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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

Attorney for Plaintiffs,
LOREN ELIZABETH PAYNE, on behalf
of all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

LOREN ELIZABETH PAYNE, an individual,
on behalf of all others similarly situated,

Plaintiffs,

v.

FIFTH THIRD BANK, NATIONAL
ASSOCIATION, an American corporation;
FIFTH THIRD BANCORP, an Ohio
corporation; AUTOMATIC DATA
PROCESSING, INC. DBA WISELY BY ADP,
a Delaware corporation; ADP
TOTALSOURCE, INC., a Florida corporation;
UNITED GROUND EXPRESS, INC., a
Delaware corporation; UNITED AIRLINES,
INC., a Delaware corporation; and DOES 1
through 20, inclusive,

Defendants.

CLASS ACTION COMPLAINT

Case No. **25STCV01796**

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 212, 1194);**
- 2. UNLAWFUL WAGE DEDUCTIONS (CAL. LABOR CODE §§221);**
- 3. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 4. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 5. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.).**

DEMAND OVER \$35,000

DEMAND FOR JURY TRIAL

PLAINTIFF, LOREN ELIZABETH PAYNE, an individual on behalf of herself and all other similarly situated employees (hereinafter collectively referred to as "Class Plaintiffs"), hereby files this Complaint against Defendants FIFTH THIRD BANK, NATIONAL ASSOCIATION, an American corporation; FIFTH THIRD BANCORP, an Ohio corporation; AUTOMATIC DATA PROCESSING, INC. DBA WISELY BY ADP, a Delaware corporation; ADP TOTALSOURCE, INC., a Florida corporation; UNITED GROUND EXPRESS, INC., a Delaware corporation; UNITED AIRLINES,

INC., a Delaware corporation, and DOES 1 through 20 (hereinafter collectively referred to as “Defendants”). Plaintiffs are informed and believe, and thereon allege as follows:

INTRODUCTION

1. This is a civil action seeking recovery for Defendants’ violations of the California Labor Code, California Business and Professions Code (“B&PC”), the applicable Wage Orders issued by the California Industrial Welfare Commission (hereinafter, the “IWC Wage Orders”) and related common law principles.

2. Plaintiffs’ action seeks monetary damages and injunctive relief, including full restitution from Defendants as a result of Defendants’ unlawful, fraudulent and/or unfair business practices.

3. Per California Labor Code Section 212, “(a) no person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.”

4. Here, the Class Plaintiffs were issued payment of wages by Defendants through a prepaid card, which required Class Plaintiffs to pay fees or incur costs to collect their wages, and/or the prepaid card could not be readily cashed in full.

5. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from January 17, 2021 up to and through the time of trial for this matter. This is hereinafter the “Class Period.”

6. The “Class Plaintiffs” are all current and former non-exempt employees, whom were employed by Defendants from on or about January 17, 2021, up to and through the time of trial in this matter, and were paid wages through a prepaid card.

7. Class Plaintiffs will also file a Private Attorney General Act (“PAGA”) notice with the Labor and Workforce Development Agency, and the Complaint will be later amended to include a PAGA

1 cause of action, seeking recovery of civil penalties under the PAGA General Act of 2004, Cal. Labor
2 Code §2699 et seq.

3
4 **JURISDICTION AND VENUE**

5 8. This Court is the proper court pursuant to CCP §295(a) and CCP §395.5, and this action
6 is properly filed in Los Angeles, because Defendants' obligations and liability arise therein, because
7 Defendants maintain offices and transact business within Los Angeles, and because the work that is the
8 subject of this action was performed by Class Plaintiffs in Los Angeles County.

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

12 10. The California Superior Court also has jurisdiction in this matter because during their
13 employment with Defendants, Class Plaintiffs, were all California citizens and Defendants FIFTH
14 THIRD BANK, NATIONAL ASSOCIATION, FIFTH THIRD BANCORP, AUTOMATIC DATA
15 PROCESSING, INC. DBA WISELY BY ADP, ADP TOTALSOURCE, INC., UNITED GROUND
16 EXPRESS, INC., UNITED AIRLINES, INC., conducted and transacted business throughout Los
17 Angeles County. Further there is no federal question at issue, as the issues herein are based solely on
18 California statutes and law.

19
20 **THE PARTIES**

21 **PLAINTIFF LOREN ELIZABETH PAYNE**

22 11. Plaintiff LOREN ELIZABETH PAYNE ("PAYNE") is an individual over the age of
23 eighteen (18) and is now and at all times mentioned in this Complaint was a citizen of the State of
24 California.

25 12. Plaintiff PAYNE worked for Defendants as an agent from on or about May 9, 2024 to on
26 or about November 25, 2024, within the State of California.

1 **DEFENDANT FIFTH THIRD BANK, NATIONAL ASSOCIATION**

2 13. Defendant FIFTH THIRD BANK, NATIONAL ASSOCIATION (hereinafter
3 “FIFTH THIRD BANK”) was and is an American corporation doing business in the County of Los
4 Angeles, California. At all relevant times, Defendant FIFTH THIRD BANK employed 26 or more
5 employees.

6
7 **DEFENDANT FIFTH THIRD BANCORP**

8 14. Defendant FIFTH THIRD BANCORP (hereinafter “BANCORP”) was and is an Ohio
9 corporation doing business in the County of Los Angeles, California. At all relevant times, Defendant
10 BANCORP employed 26 or more employees.

11
12 **DEFENDANT ADP TOTALSOURCE, INC.**

13 15. Defendant ADP TOTALSOURCE, INC. (hereinafter “TOTALSOURCE”) was and is
14 Florida corporation doing business in the County of Los Angeles, State of California. At all relevant
15 times, Defendant TOTALSOURCE employed 26 or more employees.

16
17 **DEFENDANT AUTOMATIC DATA PROCESSING, INC. DBA WISELY BY ADP**

18 16. Defendant AUTOMATIC DATA PROCESSING, INC. DBA WISELY BY ADP
19 (hereinafter “ADP”) was and is a Delaware corporation doing business in the County of Los Angeles,
20 State of California. At all relevant times, Defendant ADP employed 26 or more employees.

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22 **DEFENDANT UNITED GROUND EXPRESS, INC.**

23 17. Defendant UNITED GROUND EXPRESS, INC. (hereinafter “UNITED GROUND”) was and is a Delaware corporation doing business in the County of Los Angeles, State of California. At
24 all relevant times, Defendant UNITED GROUND employed 26 or more employees.

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

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

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

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

14 30. Class Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
15 and each of them, including those defendants named as DOES 1-20 acted in concert with one another to
16 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one
17 another in the wrongful acts alleged herein, and/or attempted to do so. Class Plaintiffs are further
18 informed and believe, and based thereupon allege, that Defendants, and each of them, including those
19 defendants named as DOES 1-20, and each of them, formed and executed a conspiracy or common plan
20 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein
21 done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiffs harm.

22 31. Whenever and wherever reference is made in this complaint to any act or failure to act
23 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
24 and/or failures to act by each Defendant acting individually, jointly and severally.

25
26 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

27 32. Class Plaintiffs are informed and believe, and based thereon allege, that there exists such
28 a unity of interest and ownership between FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE,

1 UNITED GROUND, UNITED AIRLINES and DOES 1-20 (collectively “Defendants”) that the
2 individuality and separateness of defendants have ceased to exist.

3 33. Class Plaintiffs are informed and believe, and based thereon allege, that despite the
4 formation of purported corporate existence, FIFTH THIRD BANK, BANCORP, ADP,
5 TOTALSOURCE, UNITED GROUND, UNITED AIRLINES and DOES 1-20 are, in reality, one and
6 the same, including, but not limited to because:

7 a. FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
8 GROUND, UNITED AIRLINES are completely dominated and controlled by DOES 1-20, who
9 personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden
10 and currently hide behind FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
11 GROUND, UNITED AIRLINES to perpetrate frauds, circumvent statutes, or accomplish some other
12 wrongful or inequitable purpose.

13 b. DOES 1-20 derive actual and significant monetary benefits by and through
14 FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED GROUND, UNITED
15 AIRLINES’s unlawful conduct, and by using FIFTH THIRD BANK, ADP, UNITED GROUND,
16 UNITED AIRLINES as the funding source for their own personal expenditures.

17 c. FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
18 GROUND, UNITED AIRLINES and DOES 1-20, while really one and the same, were segregated to
19 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
20 accomplishing some other wrongful or inequitable purpose.

21 d. FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
22 GROUND, UNITED AIRLINES do not comply with all requisite corporate formalities to maintain a
23 legal and separate corporate existence.

24 e. The business affairs of FIFTH THIRD BANK, BANCORP, ADP,
25 TOTALSOURCE, UNITED GROUND, UNITED AIRLINES and DOES 1-20 are, and at all times
26 relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
27 are in inextricable confusion. FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
28 GROUND, UNITED AIRLINES are at all times relevant hereto, used by DOES 1-20 as a mere shell

1 and conduit for the conduct of certain of FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE,
2 UNITED GROUND, UNITED AIRLINES's affairs, and are, and were, the alter ego of DOES 1-20.
3 The recognition of the separate existence of FIFTH THIRD BANK, BANCORP, ADP,
4 TOTALSOURCE, UNITED GROUND, UNITED AIRLINES would not promote justice, in that it
5 would permit FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED GROUND,
6 UNITED AIRLINES to insulate themselves from liability to Plaintiffs for violations of the Labor Code,
7 Business and Professions Code and other statutory violations. The corporate existence of FIFTH THIRD
8 BANK, BANCORP, ADP, TOTALSOURCE, UNITED GROUND, UNITED AIRLINES and DOES 1-
9 20 should be disregarded in equity and for the ends of justice because such disregard is necessary to
10 avoid fraud and injustice to Plaintiffs herein.

11 34. Accordingly, FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
12 GROUND, UNITED AIRLINES constitute the alter ego of DOES 1-20, and the fiction of their separate
13 corporate existence must be disregarded.

14 35. As a result of the aforementioned facts, Class Plaintiffs are informed and believe, and
15 based thereon allege that FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
16 GROUND, UNITED AIRLINES and DOES 1-20 are Plaintiffs' joint employers by virtue of a joint
17 enterprise, and that Plaintiffs were employees of FIFTH THIRD BANK, BANCORP, ADP,
18 TOTALSOURCE, UNITED GROUND, UNITED AIRLINES and DOES 1-20. Class Plaintiffs
19 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
20 and all Defendants shared control of the responsibility and influence of Class Plaintiffs as employees,
21 either directly or indirectly, and the manner in which FIFTH THIRD BANK, BANCORP, ADP,
22 TOTALSOURCE, UNITED GROUND, UNITED AIRLINES's business was and is conducted.

23 36. Alternatively, Class Plaintiffs are informed and believe and, based thereupon alleges, that
24 as and between DOES 1-20, FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED
25 GROUND, UNITED AIRLINES (1) there is an express or implied agreement of assumption pursuant
26 to which DOES 1-20 agreed to be liable for the debts of FIFTH THIRD BANK, BANCORP, ADP,
27 TOTALSOURCE, UNITED GROUND, UNITED AIRLINES, (2) the transaction between DOES 1-20
28 and FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED GROUND, UNITED

1 AIRLINES amounts to a consolidation or merger of entities, (3) DOES 1-20 is a mere continuation of
2 FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED GROUND, UNITED
3 AIRLINES, or (4) the transfer of assets to DOES 1-20 is for the fraudulent purpose of escaping liability
4 for FIFTH THIRD BANK, BANCORP, ADP, TOTALSOURCE, UNITED GROUND, UNITED
5 AIRLINES's debts. Accordingly, DOES 1-20 are the successors of FIFTH THIRD BANK, BANCORP,
6 ADP, TOTALSOURCE, UNITED GROUND, UNITED AIRLINES, and are liable on that basis.

7
8 **CLASS ACTION ALLEGATIONS**

9 37. The Class Plaintiffs are entitled to the protections of the California Labor Code and the
10 Wage Order.

11 38. Per California Labor Code Section 212, "(a) no person, or agent or officer thereof, shall
12 issue in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order,
13 check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and
14 payable in cash, on demand, without discount, at some established place of business in the state, the name
15 and address of which must appear on the instrument, and at the time of its issuance and for a reasonable
16 time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit,
17 arrangement, or understanding with the drawee for its payment."

18 39. Here, the Class Plaintiffs were issued payment of wages by Defendants through a prepaid
19 card, which required Class Plaintiffs to pay fees or incur costs to collect their wages, and/or the prepaid
20 card could not be readily cashed in full.

21 40. Defendants deducted and withheld monies from wages earned by Class Plaintiffs.

22 41. Defendants failed to maintain working conditions that comply with the Wage Order,
23 failed to timely provide them with accurate written wage statements, and failed to timely pay them
24 earned wages during employment.

25 42. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or
26 general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
27 all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a
28 class action pursuant to CCP §382.

1 43. The putative classes that Class Plaintiffs will seek to certify are Defendants' similarly
2 situated individuals who are presently employed or were formerly employed by Defendants from on or
3 about January 17, 2021, up to and through the time of trial in this matter, and were paid wages through a
4 prepaid card and: (1) were not paid all wages due and owing; (2) had monies deducted and withheld from
5 wages earned; (3) were not provided accurate wage statements, or (4) were not paid all earned wages
6 timely upon termination of their employment.

7 44. In addition, Class Plaintiffs will seek to certify a subclass of those similarly situated
8 individuals who were formerly employed by Defendants in California from January 17, 2021 through
9 trial whose employment ended or was terminated. Hereinafter, this is referred to as the "Terminated
10 Employee SubClass."

11 45. The Class and the Terminated SubClass are herein collectively referred to as the
12 "Classes."

13 46. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary
14 to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at
15 such time when Class Plaintiffs seek to certify the Classes alleged herein.

16 47. Numerosity (CCP §382):

- 17 a. The potential quantity of members of the Classes as defined is so numerous that
18 joinder of all members is unfeasible and impractical;
19 b. The disposition of the claims of the members of the Classes through this class action
20 will benefit both the parties and this Court;
21 c. The quantity of members of the Classes is unknown to Class Plaintiffs at this time;
22 however, it is estimated that the membership of the Classes numbers greater than 100
23 individuals; and
24 d. The quantity and identity of such membership is readily ascertainable via inspection
25 of Defendants' records.

26 48. Superiority (CCP §382): The nature of this action and the nature of the laws available to
27 Class Plaintiffs make the use of the class action format particularly efficient and the appropriate
28 procedure to afford relief to Class Plaintiffs for the wrongs alleged herein, as follows:

- a. California has a public policy which encourages the use of the class action device;
- b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;
- c. This case involves large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;
- d. If each individual member of the Classes were required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;
- e. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being;
- f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;
- g. Absent class treatment, the prosecution of separate actions by the individual members of the Classes, even if possible, would likely create:
 - i) a substantial risk of each individual Plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;
 - ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;

- iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants;
- iv) potentially incompatible standards of conduct for Defendants; and
- v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.

- h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;
- i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

49. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of Plaintiff PAYNE are typical of the claims of all members of the Classes she seeks to represent because she has been subject to all the violations described herein, as have all members of the Classes 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 the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.
- b. Adequacy: Plaintiff PAYNE:
 - i) is an adequate representative of the Classes she seeks to represent;
 - ii) will fairly protect the interests of the members of the Classes;

- iii) has no interests antagonistic to the member of the Classes; and
- iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:

- i) Whether Defendants failed to pay Class Plaintiffs all wages due and owing;
- ii) Whether Defendants unlawfully deducted and withheld monies and wages earned from Class Plaintiffs in violation of the Labor Code;
- iii) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to Class Plaintiffs;
- iv) Whether Defendants are derivatively liable pursuant to Labor Code §203 to the Terminated Employee SubClass;
- v) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent competition within the meaning of B&PC §17200, et seq.;
- vi) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent business practices within the meaning of B&PC § 17200, et seq.;
- vii) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- viii) Whether the members of the Classes are entitled to injunctive relief;
- ix) Whether the members of the Classes are entitled to restitution; and
- x) Whether Defendants are liable for attorneys' fees and costs.

50. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. *Collins v. Rocha* (1972) 7 Ca1.3d 232, 238).

FIRST CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 212, 1194
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

51. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

52. At all relevant times, Defendants failed and refused to pay Class Plaintiffs wages earned and required by 8 Code of Regulations §11040, as set forth hereinabove.

53. Per California Labor Code Section 212, “(a) no person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.”

54. Here, the Class Plaintiffs were issued payment of wages by Defendants through a prepaid card, which required Class Plaintiffs to pay fees or incur costs to collect their wages, and/or the prepaid card could not be readily cashed in full.

55. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

56. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct and proximate result of Defendants’ failure and refusal to pay said compensation. Class Plaintiffs are entitled to recover such amounts, plus interest thereon, attorneys’ fees and costs.

1 **SECOND CAUSE OF ACTION**
2 **FOR UNLAWFUL DEDUCTIONS**

3 **LABOR CODE § 221**
4 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
5 **AGAINST ALL DEFENDANTS**

6 57. Class Plaintiffs re-allege and incorporates by reference each of the foregoing paragraphs
7 as though set forth in full herein.

8 58. Defendants deducted and withheld monies from wages earned, owing, and paid to Class
9 Plaintiffs, without notice or authorization by Class Plaintiffs, in violation of Labor Code §221 which
10 provides, in pertinent part: “It shall be unlawful for any employer to collect or receive from an employee
11 any part of wages theretofore paid by said employer to said employee.”

12 59. Class Plaintiffs are owed the amounts unlawfully deducted from their paychecks.

13 60. By unlawfully deducting wages and failing to pay Class Plaintiffs, Defendants are also
14 liable for penalties, reasonable attorneys’ fees, and costs under the Labor Code §§218.5 and 1194.
15

16 **THIRD CAUSE OF ACTION**
17 **FOR FAILURE TO TIMELY FURNISH ACURATE ITEMIZED WAGE STATEMENTS**

18 **LABOR CODE §§226**
19 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
20 **AGAINST ALL DEFENDANTS**

21 61. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
22 forth in full herein.

23 62. Labor Code §226(a) states in pertinent part: “Every employer shall, semimonthly or at the
24 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
25 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
26 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
27 worked by the employee ... (4) all deductions ... (5) net wages earned, (6) the inclusive dates of the
28 period for which the employee is paid ... (8) the name and address of the legal entity that is the employer,

1 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee”

3 63. Further, the IWC Wage Orders §12(A) states in pertinent part: “(A) Every employer shall
4 keep accurate information with respect to each employee including the following: (3) Time records
5 showing when the employee begins and ends each work period. Meal periods, split shift intervals, and
6 total daily hours worked shall also be recorded ... (5) Total hours worked in the payroll period and
7 applicable rates of pay”

8 64. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §12(A), California
9 employers are required to maintain accurate records pertaining to the total hours worked for Defendants
10 by Class Plaintiffs, including but not limited to, beginning and ending of each work period, meal period
11 and split shift interval, the total daily hours worked, and the total hours worked per pay period and
12 applicable rates of pay.

13 65. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders
14 §12(A), Defendants did not and still do not furnish each of the Class Plaintiffs with an accurate itemized
15 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all
16 deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective
17 pay period and the corresponding number of hours worked at each hourly rate by each respective
18 individual and/or pertaining to the total hours worked for Defendants by the Class Plaintiffs, including
19 but not limited to, beginning and ending of each work period, meal period and split shift interval, the
20 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

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

25 67. Here, the Class Plaintiffs suffered injury because Defendants failed to provide accurate
26 and complete information as required by one or more items listed in Labor Code §226(a)(1)-(9) and the
27 Class Plaintiffs could not and cannot promptly and easily ascertain requisite information without
28 reference to other documents or information.

1 68. In addition, the Class Plaintiffs have suffered injury as a result of Defendants' failure to
2 maintain accurate records for the Class Plaintiffs in that the Class Plaintiffs were not timely provided
3 written accurate itemized statements showing all requisite information, including but not limited to total
4 hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code
6 §226 and the IWC Wage Orders §12(A), such that the Class Plaintiffs were misled by Defendants as to
7 the correct information regarding various items, including but not limited to total hours worked by the
8 employee, net wages earned and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate.

10 69. The actual injuries suffered by the Class Plaintiffs as a result of Defendants' knowing
11 and intentional failure to maintain accurate records for the Class Plaintiffs include but are not limited to:

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

22 70. Pursuant to Labor Code §226(e), the Class Plaintiffs are entitled to actual damages or
23 four thousand dollars (\$4,000.00), whichever is greater.

24 71. Pursuant to Labor Code §226(g), the currently-employed members of the Class Plaintiffs
25 are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

26 72. Pursuant to Labor Code §226(e) and/or §226(g), the Class Plaintiffs are also entitled to
27 an award of costs and reasonable attorneys' fees.
28

FOURTH CAUSE OF ACTION
FOR WAITING TIME PENALTIES

LABOR CODE §203
(ON BEHALF OF THE TERMINATED EMPLOYEE SUBCLASS)
AGAINST ALL DEFENDANTS

73. The Terminated Employee SubClass re-alleges and incorporates by reference the above paragraphs as though set forth in full herein.

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

75. The members of the Terminated Employee SubClass are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

76. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

77. As set forth above, Defendants willfully failed to pay the members of the Terminated Employee SubClass their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

78. Defendants' willful failure to pay wages to the members of the Terminated Employee SubClass violates Labor Code §203 because Defendants knew or should have known wages were due to the members of the Terminated Employee SubClass, as set forth above, but Defendants failed to pay them.

79. Thus, the members of the Terminated Employee SubClass are entitled to recovery pursuant to Labor Code §203, as well as attorneys' fees and costs.

FIFTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

80. Class Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

81. B&PC §17200 provides in pertinent part “[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act...”

82. B&PC §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.”

83. B&PC §17204 provides that an action for 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.

84. Defendants’ have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving Plaintiffs of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

85. 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.

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

87. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

88. Plaintiffs 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.

89. 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.

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

91. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That the Court issue an Order certifying the Classes herein, appointing the named Plaintiff PAYNE as representative of all others similarly situated, and appointing the law firm(s) representing the named Plaintiff PAYNE as counsel for the Class Plaintiffs;

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

- a. For recovery of the unpaid balance of the full amount of wages due and owing, according to proof;
- b. For prejudgment interest as allowed by Labor Code §§201, 212, 558, 1182.12, 1194, 1194.2;
- c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or Labor Code §1194(a);

As to the Second Cause of Action for Unlawful Deductions;

- a. For the wages unlawfully deducted or withheld;
- b. For an award of reasonable attorneys' fees and costs pursuant to Labor Codes §§218.5 and 1194.

As to the Third Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements:

- a. For damages according to proof;

1 b. For recovery as authorized by Labor Code §226(e) and 226.3;

2 c. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or
3 §226(g);

4 As to the Fourth Cause of Action for Derivative Violations of Labor Code §203:

5 a. For recovery as authorized by Labor Code §203;

6 b. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §203 and/or
7 Labor Code §1194(a);

8 As to the Fifth Cause of Action for Unfair Business Practices:

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

12 b. For an Order requiring Defendants to identify each of the members of the Classes by name,
13 home address, home telephone number and, if available, email address;

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

16 d. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from
17 engaging in the acts complained of herein;

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

19 f. For interest to the extent permitted by law;

20 g. For an award of attorneys' fees and costs incurred in the investigation, filing and
21 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code
22 §1194 and/or any other applicable provision of law;

23 As to All Causes of Action:

24 a. For such relief as this Court may deem just and proper, including reasonable attorneys' fees
25 and costs incurred.

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1
2 DATED: January 22, 2025

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

3
4
5 By:

Ramin R. Younessi, Esq.
Attorney for Plaintiffs
LOREN ELIZABETH PAYNE, on behalf of
all others similarly situated

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9 **JURY TRIAL DEMANDED**

10 Plaintiffs demand trial of all issues by jury.

11 DATED: January 22, 2025

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

12
13
14 By:

Ramin R. Younessi, Esq.
Attorney for Plaintiffs
LOREN ELIZABETH PAYNE, on behalf of
all others similarly situated