

Robert S. Arns, State Bar No. 65071 (rsa@arnslaw.com)
Jonathan E. Davis, State Bar No. 191346 (jed@arnslaw.com)
Shounak S. Dharap, State Bar No. 311557 (ssd@arnslaw.com)
Katherine A. Rabago, State Bar No. 333374 (kar@arnslaw.com)

THE ARNS LAW FIRM
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495-7888

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

DECEDENT SAMUEL EGGERS, BY AND
THROUGH HIS SUCCESSOR-IN-
INTEREST, LISA STRAUCH EGGERS,
Individually and on Behalf of All Other
Similarly Situated Employees,

Plaintiffs,

v.

DEXTERITY, INC.; and DOES 1 through
100, Inclusive,
Defendants.

Case No. 22-CIV-04867

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES [C.C.P.
§ 382]**

1. Violation of Lab. Code §§ 210, 216, 1194, 1197
2. Violation of Lab. Code §§ 204, 510, 1198
3. Violation of Lab. Code §§ 226.7, 512
4. Violation of Lab. Code §§ 226, 1174
5. Violation of Labor Code §§ 224 & 2802
6. Violation of Labor Code §§ 201, 202, 203
7. Violation of Bus. & Prof. Code §§ 17200, *et seq.* – Unfair, Unlawful and Fraudulent Business Acts and Practices
8. Fraud
9. Violation of Lab. Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

Electronically
FILED

by Superior Court of California, County of San Mateo

ON

6/29/2023

By /s/ Ashlee Nelson
Deputy Clerk

1 1. Sam Eggers was a smart, optimistic, successful, driven young man who joineded
2 Dexterity, Inc.—a robotics startup in the heart of Silicon Valley. But it was clear from day one that
3 the startup dream was a nightmare.

4 2. Dexterity coerced its employees into routinely working long hours over nights and
5 weekends without overtime pay so that Dexterity could attempt to meet customer demands and
6 raise its next round of funding. As is typical of many Silicon Valley startups, Dexterity struggled
7 to manage its rapid growth, promises made to customers about its product, a young and
8 inexperienced leadership team, and a lack of organizational supports, resulting in a “pressure-
9 cooker” environment in which employees were subjected to the whims of “arrogant” and
10 “antagonistic” leadership.

11 3. Dexterity’s management provided no support to employees and, in Sam’s case,
12 often dismissed his work while also taking credit for it.

13 4. Dexterity also had a practice of offering promotion opportunities to nonexempt
14 employees—to “convert” them to exempt employees with equity. Dexterity’s practice was to
15 empanel a secret committee of Dexterity’s leadership to deliberate a nonexempt employee’s
16 promotion request. The panel required unanimity to “convert.” If conversion was denied, the
17 employee was terminated. Three separate executives, including Dexterity’s CEO, convinced Sam
18 to apply for promotion months before his contract termination date, misrepresenting to him that
19 his request would be granted. It was not, and he was fired.

20 5. After eight months of working long hours, into nights and weekends, without pay,
21 culminated in a humiliating termination orchestrated by Dexterity’s leadership, Sam took his own
22 life. In a final note, he laid responsibility on Dexterity, stating: “It was all Dex.”

23 6. Sam’s experience at Dexterity, resulting in his death, was not unique. Sam’s mother
24 and successor-in-interest, Lisa Strauch Eggers, brings this action on behalf of Sam and a class of
25 similarly situated workers who were subject to the same environment and violations. Plaintiff
26

1 asserts claims individually and collectively under the Labor Code, Unfair Competition Law, and
2 for common law fraud.¹

3 7. Plaintiff seeks actual and compensatory damages, civil penalties, restitution,
4 equitable relief, costs and expenses of litigation, including attorneys' fees, and all additional and
5 further relief that may be available and that the Court may deem appropriate and just under all of
6 the circumstances.

7 JURISDICTION AND VENUE

8 8. This class action is brought pursuant to Section 382 of the California Code of Civil
9 Procedure and seeks to remedy Defendant's violations of state law, including the Labor Code,
10 Civil Code, Unfair Competition Law ("UCL"), and orders promulgated by the Industrial Welfare
11 Commission ("IWC" or "IWC Orders"), arising from and related to Defendant's failure to provide
12 meal and rest periods and to pay owed and overtime wages, as well as related misconduct.

13 9. Venue is proper in this Court because the acts complained herein occurred within
14 San Francisco County.²

15 PARTIES

16 10. Decedent Samuel Strauch Eggers ("Sam") was a California resident directly
17 employed by Defendant Dexterity Inc. Sam was employed as an Associate Product Manager by
18 Defendant from June 2021 until the date of his death, February 15, 2022. During the course of his
19 employment by Defendant, Sam was routinely required to work in excess of eight hours per day
20 and/or forty hours per week, and to skip meal and rest periods without receiving proper
21 compensation. He was also subject to an unsafe workplace that fostered an environment injurious
22 to the mental and physical health and wellness of its employees.

24 ¹ Plaintiff intends to pursue a representative action for civil penalties under the Private Attorneys
25 General Act ("PAGA") and intends to amend the complaint accordingly after exhaustion of the
pre-filing notice requirement.

26 ² While Dexterity's office is located in Redwood City, Sam was working remotely from his
27 home in San Francisco for a portion of the relevant period during which his claims accrued.

11. Plaintiff Lisa Strauch Eggers (“Plaintiff”) is the mother of Decedent Samuel Strauch Eggers and brings this action on behalf of her son as his successor-in-interest.

12. Defendant Dexterity, Inc. is a Delaware corporation with its principal place of business located at 1205 Veterans Boulevard in Redwood City, California. Plaintiff is informed and believes that Defendant Dexterity, Inc. regularly conducts business in and employs residents of the State of California.

13. The true names and capacities of DOES 1 through 25, inclusive, are unknown to Plaintiff who sues such Defendant by use of such fictitious names. Plaintiff will amend this complaint to add the true names when they are ascertained. Plaintiff is informed and believes and thereon alleges that Defendant is legally responsible for the occurrences herein alleged, and that Plaintiff and the Class’s damages as herein alleged were proximately caused by their conduct.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action as a class action pursuant to Code of Civil Procedure, Section 382, on behalf of themselves and the following Class:

All persons who were employed by Defendant from July 9, 2017 to the present. Excluded from this Class are Defendants and the Judge to whom this case is assigned.

Plaintiff also brings this action on behalf of the following Subclasses:

Wage and Hour Subclass:

All Class Members who were employed as nonexempt employees.

Fraud Subclass:

All Class Members who were promised overtime compensation.

Health and Safety Subclass:

All Class Members who suffered mental or physical harm as a result of Dexterity’s working environment.

Plaintiff reserves the right to amend the Class and Subclass definitions if discovery or further investigation demonstrate that the Class should be expanded or otherwise modified.

15. **Numerosity of the Class.** The members of the Class are so numerous that joinder of all members would be impracticable. The precise number of members of the Class and their

addresses are presently unknown to Plaintiff. The precise number of persons in the Class and their identities and addresses may be ascertained from Defendant's records.

16. **Existence of Predominance of Common Questions of Fact and Law.** There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether Defendant failed to pay Sam and the Class overtime compensation, in violation of California law;
- b. Whether Sam and the Class were required to work hours in excess of eight hours a day or forty hours per week without compensation for said hours worked;
- c. Whether Defendant failed to compensate Sam and the Class for all hours of work performed in violation of California law;
- d. Whether Defendant failed to provide accurate wage statements to Sam and the Class;
- e. Whether Defendant failed to reimburse the Class for expenses incurred during the course of their employment;
- f. Whether Defendant falsely reported reimbursement for expenses incurred during the course of employment;
- g. Whether Defendant's conduct violates the Labor Code;
- h. Whether Defendant's conduct violates Business and Professions Code Section 17200;
- i. Whether Defendant fostered an environment injurious to the physical and mental health and safety of its employees;
- j. Whether Defendant's conduct otherwise violates California law; and
- k. Whether, as a result of Defendant's misconduct, the Class is entitled to damages, restitution, equitable relief and other damages and relief, and, if so, the amount and nature of such relief.

1 17. **Typicality.** Plaintiff’s claims are typical of the claims of the members of the Class.
2 Plaintiff has no interests antagonistic to those of the Class and is not subject to any unique defenses.

3 18. **Adequacy.** Plaintiff will fairly and adequately protect the interests of all members
4 of the Class and has retained attorneys experienced in class action and complex litigation.

5 19. **Superiority.** A class action is superior to all other available methods for the fair
6 and efficient adjudication of this controversy for, *inter alia*, the following reasons:

- 7 a. It is economically impractical for members of the Class to prosecute
8 individual actions;
- 9 b. The Class and Subclass are readily definable;
- 10 c. Prosecution as a class action will eliminate the possibility of repetitious
11 litigation; and
- 12 d. A class action will enable claims to be handled in an orderly and expeditious
13 manner, will save time and expense, and will ensure uniformity of
14 decisions.

15 20. Any individualized inquiries will be managed with a trial plan to be presented to
16 the Court at class certification.

17 **FACTUAL ALLEGATIONS**

18 **A. Silicon Valley’s Pressure-Cooker Work Culture**

19 21. Dexterity is a robotic automation startup based in Redwood City, California, in the
20 heart of Silicon Valley. Startups—young companies vying to introduce new technology-based
21 products or services to the market—are ubiquitous in this area.

22 22. In seeking to disrupt existing markets, startups can often foster a culture of pushing
23 and breaking boundaries—including legal ones.”³ Startups tend to be small and are often headed
24 by a single entrepreneur or a few founders with expertise and training in narrow technical/
25 engineering subject matter areas, and thus lack management experience and formal organizational

26 ³ Tim Weiss, *Does Startup Culture Encourage Misconduct?*, FORBES (Feb. 2, 2022)
27 [https://www.forbes.com/sites/imperialinsights/2022/02/02/does-startup-culture-encourage-](https://www.forbes.com/sites/imperialinsights/2022/02/02/does-startup-culture-encourage-misconduct/?sh=261eb6b4682a)
28 [misconduct/?sh=261eb6b4682a](https://www.forbes.com/sites/imperialinsights/2022/02/02/does-startup-culture-encourage-misconduct/?sh=261eb6b4682a).

1 structures such as legal departments or human resources departments. Many startups have half as
2 many professional “back office” personnel as companies of the same size in different industries in
3 an effort to keep costs down, eliminate process and gatekeeping and keep decisions rolling.⁴

4 23. This combination results in a culture that not only encourages long hours but
5 requires it. The collective startup mindset is that extreme work hours are a prerequisite for success.
6 Entrepreneurs glorify stories of extreme devotion to their company and product—for example,
7 Elon Musk, the founder of Tesla, sleeping on his factory floor among the Tesla assembly lines.⁵
8 Or a pregnant Lyft driver praised by the company for continuing to drive customers even after she
9 went into labor.⁶ Or Marissa Mayer, former CEO of Yahoo, discussing 130-hour weeks as a secret
10 to success.⁷

11 24. Yet while executives are often the ones touting the virtue of overwork for success,
12 the detrimental consequences of this culture fall onto employees. In a survey of over 9,000 workers
13 in the tech industry, 52% reported unhealthy work environments and contributed toxic work
14 culture, poor management and work overload as being the top three reasons for employee burnout.⁸

15 25. Employees who do not meet these startup demands quickly fall by the wayside,
16 with layoffs and turnover being commonplace in the tech industry. According to LinkedIn, the
17 tech industry has the highest turnover of all industries, at 13.2%. PayScale reports that the median

18 ⁴ Claire Cain Miller, *Yes, Silicon Valley, Sometimes You Need More Bureaucracy*, N.Y. TIMES,
19 (April 30, 2014) <https://www.nytimes.com/2014/05/01/upshot/yes-silicon-valley-there-is-such-a-thing-as-not-enough-bureaucracy.html>.

20 ⁵ Catherine Clifford, *Elon Musk is stressed, says he’s sleeping on Tesla factory floor and has no*
21 *time to go home and shower*, CNBC (April 11, 2018) <https://www.cnbc.com/2018/04/11/elon-musk-says-he-is-sleeping-on-tesla-factory-floor-to-save-time.html>.

22 ⁶ Dan Lyons, *In Silicon Valley, Working 9 to 5 is for Losers*, N.Y. TIMES (Aug. 31, 2017)
23 <https://www.nytimes.com/2017/08/31/opinion/sunday/silicon-valley-work-life-balance-.html>.

24 ⁷ Chris Matyszczyk, *Marissa Mayer says the secret of success is working 130 hours a week*,
25 CNET (Aug. 4, 2016) <https://www.cnet.com/culture/marissa-mayer-says-the-secret-of-success-is-working-130-hours-a-week>.

26 ⁸ Blind Staff Writer, *52 Percent of Tech Employees Believe Their Work Environment is Toxic*,
27 BLIND BLOG (Nov. 28, 2018) <https://www.teamblind.com/blog/index.php/2018/11/28/52-percent-of-tech-employees-believe-their-work-environment-is-toxic/>.

1 tenure is one year, even at the biggest tech firms.⁹ Employees who do not work long hours are
2 denied promotions or not seen as being committed, passionate or a cultural fit.¹⁰

3 26. But the results-focused pressure to innovate goes beyond long hours—it affects the
4 very culture and environment in which employees are expected to spend those hours. Time and
5 again, Silicon Valley startups have been the locus of fraudulent practices arising from a pressure
6 to perform. (For example, the well-publicized story of Theranos, the blood-testing startup that
7 falsely promised a product that didn't exist¹¹; Zenefits, a human resources startup whose founder
8 allegedly created software to allow its employees to cheat on state-mandated broker licensing
9 training¹²; LendingClub, a financial services startup that doctored loan applications to make them
10 look more appealing to investors¹³; WrkRiot, a job-search startup that folded after its founder was
11 accused (and later convicted) of defrauding employees¹⁴; or, as one publication put it: “any of the
12 dozens of smaller shady accounting shortcuts, growth hacks gone awry, and other implosions too
13 minor to make headlines.”¹⁵)

14
15
16 ⁹ Delcie D. Bean IV, *A small tech company tried it all to stop employee turnover. Only one thing*
17 *worked*, CNBC (Dec. 3, 2019) [https://www.cnbc.com/2019/12/03/a-tech-firm-tried-it-all-to-stop-](https://www.cnbc.com/2019/12/03/a-tech-firm-tried-it-all-to-stop-turnover-only-one-thing-worked.html)
18 [turnover-only-one-thing-worked.html](https://www.cnbc.com/2019/12/03/a-tech-firm-tried-it-all-to-stop-turnover-only-one-thing-worked.html).

19 ¹⁰ Nitasha Tiku, *The Gospel of Hard Work According to Silicon Valley*, WIRED (June 3, 2017)
20 <https://www.wired.com/2017/06/silicon-valley-still-doesnt-care-work-life-balance/>.

21 ¹¹ Dan Primak, *The Rise and Fall of Elizabeth Holmes*, FORTUNE (July 8, 2016)
22 <https://fortune.com/2016/07/08/rise-fall-elizabeth-holmes-theranos/>.

23 ¹² Farhad Manjoo, *Zenefits Scandal Highlights Perils of Hypergrowth at Start-Ups*, NY TIMES,
24 (Feb. 17, 2016) [nytimes.com/2016/02/18/technology/zenefits-scandal-highlights-perils-of-](http://nytimes.com/2016/02/18/technology/zenefits-scandal-highlights-perils-of-hypergrowth-at-start-ups.html)
25 [hypergrowth-at-start-ups.html](http://nytimes.com/2016/02/18/technology/zenefits-scandal-highlights-perils-of-hypergrowth-at-start-ups.html).

26 ¹³ Aarti Shahani, *With Lending Club Disgraced, An Industry Looks for Lessons*, NPR, (June 10,
27 2016) [https://www.npr.org/sections/alltechconsidered/2016/06/10/481474919/with-lending-club-](https://www.npr.org/sections/alltechconsidered/2016/06/10/481474919/with-lending-club-disgraced-an-industry-looks-for-lessons)
28 [disgraced-an-industry-looks-for-lessons](https://www.npr.org/sections/alltechconsidered/2016/06/10/481474919/with-lending-club-disgraced-an-industry-looks-for-lessons).

¹⁴ Press Release, Dept. of Justice, Former Silicon Valley CEO Pleads Guilty to Defrauding
Employees of Tech Company Start-Up (Feb. 5, 2018) [https://www.justice.gov/opa/pr/former-](https://www.justice.gov/opa/pr/former-silicon-valley-ceo-pleads-guilty-defrauding-employees-tech-company-start)
[silicon-valley-ceo-pleads-guilty-defrauding-employees-tech-company-start](https://www.justice.gov/opa/pr/former-silicon-valley-ceo-pleads-guilty-defrauding-employees-tech-company-start).

¹⁵ Erin Griffith, *The Ugly Unethical Underside of Silicon Valley*, FORTUNE (Dec. 28, 2016)
<https://fortune.com/longform/silicon-valley-startups-fraud-venture-capital/>.

1 27. As a Fortune article on Silicon Valley’s culture observed: “Breaking the rules
2 makes you a Silicon Valley hero. That’s great if you’re breaking a dumb rule, not so much if you’re
3 breaking an important one.”

4 28. The common theme in these stories is that startup founders and executives set
5 company culture—usually to “move fast and break things”—and when they break important rules
6 to perform, the employees bear the consequences.

7 **B. Dexterity Fostered a Work Environment Injurious to the Mental Health and Safety**
8 **of its Employees and Pressured Them into Working Overtime Without Pay**

9 29. Reviews by employees of Dexterity on the website Glassdoor demonstrate that
10 Dexterity is no exception. They detail a fast-paced “pressure cooker” environment where “[l]ong
11 hours are expected and quietly pushed by management. Work has to get done at all costs.” The
12 culprits of this culture are the company’s leaders, who are described as aggressive, abrasive,
arrogant, and antagonistic.

13 30. Sam experienced this environment even before he started working. On April 27,
14 2021, three weeks prior to his expected start date of May 17, 2021, Sam suffered a broken neck, a
15 severe concussion, a broken hand, a fractured foot and other serious injuries when he was hit by a
16 delivery van while riding his bicycle. When he called his supervisor, Roger Hau, to tell him about
17 the accident and request a four-week postponement for health reasons, Roger pressured him to
18 start as early as possible, saying he hired Sam to work toward Defendant’s next funding round,
19 and implied that Sam’s offer might be rescinded if he did not show up for work as quickly as
20 possible. In complete disregard of Sam’s serious injuries, and the fact that he was not yet an
21 employee of Defendant, on May 18, 2021 Defendant gave Sam a work assignment to complete
22 before his start date.

23 31. When Sam did start on June 7, 2021, a week sooner than he originally requested,
24 he was still visibly recovering from his severe injuries. He wore a neck brace and limped from his
25 fractured foot. Yet on his first day his supervisor informed him that he needed to fly to New York
26

1 with a colleague and then drive to Greenwich, CT to see an installation of Defendant's equipment
2 at a client's warehouse.

3 32. On Wednesday, June 9, 2021, six weeks after his accident, Sam was sent across the
4 country, for two days, and had to walk around a hot warehouse. Furthermore,, Dexterity had not
5 organized sufficient lodgings. It had secured a single-bedroom AirBnB for both employees. After
6 flying across the country in a neck brace, Sam was forced to spend two nights on a sofa while his
7 senior colleague slept in the bed. This incident set the tone for the working environment to which
8 Sam and other employees were subjected.

9 33. Dexterity hired Sam as an associate product manager—a nonexempt position.
10 Dexterity stated that workers would be required to work overtime hours on weeknights and
11 weekends as needed, Dexterity promised Sam, in writing, that he would be paid overtime in
12 accordance with state and federal law. On information and believe, Dexterity made this same
13 representation to all class members.

14 34. But after Sam began working for Dexterity, it became apparent that this promise
15 had been false. He was often instructed by his superiors to work overtime hours and coerced, under
16 the guise of being a team player, to do so without compensation. He was told that “everyone works
17 hard” but that “nobody files for overtime [compensation].” On information and belief, all class
18 members were similarly instructed, coerced, or pressured into working overtime hours without any
19 compensation. They held a reasonable belief that, if they sought proper compensation for the
20 overtime hours they worked, their jobs would be adversely affected.

21 35. Sam and the other class members routinely worked over eight hours per day and
22 forty hours per week without overtime compensation. Members of the class continue to work
23 similar hours without overtime pay.

24 36. Similarly, Sam and class members were pressured into skipping meal and rest
25 breaks in order to complete their job duties.

26 37. Dexterity did not keep adequate timekeeping records of non-exempt employees;
27 nor did they keep records of missed meal or rest periods. Dexterity did not provide accurate wage
28

1 statements. Defendant failed to include required information on class members' wage statements
2 including the regular rate of pay, rate of overtime pay, and all hours worked.

3 38. Sam's manager was a founder and head of product management at the company.
4 His management style was so unpleasant that one of the other founders referred to working under
5 him as "torture." Yet Dexterity did nothing to discipline the manager or provide resources or
6 guidance to affected workers; when Sam attempted to switch managers after three months at
7 Dexterity, one of the founders remarked: "I was wondering why you let [the manager] torture you
8 for so long."

9 39. Dexterity also offered its nonexempt employees promotion opportunities to
10 "convert" to exempt employees with equity. Upon submission of an employee's request for
11 conversion, a committee of founders and executives would meet to deliberate. A unanimous vote
12 is required to convert. If Dexterity decided not to convert the employee, their employment was
13 terminated.

14 40. Dexterity's head of product management, the CEO, and a founding engineer all
15 independently encouraged Sam to apply to convert to exempt status, representing to him that his
16 request would be approved. But after Sam submitted his request, he was denied conversion and
17 his position was terminated.

18 41. After more than eight months of working late nights and weekends without pay,
19 being subjected to an admittedly hostile work environment, during which his physical injuries were
20 obvious, and being induced into a position that resulted in his termination, Sam, exhausted and
21 betrayed, took his own life.

22 42. In his final note, Sam stated that the environment and culture at Dexterity were
23 responsible, writing: "It was all Dex."

24 **FIRST CAUSE OF ACTION**
25 **UNPAID WAGES**
26 **(Violation of Labor Code §§ 210, 216, 1194, 1197)**

27 43. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if
28 set forth in detail herein.

1 44. Defendant has violated and continue to violate Labor Code §§ 216, 1194, and 1197
2 by willfully refusing to pay wages – including the benefits described above – due and payable to
3 class members. As more fully set forth above, class members worked without being appropriately
4 compensated for hours worked.

5 45. Equally, Defendant denied that any wages due for work in excess of forty hours per
6 week or eight hours per day were due to be paid to class members even though Defendant knew
7 that under any set of circumstances or facts, class members were entitled to be paid for each hour
8 that they worked. Defendant has falsely denied and refused and continues to deny falsely and
9 refuse payment for purposes of securing a material economic benefit to themselves and with the
10 intent to annoy, harass, oppress, hinder, and defraud class members.

11 46. Plaintiff and the Class are entitled to recover unpaid wages.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PAY OVERTIME WAGES**
 (Violation of Labor Code §§ 204, 510 & 1198)

14 47. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if
15 set forth in detail herein.

16 48. Class members were expected to regularly work in excess of eight hours per day
17 and forty hours per week; and have regularly worked, and continue to regularly work, in excess of
18 eight hours per day or forty hours per week.

19 49. At all relevant times, Defendant failed to pay class members wages when due, as
20 required by Labor Code §§ 204, 510 & 1198.

21 50. Such a pattern, practice and uniform administration of a corporate policy designed
22 to deprive employees of compensation, as described herein, is unlawful and creates an entitlement
23 to recovery by Plaintiff and the Class, in a civil action, for the unpaid balance of the amount of
24 overtime and other compensation.

**THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(Labor Code §§ 226.7 & 512)**

51. Plaintiff hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

52. Defendant has required and continues to require class members to work during meal or rest periods of more than 5 hours per day with no provision of a meal period of at least 30 minutes.

53. Class members were not properly provided with meal periods as required by California Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Wage Orders Nos. 4 and 5.

54. As a result of Defendant's conduct, Plaintiff and the Class are entitled to all monetary and other damages permitted under the Labor Code.

**FOURTH CAUSE OF ACTION
FAILURE TO PROPERLY REPORT PAY
(Labor Code §§ 226 & 1174)**

55. Plaintiff hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

56. At all relevant times, Defendant failed to keep accurate records of the hours worked by Sam and the Class in violation of Labor Code §§ 226 & 1174.

57. At all relevant times, Defendant failed to provide class members with accurate records of pay indicating the hours worked and/or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and federal deductions were provided to Sam and the Class.

58. As a result of Defendant's conduct, Plaintiff and the Class are entitled to all monetary and other damages permitted under the Labor Code.

**FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(Violation of Labor Code §§ 224 & 2802)**

59. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

1 60. Throughout his employment, Sam and Class members incurred expenditures or
2 losses related to their employment and in direct consequence of the discharge of their duties as
3 Defendant's employees, or of their obedience to the directions of Defendant.

4 61. Defendant failed to reimburse or indemnify class members for these expenditures
5 or losses. Expenses that class members were required to incur include, but are not limited to, costs
6 for their cellular phone used for business purposes.

7 62. By the conduct described herein, Defendant has violated the Labor Code. As a
8 result of Defendant's violations, Plaintiff and the Class are entitled to reimbursement of the
9 incurred expenses pursuant to Labor Code §§ 224 and 2802.

10 **SIXTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**
12 **(Violation of Labor Code §§ 201, 202, 203)**

13 63. Plaintiff hereby realleges and incorporates the above allegations by reference as if
14 set forth fully herein.

15 64. Labor Code §§ 201 and 202 require Defendant to pay its employees all wages due
16 immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice and
17 within 72 hours of resignation made without 72 hours' notice.

18 65. Labor Code § 203 provides that if an employed willfully fails to pay compensation
19 promptly upon discharge, as required by §§ 201 or 202, then the employer is liable for waiting
20 time penalties in the form of continued compensation of up to thirty work days.

21 66. Plaintiff alleges thereon that since at least 2021, Defendant has failed to pay all
22 earned wages to class members during their employment with Defendant. In addition, beginning
23 in at least 2021, members of the Class have been discharged, laid off, resigned, retired or otherwise
24 voluntarily left employment, but Defendant did not pay earned wages upon separation of
25 employment in violation of Labor Code §§ 201 and 202. Defendant's conduct in this regard has
26 been willful.

27 67. As a consequence of Defendant's willful failure to pay wages due to each such
28 employee following separation from employment as required by Labor Code §§ 201 and 202,

1 Class members whose employment ended during the three years prior to the date of the initial
2 filing of this action and continuing through the date of its final disposition are entitled to recover
3 from Defendant an additional sum as a penalty, pursuant to Labor Code § 203, equal to thirty days
4 wages per person plus interest for each employee who separated from employment with
5 Defendant, in amounts according to proof at trial.

6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATION OF THE UCL**
8 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

9 68. Plaintiff hereby realleges and incorporates the above allegations by reference as if
10 set forth fully herein.

11 69. Business & Professions Code §§ 17200 *et seq.* prohibits acts of “unfair
12 competition” which is defined by Business & Professions Code § 17200 as including “any
13 unlawful, unfair or fraudulent business act or practice.” Defendant’s conduct, as described above,
14 constitutes unlawful, unfair and fraudulent business acts and practices.

15 **Unlawful Business Acts and Practices**

16 70. Defendant has violated and continues to violate Business & Professions Code §
17 17200’s prohibition against engaging in “unlawful” business acts or practices by, inter alia:

- 18 a. Violating, and continuing to violate, Labor Code §§ 216, 1194 & 1197, as
19 set forth above;
- 20 b. Violating, and continuing to violate, Labor Code §§ 204, 510 & 1198, as set
21 forth above;
- 22 c. Violating, and continuing to violate, Labor Code §§ 226.7 & 512, as set
23 forth above;
- 24 d. Violating, and continuing to violate, Labor Code §§ 226 & 1174, as set forth
25 above;
- 26 e. Violating, and continuing to violate, Labor Code § 206.5, as set forth above;
27 and
28

1 f. Violating, and continuing to violate, Labor Code §§ 201, 202 & 203, as set
2 forth above.

3 71. In addition, Defendant violated various health and safety laws. Labor Code § 6400
4 mandates that: “Every employer shall furnish employment and a place of employment that is safe
5 and healthful for the employees therein.” Section 6403 further provides that an employer must do
6 everything reasonably necessary to protect the life, safety and health of its employees. Section
7 6405 prohibits an employer from constructing or causing to be constructed a workplace that is
8 unsafe and unhealthful.

9 72. During the relevant period, as stated, Defendant failed to provide class members
10 with a safe and healthful workplace because of the demands imposed by Defendant. Defendant
11 required Sam and other similarly situated employees to work strenuous hours without full
12 compensation. Defendant failed to adopt reasonable policies and practices, such as tracking total
13 hours worked, allowing rest and meal breaks, and providing full compensation for all hours
14 worked, to keep Sam and other similarly situated employees healthful and safe. Further, Defendant
15 encouraged and constructed a workplace that is not safe and healthful because it required of Sam
16 and other similarly situated employees to work long hours, skip meal and rest breaks, and failed
17 to fully compensate them.

18 73. Class members have suffered injury in fact and lost money and/or property as a
19 result of Defendant’s unlawful business acts and practices by, *inter alia*, being deprived paid meal
20 and rest periods and of compensation for all hours worked including overtime.

21 74. By and through its unlawful business practices and acts described herein, Defendant
22 has obtained valuable services from Sam and the Class and have deprived them of valuable rights
23 and benefits guaranteed by law, all to their detriment.

24 75. As a result of Defendant’s violations of the Business and Professions Code section
25 17200, Plaintiff and the Class seek an order of this Court enjoining Defendant’s continued
26 violations. Plaintiff and the Class also seek an order for restitution, injunctive relief and all other

1 relief allowed under the UCL, including interest and attorneys' fees pursuant to, *inter alia*, Cal.
2 Code of Civ. Proc. § 1021.5.

3 **Unfair Business Acts and Practices**

4 76. Defendant's acts and practices, as described above, constitute unfair business
5 practices within the meaning of Business & Professions Code, §§ 17200, *et seq.*

6 77. Class members suffered a substantial injury in fact resulting in the loss of money
7 or property by virtue of Defendant's conduct.

8 78. Defendant's conduct does not benefit workers or competition. Indeed, the injury to
9 class members as a result of Defendant's conduct is substantial and far greater than any alleged
10 countervailing benefit.

11 79. Class members could not have reasonably avoided the injury each of them suffered.

12 80. The gravity of the consequences of Defendant's conduct as described above
13 outweighs any justification, motive or reason therefore, is immoral, unethical, oppressive,
14 unscrupulous, and is contrary to the public welfare since it transgresses civil statutes of the State
15 of California designed to protect workers from exploitation.

16 81. Class members have suffered injury in fact and lost money and/or property as a
17 result of Defendant's unfair business acts and practices by, *inter alia*, being deprived paid meal
18 and rest periods and of compensation for all hours worked including overtime.

19 82. By and through its unfair business practices and acts described herein, Defendant
20 has obtained valuable services from Class members and has deprived them of valuable rights and
21 benefits guaranteed by law, all to their detriment.

22 83. As a result of Defendant's violations of the Business and Professions Code section
23 17200, Plaintiff seeks an order of this Court enjoining Defendant's continued violations. Plaintiff
24 also seeks an order for restitution, injunctive relief, and all other relief allowed under the UCL,
25 including interest and attorneys' fees pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

26 //

27 //

1 **Fraudulent Business Acts and Practices**

2 84. Plaintiff hereby realleges and incorporates the above allegations by reference as if
3 set forth fully herein.

4 85. Defendant's acts and practices, as described above, constitute fraudulent business
5 practices within the meaning of Business & Professions Code, §§ 17200, *et seq.*

6 86. Defendant made uniform misleading and fraudulent communications regarding
7 payment and overtime compensation to class members. Specifically, these fraudulent statements
8 were included within offer letters of employment.

9 87. Defendant represented that Sam and Class Members would be paid for all hours
10 worked, including overtime pay.

11 88. In reality, Defendant had no intention or practice of compensating Sam and non-
12 exempt workers for all hours worked including compensation for overtime and meal and rest
13 breaks.

14 89. As described above, Defendant had a duty to pay wages due for all hours worked
15 including overtime, and meal and rest breaks under California law. Defendant failed to pay said
16 wages.

17 90. Said communications were made with actual knowledge of their falsity or with
18 reckless disregard or deliberate ignorance of their truth.

19 91. Defendant's misleading and fraudulent communications were and are likely to
20 deceive reasonable employees, leading them to believe they would receive payment for all hours
21 worked at applicable rates.

22 92. These communications regarded a material aspect of and were a substantial factor
23 leading class members to be employed by Defendant.

24 93. Class members suffered concrete and identifiable economic injuries as a
25 consequence of Defendant's unlawful conduct because they worked many hours for which they
26 were not properly compensated in reliance on Defendant's false and misleading representations.

1 94. As a result of Defendant's conduct, class members are entitled to all monetary and
2 other damages permitted under law, including but not limited to restitution and compensatory
3 damages for loss of wages.

4 **EIGHTH CAUSE OF ACTION**
5 **FRAUD**

6 95. Plaintiff hereby realleges and incorporates the above allegations by reference as if
7 set forth fully herein.

8 96. As described above, Defendant made uniform misleading and fraudulent
9 communications regarding payment and overtime compensation to class members. Specifically,
10 these fraudulent statements were included within offer letters of employment.

11 97. Defendant uniformly stated to class members that they would be paid overtime
12 compensation, calculated and paid at the rate required by state and federal law.

13 98. In reality, Defendant had no intention or practice of compensating Sam and
14 Subclass members for all hours worked including compensation for overtime and meal and rest
15 breaks.

16 99. As described above, Defendant had a duty to pay wages due for all hours worked
17 including overtime, and meal and rest breaks under California law. Defendant failed to pay said
18 wages.

19 100. Said communications were made with actual knowledge of their falsity or with
20 reckless disregard or deliberate ignorance of their truth.

21 101. Defendant's misleading and fraudulent communications were and are likely to
22 deceive reasonable employees, leading them to believe they would receive payment for all hours
23 worked at applicable rates.

24 102. These communications regarded a material aspect of and were a substantial factor
25 leading class members' decisions to be employed by Defendant.

26 103. Class members suffered concrete and identifiable economic injuries as a
27 consequence of Defendant's unlawful conduct because they worked many hours for which they
28 were not properly compensated in reliance on Defendant's false and misleading representations.

1 104. As a result of Defendant's conduct, Plaintiff and the Class are entitled to all
2 monetary and other damages permitted under law, including but not limited to restitution and
3 compensatory damages for loss of wages.

4 **NINTH CAUSE OF ACTION**
5 **PRIVATE ATTORNEYS GENERAL ACT**

6 105. Plaintiff hereby realleges and incorporates the above allegations by reference as if
7 set forth fully herein.

8 106. Plaintiff complied with the requirements of Labor Code § 2699.3 by providing
9 written notice to the Labor and Workforce Development Agency via its online submission portal,
10 as well as to Defendant by certified mail, of all violations of the Labor Code Plaintiffs allege that
11 are enumerated in Labor Code § 2699.5. Plaintiff waited the requisite notice period before bringing
12 this claim.

13 107. Pursuant to Labor Code § 2699, Plaintiff brings this representative action as a proxy
14 for the Labor and Workforce Development Agency to recover all civil penalties for violations
15 suffered by aggrieved employees. Plaintiff seeks penalties for the following violations

- 16 • Failure to pay wages for meal periods and rest periods (Lab. Code §§ 226.7,
17 512, 558, 1197.1)
- 18 • Failure to pay unpaid wages (Lab. Code §§ 210, 216, 1194, 1197)
- 19 • Failure to pay overtime wages (Lab. Code §§ 204, 510, 1198)
- 20 • Failure to properly report pay (Lab. Code §§ 226, 1174)
- 21 • Failure to reimburse (Lab. Code §§ 224, 2802)
- 22 • Requirement of the execution of release of claim or right on account of wages
23 due (Lab. Code § 206.5)
- 24 • Waiting time penalties (Lab Code §§ 201, 202, 203)
- 25 • Failure to provide safe and healthful workplace (Lab. Code §§ 6400, 6401,
26 6403, 6405)

27 108. By the conduct described herein, Defendant has violated the Labor Code.

28 109. As a result of Defendant's violations, Plaintiff is entitled to all civil penalties
available pursuant to the Labor Code, as well as attorneys' fees and costs as authorized by Labor
Code § 2699(g).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 3 A. An order certifying this case as a class action and appointing Plaintiff Lisa Strauch
4 Eggers and her counsel to represent the Class;
- 5 B. For actual and compensatory damages according to proof pursuant to the Labor
6 Code, Civil Code, applicable IWC Orders and all other applicable laws and
7 regulations;
- 8 C. For restitution and disgorgement to the extent permitted by applicable law;
- 9 D. For civil and statutory penalties available under applicable law;
- 10 E. For pre-judgment and post-judgment interest;
- 11 F. For an award of attorneys' fees, costs and expenses as authorized by applicable law;
12 and
- 13 G. For such other and further relief as this Court may deem just and proper.

14
15
16
17
18
19 Jonathan E. Davis, State Bar No. 191346
20 Shounak S. Dharap, State Bar No. 311557
Katherine A. Rabago, State Bar No. 333374
21 **THE ARNS LAW FIRM**
22 515 Folsom Street, 3rd Floor
San Francisco, CA 94105
23 Tel: (415) 495-7800
Fax: (415) 495-7888

24 Attorneys for Plaintiffs

1 **Eggers v. Dexterity, Inc.**
2 **San Mateo Superior Court Case No. 22-CIV-04867**

3 CERTIFICATE OF SERVICE

4 I, the undersigned, declare as follows:

5 I am over the age of 18 years and not a party to, nor interested in, the above-entitled action. I am an
6 employee of Arns Davis Law Firm, A Professional Corporation, and my business address is 515 Folsom Street, 3rd
7 Floor, San Francisco, CA 94105

8 On June 29, 2023, I served the following: **FIRST AMENDED CLASS ACTION COMPLAINT FOR**
9 **DAMAGES [C.C.P. § 382]**

10 on all interested parties in the above cause, by:

11 X **ONLY BY ELECTRONIC TRANSMISSION** Only by emailing the document(s) to the persons
12 at the e-mail address(es) below pursuant to California Code of Civil Procedure § 1010.6

13 The envelopes were addressed as follows:

14 Melinda S. Riechert
15 Orrick Herrington & Sutcliffe LLP
16 1000 Marsh Road
17 Menlo Park, CA 94025-1015
18 mrieichert@orrick.com
19 *Counsel for Defendants*

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
21 correct:
22 and Executed on June 29, 2023 at San Francisco, California.

23
24
25
26
27
28



MARY BACELIS