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Superior Court of California
County of Fresno
By: Jamie Nelson, Deputy

Attorneys for Plaintiff Germaine Tanner Sr., on behalf of himself and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

GERMAINE TANNER SR., on behalf of
himself and on behalf of all similarly situated
individuals,

Plaintiff,

v.

AMERICAN TIRE DISTRIBUTORS, INC., a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 22CECG00735

*Assigned to the Honorable Kristi Culver
Kapetan, Dept. 403*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES (LABOR
CODE §§ 510, 1194 AND 1194.2)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 9-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512 AND 1194; IWC WAGE ORDER 9-
2001)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**5. INJUNCTIVE RELIEF AND
RESTITUTION FOR THE VIOLATION
OF BUSINESS AND PROFESSIONS
CODE § 17200**

**6. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR**

**VIOLATIONS OF LABOR CODE §§
226(a), (e), 226.7, 510, 512 AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint filed: March 8, 2022

Plaintiff GERMAINE TANNER SR. (“Plaintiff”), individually and on behalf all similarly situated individuals (the “Class” or “Plaintiff’s Class”), and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of AMERICAN TIRE DISTRIBUTORS, INC., a Delaware corporation, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, respectively, on behalf of Plaintiff and all other employees who work or formerly worked for Defendants within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had consistent policies of failing to pay all minimum and overtime wages due to Class Members (as defined below), provide legally compliant meal and rest periods, or compensation in lieu thereof to Class Members; and issue accurately itemized wage statements to Class Members.

3. Plaintiff, on behalf of himself members of the Class, brings this action pursuant to Labor Code §§ 226(a), 226.7, 510, 512, 1194, and 1194.2 seeking compensation for all unpaid wages, meal and rest period premium wages, liquidated damages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due.

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff in Fresno County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff GERMAINE TANNER SR. has been employed by Defendants since June 2020 as a non-exempt employee and performing work for Defendants in Fresno County, California.

8. During his work with Defendants, Plaintiff is:

- a. Willfully denied the payment of all minimum and overtime wages due;
- b. Willfully denied all meal and rest periods or compensation in lieu thereof; and
- c. Willfully denied accurately itemized wage statements.

B. Defendants

9. Defendant AMERICAN TIRE DISTRIBUTORS, INC. is a Delaware corporation that employed Plaintiff in Fresno County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

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12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All persons employed as non-exempt employees by Defendants in California at any time since the date four years preceding the filing of this Action and continuing through the present.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

15. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and each proposed Class is easily ascertainable.

A. Numerosity

16. The potential members of the Class as defined are so numerous that joinder of all class members is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 50 persons in the State of California who fall within the Class definition.

17. Accounting for employee turnover during the relevant period necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of members of the Class. Joinder of members of the Class is not practicable.

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B. Commonality

18. There are questions of law and fact common to the Class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

- a. Whether Defendants failed to pay all minimum and overtime wages due to Plaintiff and Class Members, in violation of Labor Code §§ 510, 1194, and 1194.2;
- b. Whether Defendants failed to properly provide rest periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7, and IWC Wage Order 9-2001;
- c. Whether Defendants failed to properly provide meal periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 510, 512 and 1194, and IWC Wage Order 9-2001;
- d. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a), (e); and
- e. Whether Plaintiff and members of the Class are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

19. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

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E. Superiority of Class Action

21. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

22. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES
(LABOR CODE §§ 510, 1194 AND 1194.2)**

23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. During the liability period, Defendants failed to pay all minimum and overtime wages due, in violation of Labor Code §§ 510, 1194 and 1194.2. Defendant does not pay Plaintiff and Class Members for all hours worked and, therefore, they are not paid all wages due and owing during each pay period, including minimum wages and any applicable overtime wages. This deprives Plaintiff and Class Members of significant hours worked and minimum and overtime wages due, and constitutes a violation of Labor Code §§ 510, 558, 1194, and 1194.2.

25. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiff and members of the Class have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE § 226.7 AND IWC WAGE ORDER 9-2001)**

26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 9-2001.

28. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 9-2001. Plaintiff and Class Members are routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but are not paid premium wages of one hour's pay for each missed rest period. When Plaintiff and Class Members are able to take a rest period, they are oftentimes late or cut short. This violates Labor Code § 226.7 and IWC Wage Order 9-2001.

29. Pursuant to Labor Code § 226.7 and IWC Wage Order 9-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7, 510, 512, AND 1194 AND IWC WAGE ORDER 9-2001)

6 30. Plaintiff incorporates paragraphs 1 through 29 of this Complaint as though fully set
7 forth herein.

8 31. Plaintiff and Class Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
10 and 512 and IWC Wage Order 9-2001.

11 32. Defendants failed to pay premium wages to Plaintiff and Class Members who were
12 denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order
13 9-2001. Plaintiff and Class Members are routinely denied, and not authorized to take, an
14 uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and
15 a second meal period when they work shifts greater than ten hours, but are not paid premium wages
16 of one hour's pay for each missed meal period. Plaintiff and Class Members also clock out for meal
17 periods and continue to work off-the-clock and without compensation. When they are able to take a
18 meal period, they are late or short, thereby entitling them to premium meal period wages, which they
19 are not paid. This violates Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 9-2001.

20 33. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001, Plaintiff
21 seeks the payment of all meal period compensation which Class Members are owed for four years
22 preceding the filing of this Action, according to proof.

23 Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

34. Plaintiff incorporates paragraphs 1 through 33 of this Complaint as though fully set forth herein.

35. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (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 only 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 hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

36. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiff and Class Members are not paid all minimum wages, overtime wages, and meal and rest period premium wages. As such, the wage statements provided by Defendants fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1) total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

37. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to injunctive relief and an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

38. Plaintiff incorporates paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

40. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

41. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

1 42. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages due is a fundamental public policy of this State and of the United States.
3 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
4 standards, to ensure that employees are not required or permitted to work under substandard and
5 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
6 lower their costs by failing to comply with minimum labor standards.

7 43. Defendants have violated statutes and public policies. Through the conduct alleged
8 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
9 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
10 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
11 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
12 guaranteed to all employees under law.

13 44. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 45. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
17 17200 *et seq.* of the Business & Professions Code.

18 46. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
19 similarly situated have been damaged in a sum as may be proven.

20 47. Unless restrained by this Court, Defendants will continue to engage in the unlawful
21 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
22 make such orders or judgments, including the appointment of a receiver, as may be necessary to
23 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive
24 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
25 disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to the
26 money Defendants have unlawfully failed to pay.

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IX.

SIXTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 226(a), 226.7, 510, 512 AND 1194 AND PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

48. Plaintiff incorporates paragraphs 1 through 47 of this Complaint as though fully set forth herein.

49. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

50. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 226(a), 226.7, 510, 512 and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

51. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

52. On January 28, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of January 28, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described below.

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 1194 and 1194.2, respectively, in the amount of all unpaid overtime and minimum wages due to Plaintiff and members of the Class;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members, pursuant to Labor Code §§ 226.7 and 512;
3. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
4. For civil penalties pursuant to Labor Code § 2698 et seq. for Plaintiff and all other Aggrieved Employees;
5. For restitution and injunctive relief for unfair competition pursuant to Business & Professions Code § 17200 et seq. for Plaintiff and Class Members;
6. An award providing for payment of costs of suit pursuant to Labor Code § 226(h) and other applicable law;
7. For injunctive relief and an award of attorneys' fees pursuant to Labor Code § 226(h) and other applicable law;
8. An award of prejudgment and post-judgment interest; and
9. Such other and further relief as this Court may deem just and proper.

Dated: April 4, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

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Dated: April 4, 2022

GAINES & GAINES
A Professional Law Corporation

By: Evan S. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to
3 the within action. My business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301.

4 _____ (For messenger) my business address is:

5 On April 4, 2022, I served the foregoing document described as **FIRST AMENDED CLASS AND**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof
7 enclosed in sealed envelopes addressed as follows:

8 **Matthew E. Farmer, Esq.**
9 **LITTLER MENDELSON P.C.**
10 **5200 North Palm Avenue, Suite 302**
11 **Fresno, CA 93704**

12 On the above date:

13 X (BY U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
14 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
15 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
16 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
17 meter date is more that one day after date of deposit for mailing in affidavit.

18 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
19 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
20 carrier or driver authorized by the express carrier to receive documents.

21 _____ (BY ELECTRONIC SERVICE) The above-stated document was served by electronic transmission via email
22 on the counsel of record listed above.

23 _____ (UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the
24 Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in
25 accordance with the procedure imposed by the LWDA.

26 I certify that the above document was printed on recycled paper.

27 I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on April 4, 2022, at Calabasas, California.

Beatriz Franco
BEATRIZ FRANCO