williams earned Incentive Pay and overtime or double time.

As Defendant failed to pay all overtime wages properly in those pay periods in which Mr. Williams and other similarly situated employed individuals earned Incentive Pay, Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

2) Failure to Pay Minimum and Overtime Wages for Working Through Meal Periods

As discussed below, Mr. Williams and other similarly employed individuals are/were required to work through mandated meal periods. However, because that work was performed off-the-clock, Mr. Williams and other similarly employed individuals are/were not paid for that work time. However, as explained below, Defendant knew the work was being performed. On the rare occasion that Mr. Williams or another delivery driver worked a shift less than 8 hours, Defendant owes the employee for the unpaid work time at minimum wage. On shifts of 8 or more hours or in weeks in which Mr. Williams or the other similarly situated delivery drivers worked 40 or more hours, Defendant owes them for their unpaid work at the employee's overtime rate.

As Defendant failed to pay all minimum and overtime wages properly, Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

Meal and Rest Period Violations

1) Failure to Provide Compliant Meal Periods

During Mr. Williams's employment, Defendant regularly failed to provide, authorize, and/or permit to Mr. Williams and other similarly employed individuals all uninterrupted 30-minute meal periods to which they were entitled under California law.

Under Labor Code sections 226.7 and 512, and Wage Order 9-2001(11), Mr. Williams and other similarly situated employees were entitled to a meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday and a second meal period of at least 30 minutes for each workday they worked more than 10 hours. Additionally, they were entitled to one additional hour of pay for every day that a timely meal period was not provided.

Mr. Williams regularly worked shifts lasting longer than 8 hours and often more than 10 hours, entitling him to at least one meal period and often two. Because of the workload and the press of time to deliver packages, Mr. Williams and others had to work through parts or all of their meal periods. After Mr. Williams began working for Defendant, he clocked back in less than 30 minutes after beginning a meal period when the press of work did not permit him to take a full meal period. As a result, Defendant was required to pay Mr. Williams the additional hour of premium pay and did so at first. However, because he and other drivers incurred multiple meal violations under these same conditions, Defendant changed the clocking system so that the drivers could not clock back in less than 31 minutes after clocking out for a meal period, even if they were unable to take a full 30 minutes for their meal period. Because the Amazon devices provided to Mr. Williams and the other drivers would not allow them to scan packages while they were clocked out for a meal period, during the holiday season when it was particularly busy

Dawson's owner instructed Mr. Williams and the other drivers to use the time that they were clocked out for meal periods as driving time as there was often much traffic getting to their delivery destinations. Thus, Defendant knew that drivers were not taking these breaks because the owner had instructed the drivers to work through them and Defendant was able to track its drivers progress through GPS and knew that the drivers were still driving during these periods. Despite this knowledge, Defendant did not pay meal period premium wages, as required by California Labor Code sections 512, 226.7 and Section 11 of Wage Order 9-2001.

California law also requires that employers must authorize and permit non-exempt employees to take a paid rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. *Id.* at 1029.

Similar to meal periods, Mr. Williams and other similarly situated delivery drivers were not able to take their mandated rest periods due to the press of work and the time within which they were required to complete their delivery routes. As noted above, Defendant was able to track its drivers progress through GPS and had constructive knowledge that its drivers did not take rest periods. Despite this knowledge, Defendant did not pay rest period premium wages, as required by California Labor Code sections 512, 226.7 and Section 12 of Wage Order 9-2001

As Defendant failed to provide all meal and rest periods required by California law and did not pay the required break premiums when such violations occurred, Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

2) <u>Failure to Factor in All Forms of Pay When Calculating the Regular Rate for Payment of Meal and Rest Period Premiums</u>.

On the two occasions when Defendant actually paid Mr. Williams premiums for meal period violations, Defendant failed to pay Mr. Williams the additional one hour of pay at the correct regular rate of pay.

Labor Code section 226.7 and Section 11(D) of the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 9-2001, require Defendant to pay employees, when their rights to meal breaks and rest breaks are violated, "one additional hour of pay at the employee's regular rate of compensation" for each workday that the meal or rest period is not provided. Defendant's policy and practice of paying missed break premiums has been to pay the break premium at the employee's base hourly rate without factoring in other wages paid for the labor performed, including in periods when the employees earned Incentive Pay required to be factored into an employee's regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (Cal. July 15, 2021) --- P.3d ---- (holding that when employers pay one-hour meal and rest period premiums to employees who report that they were not provided compliant meal or rest periods, the pay is not at the employee's normal "base" hourly rate but must be at the same FLSA "regular rate" that is used to calculate overtime premiums).

As a result of Defendant's failure to factor non-discretionary pay into Mr. Williams's and other aggrieved employees' regular rate of compensation for the payment of meal and rest break premiums, Defendant is liable for civil penalties in the amount of one hundred dollars ($100) per aggrieved employee per pay period for the first violation and two hundred dollars ($200) per aggrieved employee per pay period for each subsequent violation.

Inaccurate Wage Statements

Mr. Williams and similarly-situated employees of Defendant received wage statements that did not list all wages earned, including the minimum, overtime and premium wages discussed above. As the above infractions explain, Mr. Williams and similarly employed persons were entitled to minimum, overtime and premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code section 226.

As Defendant failed to provide accurate wage statements reflecting the correct minimum, overtime and premium wages of aggrieved employees, when such violations occurred, Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

Unpaid Final Wages

Mr. Williams (and others) have ceased their employment with Defendant. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees (including Mr. Williams) did not receive all of their minimum and overtime wages due to Defendant's failure to include Incentive Pay in the calculation of their regular rate of pay and due to Defendant's making Mr. Williams and others work through their mandated meal periods while off-the-clock. Mr. Williams and those similarly situated, upon termination, did not receive all owed wages on the date of termination. Therefore, Defendant has violated and continues to violate Labor Code sections 201 and 202, because even if it pays employees timely, it has not paid the aforementioned wages and wage penalties. Likewise, Defendant has violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201 and 202.

<u>Violations of Labor Code § 204</u>

California Labor Code section 204, subdivision (a), states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employers. Defendant did not correctly pay Mr. Williams and other aggrieved employees their minimum, overtime and premium wages (as alleged above) in conformity with Section 204. Defendant willfully failed to timely pay Mr. Williams and other aggrieved employees all wages due for work performed and this failure continued through the time in which they were employed by Defendant. As a result, Defendant violated California Labor Code section 204.

As Defendant failed to pay Mr. Williams and other aggrieved employees as required by California Labor Code § 204, when such violations occurred Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

<u>Violations of Labor Code § 1174(d), 1174.5 and IWC Wage Order 9-2001(7)</u>

Labor Code section 1174 states, "[e]very person employing labor in this state shall…(d) [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, …, employees employed at the respective plants or establishments." The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 9-2001(7).

Defendant failed to keep accurate information with respect to Mr. Williams's and other aggrieved employees payroll, including the applicable rates of pay and total wages earned (such as non-discretionary renumeration when determining the regular rate of compensation for the payment of overtime and break premiums) each payroll period as required by the "Records" section of the applicable IWC Wage Order. Therefore, Defendant knowingly and intentionally failed to keep and maintain accurate records as required by Labor Code section 1174.

Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Defendant's failure to maintain accurate and complete records constitutes an injury as defined under Labor Code section 1174. Therefore, Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor Code sections 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and 2699 per violation.

As Defendant failed to maintain accurate records of Mr. Williams and other aggrieved employees as required by California Labor Code § 1174, when such violations occurred, Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

Failure to Reimburse

As discussed above, Defendant requires its delivery drivers, including Mr. Williams, to use their personal cell phones to perform their work for Dawson at the employee's own expense. During training, drivers are required to load the Amazon Chime app on their personal phones to participate in the training. While Amazon provides a phone to connect to its services, Defendant requires its delivery drivers, including Mr. Williams, to load additional apps, such as Paycom and others, on their personal phones in order to connect to Defendant's Human Resources applications, including clocking in and out to begin and end their shifts and meal periods. Defendant paid Mr. Williams based on the time clock entries submitted through the app Dawson ordered Mr. Williams to load onto Mr. Williams's personal phone. During the period that Mr. Williams worked for Defendant, Mr. Williams's cell phone bill was approximately $122 per month for the use of his cell phone. Defendant did not reimburse Mr. Williams for any portion of Mr. Williams's monthly cell phone charges.

Pursuant to California Labor Code Section 2802:

> "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"

Wage Order 9, Section 9(B) also states that an employer shall provide necessary tools or equipment, except in cases where the employee is paid two times the minimum wage.

At the time he was laid off, Mr. Williams was paid $16 per hour. On information and belief, the other similarly situated employees of Defendant were also paid less than two times the minimum wage. As such, Defendant is required to provide all necessary tools and equipment. Moreover, pursuant to Labor Code section 2802, Defendant is required to reimburse all necessary expenditures. Here, Defendant is required to indemnify Mr. Williams and all similarly situated employees for use of their personal cell phones used in direct consequence of the discharge of their duties. Therefore, Defendant has violated Labor Code section 2802, by requiring its employees to expend money on the purchase and use of personal cell phones and failing to reimburse the expense.

As Defendant failed to reimburse Mr. Williams and other similarly employed individuals for business expenses they incurred in violation of Section 2802, Defendant is liable for penalties of $100 per pay period for the first violation within the statutory period, and $200 per pay period for each additional violation.

Civil Penalties

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Mr. Williams and all other similarly employed persons who worked as delivery drivers for Defendant in California are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendant violated and continues to violate the obligation to pay all minimum and overtime wages, to make available legally compliant meal and rest breaks, to pay break premiums at the correct regular rate of pay, to issue legally compliant wage statements, to pay all wages timely, to maintain accurate records, to pay all final wages, and to reimburse all necessary expenditures. Mr. Williams requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Mr. Williams requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,

Jeremy F. Bollinger
MOSS BOLLINGER, LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 15300 Ventura Blvd, Suite 207, Sherman Oaks, CA 91403. On March 2 2022, I served the foregoing document(s) described as:

FIRST AMENDED COMPLAINT

on the interested party(ies) below, using the following means:

Tim Johnson (Tim.Johnson@ogletree.com)
Nik Djordjevski (nikolas.djordjevski@ogletree.com)
Yousaf M. Jafri (yousaf.jafri@ogletree.com)
Alicia Martinez (alicia.martinez@ogletree.com)
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
Telephone: 858-652-3112 | Fax: 858-652-3101
Attorneys for Defendant Dawson Delivery LLC

☐ BY UNITED STATES MAIL. I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☒ BY ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on March 2, 2022, at Los Angeles, California.

Lea Garbe
[Print Name of Person Executing Proof]

Lea Garbe
[Signature]