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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

22CV393221

RAUL ESPINOZA and EUSEBIO
MALDONADO, Individually, and On Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

DARKO PRECISION, INC., a California
Corporation; and DOES 1 through 100,
Inclusive,

Defendants.

Case No.

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure To Pay For All Hours Worked [Lab. Code §§ 1194, 1197, 1198, And 1199];
2. Failure To Pay Overtime Compensation [Lab. Code § 510];
3. Failure To Provide Meal Periods [Lab. Code §§ 226.7 and 512];
4. Failure To Authorize and Permit Rest Periods [Lab. Code § 226.7];
5. Failure To Furnish Complete and Accurate Wage Statements [Lab. Code § 226(a)];
6. Failure To Timely Pay Wages Upon Termination Or Resignation [Lab. Code §§ 201, 202, And 203];
7. Unfair Business Practices [Bus. & Prof. Code §§ 17200, *Et Seq.*]; and
8. Violation of PAGA [Lab. Code §§ 2698 *Et Seq.*].

DEMAND FOR JURY TRIAL

1 Plaintiffs RAUL ESPINOZA and EUSEBIO MALDONADO (“Plaintiffs”), individuals, on
2 behalf of themselves and all others similarly situated and aggrieved employees, hereby alleges the
3 following facts and claims against DARKO PRECISION, INC. (“DARKO”) and DOES 1 through
4 100, inclusive (“Defendants”), and respectfully requests a trial by jury of all issues and causes of
5 action so triable:

6 **I. INTRODUCTION**

7 1. This class action and representative action complaint challenges Defendants’ past
8 and ongoing unlawful employment practices and policies on behalf of Plaintiffs and similarly
9 situated current and former non-exempt employees of Defendants in California, whose rights
10 Defendants violated and continue to violate under California laws. Plaintiffs have also submitted
11 notice to the California Labor and Workforce Development Agency (“LWDA”) on December 3,
12 2021, identifying Defendants’ alleged violations of California’s Labor Code together with facts
13 and theories supporting the alleged violation, pursuant to Labor Code 2699.3; the LWDA did not
14 respond with advisement of its intent to investigate the alleged violations within the requisite time,
15 Plaintiffs thus hereby amend this Complaint to also allege a representative action claim pursuant
16 to the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) on behalf
17 of the LWDA for Defendants’ aggrieved employees.

18 2. Specifically, with regard to Plaintiffs and similarly situated current and former non-
19 exempt employees, Defendants have uniformly and systematically:

- 20 a. Failed to pay all wages owed in violation of Labor Code sections 1194 and
21 1197 and Section 4 of the IWC Wage Order(s);
22 b. Failed and continue to fail to pay all overtime compensation owed for time
23 worked in excess of either eight hours in one work day or forty hours in one
24 work week in violation of Labor Code section 510 and Section 3 of the
25 applicable IWC Wage Order(s);
26 c. Failed and continue to fail to provide meal periods in violation of Labor Code
27 sections 226.7 and 512 and Section 11 of the IWC Wage Order(s);
28 d. Failed and continue to fail to authorize and permit all paid rest periods in

violation of Labor Code section 226.7 and Section 12 of the IWC Wage Order(s);

- e. Failed and continue to fail to provide paid sick time payment for sick leave in violation of Labor Code sections 246, 248.2, 248.5;
- f. Failed and continue to fail to furnish complete and accurate itemized wage statements in violation of Labor Code section 226, subdivision (a) and Section 7 of the IWC Wage Order(s);
- g. With regard to former non-exempt employees only, willfully failed and continue to fail to pay, without abatement or reduction, all final wages owed in accordance with Labor Code sections 201 and 202, in violation of Labor Code section 203; and
- h. Committed and continue to commit unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*

3. The acts complained of herein occurred, occur, and will occur, at least in part, within the time period from four (4) years preceding the filing of the original Complaint herein, up to and through the time of trial for this matter, although this should not automatically be considered the statute of limitations for any cause of action herein.

4. Plaintiffs also bring this representative action against Defendants for civil penalties pursuant to PAGA, Labor Code section 2698, *et seq.*, resulting from Defendants' wage and hour violations under the California Labor Code and the IWC Wage Orders. PAGA permits an aggrieved employee to bring a lawsuit on behalf of herself and other current and former non-exempt employees ("aggrieved employees") to recover civil penalties for an employer's violation of the California Labor Code.

5. As a result of the foregoing, Plaintiffs seek monetary damages, civil penalties, injunctive relief, restitution, reasonable attorneys' fees, costs, and interest.

II. PARTIES

6. Plaintiff RAUL ESPINOZA is an individual over the age of eighteen (18), and is now and/or at all times mentioned in this Complaint a California citizen residing in Santa Clara

1 County, California. From approximately April 19, 2021 to September 14, 2021, Plaintiff worked for
2 Defendants as an hourly paid, non-exempt welder at Defendants' facilities located at 470 Gianni
3 Street in Santa Clara. At all times herein, Plaintiff was and is an "employee" as that term is used in
4 the Labor Code and IWC Wage Orders regulating wages, hours, and working conditions.

5 7. Plaintiff EUSEBIO MALDONADO is an individual over the age of eighteen (18),
6 and is now and/or at all times mentioned in this Complaint a California citizen residing in Santa Clara
7 County, California. From approximately March 10, 2021 to September 14, 2021, Plaintiff worked for
8 Defendants as an hourly paid, non-exempt welder at Defendants' facilities located at 470 Gianni
9 Street in Santa Clara. At all times herein, Plaintiff was and is an "employee" as that term is used in
10 the Labor Code and IWC Wage Orders regulating wages, hours, and working conditions.

11 8. Plaintiffs seek the recovery alleged herein from Defendants because, at all times
12 while working for Defendants in their capacity as non-exempt employees, Defendants:

- 13 a. Failed to pay all wages owed in violation of Labor Code sections 1194 and
14 1197 and Section 4 of the IWC Wage Order(s);
- 15 b. Failed to pay all overtime compensation owed for time worked in excess of
16 either eight hours in one work day or forty hours in one work week in violation
17 of Labor Code section 510 and Section 3 of the IWC Wage Order(s);
- 18 c. Failed to provide meal periods in violation of Labor Code sections 226.7 and
19 512 and Section 11 of the IWC Wage Order(s);
- 20 d. Failed to authorize and permit all paid rest periods in violation of Labor Code
21 sections 226.7 and Section 12 of the IWC Wage Order(s);
- 22 e. Failed to provide paid sick time payment for sick leave in violation of Labor
23 Code sections 246, 248.2, 248.5;
- 24 f. Failed to furnish complete and accurate itemized wage statements in violation
25 of Labor Code section 226, subdivision (a), and Section 7 of the IWC Wage
26 Order(s);
- 27 g. Violated Labor Code section 203 by willfully failing to pay, without abatement
28 or reduction, all final wages owed in accordance with Labor Code sections 201

and 202; and

h. Conducted unfair business practices in violation of Business & Professions Code section 17200, *et seq.*

9. Defendant DARKO PRECISION, INC. (“DARKO”) is a California corporation headquartered in Santa Clara, California, and is registered with the California Secretary of State to do business within California. DARKO, at all relevant times herein, has conducted business within California, and is the owner and operator of an industry, business, and/or facility licensed to do business which designs, engineers and manufactures high-tech products for various industries such as medical and aerospace in the State of California. On information and belief, DARKO’S principle place of business is, as listed on the California Secretary of State’s website, 470 Gianni Street, Santa Clara, California 95054. Defendant DARKO is an “employer” as that term is used in the Labor Code and IWC Wage Orders.

10. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on information and belief now, and/or at all times mentioned in this Complaint, licensed to do business and/or are actually doing business in California, including Santa Clara County, and each of the fictitiously named Defendants is responsible for the conduct alleged in this Complaint. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 100, inclusive, and for that reason, DOES 1 through 100, inclusive, are sued under such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

11. Defendants, and each of them, are now, and/or at all times mentioned in this Complaint, in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

12. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

13. Defendants, and each of them, are now, and/or at all times mentioned herein, were the agents, servants, and/or employees of some or all other Defendants, or vice-versa, and in doing

1 the things alleged in this Complaint, Defendants are now, and/or at all times mentioned in this
2 Complaint, were acting within the course and scope of that agency, servitude, and/or employment.

3 14. Defendants, and each of them, are now, and/or at all times mentioned in this
4 Complaint, were members of and/or engaged in a joint venture, partnership, and common
5 enterprise, and were acting within the course and scope of, and in pursuance of said joint venture,
6 partnership and common enterprise.

7 15. Defendants, and each of them, at all times mentioned in this Complaint, concurred
8 and contributed to the various acts and omissions of each and every one of the other Defendants in
9 proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

10 16. Defendants, and each of them, at all times mentioned in this Complaint, approved
11 of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions alleged in
12 this Complaint.

13 17. Defendants, and each of them, at all times mentioned in this Complaint, aided and
14 abetted the acts and omissions of each and every one of the other Defendants, thereby proximately
15 causing the damages alleged in this Complaint.

16 **III. JURISDICTION AND VENUE**

17 18. The California Superior Court has jurisdiction in this matter pursuant to California
18 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
19 causes except those given by statute to other trial courts.” The statutes under which this action is
20 brought do not specify any other specific basis for jurisdiction.

21 19. The California Superior Court also has jurisdiction in this matter because both the
22 individual and aggregate monetary damages and restitution sought herein exceed the minimal
23 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

24 20. The California Superior Court also has jurisdiction over Defendants because they are
25 corporations, and/or entities, and/or persons with sufficient minimum contacts in California, are
26 citizens of California, or otherwise intentionally availed themselves of the California market so as to
27 render the exercise of jurisdiction over them by the California courts consistent with traditional
28 notions of fair play and substantial justice.

21. Venue is proper in the Superior Court of California, County of Santa Clara, pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5, in that liability arose there because at least some of the acts and omissions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, exists, and/or has an agent therein.

IV. GENERAL ALLEGATIONS

22. Plaintiffs, the class members, and aggrieved employees are current and former non-exempt, hourly paid employees of Defendants and thus, have performed work for Defendants, and/or on Defendants' behalf, in the State of California.

23. Plaintiffs allege that Defendants adopted and maintained uniform policies, practices, and procedures governing the working conditions of, and payment of wages to, Plaintiffs, the class members, and aggrieved employees. As alleged below, Defendants' uniform policies, practices, and procedures violated California's labor laws and constituted unfair, fraudulent, or illegal business practices under Business & Professions Code section 17200 *et seq.*

24. During the relevant statutory period, Defendants failed to pay its non-exempt hourly employees all wages including all overtime compensation owed for time worked in excess of either eight hours in one work day or forty hours in one work week due to its illegal time rounding policy.

25. During the relevant statutory period, Defendants failed to provide Plaintiffs and their non-exempt hourly employees with a meal period within five (5) hours of commencing work and a second meal period within ten (10) hours of commencing work, as required by California law and failed to pay meal period premiums for the incompassant meal periods. For example, Defendants automatically deduct 30 minutes from Plaintiffs and other hourly non-exempt employees' time worked when meal periods are not recorded irrespective of whether the meal period is taken or not and if it is either taken late or is actually less than 30 minutes. Moreover, Plaintiffs and other hourly non-exempt employees worked shifts of over ten hours without being provided a second meal period or paid a meal period premium for the missed meal periods. In addition, Defendants have a mandatory hand washing requirement which should extend hourly

1 non-exempt employees' meal periods or Defendants have to provide employees supplemental time
2 for it. It does not appear Defendants do either.

3 26. During the relevant statutory period, Defendants failed to relinquish control over
4 Plaintiffs and their non-exempt employees to provide them with legally-compliant ten (10) minute
5 off-duty rest periods for every four (4) hours of work or major fraction thereof, as required by
6 California law, and failed to pay rest period premiums for the in compliant rest periods. Plaintiffs
7 and other hourly non-exempt employees typically worked and work eight hours per day, and
8 Defendants' policies and practices routinely prevented and prevent them from taking the off-duty
9 ten minute rest periods they are entitled to by making non-exempt employees either miss their rest
10 periods altogether, work through their rest periods, take untimely rest periods, or take shortened
11 rest periods.

12 27. During the relevant statutory period, Plaintiffs and non-exempt employees accrued
13 sick time throughout their employment, but Defendants failed to properly compensate them for all
14 vested sick time earned at the correct accrual rates in accordance with their employment contracts
15 and/or Darko's policies when they sought sick leave, including COVID-19 supplemental sick pay.
16 For example, on May 24, 2021, Plaintiff Maldonado took a sick day but was not paid for that day
17 under sick pay even though he had sick time accrued.

18 28. During the relevant statutory period, Defendants furnished wage statements to
19 provide Plaintiffs and other non-exempt hourly employees that were in compliant by reason that
20 they failed to show the correct total hours. For example, Plaintiffs' wage statements have hours for
21 holiday line items, leaving it unclear as to whether the holiday hours are in addition to or inclusive
22 of the regular hours accumulated. Additionally, as a result of the alleged violations discussed
23 above, Defendants furnished wage statements that failed to correctly show, among other items: (1)
24 gross wages earned, (2) all deductions, and (3) net wages earned.

25 29. During the relevant statutory period, Defendants failed to pay its former non-
26 exempt hourly employees all wages owed at the time of separation of employment. For example,
27 Plaintiffs' employment concluded on or around September 14, 2021 and they have yet to receive
28 all wage owed as a result of the violations described above.

30. Plaintiffs are informed and believe, and based thereon allege, that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, Defendants DARKO PRECISION, INC. and/or DOES 1-100 acting as agents, and/or employees, and/or under the direction and control of Defendants, and that said acts and failure to act were within the course and scope of said agency, employment, and/or direction and control, and were committed willfully.

31. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs and the class members have suffered and continue to suffer from loss of earnings and penalties in amounts as yet to be ascertained, but subject to proof at trial in amounts in excess of the minimum jurisdiction of this Court.

V. CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this class action complaint against Defendants, individually, and on behalf of all others similarly situated pursuant to Code of Civil Procedure section 382. This action may be brought and properly maintained as a class action because as set forth herein, Plaintiffs satisfy the numerosity, adequacy, typicality, and commonality pre-requisites for suing as representative parties pursuant to Code of Civil Procedure section 382.

33. Description of the Classes: The classes Plaintiffs will seek to certify are currently composed of and defined as follows:

- a. All persons employed by Defendants as hourly non-exempt employees in the state of California who, at any time from January 11, 2018 through the conclusion of this action, were subject to Defendants' policies and practices regarding the rounding of employee time records (hereinafter, the "Rounding Class");
- b. All persons employed by Defendants as hourly non-exempt employees in the state of California who, at any time from January 11, 2018 through the conclusion of this action, were subject to Defendants' policies and practices regarding meal periods (hereinafter, the "Meal Period Class");
- c. All persons employed by Defendants as hourly non-exempt employees in the

state of California who, at any time from January 11, 2018 through the conclusion of this action, were subject to Defendants' policies and practices regarding rest periods (hereinafter, the "Rest Period Class");

d. All persons employed by Defendants as hourly non-exempt employees in the state of California, who at any time from January 11, 2018 through the conclusion of this action, were subject to Defendants' policies and practices regarding wage statements (hereinafter, the "Wage Statement Class");

e. All persons employed by Defendants as hourly non-exempt employees in the state of California who, at any time from January 11, 2019 through the conclusion of this action, were subject to Defendants' policies and practices regarding final payment of wages (hereinafter, the "Final Pay Class");

34. Each of the aforementioned classes are referred to collectively herein as "the Classes."

35. As a consequence of obtaining information and documents through discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Class(es) and/or add additional classes and/or subclasses. Plaintiffs will formally define and designate a class definition(s) at such time when Plaintiff seeks to certify the Classes alleged herein.

36. Numerosity: The potential number of members of each Class alleged herein is so numerous that joinder of all members is unfeasible and impractical. The exact quantity of members in each Class and the identity of all members is readily ascertainable via inspection of Defendant's records.

37. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification, as follows:

a. Typicality: The claims of Plaintiffs are typical of the claims of all members of each Class they seek to represent because all members of each Class sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of each Class were

caused by Defendants' wrongful conduct in violation of law, as alleged herein.

- b. Adequacy: Plaintiffs are adequate representatives of each Class they seek to represent and will fairly protect the interests of the members of each Class. Plaintiffs have no interest antagonistic to each Class and will vigorously pursue favorable resolution of this suit on behalf of himself and members of each Class via attorneys who are competent, skilled, and experienced in litigating class actions.
- c. Predominant Common Questions of Law and/or Fact: There are common questions of law and/or fact as to each Class that predominate over questions affecting only individual members of each Class, including, without limitation:
- i) Whether Defendants failed and continue to fail to pay all wages owed due in violation of Labor Code sections 1194 and 1197 and the IWC Wage Order(s);
 - ii) Whether Defendants failed and continue to fail to pay all overtime compensation in violation of Labor Code section 510 and the IWC Wage Order(s);
 - iii) Whether Defendants failed and continue to fail to provide all meal periods in violation of Labor Code sections 226.7 and 512 and the IWC Wage Order(s);
 - iv) Whether Defendants failed and continue to fail to authorize and permit all paid rest periods in violation of Labor Code sections 226.7 and the IWC Wage Order(s);
 - v) Whether Defendants failed and continue to fail to provide complete and accurate itemized wage statements in violation of Labor Code section 226, subdivision (a);
 - vi) With regard to Defendants' former non-exempt employees, whether Defendants have violated Labor Code section 203 by willfully failing to pay, without abatement or reduction, all final

wages owed in accordance with Labor Code sections 201, 201.3, 201.5, 202, and 205.5;

vii) Whether Defendants' conduct constitutes unfair competition within the meaning of Business & Professions Code section 17200, *et seq.*;

viii) Whether members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;

ix) Whether members of the Classes are entitled to injunctive relief;

x) Whether members of the Classes are entitled to restitution; and

xi) Whether Defendants are liable for attorneys' fees and costs.

38. Superiority: The nature of this action and the nature of the laws available to Plaintiffs and members of the Classes is such that a class action is not only superior to other methods, but also particularly efficient and appropriate to afford relief to Plaintiffs and members of the Classes for the wrongs alleged herein, as follows:

- a. By allowing a method whereby claims of many individuals can be resolved at the same time, the class action device eliminates the possibility of repetitious litigation, inconsistent rulings, and provides small claimants with the opportunity to redress for claims which would otherwise be too small to justify the filing of individual actions;
- b. This case involves a large corporate Defendant and a large number of individuals with many relatively small claims and common issues of law and fact;
- c. If each individual member of the Classes was required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because Defendant would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendant's vastly superior financial and legal resources;
- d. Requiring each individual member of the Classes to pursue an individual

remedy would also discourage the assertion of lawful claims by individual members of the Classes who would be disinclined to pursue an action against Defendant because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and wellbeing;

- e. Proof of a common business practice or factual pattern, of which members of the Classes experienced, is representative of the Classes herein and will establish the right of each member of the Classes to recover on the causes of action alleged herein.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(By Plaintiffs, individually, and on behalf of the Rounding Class against Defendant DARKO and DOES 1 to 100, inclusive)

39. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as fully set forth herein.

40. Labor Code section 1194, subdivision (a), states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil 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."

41. Further, pursuant to Labor Code section 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

42. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

43. Pursuant to the IWC Wage Order(s), Defendants are required to pay Plaintiffs and members of the Rounding Class for all hours worked, meaning the time during which an employee

1 is subject to the control of an employer, including all the time the employee is suffered or
2 permitted to work, whether or not required to do so.

3 44. Defendants, as a matter of established company policy and procedure, consistently
4 administered a uniform company policy and practice as to the rounding policies regarding
5 Plaintiffs and members of the Rounding Class in rounding the actual time worked and recorded at
6 the beginning of their shifts, in most instances rounding down, such that during the course of the
7 their employment, Plaintiffs and members of the Rounding Class were paid far less than they
8 would have been paid had they been paid for actual recorded time rather than “rounded” time.

9 45. Because Defendants required Plaintiffs and members of the Rounding Class to
10 remain under Defendants’ control without paying therefore, Plaintiffs and members of the
11 Rounding Class earned less than the legal minimum wage in the State of California.

12 46. Defendants’ pattern, practice, and uniform administration of corporate policy
13 regarding illegal employee compensation as described herein is unlawful and creates an
14 entitlement, pursuant to Labor Code section 218, to recovery by Plaintiffs and members of the
15 Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing,
16 calculated at the appropriate rate.

17 47. Further, Defendants’ pattern and practice in uniform administration of corporate
18 policy regarding Defendants’ failure to pay the legal minimum wage to Plaintiffs and members of
19 the Rounding Class as described herein is unlawful and creates entitlement, pursuant to Labor
20 Code section 1194(a), to recovery by Plaintiffs and members of the Rounding Class, in a civil
21 action, for the unpaid balance of the full amount of the unpaid minimum wages owed calculated as
22 the difference between the straight time compensation paid and the applicable minimum wage
23 (and/or the full amount of unpaid overtime compensation, which includes any unpaid straight time
24 and unpaid overtime premium for overtime hours worked), including interest thereon.

25 48. Pursuant to Labor Code section 1194.2, subdivision (a), which provides that in any
26 action under Labor Code section 1194, an employee shall be entitled to recover liquidated
27 damages, Plaintiffs, individually, and on behalf of members of the Rounding Class, seek recovery
28 of liquidated damages on the straight-time portion of uncompensated hours of work (not including

1 the overtime portion thereof) in an amount equal to the wages unlawfully unpaid and interest
2 thereon.

3 49. Pursuant to Labor Code section 218.6, Labor Code section 1194, subdivision (a),
4 and Civil Code section 3287, Plaintiffs, individually, and on behalf of members of the Rounding
5 Class, seek recovery of pre-judgment interest on all amounts recovered herein.

6 50. Pursuant to Labor Code section 218.5 and/or Labor Code section 1194, Plaintiffs,
7 individually, and on behalf of members of the Rounding Class, request that the Court award
8 reasonable attorneys' fees and costs incurred in this action.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME COMPENSATION**

11 **(By Plaintiffs, individually, and on behalf of the Rounding Class against Defendant DARKO
and DOES 1 to 100, inclusive)**

12 51. Plaintiffs incorporate by reference and reallege each and every one of the
13 allegations contained in the preceding and foregoing paragraphs of this Complaint as fully set
14 forth herein.

15 52. California Labor Code section 510 provides non-exempt employees, including
16 Plaintiffs and members of the Rounding Class, the right to overtime compensation at one-and-one-
17 half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a
18 week or for the first 8 hours worked on the seventh day of work, and to overtime compensation at
19 twice the regular hourly rate for hours worked in excess of 12 hours in a day or in excess of 8
20 hours in a day on the seventh day of work.

21 53. California Labor Code section 1198 and the applicable Industrial Welfare
22 Commission ("IWC") Wage Order provide that it is unlawful to employ persons, such as Plaintiffs
23 and members of the Rounding Class, without compensating them at a rate of pay either one-and-
24 one-half times or twice that person's regular rate of pay, depending on the number of hours
25 worked by the person on a daily or weekly basis.

26 54. Upon information and belief, as a matter of policy and practice across Defendants'
27 locations in California, Defendants consistently administered a uniform company policy and
28

1 practice of requiring Plaintiffs and members of the Rounding Class to work in excess of 8 hours
2 per day or 40 hours per week.

3 55. Defendants, as a matter of established company policy and procedure, consistently
4 administered a uniform company policy and practice as to the rounding policies regarding
5 Plaintiffs and members of the Rounding Class in rounding the actual time worked such that during
6 the course of the their employment, Plaintiffs and members of the Rounding Class were paid far
7 less overtime than they would have been paid had they been paid for actual recorded time rather
8 than “rounded” time.

9 56. Because Defendants required Plaintiffs and members of the Rounding Class to
10 remain under Defendants’ control without paying, Plaintiffs and members of the Rounding Class
11 earned less than the legal minimum wage in the State of California.

12 57. As a result of Defendants’ conduct alleged herein, Plaintiffs and members of the
13 Rounding Class have suffered damages and are entitled to recover the full amount of unpaid
14 wages in an amount to be proven at trial and interest thereon, applicable penalties, liquidated
15 damages, and costs of suit including attorney’s fees.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 **(By Plaintiffs, individually, and on behalf of the Meal Period Class against**
19 **Defendant DARKO and DOES 1 to 100, inclusive)**

20 58. Plaintiffs incorporate by reference and reallege each and every one of the
21 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
22 forth herein.

23 59. Labor Code section 226.7, subdivision (b), provides that “An employer shall not
24 require an employee to work during a meal or rest or recovery period mandated pursuant to an
25 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
26 Commission, the Occupational Safety and Health Standards Board, or the Division of
27 Occupational Safety and Health.”

28 60. Labor Code section 512 provides that “An employer may not employ an employee

1 for a work period of more than five hours per day without providing the employee with a meal
2 period of not less than 30 minutes, except that if the total work period per day of the employee is
3 no more than six hours, the meal period may be waived by mutual consent of both the employer
4 and employee. An employer may not employ an employee for a work period of more than 10
5 hours per day without providing the employee with a second meal period of not less than 30
6 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
7 may be waived by mutual consent of the employer and the employee only if the first meal period
8 was not waived.”

9 61. Labor Code section 516 provides that the Industrial Welfare Commission “May
10 adopt or amend working condition orders with respect to break periods, meal periods, and days of
11 rest for any workers in California consistent with the health and welfare of those workers.”

12 62. Section 11(A) of the IWC Wage Order(s) provides that “Unless the employee is
13 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
14 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
15 when the nature of the work prevents an employee from being relieved of all duty and when by
16 written agreement between the parties an on-the-job paid meal period is agreed to. The written
17 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

18 63. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to
19 provide an employee a meal period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal period is not provided.”

22 64. On one or more occasions, Plaintiffs and members of the Meal Period Class
23 worked over five (5) hours per shift and therefore were entitled to a meal period of not less than
24 thirty (30) minutes prior to exceeding five (5) hours of employment.

25 65. On one or more occasions, Plaintiffs and members of the Meal Period Class
26 worked over ten (10) hours per shift and therefore were entitled to a second meal period of not less
27 than thirty (30) minutes prior to exceeding ten (10) hours of employment.

28 66. On information and belief, Plaintiffs and members of the Meal Period Class did not

1 validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

2 67. On information and belief, Plaintiff and members of the Meal Break Class did not
3 enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

4 68. As a matter of Defendants' established company policy, Defendants automatically
5 deduct 30 minutes from Plaintiffs and other hourly non-exempt employees' time worked when
6 meal periods are not recorded irrespective of whether the meal period is taken or not and if it is
7 either taken late or is actually less than 30 minutes.

8 69. As a matter of Defendants' established company policy, Defendants failed to
9 comply with the meal period requirements established by Labor Code sections 226.7, 512, and
10 516, and Section 11 of the IWC Wage(s) by failing to provide Plaintiffs and members of the Meal
11 Period Class with a first and a second legally compliant meal period.

12 70. Section 11(B) of the IWC Wage Order(s) and Labor Code section 226.7,
13 subdivision (c), provides that "If an employer fails to provide an employee a meal or rest or
14 recovery period in accordance with a state law, including, but not limited to, an applicable statute
15 or applicable regulation, standard, or order of the Industrial Welfare Commission, the
16 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
17 Health, the employer shall pay the employee one additional hour of pay at the employee's regular
18 rate of compensation for each workday that the meal or rest or recovery period is not provided."

19 71. As a matter of Defendants' established company policy, Defendants failed to
20 comply with the requirements of Section 11(B) of the IWC Wage Order(s) and Labor Code
21 section 226.7, subdivision (c), by failing to pay Plaintiffs and members of the Meal Period Class
22 one additional hour of pay at each employee's regular rate of compensation for each workday that
23 a compliant meal period was not provided.

24 72. Therefore, Plaintiffs and members of the Meal Period Class are entitled to damages
25 in an amount equal to one (1) additional hour of pay at each employee's regular rate of
26 compensation for each work day that a compliant meal period was not provided, in a sum to be
27 proven at trial.

28 73. Pursuant to Labor Code section 218.6 and Civil Code section 3287, Plaintiffs,

1 individually, and on behalf of members of the Meal Period Class, seek recovery of pre-judgment
2 interest on all amounts recovered herein.

3 74. Pursuant to Labor Code section 218.5, Plaintiffs, individually, and on behalf of
4 members of the Meal Period Class, request that the Court award reasonable attorneys' fees and
5 costs incurred in this action.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

8 **(By Plaintiffs, individually, and on behalf of the Rest Period Class against**
9 **Defendant DARKO and DOES 1 to 100, inclusive)**

10 75. Plaintiffs incorporate by reference and reallege each and every one of the
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
12 forth herein.

13 76. Labor Code section 226.7, subdivision (b), provides that "An employer shall not
14 require an employee to work during a meal or rest or recovery period mandated pursuant to an
15 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
16 Commission, the Occupational Safety and Health Standards Board, or the Division of
17 Occupational Safety and Health."

18 77. Labor Code section 516 provides that the Industrial Welfare Commission "May
19 adopt or amend working condition orders with respect to break periods, meal periods, and days of
20 rest for any workers in California consistent with the health and welfare of those workers."

21 78. Section 12(A) of the IWC Wage Order(s) provides that "Every employer shall
22 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
23 middle of each work period. The authorized rest period time shall be based on the total hours
24 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
25 thereof. However, a rest period need not be authorized for employees whose total daily work time
26 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
27 worked for which there shall be no deduction from wages."

28 79. Section 12(B) of the IWC Wage Order(s) provides that "If an employer fails to

1 provide an employee a rest period in accordance with the applicable provisions of this order, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
3 compensation for each workday that the rest period is not provided."

4 80. Plaintiffs and members of the Rest Period Class often worked over three and one-
5 half (3 1/2) hours per shift and therefore were entitled to a rest period of not less than ten (10)
6 minutes prior to exceeding four (4) hours of employment, and additional rest periods of not less
7 than ten (10) minutes per four (4) hours worked or major fraction thereof. Upon information and
8 belief, Defendants' policies and practices failed and fail to provide Plaintiffs and class members
9 with off-duty net rest periods of at least ten (10) minutes for each four (4) hours worked, or major
10 fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on
11 workdays that Defendants failed to provide them with an opportunity to take rest periods.

12 81. As a matter of Defendants' established company policy, Defendants failed to
13 authorize and permit required off-duty rest periods established by Labor Code sections 226.7 and
14 516 and Section 12 of the IWC Wage Order(s). Pursuant to *Augustus v. ABM Security Services,*
15 *Inc.*, (2017) 2 Cal.5th 257, 260, "[d]uring required rest periods, employers must relieve their
16 employees of all duties and relinquish any control over how employees spend their break time."

17 82. Section 12 of the IWC Wage Order(s) and Labor Code section 226.7, subdivision
18 (b), provides that "If an employer fails to provide an employee a meal or rest or recovery period in
19 accordance with a state law, including, but not limited to, an applicable statute or applicable
20 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
21 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
22 pay the employee one additional hour of pay at the employee's regular rate of compensation for
23 each workday that the meal or rest or recovery period is not provided."

24 83. As a matter of Defendants' policies and procedures, Defendants failed to comply
25 with the requirements of Section 12(B) of the IWC Wage Order(s) and Labor Code section 226.7,
26 subdivision (c), by failing to pay Plaintiffs and members of the Rest Period Class one additional
27 hour of pay at each employee's regular rate of compensation for each workday that an off-duty
28 rest period was not provided.

84. Therefore, pursuant to Section 12 of the IWC Wage Order(s) and Labor Code section 226.7, Plaintiffs and members of the Rest Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that a legally compliant rest period was not so provided.

85. Pursuant to Labor Code section 218.6 and Civil Code section 3287, Plaintiffs, individually, and on behalf of the Rest Period Class, seek recovery of pre-judgment interest on all amounts recovered herein.

86. Pursuant to Labor Code section 218.5, Plaintiffs, individually, and on behalf of the Rest Period Class, request that the Court award reasonable attorneys' fees and costs incurred in this action.

FIFTH CAUSE OF ACTION

**FAILURE TO TIMELY FURNISH COMPLETE AND ACCURATE
ITEMIZED WAGE STATEMENTS**

**(By Plaintiffs, individually, and on behalf of the Wage Statement Class against
Defendant DARKO and DOES 1 to 100, inclusive)**

87. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

88. Labor Code section 226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee...."

89. As a pattern and practice, in violation of Labor Code section 226(a), Defendants did not and still do not furnish each of the members of the Wage Statement Class with an accurate

1 itemized statement in writing correctly showing: (1) gross wages earned, (2) total hours worked by
2 the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and
3 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
4 that all deductions made on written orders of the employee may be aggregated and shown as one
5 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
6 the name of the employee and only the last four digits of his or her social security number or an
7 employee identification number other than a social security number, (8) the name and address of
8 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
9 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
10 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee.

12 90. As a pattern and practice, in violation of Labor Code section 226(a) and Section 7,
13 subdivision (A) of the IWC Wage Order(s), Defendants did not and do not maintain accurate
14 records pertaining to the total hours worked for Defendants by Plaintiffs and members of the
15 Wage Statement Class, including but not limited to, gross wages earned, total hours worked by the
16 employee, all deductions, and net wages earned.

17 91. As of January 1, 2013, SB 1255 amended Labor Code section 226 to clarify that an
18 employee suffers injury if the employer fails to provide accurate and complete information as
19 required by any one or more items listed in Labor Code section 226(a)(1)-(9) and the employee
20 cannot promptly and easily ascertain requisite information without reference to other documents or
21 information.

22 92. Here, Plaintiffs and members of the Wage Statement Class suffered injury because
23 Defendants failed to provide accurate and complete information as required by one or more items
24 listed in Labor Code section 226(a)(1)-(9) as set forth herein, and Plaintiffs and members of the
25 Wage Statement Class could not and cannot promptly and easily ascertain requisite information
26 without reference to other documents or information.

27 93. In addition, Plaintiffs and members of the Wage Statement Class have suffered
28 injury as a result of Defendants' failure to maintain accurate records in that Plaintiffs and members

1 of the Wage Statement Class were not provided written accurate itemized statements showing all
2 requisite information as set forth herein in violation of Labor Code section 226 and Section 7,
3 subdivision (A) of the IWC Wage Order(s), such that Plaintiffs and members of the Wage
4 Statement Class were misled by Defendants as to the correct information regarding the various
5 items, including but not limited to, the total hours worked by the employee, gross wages earned,
6 net wages earned, all deductions, all applicable hourly rates in effect during the pay period, and
7 the corresponding number of hours worked at each hourly rate.

8 94. The actual injuries suffered by Plaintiffs and members of the Wage Statement Class
9 as a result of Defendants' knowing and intentional failure to maintain accurate records include but
10 are not limited to:

- 11 a. Confusion over whether they received all wages owed them by Defendants;
- 12 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 13 c. Being forced to engage in mathematical computations to analyze whether
- 14 Defendants' wages in fact compensated for all hours worked;
- 15 d. The inability to accurately calculate wage rates complicated by the fact that
- 16 wage statement information required by Labor Code section 226 is missing;
- 17 e. That such practice prevents Plaintiff and members of the Classes from being
- 18 able to effectively challenge information on their wage statements; and/or
- 19 f. The difficulty and expense of filing and maintaining this lawsuit, and the
- 20 discovery required to collect and analyze the very information that California
- 21 law requires.

22 95. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and members of the
23 Wage Statement Class are entitled to fifty dollars (\$50.00) per individual employee for the initial
24 pay period in which a violation hereunder occurred and one hundred dollars (\$100.00) per
25 individual employee for each violation in a subsequent pay period, not exceeding an aggregate
26 penalty of four thousand dollars (\$4,000.00) per individual employee.

27 96. Pursuant to Labor Code section 226, subdivision (g), currently-employed members
28 of the Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance

1 with Labor Code section 226.

2 97. Pursuant to Labor Code section 226, subdivisions (e) and/or (g), Plaintiffs and
3 members of the Wage Statement Class are also entitled to an award of costs and reasonable
4 attorneys' fees.

5 **SIXTH CAUSE OF ACTION**

6 **VIOLATIONS OF LABOR CODE §§ 201, 202, 203**

7 **(By Plaintiffs, individually, and on behalf of the Final Pay Class against**
8 **Defendant DARKO and DOES 1 to 100, inclusive)**

9 98. Plaintiffs incorporate by reference and reallege each and every one of the
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
11 forth herein.

12 99. Labor Code section 203 provides that if an employer willfully fails to pay, without
13 abatement or reduction, in accordance with Labor Code sections 201 and 202, any wages of an
14 employee who is discharged or who quits, the wages of the employee shall continue at the same
15 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
16 commenced.

17 100. Defendants have a consistent and uniform policy, practice, and procedure of
18 willfully failing to pay the earned wages of Defendants' former employees according to
19 amendment or proof.

20 101. Defendants willfully failed to pay Plaintiffs and members of the Final Pay Class
21 that are former employees their entire wages due and owing at the time of their termination or
22 within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty
23 (30) days thereafter.

24 102. Defendants' willful failure to pay wages to Plaintiffs and members of the Final Pay
25 Class that are former employees violates Labor Code section 203 because Defendants knew or
26 should have known such wages were due, but Defendants failed to pay them.

27 103. Thus, Plaintiffs and members of the Final Pay Class are entitled to recovery
28 pursuant to Labor Code section 203.

SEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

**(By Plaintiffs, individually, and on behalf of the Classes against
Defendant DARKO and DOES 1 to 100, inclusive)**

104. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

105. Business & Professions Code section 17200 provides in pertinent part “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice.”

106. Defendants are a “person” as defined under Business & Professions Code section 17201.

107. Business & Professions Code section 17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

108. Business & Professions Code section 17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

109. Defendants have engaged in unlawful, unfair, and fraudulent business acts or practices prohibited by Business & Professions Code section 17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving Plaintiff and members of the Classes of the minimum working standards and conditions due to them under the Labor Code and/or the IWC_Wage Orders, as specifically described herein.

110. Defendants have engaged in unfair business practices in California by practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

111. Defendants’ use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants’ competitors.

112. Plaintiffs and members of the Classes have suffered injury in fact and have lost money or property as a result of such unfair competition.

113. Plaintiffs, individually, and on behalf of members of the Classes, seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair practices complained of herein.

114. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined in the preceding paragraphs.

115. Therefore, Plaintiffs requests that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

116. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendant.

EIGHTH CAUSE OF ACTION

VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)

(By Plaintiffs, as aggrieved employees of Defendant DARKO on behalf of the LWDA for all aggrieved employees against Defendant DARKO and DOES 1 to 100, inclusive)

117. Plaintiffs incorporate by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

118. Pursuant to Labor Code section 2698, *et seq.*, Plaintiffs seek to recover all applicable civil penalties and reasonable attorneys’ fees and costs, permitted under PAGA through a representative action on behalf of all aggrieved employees that work or worked for Defendants during the relevant time period.

119. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative action is not subject to the formalities required of a class action and class certification of PAGA claims is not required.

120. Plaintiffs are “aggrieved employee[s]” within the meaning of Labor Code section

1 2699(c) because they were employed by Defendants during the applicable statutory period and
2 suffered one or more of the Labor Code violations, as alleged herein. Thus, Plaintiffs are well
3 suited to represent the interests of all other aggrieved employees in in this PAGA representative
4 action.

5 121. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
6 penalties recovered by aggrieved employees shall be distributed to the Labor and Workforce
7 Development Agency (hereinafter “LWDA”) for enforcement of labor laws and education of
8 employers and employees about their rights and responsibilities under this code, and twenty-five
9 percent (25%) shall be distributed to the aggrieved employees.

10 122. Plaintiffs’ representative action alleges violations of certain Labor Code sections
11 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
12 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

13 123. On December 3, 2021, Plaintiffs complied with Labor Code section 2699.3(a) by
14 electronically filing written notice with the LWDA and serving written notice, via certified mail,
15 upon the LWDA and Defendants regarding the specific provisions of the Labor Code alleged to
16 have been violated by Defendants and Plaintiffs’ intent to pursue civil penalties against
17 Defendants on behalf of all aggrieved employees pursuant to PAGA. Attached hereto as **Exhibit 1**
18 is a true and correct copy of Plaintiffs’ notice letter.

19 124. Labor Code section 2699.3(a) provides in pertinent part that: “The agency shall
20 notify the employer and the aggrieved employee or representative by certified mail that it does not
21 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
22 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
23 of the postmark date of the notice given... the aggrieved employee may commence a civil action
24 pursuant to Section 2699.” More than sixty-five calendar days have passed since Plaintiffs served
25 notice upon the LWDA and Defendants, and the LWDA did not provide notice of its intent to
26 investigate Plaintiffs’ claims. Accordingly, Plaintiffs exhausted their obligation to provide
27 administrative notice and are authorized to commence this representative action seeking civil
28 penalties on behalf of aggrieved employees of Defendants.

1 125. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
2 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
3 divisions, commissions, boards, agencies or employees for violation of the code may, as an
4 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
5 current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

6 126. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
7 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
8 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
10 subsequent violation.

11 127. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs, on behalf of aggrieved
12 employees, seek applicable civil penalties for violations of Labor Code sections 201, 202, 203,
13 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 1199 during the statutory period as set forth
14 below:

15 128. For violations of Labor Code section 201, 202, 203, 226.7, 246, 248.2, 248.5510,
16 512, 1194, 1197 1198, and 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one
17 hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation and
18 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
19 violation;

20 129. For violations of Labor Code section 204, Labor Code section 210 imposes a civil
21 penalty of one hundred dollars (\$100) for each aggrieved employee for each initial violation that
22 was neither willful nor intentional, and two hundred dollars (\$200) for each aggrieved employee,
23 for each subsequent violation, regardless of whether the subsequent violation was willful or
24 intentional;

25 130. For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a
26 civil penalty, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250)
27 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
28 employee for each subsequent violation.

1 131. Defendants violated Labor Code sections 204, 510, 1194, 1197, and 1198 by not
2 paying Plaintiffs and aggrieved employees all wages owed for all hours worked, including
3 overtime compensation for each pay period as a result of Defendants' policy or practice of
4 rounding the actual time worked and recorded at the beginning of their shifts, in most instances
5 rounding down, such that during the course of the their employment, Plaintiffs and aggrieved
6 employees were paid less than they would have been paid had they been paid for actual recorded
7 time rather than "rounded" time. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are
8 subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay
9 period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per
10 pay period for each subsequent violation.

11 132. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiffs and
12 aggrieved employees an opportunity to take timely off-duty and uninterrupted thirty minute meal
13 periods for every five hours worked, including timely off-duty and uninterrupted thirty minute
14 long meal periods before the end of the fifth hour of work, and by failing to pay a premium wage
15 equivalent to an additional hour of pay at the regular rate of pay for each day a compliant meal
16 period was not provided. Compounding this issue is Defendants' policy or practice of
17 automatically deducting 30 minutes from Plaintiffs and aggrieved employees' time worked when
18 meal periods are not recorded irrespective of whether the meal period is taken or not and if it is
19 either taken late or is actually less than 30 minutes Thus, pursuant to Labor Code section
20 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
21 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
22 each aggrieved employee per pay period for each subsequent violation.

23 133. Defendants violated Labor Code section 226.7 by denying Plaintiffs and aggrieved
24 employees a ten minute off-duty rest period for every four hours worked, or major fraction
25 thereof, and by failing to provide a premium wage equivalent to an additional hour of pay at the
26 regular rate of pay for each workday that a compliant rest period was not provided. Thus,
27 pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one
28 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and

1 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
2 violation.

3 134. Defendants violated Labor Code section 226(a) by failing to provide Plaintiffs and
4 aggrieved employees with accurate itemized wage statements correctly identifying, among other
5 things, the total hours worked, wages earned, the correct amount of net wages earned, and the
6 correct amount of deductions that were paid or should have been paid. Thus, pursuant to Labor
7 Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely independent and apart
8 from any other penalty, are subject to a civil penalty for violation Labor Code section 226(a) in the
9 amount of two hundred and fifty dollars (\$250) per aggrieved employee per violation in an initial
10 citation and one thousand dollars (\$1,000) per aggrieved employee for each violation in a
11 subsequent citation.

12 135. Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to
13 timely pay Plaintiffs and aggrieved employees all wages owed upon separation of employment by
14 failing to pay all minimum wages, overtime compensation, and Defendants' failure to pay meal
15 and rest period premium wages owed. Thus, pursuant to Labor Code section 2699(f)(2),
16 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
17 employee per pay period for the initial violation of these sections, and two hundred dollars (\$200)
18 for each aggrieved employee per pay period for each subsequent violation.

19 136. Defendants violated Labor Code sections 246 and 248 by willfully failing to
20 properly compensate Plaintiffs and aggrieved employees for all vested sick time earned at the
21 correct accrual rates in accordance with their employment contracts and/or Defendants' policies
22 when they sought sick leave, including COVID-19 supplemental sick pay. Thus, pursuant to Labor
23 Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100)
24 for each aggrieved employee per pay period for the initial violation of these sections, and two
25 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation

26 137. At all material times, Defendants were Plaintiff and all other aggrieved employees'
27 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
28 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision

1 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
2 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
3 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
4 provided by law.

5 138. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
6 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
7 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiffs
8 and aggrieved employees of Defendants were not paid all wages owed as a result of Defendants'
9 failure to pay wages owed for all overtime, as alleged herein.

10 139. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
11 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
12 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiffs and
13 aggrieved employees of Defendants were not provided with a compliant timely off-duty and
14 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
15 worked, or major fraction thereof, as alleged herein.

16 140. Defendants violated Labor Code section 1198 by failing to comply with the
17 maximum hours of work and the standards conditions of labor fixed by the IWC under the "Hours
18 and Days of Work", the "Meal Period", the "Rest Period" and "Record" sections of the applicable
19 IWC Wage Order, by failing to provide compliant meal periods, failing to pay meal periods
20 premium wages, failing to provide compliant rest periods, failing to pay rest period premium
21 wages, failing to keep and provide accurate records, and failing to timely pay owed wages upon
22 separation of employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2),
23 Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for each
24 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
25 each aggrieved employee per pay period for each subsequent violation.

26 **VII. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray:

28 That the Court issue an Order certifying the Classes herein, appointing Plaintiffs as

representatives of all others similarly situated, and appointing the law firm representing Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Pay All Wages:

a. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

b. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code section 1194.2, subdivision (a);

c. For recovery of the unpaid balance of the full amount of the earned overtime compensation due and owing, calculated at the appropriate rate and according to proof;

d. For pre-judgment interest as allowed by Labor Code section 218.6, Labor Code section 1194, subdivision (a), and Civil Code section 3287;

e. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section 218.5 and/or Labor Code section 1194, subdivision (a);

As to the Second Cause of Action for Failure to Pay Overtime:

f. For recovery of the full amount of unpaid wages in an amount to be proven at trial and interest thereon, applicable penalties, liquidated damages, and costs of suit including attorney's fees;

As to the Third Cause of Action for Failure to Provide Meal Periods:

g. For one (1) hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a full meal period was not provided;

h. For pre-judgment interest as authorized by Labor Code section 218.6 and Civil Code section 3287;

i. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section 218.5;

As to the Fourth Cause of Action for Failure to Provide Rest Periods:

j. For one (1) hour of pay at the regular rate of compensation for each member of the Rest Period Class for each workday that a full rest period was not provided;

k. For pre-judgment interest as authorized by Labor Code section 218.6 and Civil Code section 3287;

l. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section 218.5;

As to the Fifth Cause of Action for Failure to Provide Complete and Accurate Itemized Wage Statements:

m. For recovery as authorized by Labor Code section 226(e);

n. For an award of costs and reasonable attorneys' fees pursuant to Labor Code section 226, subdivision (e) and/or subdivision (g);

As to the Sixth Cause of Action for Violations of Labor Code section 203:

o. For recovery as authorized by Labor Code section 203;

As to the Seventh Cause of Action for Unfair Business Practices:

p. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

q. For an Order requiring Defendants to identify each of the members Classes by name, home address, and home telephone number;

r. For an Order requiring Defendants to make full restitution and payment pursuant to California law;

s. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

t. For all other appropriate injunctive, declaratory and equitable relief;

u. For interest to the extent permitted by law;

v. For an award of attorneys' fees and costs incurred in the investigation, filing, and prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business & Professions Code section 17200, *et seq.*, Labor Code section 1194 and/or any other applicable provision of law;

As to the Eighth Cause of Action for Violation of PAGA:

- 1 w. For all civil penalties authorized by Labor Code section 2698, *et seq.*;
- 2 x. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
- 3 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
- 4 per aggrieved employee for each subsequent violation;
- 5 y. For civil penalties under Labor Code section 210 in the amount of one hundred
- 6 dollars (\$100.00) for each aggrieved employee for each initial violation that was neither willful
- 7 nor intentional, and two hundred dollars (\$200.00) for each aggrieved employee, plus twenty-five
- 8 percent (25%) of the amount unlawfully withheld from each aggrieved employee, for each
- 9 subsequent violation, regardless of whether the subsequent violation was willful or intentional;
- 10 z. For civil penalties under Labor Code section 2699(f), for Labor Code violations
- 11 without a specific civil penalty, in the amount of one hundred dollars (\$100.00) for each aggrieved
- 12 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
- 13 aggrieved employee per pay period for each subsequent violation;
- 14 aa. For civil penalties under Labor Code section 558, as follows: (1) for an initial
- 15 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
- 16 employee was underpaid; and (2) for each subsequent violation, one hundred dollars (\$100) for
- 17 each underpaid employee for each pay period for which the employee was underpaid;
- 18 bb. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
- 19 section 2699(g)(1), or other applicable laws, and pre-judgment and post-judgment interest as
- 20 provided by law;
- 21 As to All Causes of Action:
- 22 cc. For such relief as this Court may deem just and proper, including reasonable
- 23 attorneys' fees and costs incurred.
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DATED: February 7, 2022

BOUCHER LLP

By: 

RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
ALEXANDER GAMEZ

*Attorneys for Plaintiffs Raul Espinoza and
Eusebio Maldonado*

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims alleged in Plaintiffs' Complaint to the fullest extent authorized by law.

DATED: February 7, 2022

Respectfully submitted,

BOUCHER LLP

By:



RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
ALEXANDER GAMEZ

*Attorneys for Plaintiffs Raul Espinoza and
Eusebio Maldonado*

EXHIBIT 1

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21600 Oxnard Street, Suite 600
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Facsimile 818.340.5401

December 3, 2021

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
<https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL

Darko Precision, Inc.
c/o Agent for Service of Process
Darko Simunic
470 Gianni St
Santa Clara, CA 95054

Re: *Espinoza, et al., v. Darko Precision, Inc., et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 (“PAGA” or “the Act”) (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Mr. Raul Espinoza and Mr. Eusebio Maldonado as proxies for the Labor and Workforce Development Agency (“LWDA”) on behalf of all non-exempt aggrieved employees employed by Darko Precision, Inc. (“Darko”) in California during the statutory period, against Darko.

Headquartered in Santa Clara, California Darko designs, engineers and manufactures high-tech products for various industries such as medical and aerospace. Mr. Espinoza was employed as a non-exempt welder at Darko’s facilities located at 470 Gianni Street in Santa Clara, California from approximately April 19, 2021 to September 14, 2021. Mr. Maldonado was employed as a non-exempt welder at Darko’s facilities located at 470 Gianni Street in Santa Clara, California from approximately March 10, 2021 to September 14, 2021. Pursuant to California law, Darko was at all relevant times Mr. Espinoza and Mr. Maldonado’s employer during the statutory period.

In his representative action, Mr. Espinoza and Mr. Maldonado will seek civil penalties pursuant to PAGA as a result of Darko’s failure to: (1) compensate for all hours worked, including overtime (Lab. Code §§ 204, 510, 1194, 1197, 1198); (2) provide proper meal periods and/or

premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (3) provide proper rest periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (4) provide paid sick time payment for sick leave (Lab. Code §§ 246, 248.2, 248.5); (5) furnish complete and accurate itemized wage statements (Lab. Code § 226(a)); and (6) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2699)

Labor Code section 204 states that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

Labor Code section 1194(a) states, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable is entitled to recover in a civil 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.”

Labor Code section 1197 states, in pertinent part, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Section 2 of the applicable Wage Order states that, “Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work.”

In relevant part, Section 4 of the applicable Wage Order states that, “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

In conjunction, the provisions of the applicable Wage Order and Labor Code require employers to pay non-exempt employees no less than their agreed upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” when the employer

knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Upon information and belief, during Mr. Espinoza and Mr. Maldonado's employment, Darko failed and fails to compensate them and aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Darko's policy and practice of rounding the time worked by aggrieved employees in Darko's favor such that Mr. Espinoza, Mr. Maldonado and aggrieved employees were not paid for all time actually worked.

Accordingly, Mr. Espinoza and Mr. Maldonado, on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the
Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work."

Section 11 of the applicable Wage Order provides that:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, Darko failed and fails to provide Mr. Espinoza, Mr. Maldonado and aggrieved employees with compliant thirty minute off-duty meal periods for work periods and failed to pay them premium wages at their regular rates of pay thereto. For example, Darko automatically deducts 30 minutes from Mr. Espinoza, Mr. Maldonado and aggrieved employees' time worked when meal periods are not recorded irrespective of whether the meal period is taken or not and if it is either taken late or is actually less than 30 minutes. Moreover, Mr. Maldonado worked multiple shifts of over ten hours without being provided a second meal period or paid a meal period premium for the missed meal period. In addition, Darko has a mandatory hand washing requirement which should extend aggrieved employees' meal periods or Darko has to provide employees supplemental time for it. It does not appear Darko does either.

Accordingly, Mr. Espinoza and Mr. Maldonado, on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1197, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, “An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

Section 12 of the applicable Wage Order provides that:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, Darko’s policies and practices failed and fails to provide Mr. Espinoza, Mr. Maldonado and aggrieved employees with off-duty rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays they failed to provide them with an opportunity to take rest periods. Mr. Espinoza, Mr. Maldonado and other employees typically worked and work eight hours per day, and Darko’s policies and practices routinely prevented and prevent them from taking the off-duty ten-minute rest breaks they are entitled to by making Mr. Espinoza, Mr. Maldonado and other aggrieved employees either miss their rest periods altogether, work through their rest periods, take untimely rest periods, or take shortened rest periods by failing to provide additional time to allow employees to walk back and forth from their rest periods.

Accordingly, Mr. Espinoza and Mr. Maldonado, on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE PAYMENT FOR SICK LEAVE

(Labor Code §§ 246, 248.2, 248.5, 2699)

Labor Code section 246(a)(1) provides that an employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Labor Code section 246(n) provides that an employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

Labor Code section 248.2(b) provides that a covered employees shall be entitled to COVID-19 supplemental paid sick leave if the covered employee is unable to work due to various reasons including but limited to the employee is subject to a quarantine or isolation period related to COVID-19, the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, the employee is attending an appointment to receive a vaccine for protection against contracting COVID-19, the employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work. The total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled, shall be in addition to any paid sick leave that may be available to the covered employee under Section 246. Lab Code § 248.2(b)(2)(D).

Pursuant to Labor Code section 248.2(b)(3)(A), each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following:

(i) For nonexempt covered employees, by the highest of the following:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

Labor Code section 248.5(a)(2) states that if paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred

fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.

Upon information and belief, Mr. Espinoza, Mr. Maldonado and aggrieved employees accrued sick time throughout their employment, but Darko failed to properly compensate them for all vested sick time earned at the correct accrual rates in accordance with their employment contracts and/or Darko's policies when they sought sick leave, including COVID-19 supplemental sick pay. For example, on May 24, 2021, Mr. Maldonado took a sick day but was not paid for that day under sick pay even though he had sick time accrued.

Accordingly, Mr. Espinoza and Mr. Maldonado, on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Darko furnished wage statements to Mr. Espinoza, Mr. Maldonado and aggrieved employees that were noncompliant by reason that they failed to show the correct total hours. For example, Mr. Espinoza and Mr. Maldonado's wage statements have hours for holiday line items, leaving it unclear as to whether the holiday hours are in addition to or inclusive of the regular hours accumulated. Additionally, as a result of the alleged violations discussed above, Darko furnished wage statements to Mr. Espinoza, Mr. Maldonado and aggrieved employees that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned.

Accordingly, Mr. Espinoza and Mr. Maldonado on behalf of aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, and 2699)

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Upon information and belief, Darko willfully failed and fails to provide Mr. Espinoza, Mr. Maldonado, and aggrieved employees all wages due and owed upon separation of employment. By furnishing aggrieved employees with a final check that failed to include all earned and owed minimum wages, overtime, and meal and rest period premiums – as described above, Darko violated Labor Code sections 201 or 202.

Accordingly, Mr. Espinoza and Mr. Maldonado on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, Darko failed to pay all overtime compensation and provide Mr. Espinoza, Mr. Maldonado and aggrieved employees compliant meal periods and/or rest periods and failed to pay premium wages owed.

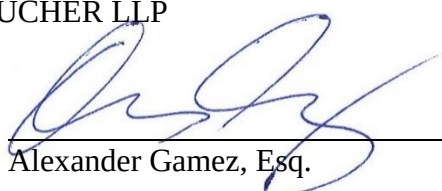
Accordingly, Mr. Espinoza and Mr. Maldonado, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Mr. Espinoza and Mr. Maldonado's employment with Darko, including wage statements, timesheets, and Mr. Espinoza and Mr. Maldonado's confirmation of Darko's unlawful practices and policies. As a result of the foregoing violations, Mr. Espinoza and Mr. Maldonado are entitled to file a Complaint and invoke the protections of the Act. Mr. Espinoza and Mr. Maldonado have placed Darko on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: 

Alexander Gamez, Esq.

cc via email:
Sahag Majarian II
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18250 Ventura Boulevard
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