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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BENITO**

11 MARIA D. PEREZ, on behalf of herself and all
12 others similarly situated,

13 Plaintiff,

14 vs.

15
16
17 EDPO, LLC, dba ENERGY DISTRIBUTION
PARTNERS; DASSEL'S PETROLEUM, INC.,
18 a California corporation; and DOES 1 through
19 100, Inclusive,

20 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BENITO

OCT 17 2022

M. Pantyn
DEPUTY CLERK

Case No. CU-22-00156

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

- (1) **FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198)**
- (4) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*);**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria D. Perez (“Plaintiff”), on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against EDPO,
3 LLC dba Energy Distribution Partners; Dassel’s Petroleum, Inc., a California corporation; and
4 Does 1 through 100, inclusive (collectively, “Defendants”), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby bring this
8 class action for recovery of unpaid wages and penalties under California Business and Professions
9 Code section 17200, *et. seq.*, Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558, 1194,
10 1198, 2698, *et seq.*, and Industrial Welfare Commission Wage Order No. 7 (“Wage Order 7”), in
11 addition to seeking declaratory relief and restitution. This class action is brought pursuant to
12 California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants’
13 violations of the California Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in San Benito County. Defendants own, maintain offices, transact business, have an
19 agent or agents within San Benito County, and/or otherwise are found within San Benito County,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of this action and within the statute of limitations periods applicable to each cause of
25 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
26 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
27 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
28 204, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2698, *et seq.*, California Business & Professions

Code § 17200, *et seq.* (Unfair Competition), and Wage Order 7, which sets employment standards for the mercantile industry, which includes any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a propane distribution company, and that they employed Plaintiff and other similarly situated non-exempt employees within San Benito County and the state of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 16).

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10. During Plaintiff's employment with Defendants, Plaintiff often worked overtime hours, but did not always receive overtime compensation equal to one and one-half times her regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff bonuses, "essential awards," "Lock Card" payments, "LTD imputed" payments, and/or other forms of non-discretionary incentive pay (hereinafter, the aforementioned forms of pay are collectively referred to as "Incentive Pay"), but Defendants failed to properly include Incentive Pay in Plaintiff's regular rate of pay, and therefore failed to properly calculate Plaintiff's regular rate of pay for overtime purposes. Thus, Plaintiff and other non-exempt employees were paid less than one and one-half times (or two times in the case of double-time hours) their "regular rate" of pay for overtime hours worked. Defendants' systematic underpayment of Plaintiff's and other non-exempt employees' overtime wages occurred during time periods in which they earned Incentive Pay and worked overtime hours.

11. Defendants have also failed to provide Plaintiff and other non-exempt employees with all statutorily mandated meal periods due to Defendants' meal period policies/practices. Specifically, Defendants sometimes provided meal periods late, due to Defendants' failure to provide meal periods starting no later than 5.0 hours into employees' shifts. In addition to Defendants' failure to provide legally compliant first meal periods, Defendants failed to provide a second meal period when Plaintiff and other non-exempt employees work shifts in excess of 10.0 hours. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

12. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-

1 minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other
2 non-exempt employees were frequently unable to take the rest periods to which they were entitled
3 as a result of the workload imposed by Defendants. Moreover, when Plaintiff or other non-exempt
4 employees worked over 10.0 hours, Defendants failed to authorize and permit a third rest period.
5 In those instances that Defendants failed to provide Plaintiff and other non-exempt employees
6 with a legally compliant rest period, Defendants failed to pay the rest period premiums required
7 by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative
8 class period, Defendants maintained no payroll code or other mechanism for paying rest period
9 premiums when Defendants failed to authorize and permit a legally compliant rest period.

10 13. As a result of Defendants' failure to pay all overtime wages, as well as Defendants'
11 failure to pay meal and rest period premium wages, Defendants maintained inaccurate payroll
12 records, and issued inaccurate wage statements to Plaintiff.

13 14. In addition, the wage statements issued to Plaintiff and other non-exempt
14 employees were facially deficient in that they failed to list the correct total hours worked and
15 therefore, failed to comply with Labor Code § 226(a)(2). Specifically, the wage statements issued
16 by Defendants generally included a line item titled "total hours worked," which stated "0.0000"
17 regardless of the number of hours actually worked; and/or a line item that stated "total hours,"
18 which included the "hours" attributed to holiday pay, vacation pay, and/or sick pay, even though
19 the hours ascribed to these types of earnings are not considered hours worked, and/or included
20 other items in "total hours" other than hours worked.

21 15. As a result of Defendants' failure to pay all overtime wages, and failure to pay all
22 required meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and
23 other formerly employed non-exempt employees at the separation of their employment.

24 **CLASS ACTION ALLEGATIONS**

25 16. Class Definitions: Plaintiff bring this action on behalf of herself and the following
26 Classes pursuant to Section 382 of the Code of Civil Procedure:

27 a. The Overtime Class consists of all of the Defendants' current and former non-
28 exempt employees in California who worked overtime hours and also earned Incentive Pay

during a corresponding time period, at any time from four years immediately preceding the filing of this action through the present.

b. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours without a 30-minute meal period beginning prior to the end of the fifth of work as reflected in their time records; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of this action through the present.

c. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

d. The Wage Statement Class consists of (i) all members of the Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this lawsuit through the present; and (ii) all of the Defendants' current and former non-exempt employees in California who were issued a wage statement that listed a record of zero "total hours worked" and/or listed a calculation of "total hours" that includes holiday hours, sick hours, vacation hours, or other hours not attributed to actual hours worked.

e. The Waiting Time Class consists of all members of the Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants and who last worked for Defendants at any time from three years immediately preceding the filing of this lawsuit through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly

1 situated employees, which predominate over questions affecting only individual members
2 including, without limitation to:

- 3 i. Whether Defendants' overtime practices violate the applicable Labor Code
4 provisions including, but not limited to, Sections 510 and 1194 by
5 requiring overtime work and not paying the Overtime Class for said work
6 according to the overtime laws of the State of California;
- 7 ii. Whether Defendants provided legally compliant meal periods to members
8 of the Meal Period Class;
- 9 iii. Whether Defendants authorized and permitted legally compliant rest
10 periods to members of the Rest Period Class;
- 11 iv. Whether Defendants furnished legally compliant wage statements to
12 members of the Wage Statement Class pursuant to Labor Code § 226; and
- 13 v. Whether Defendants paid all wages due to members of the Waiting Time
14 Class at the time of separation of employment.

15 19. **Predominance of Common Questions:** Common questions of law and fact
16 predominate over questions that affect only individual members of the Classes. The common
17 questions of law set forth above are numerous and substantial and stem from Defendants' policies
18 and/or practices applicable to each individual class member, such as Defendants' overtime rate,
19 wage statement, meal period, rest period, and final wage policies/practices. As such, the common
20 questions predominate over individual questions concerning each individual class member's
21 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

22 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
23 Plaintiff was employed by Defendants as a non-exempt employee in California during the
24 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
25 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime
26 wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished
27 with inaccurate wage statements, and was deprived of all final wages upon her separation of
28 employment from Defendants.

1 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
5 actions in state and federal courts in the past and are committed to vigorously prosecuting this
6 action on behalf of the members of the Classes.

7 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 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 attending thereto. As such, the Classes identified in Paragraph 16 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

25. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 14, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

26. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, Wage Order 7, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

27. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, for the reasons set forth in this Complaint.

29. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 7, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. Labor Code §§ 226.7 and 516, and Wage Order 7, § 12 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

32. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members for each rest period to which they were entitled while working.

33. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants negligently and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all overtime wages earned, all meal and rest period premium wages earned, and total hours worked, in violation of Labor Code § 226.

37. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit according to California Labor Code §§ 226 and 226.3.

**WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)**

39. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime wages and unpaid meal and rest period premium wages.

41. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Cal. Labor Code §§ 201-203.

42. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages due, failing to provide meal periods or pay meal period premium wages, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements in violation of Labor Code § 226, and failing to pay all earned wages to Waiting Time Class members at the time of their separation of employment.

45. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over

Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

46. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

47. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

48. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

50. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employees" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1

per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime wages owed, in violation of Labor Code §§ 204, 510, 1194, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to pay Plaintiff and other aggrieved former employees all final wages due at the end of their employment in violation of Labor Code §§ 201-203;
- f. Failing to pay Plaintiff and other aggrieved employees all wages due at least twice each calendar month, in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code § 1174.

51. On or around August 11, 2022, Plaintiff notified Defendants EDPO, LLC and Dassel's Petroleum, Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in paragraph 50 (a)-(g) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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52. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation

pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §§ 218.6 and 1194(a), Civil Code § 3287, and Art. XV, § 1 of the California Constitution;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, and 2699(g), and Code of Civil Procedure § 1021.5; and

13. For such other and further relief the Court may deem just and proper.

Date: October 14, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

By: _____


Tuvia Korobkin
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: October 14, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

By: _____


Tuvia Korobkin
Attorney for Plaintiff