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on behalf of himself and all others similarly situated

Assigned for all purposes:
Judge Randall J. Sherman
Dept. CX105

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

OMID GIAHI, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

XPRESS MED PHARMACY, INC., a
California corporation, MAHBOD ZARGAR
an individual, and DOES 1 through 20,
inclusive,

Defendants.

Case No. 30-2023-01313532-CU-WT-CXC

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1194, 1194.2, 1197, WAGE ORDER NO. 5 OF THE IWC;**
- 2. FAILURE TO FURNISH WAGE AND HOUR STATEMENTS (LABOR CODE §§ 226 AND 226.3);**
- 3. FAILURE TO MAINTAIN PAYROLL RECORDS (LABOR CODE §§ 1174 AND 1174.5);**
- 4. FAILURE TO PROVIDE MEAL AND REST PERIOD COMPENSATION (LABOR CODE § 226.7);**
- 5. FAILURE TO PAY WAGES IN A TIMELY MANNER (LABOR CODE § 204);**
- 6. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 512, 1194);**
- 7. WAITING TIME PENALTIES (LABOR CODE §§ 201, 202, AND 203);**
- 8. FAILURE TO INDEMNIFY/REIMBURSE**

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NECESSARY EXPENDITURES
INCURRED DURING DISCHARGE OF
WORK DUTIES (LABOR CODE § 2802);
9. VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200 *ET SEQ.*;
AND
10. FOR CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEY
GENERAL ACT (LABOR CODE §§ 2698
ET SEQ.)

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

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COMPLAINT

1. Plaintiff OMID GIAHI, both as an individual and on behalf of all other persons similarly situated (collectively “Plaintiffs”) files this Class Action Complaint against XPRESS MED PHARMACY, INC., a California Corporation, MAHBOD ZARGAR, an individual, and DOES 1 through 20, inclusive, (collectively “Defendants”) and in support thereof alleges as follows:

SUMMARY OF COMPLAINT

2. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, XPRESS MED PHARMACY, INC. owned and operated a corporation and availed itself of the rights and privileges of the State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, MAHBOD ZARGAR was Plaintiff’s employer, manager, corporate agent, and/or supervisor.

4. Plaintiff alleges a representative wage and hour complaint against Defendants.

5. In actuality, Plaintiff was forced to work without proper compensation for his hours worked. Plaintiff was also left without compensation for missed meal and rest breaks. In essence, Defendants used unlawful timekeeping methods and practices to circumvent California’s Labor Code and secure more labor for less cost, at the expense of their employees such as Plaintiff.

6. In addition to the class claims described above, Plaintiff also brings Private Attorneys General Act (“PAGA”) claims sounding primarily in wage and hour violations.

JURISDICTION AND VENUE

7. Jurisdiction. This Court has jurisdiction of this action pursuant to Code of Civil Procedure section 410.10. This action is brought pursuant to Code of Civil Procedure section 382, Civ. Code section 1781, et seq., and Business and Professions Code § 17200 et seq. Further, the acts and omissions complained of occurred at the workplaces owned and operated by Defendants. This Court is the proper court, and this action is properly filed in Orange County, because Defendants’ obligations and liability arise therein, because Defendants maintain an office and transact business within Orange County, and because the work that is the subject of

1 this action was performed by Plaintiffs in Orange County. Plaintiff is a citizen of California.
2 Defendants, from whom significant relief is sought and whose conduct forms the basis for this
3 suit, operate their business throughout this state and from within the County of Orange. Plaintiff,
4 through this Complaint, seeks to redress injuries and violations of California law.

5 8. Venue. Venue is proper in the Superior Court of Orange County pursuant to Code
6 of Civil Procedure sections 395(a) and 395.5 because the acts complained of herein occurred in
7 the County of Orange and a large percentage, if not the majority, of Defendants' operations in
8 this state are within the County of Orange. Defendants own, maintain an office, transact
9 business, have an agent or agents within the County of Orange, or are otherwise found within the
10 County of Orange. Defendants are within the jurisdiction of this Court for purposes of service of
11 process.

12 PLAINTIFFS

13 9. Plaintiff, OMID GIAHI, (hereinafter referred to as "Mr. Giahi" or "Plaintiff") is
14 and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

15 10. Collectively, Mr. Giahi and all persons similarly situated to Mr. Giahi are referred
16 to herein as "Plaintiffs." Mr. Giahi brings this action individually and on behalf of himself and
17 as a representative of all similarly situated persons pursuant to Cal. Civ. Code section 382. With
18 respect to the Plaintiffs, each plaintiff:

- 19 a. was a resident of the State of California;
- 20 b. was employed by Defendants as a member of Defendants' CLASS
21 PLAINTIFFS (*infra* at ¶ 11) at Defendants' location within the four years
22 preceding February 2023;
- 23 c. was not compensated the minimum wage for all hours worked and was forced
24 to work hours off the clock;
- 25 d. was not provided with accurate itemized wage and hour statements pursuant to
26 applicable Labor Code requirements;
- 27 e. was not provided compliant meal breaks pursuant to applicable Labor Code
28 requirements;

- 1 f. was not provided compliant rest breaks pursuant to applicable Labor Code
2 requirements;
3 g. was not compensated all wages earned and owed in a timely manner as
4 required by the Labor Code; and
5 h. worked more than eight (8) hours in any given day and/or more than forty (40)
6 hours in any given week, but was not paid overtime compensation pursuant to
7 applicable Labor Code requirements.

8 DEFENDANTS

9 10. Plaintiffs are informed and believe, and based thereupon allege, that at all times
10 relevant hereto, Defendant XPRESS MED PHARMACY, INC. (hereinafter referred to as
11 “Xpress”) was and is a California corporation doing business at 16929 Bushard St., Fountain
12 Valley 92708, in the County of Orange, State of California.

13 11. Plaintiffs are informed and believe, and based thereupon alleges, that at all times
14 relevant hereto, Defendant MAHBOD ZARGAR (hereinafter referred to as “Mr. Zargar”) was and
15 is an individual residing in the County of Orange, State of California, with his principal place of
16 business located therein.

17 12. Plaintiffs are informed and believe, and based thereupon allege, that at all times
18 relevant hereto, Defendant Mr. Zargar was Plaintiffs’ employer, manager, corporate agent,
19 supervisor. Specifically, Plaintiffs are informed and believe, and based thereon allege, that Mr.
20 Zargar dictated Plaintiffs’ compensation and had plenary ability to supervise, manage, hire, and fire,
21 and did participate in the firing of Plaintiffs. Defendant Mr. Zargar exercised control and
22 management of the work performed by Plaintiffs as to establish or change corporate policies for
23 which Plaintiffs were required to perform. Defendant Mr. Zargar had the ability to ensure Plaintiffs
24 were properly compensated and allotted meal breaks, rest periods, and other provisions issued to
25 employees. Furthermore, Plaintiffs were of the belief that Mr. Zargar was also their employer.

26 13. On information and belief, Mr. Zargar was the primary, if not the sole, decision
27 maker and author of its corporate policies as to: (1) setting employees’ working hours and rates of
28 pay; (2) whether, and how much, to pay employees for overtime hours worked; (3) whether to

1 allow employees the opportunity to take meal periods and rest breaks; (4) determining whether to
2 issue itemized wages statements to employees; (5) determining whether an employee was exempt
3 or non-exempt for purposes of applicable compliance with the Labor Code and order of the
4 Industrial Welfare Commission; and (6) ensure compliance with all applicable Labor Code sections
5 and orders of the Industrial Welfare Commission.

6 14. Plaintiffs are informed and believe, and based thereupon allege, that at all times
7 relevant hereto, Defendants owned and operated a pharmaceutical corporation and availed itself
8 of the rights and privileges of the State of California.

9 15. Defendants were Plaintiffs' employer within the meaning of Government Code
10 §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and
11 regularly employs five (5) or more persons and is therefore subject to the jurisdiction of this
12 Court.

13 16. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiffs at
15 this time and therefore said Defendants are sued by such fictitious names. Plaintiffs will seek
16 leave to amend this complaint to insert the true names and capacities of said Defendants when
17 the same become known to Plaintiffs. Plaintiffs are informed and believe, and based thereupon
18 allege, that each of the fictitiously named Defendants is responsible for the wrongful acts alleged
19 herein, and are therefore liable to Plaintiffs as alleged hereinafter.

20 17. Plaintiffs are informed and believe, and based thereupon allege, that at all times
21 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
22 supervisors, co-conspirators, parent corporation, joint employers, alter egos, successors, and/or
23 joint ventures of the other Defendants, and each of them, and in doing the things alleged herein,
24 were acting at least in part within the course and scope of said agency, employment, conspiracy,
25 joint employer, alter ego status, successor status and/or joint venture and with the permission and
26 consent of each of the other Defendants.

27 18. Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
28 and each of them, including those defendants named as DOES 1-20, acted in concert with one
another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or

1 coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including
2 pursuant to Government Code §12940(i). Plaintiffs are further informed and believe, and based
3 thereupon allege, that Defendants, and each of them, including those defendants named as DOES
4 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to which
5 they would commit the unlawful acts alleged herein, with all such acts alleged herein done as
6 part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiffs' harm.

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

10 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

11 20. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
12 unity of interest and ownership between Defendants and DOES 1-20 that the individuality and
13 separateness of Defendant has ceased to exist.

14 21. Plaintiffs are informed and believe, and based thereon allege, that despite the
15 formation of purported corporate existence, Defendants and DOES 1-20 are, in reality, one and the
16 same as Defendants, including, but not limited to because:

- 17 a. Defendants are completely dominated and controlled by DOES 1-20, who personally
18 committed the frauds and violated the laws as set forth in this Complaint, and who
19 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent
20 statutes, or accomplish some other wrongful or inequitable purpose.
- 21 b. DOES 1-20 derive actual and significant monetary benefits by and through
22 Defendant's unlawful conduct, and by using Defendants as the funding source for
23 their own personal expenditures.
- 24 c. Plaintiffs are informed and believe that Defendants and DOES 1-20, while really one
25 and the same, were segregated to appear as though separate and distinct for purposes
26 of perpetrating a fraud, circumventing a statute, or accomplishing some other
27 wrongful or inequitable purpose.
- 28 d. Plaintiffs are informed and believe that Defendants do not comply with all requisite
corporate formalities to maintain a legal and separate corporate existence.

1 e. Plaintiffs are informed and believe, and based thereon allege, that the business affairs
2 of Defendants and DOES 1-20 are, and at all times relevant were, so mixed and
3 intermingled that the same cannot reasonably be segregated, and the same are in
4 inextricable confusion. Defendants are, and at all times relevant hereto was, used by
5 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants'
6 affairs, and is, and was, the alter ego of DOES 1-20. The recognition of the separate
7 existence of Defendants would not promote justice, in that it would permit Defendants
8 to insulate themselves from liability to Plaintiffs for violations of the *Labor* Code and
9 other statutory violations. The corporate existence of Defendants and DOES 1-20
10 should be disregarded in equity and for the ends of justice because such disregard is
11 necessary to avoid fraud and injustice to Plaintiffs herein.

12 22. Accordingly, Defendants constitute the alter ego of DOES 1-20, and the fiction of
13 their separate corporate existence must be disregarded.

14 23. In addition, Plaintiffs are informed and believe, and based thereon allege that
15 Defendant and DOES 1-20 are Plaintiffs' joint employers by virtue of a joint enterprise, and that
16 Plaintiffs were employees of each of them. Plaintiffs performed services for each and every one of
17 Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of
18 Plaintiffs as employees, either directly or indirectly, and the manner in which Defendants' business
19 was and is conducted.

20 24. In addition, Plaintiffs are informed and believe and, based thereupon allege, that as
21 and between DOES 1-20 and Defendants: (1) there is an express or implied agreement of
22 assumption pursuant to which DOES 1-20 agreed to be liable for the debts of Defendants, (2) the
23 transaction between DOES 1-20 and Defendants amounts to a consolidation or merger of the two
24 corporations, (3) DOES 1-20 is a mere continuation of Defendants, or (4) the transfer of assets to
25 DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly,
DOES 1-20 are the successors of Defendants, and are liable on that basis.

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FACTUAL ALLEGATIONS

A. Class Claims

25. Defendants own a pharmacy delivery service located in Fountain Valley, within Orange County. Plaintiffs were employed by Defendants as non-exempt employees and misclassified independent contractors, including but not limited to, pharmacists, pharmacy technicians, drivers, payroll specialists, managers, IT, technical support, marketing/advertising/media, Xpress Med Pharmacy representatives, and other non-exempt employees or misclassified independent contractors.

26. Defendants provide their services all throughout Southern California, including but not limited to San Diego, San Bernardino, Los Angeles County, Orange County, and Ventura County.

27. Mr. Giahi was first employed as a delivery driver at a rate of pay of \$21.00 per hour from on or about April 25, 2022 until on or about August 17, 2022, when he was terminated. In addition to Mr. Giahi's base rate of pay, Defendants ensured Mr. Giahi that Defendants would pay for mileage and gas.

28. Mr. Giahi and all others similarly situated who have worked for Defendants as Non-Exempt or Misclassified Independent Contractors at Defendants within the four years preceding the date of this complaint, bring this class action to recover wages, damages, unreimbursed business expenses, penalties, attorneys' fees, litigation expenses, and costs of court under the provisions of the *Labor Code* sections 201, 202, 203, 204, 210, 221, 226, 226.7, 226.8, 510, 512, 515, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, provisions of the Industrial Welfare Commission ("IWC") Order No. 5-2001, and the *California Business and Professional Code* section 17200 et seq.

29. Despite the fact that Plaintiffs performed non-exempt duties for Defendants, Defendants misclassified Plaintiffs as independent contractors. On at least once occasion, Mr. Giahi informed Defendants' owner and manager, Mr. Zargar, that Defendants had been misclassifying Plaintiffs. In response, Mr. Zargar sternly warned Mr. Giahi to stop informing Plaintiffs that they had been misclassified. Defendants continued misclassifying Plaintiffs after this conversation.

30. Within the time period of four years preceding the date of this complaint ("Relevant

1 Time Period”), Plaintiffs were not provided compliant meal and rest breaks as statutorily mandated,
2 were forced to work through statutorily mandated meal and rest breaks without pay, were not paid
3 legally mandated minimum, overtime and waiting time wages, did not receive accurate itemized
4 wage statements, were not paid all wages earned and owed in a timely manner, and were, in some
5 cases, wrongfully terminated.

6 31. During the Relevant Time Period, Plaintiffs are and/or have been non-exempt
7 employees within the meaning of the *Labor Code*, and the implementing regulations of the IWC
8 Wage Orders.

9 32. Defendants are or were the employer of all Plaintiffs during the Relevant Time
10 Period. Defendants “employ(ed)” all Plaintiffs pursuant to the definition of “employ” within IWC
11 Wage Order 5.

12 33. During the Relevant Time Period, Defendants exercised control over the wages,
13 hours, and working conditions of Plaintiffs; suffered or permitted Plaintiffs to work and created a
14 common law employment relationship with Plaintiffs.

15 34. Indeed, during their employment with Defendants, Plaintiffs’ work was subject to
16 Defendants’ control, in that Defendants dictated how Plaintiffs were to carry out their job duties
17 and what tasks Plaintiffs were to perform. Defendants also set Plaintiffs’ schedules and rate of pay
18 and required that Plaintiffs report to Defendants for approval on each task Plaintiffs had to
19 complete.

20 35. Throughout the entirety of Plaintiffs’ employment, Plaintiffs performed all of their
21 job duties satisfactorily.

22 36. Plaintiffs paid for several items required for performing their job; however
23 Defendants failed to reimburse Plaintiffs for necessary business expenses. For instance, Mr. Giahi,
24 had to use his personal vehicle to drive thousands of miles in his capacity as a delivery driver.
25 During his time with Defendants, Mr. Giahi drove a total of approximately 19,500 miles. Yet,
26 Defendants did not reimburse Mr. Giahi for any of the necessary business costs associated with
27 driving thousands of miles in a car, such as gas, mileage, maintenance, etc.

28 37. During the Relevant Time Period, Defendants failed and refused to pay Plaintiffs the
total amount of wages that Plaintiffs, through their employment and labor, earned working for

1 Defendants. Defendants' timekeeping policies and/or practices resulted in Plaintiffs not being
2 compensated for all hours actually worked. During Plaintiffs' employment with Defendants,
3 Defendants' policies/practices were to only compensate Plaintiffs for eight (8) hours each workday,
4 despite Plaintiffs regularly working shifts greater than eight (8) hours in length. In addition,
5 Plaintiffs were routinely forced to work off the clock without any compensation due to Defendants'
6 requirement that Plaintiffs perform work either prior to clocking in or to perform work after
7 clocking out for the day.

8 38. For instance, Defendants' required Plaintiffs to clock in using an application.
9 However, Defendants granted themselves access on the application to alter Plaintiffs' respective
10 hours worked. Defendants used this unlawful power to clock Plaintiffs out early each day so that
11 Plaintiffs would continue working for free.

12 39. For instance, in the case of Mr. Giahi, Defendants would clock Mr. Giahi out as
13 soon as Mr. Giahi dropped off his final delivery for the day; yet, delivery drivers, such as Mr.
14 Giahi, were required to drive back to Defendants' pharmacy after their final delivery. This drive
15 would vary in length depending on where the final delivery was located. On some occasions Mr.
16 Giahi would have to drive back to Fountain Valley from San Diego, which can take around two
17 hours on average. Defendants altered Plaintiffs' timesheets in an unlawful effort to secure more
18 labor for less cost.

19 40. For the entirety of Plaintiffs' employment with Defendants, Defendants consistently
20 failed to provide Plaintiffs with timely, accurate, and itemized wage and hour statements, in
21 writing, showing gross wages earned, total hours worked, all deductions made, net wages earned,
22 the name and address of the legal entity employing them, all applicable hourly rates in effect during
23 each pay period, and the corresponding number of hours worked by them at each hourly rate in and
24 among other information, as required by California wage-and-hour laws.

25 41. For the entirety of Plaintiffs' employment, Defendants' meal period
26 policies/practices failed to provide Plaintiffs with all legally compliant meal periods because
27 Defendants failed to provide Plaintiffs with timely, duty-free, and uninterrupted 30-minute meal
28 periods commencing before the end of the fifth hour of work. Specifically, Plaintiffs were required
to work through their meal periods because Defendants' work demands prevented Mr. Giahi and

1 similarly situated Plaintiffs from taking off-duty meal periods.

2 42. For the entirety of Plaintiffs' employment, Plaintiffs were not authorized and
3 permitted to take all required and legally-compliant rest periods due to Defendants' rest period
4 policies/practices, which failed to authorize and permit a net 10-minute off-duty rest period for
5 every four hours worked. On those occasions when Plaintiffs were not authorized and permitted to
6 take all legally-required and compliant rest periods to which they were entitled, Defendants further
7 failed to compensate Plaintiffs with the required rest period premium for each workday in which
8 they were experienced a rest period violation as mandated by Labor Code § 226.7.

9 43. Further, Defendants have failed to pay all earned wages owed to Plaintiffs for the
10 noncompliant and/or missed meal and rest periods under *Labor Code* section 226.7(b) and Wage
11 Order 5. Plaintiffs were and are entitled to an hour of pay at their regular rate for each day with a
12 meal period violation and an additional hour of pay for each day with a rest period violation.
13 Plaintiffs have not received that payment.

14 44. For the entirety of Plaintiffs' employment with Defendants, Defendants routinely
15 failed to maintain complete and accurate payroll records for Plaintiffs showing gross wages earned,
16 total hours worked, all deductions made, net wages earned, the name and address of the legal entity
17 employing them, all applicable hourly rates in effect during each pay period, and the corresponding
18 number of hours worked by him at each hourly rate in and among other information.

19 45. For the entirety of Plaintiffs' employment with Defendants, Defendants routinely
20 required Plaintiffs to work more than eight hours per day and 40 hours per week. Plaintiffs did not
21 receive accurate compensation for straight, regular time pay, and overtime pay.

22 46. Defendants failed to pay all wages due and owed to Plaintiffs at the time of their
23 termination or within seventy-two (72) hours of their resignation, as required by California wage-
24 and-hour laws in violation of *Labor Code* sections 201-203. Plaintiffs who are no longer employed
25 by Defendants are entitled to penalties pursuant to *Labor Code* section 203, in the amount of each
26 person's daily wage multiplied by the number of days since the termination, up to thirty days.

27 47. As set forth above, and throughout this Complaint, Defendants engaged in various
28 acts of unfair competition and unlawful and unfair business practices as defined in the *Unfair
Competition Law* embodied in *Business and Professions Code* section 17200, *et seq.*

48. Pursuant to the *Labor Code*, California law and applicable Wage Orders, Plaintiffs are entitled to all unpaid wages, damages, penalties, interest and attorney's fees and costs for the illegal and wrongful acts and omissions of Defendants, all as alleged throughout this Complaint.

CLASS ALLEGATIONS

A. Definition of the CLASS PLAINTIFFS

49. The CLASS consists of: all persons who were employed by Defendants, within the Relevant Time Period as a member of Defendants' CLASS PLAINTIFFS or with any similar title who were non-exempt or misclassified employees and are owed unpaid minimum wages, unpaid overtime wages, penalties for noncompliant and/or missed meal and rest breaks, were provided inaccurate wage statements, and were not timely paid during and/or following their employment with Defendants.

B. CLASS Definitions

50. Mr. Giahi brings this action on behalf of CLASS PLAINTIFFS pursuant to § 382 of the Code of Civil Procedure and *Lab. Code* section 2698 (hereinafter, collectively referred to as "CLASS"):

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked over 8.0 hours in a workday and/or over 40 hours in a workweek and were subject to Defendants' timekeeping policies/practices, during the Relevant Time Period.
- b. The Double Overtime Class consists of all of Defendants' current and former non-exempt or misclassified employees in California who worked over 12.0 hours in a workday, and/or over 8.0 hours on their seventh consecutive day of work and were subject to Defendants' timekeeping policies/practices, during the Relevant Time Period.
- c. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies/practices, and/or employees forced to work off-the-clock without compensation, during the Relevant Time Period.

- d. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours and/or in excess of 10.0 hours, during the Relevant Time Period.
- e. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the Relevant Time Period.
- f. The Wage Statement Class consists of all members of the Overtime Class, Double Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who were employed by Defendants during the Relevant Time Period.
- g. The Waiting Time Class consists of all members of the Overtime Class, Double Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who were employed with Defendants during the Relevant Time Period.
- h. The Failure to Indemnify Class consists of all Defendants' current and former employees who were required purchase supplies or to drive their own personal vehicles to various job sites but were never compensated for these business-related expenses incurred on behalf of the Defendants.

C. Class Action Requisites

51. **Numerosity/Ascertainability.** Plaintiffs bring this action pursuant to *Code of Civil Procedure* section 382 for violations of California's wage and hour laws, on behalf of themselves and all other similarly situated CLASS PLAINTIFFS, who worked for Defendants in the four years preceding this Complaint at Defendants' locations. Plaintiffs are any current or former CLASS PLAINTIFFS, or current or former employees with any similar title, who were non-exempt or misclassified employees and are owed wages and/or penalties for noncompliant and/or missed meal and rest breaks, unpaid overtime compensation, and/or were provided inaccurate wage statements.

52. **Predominance of Common Questions.** Predominant common questions of law and fact exist as to Class Members that include, without limitation, the following:

- a. Whether Defendants implemented and engaged in a systematic practice of failing to compensate CLASS PLAINTIFFS for all hours worked, including a practice of forcing Plaintiffs to work off the clock;
- b. Whether Defendants implemented and engaged in a systematic practice whereby they unlawfully failed to provide CLASS PLAINTIFFS with compliant meal periods;
- c. Whether Defendants implemented and engaged in a systematic practice whereby they unlawfully failed to provide CLASS PLAINTIFFS with compliant rest periods;
- d. Whether Defendants implemented and engaged in a systematic practice whereby they unlawfully failed to provide CLASS PLAINTIFFS with overtime compensation for all hours worked over 8 hours in one day or over 40 hours in one week;
- e. Whether Defendants have willfully failed to pay CLASS PLAINTIFFS at the time of termination of employment all earned wages owed;
- f. Whether the systematic acts and practices of Defendants as alleged herein violated applicable provisions of the Labor Code, as well as the applicable Wage Orders;
- g. Whether Defendants engaged in unfair business practices in violation of the Business and Professions Code, including Business and Professions Code sections 17200, et seq.

53. Common questions of law and fact predominate over questions that affect only individual members of the CLASS PLAINTIFFS. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, including but not limited to Defendants' failure to implement lawful meal and rest period policies, failure to provide accurate wage statements and/or failure to pay all final wages. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

1 54. All Plaintiffs shared common job duties and responsibilities. Thus, all of
2 Plaintiffs' experiences and claims are typical of the experiences and claims of Defendants' other
3 employees who worked at any of Defendants' locations.

4 55. The potential members of the CLASS are sufficiently numerous that joinder of all
5 members would be unfeasible and impracticable. The disposition of the claims through this class
6 action will benefit both the parties and the Court. The exact number of members is unknown to
7 Plaintiffs at this time. The number and identity of the proposed CLASS PLAINTIFFS are
8 readily ascertainable through inspection of Defendants' records.

9 56. **Adequacy of Representation.** The claims of Mr. Giahi are typical of the claims
10 of the CLASS PLAINTIFFS because Mr. Giahi was employed by Defendants as a non-exempt
11 employee in California during the Relevant Time Period. Mr. Giahi will fairly and adequately
12 represent and protect the interests of the members of the CLASS. Plaintiffs have retained and are
13 represented by counsel competent and experienced in complex multi-party litigation, including
14 wage and hour class actions.

15 57. **Manageability.** Plaintiffs know of no difficulty which will be encountered in the
16 management of this litigation which would preclude its maintenance as a class action, and the
17 class action method will confer substantial benefits to Plaintiffs, members of the CLASS and this
18 Court.

19 58. **Superiority.** The questions of law and fact common to Plaintiffs predominate over
20 questions affecting the individual class members such that the nature of this action and the nature
21 of laws available to Plaintiffs make use of the class action format the superior and appropriate
22 procedure to afford relief for the wrongs alleged.

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FIRST CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF *LABOR CODE* §§ 1194, 1194.2, 1197,
WAGE ORDER NO. 10 OF THE IWC
BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS

59. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with this cause of action.

60. Pursuant to *Labor Code* §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order No. 10, codified at California Code of Regulations, title 8, section 11160, subdivision 4.

61. Pursuant to IWC Wage Order No. 10 at all times material hereto, “hours worked” included “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

62. During the liability period, Plaintiffs suffered, were permitted and were required, to perform work “off-the-clock,” for which they received no pay, including work before, during and after their shifts and work during unpaid rest periods.

63. During the liability period, under the provisions of IWC Wage Order No. 10, Plaintiffs should have received not less than the minimum wage in a sum according to proof for the time worked, but not compensated.

64. For all time that Plaintiffs worked and received no pay, they are entitled to not less than the California minimum wage and, pursuant to *Labor Code* section 1194.2, subdivision (a), liquidated damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to *Labor Code* section 1194, Plaintiffs are also entitled to their attorneys' fees, costs and interest according to proof.

SECOND CAUSE OF ACTION
FOR FAILURE TO FURNISH WAGE AND HOUR STATEMENTS
(*LABOR CODE* §§ 226 AND 226.3)
BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS

65. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding

1 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
2 this cause of action.

3 66. Defendants failed to provide Plaintiffs with timely and accurate wage and hour
4 statements showing gross wages earned, total hours worked, all deductions made, net wages
5 earned, the name and address of the legal entity employing them, all applicable hourly rates in
6 effect during each pay period, and the corresponding number of hours worked at each hourly rate.

7 67. Defendants are liable for statutory penalties and civil penalties pursuant to *Labor*
8 *Code* §§ 226, 226.3, and 558 and the other applicable laws and regulations.

9 **THIRD CAUSE OF ACTION**
10 **FOR FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**
11 **(LABOR CODE §§ 226, 1174 AND 1174.5)**
12 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

13 68. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
14 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
15 this cause of action.

16 69. Defendants failed to maintain complete and accurate payroll records for Plaintiffs,
17 showing gross wages earned, total hours worked, all deductions made, net wages earned, the
18 name and address of the legal entity employing them, all applicable hourly rates in effect during
19 each pay period, and the corresponding number of hours worked by Plaintiffs at each hourly rate,
20 and Defendants are therefore not able to furnish to the commission said documents and/or
21 information.

22 70. Defendants are liable for statutory and civil penalties pursuant to Labor Code §§
23 1174.5, 558 and other applicable laws and regulations.

24 **FOURTH CAUSE OF ACTION**
25 **FOR FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION**
26 **(LABOR CODE § 226.7)**
27 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

28 71. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
this cause of action.

72. Plaintiffs regularly worked shifts greater than five (5) hours. Pursuant to *Labor Code*

1 § 512 an employer may not employ someone for a shift of more than five (5) hours without
2 providing him or her with a meal period of not less than thirty (30) minutes.

3 73. Plaintiffs also regularly worked shifts greater than ten (10) hours. Pursuant to *Labor*
4 *Code* § 512 an employer may not employ someone for a shift of more than ten (10) hours without
5 providing him or her with a second meal period of not less than thirty (30) minutes.

6 74. Defendants failed to provide Plaintiffs with meal periods as required under the
7 *Labor Code*. As discussed above, Plaintiffs were required to work through their alleged meal
8 periods, without pay, all in violation of *Labor Code* and applicable Wage Orders. Moreover,
9 Defendants failed to compensate Plaintiffs for each meal period not provided or inadequately
10 provided, as required under *Labor Code* § 226.7.

11 75. Therefore, pursuant to *Labor Code* § 226.7, Plaintiffs are entitled to damages in an
12 amount equal to one (1) hour of wages at their effective hourly rates of pay, but not less than the
13 applicable minimum wage, for each meal period not provided or deficiently provided, a sum to be
14 proven at trial.

15 76. Plaintiffs consistently worked consecutive four (4) hour shifts. Pursuant to the *Labor*
16 *Code* and the applicable IWC Wage Order, Plaintiffs were entitled to paid rest breaks of not less
17 than ten (10) minutes for each consecutive four (4) hour shift.

18 77. Defendants failed to provide Plaintiffs with timely rest breaks of not less than ten
19 (10) minutes for each consecutive four (4) hour shift.

20 78. Moreover, Defendants did not compensate Plaintiffs with an additional hour of pay
21 at their effective hourly rate, but not less than the applicable minimum wage, for each day that
22 Defendants failed to provide adequate rest breaks as required under *Labor Code* § 226.7.

23 79. Therefore, pursuant to *Labor Code* § 226.7, Plaintiffs are entitled to damages in an
24 amount equal to one (1) hour of wages at their effective hourly rates of pay, but not less than the
25 applicable minimum wage, for each day worked without the required rest breaks, a sum to be
26 proven at trial.

27 **FIFTH CAUSE OF ACTION**
28 **FOR FAILURE TO PAY WAGES IN A TIMELY MANNER**

1 **(LABOR CODE §§ 204 ET SEQ. AND 206 ET SEQ.)**
2 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

3 80. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
4 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
5 this cause of action.

6 81. During Plaintiffs' putative employment, Defendants routinely failed, without
7 justification, and refused to provide Plaintiffs with timely wages or pay as required *Labor Code* §
8 204, *et seq.* and other applicable laws and regulations.

9 82. As a direct and proximate result of Defendants' failure and refusal to pay Plaintiffs
10 timely, Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's fees and
11 costs, including treble damages pursuant to *Labor Code* § 206, *et seq.*

12 83. Based on Defendants' conduct as alleged herein, Defendants is liable for up to 30
13 days of pay for a waiting time penalty, statutory penalties, and civil penalties pursuant to the *Labor*
14 *Code* and other applicable laws and regulations.

15 **SIXTH CAUSE OF ACTION**
16 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
17 **(LABOR CODE §§ 510 AND 1194)**
18 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

19 84. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
20 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
21 this cause of action.

22 85. Defendants routinely required Plaintiffs to work more than eight hours per day.
23 Defendants failed and refused to pay Plaintiffs the overtime compensation required by the *Labor*
24 *Code* and other applicable laws and regulations.

25 86. Plaintiffs have been deprived of their rightfully earned and legally required overtime
26 compensation as a direct and proximate result of Defendants' failure and refusal to pay said
27 compensation. Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's fees
28 and costs.

87. Based on Defendants' conduct as alleged herein, Defendants are liable for civil

1 penalties pursuant to *Labor Code* § 558 and other applicable provisions of the *Labor Code* and
2 other applicable laws and regulations.

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5 **SEVENTH CAUSE OF ACTION**
6 **FOR WAITING TIME PENALTIES**
7 **(LABOR CODE §§ 201 THROUGH 203)**
8 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

8 88. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
9 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
10 this cause of action.

11 89. Defendants willfully failed to pay Plaintiffs accrued wages and other compensation
12 due to them at the time of their respective pre-scheduled terminations or within seventy-two (72)
13 hours of their respective resignations.

14 90. Defendants are liable for statutory and civil waiting time penalties of up to 30 days
15 of pay pursuant to *Labor Code* §§ 201, 202, 203 and other applicable laws and regulations.

16 **EIGHTH CAUSE OF ACTION**
17 **FOR FAILURE TO INDEMNIFY/REIMBURSE NECESSARY EXPENDITURES**
18 **INCURRED DURING DISCHARGE OF WORK DUTIES LABOR CODE § 2802**
19 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

19 91. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
20 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
21 this cause of action.

22 92. Defendants regularly required Plaintiff and all others similarly situated to use his or
23 her personal vehicle for the company purposes. Others were never provided a work vehicle and
24 were not reimbursed for mileage and gas.

25 93. Defendants failed to indemnify Plaintiff and all others similarly situated, as their
26 employees, for all necessary expenditures or losses incurred by Plaintiff and all others similarly
27 situated, in direct consequence of the discharge of their work-related duties.

28 94. As a proximate cause of Defendants' failure to indemnify or reimburse Plaintiffs,

1 Plaintiffs have been deprived of compensation for work related expenses arising from and in direct
2 consequence of the discharge of their work duties and been damaged in an amount according to
3 proof at the time of trial. Plaintiffs are entitled to recover such amounts, plus interest thereon,
4 attorney's fees and costs pursuant to Labor Code § 2802 et seq., plus statutory and civil penalties
5 pursuant to the Labor Code and other applicable laws and regulations.

6 **NINTH CAUSE OF ACTION**
7 **FOR UNFAIR COMPETITION**
8 **(BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.)**
9 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

10 95. CLASS PLAINTIFFS incorporate by reference and reallege all of the preceding
11 paragraphs above as though set forth fully herein, except those paragraphs that are inconsistent with
12 this cause of action.

13 96. Plaintiff, on behalf of himself, the CLASS, and the general public, brings this claim
14 pursuant to *Business & Professions Code* § 17200, et seq. The conduct of Defendants as alleged in
15 this Complaint has been and continues to be unfair, unlawful, and harmful to the CLASS and the
16 general public. Plaintiffs seek to enforce important rights affecting the public interest within the
17 meaning of valid California law and specifically *Code of Civil Procedure* § 1021.5.

18 97. Plaintiff is a "person" within the meaning of *Business & Professions Code* § 17204,
19 has suffered injury, and therefore has standing to bring this cause of action for injunctive relief,
20 restitution, and other appropriate equitable relief.

21 98. *Business & Professions Code* § 17200, et seq. prohibits unlawful and unfair business
22 practices.

23 99. Wage-and-hour laws express fundamental public policies. Paying employees their
24 wages and overtime, and providing them with meal periods, rest breaks, timely pay both during and
25 after the termination of their employment, and accurate and itemized wage statements are
26 fundamental public policies of California. *Labor Code* § 90.5(a) articulates the public policies of
27 this State vigorously to enforce minimum labor standards, to ensure that employees are not required
28 or permitted to work under substandard and unlawful conditions, and to protect law-abiding
employers and their employees from competitors who lower costs to themselves by failing to

1 comply with minimum labor standards.

2 100. Defendants violated statutes and public policies. Through the conduct alleged in this
3 Complaint, Defendants acted contrary to these public policies, violated specific provisions of the
4 *Labor Code*, and have engaged in other unlawful and unfair business practices in violation of
5 *Business & Professions Code* § 17200, *et seq.* Defendants' conduct in this regard has deprived
6 Plaintiffs of the rights, benefits, and privileges guaranteed to all employees under the law.

7 101. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
8 violation of the *Business & Professions Code* § 17200, *et seq.*

9 102. Defendants, by engaging in the conduct herein alleged either knew or in the exercise
10 of reasonable care should have known that its conduct was unlawful, and as such this conduct
11 violates *Business & Professions Code* § 17200, *et seq.*

12 103. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs have
13 been damaged, in a sum to be proven at trial.

14 104. Unless restrained by this Court, Defendants will continue to engage in such unlawful
15 conduct as alleged above. Pursuant to the *Business & Professions Code*, this Court should make
16 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
17 the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited
18 by the *Business & Professions Code*, including but not limited to the disgorgement of such profits
19 as may be necessary to restore Plaintiffs to the money Defendants have unlawfully failed to pay.

20 **TENTH CAUSE OF ACTION**
21 **RECOVERY FOR CIVIL PENALTIES UNDER THE LABOR CODE**
22 **PRIVATE ATTORNEY GENERAL ACT**
(LABOR CODE §§ 2698 ET SEQ.)
23 **BY PLAINTIFFS AGAINST ALL DEFENDANTS AND ALL DOE DEFENDANTS**

24 105. Plaintiffs re-allege the information set forth in the preceding paragraphs and
25 incorporate it into this cause of action as if it was fully alleged herein.

26 106. As alleged herein, Defendants have repeatedly committed several types of Labor
27 Code violations against Plaintiffs.

28 107. Plaintiffs, as "aggrieved employees" within the meaning of California Labor Code

1 Section 2699(c), acting on behalf of themselves and the State of California's Labor and Workforce
2 Development Agency, bring this action to recover the civil penalties provided for under the
3 California Labor Code Private Attorney General Act of 2004 ("PAGA"), including, but not limited
4 to, the penalties provided under California Labor Code Sections 210, 225.5, 226.3, 558, 1197.1,
5 and 2699, subdivisions (a) and (f), for the following knowing and intentional Labor Code
6 violations:

- 7 a. Failing and/or refusing to pay Plaintiffs all earned overtime compensation for
8 work beyond 8 hours in a day and/or 40 hours in a week, in violation of
9 California Labor Code Section 1197 and IWC and IWC Wage Order 15 (*see*
10 *Cal. Lab. Code §§ 558 & 2699(a)*);
- 11 b. Failing and/or refusing to pay Plaintiffs the legally-mandated minimum wage
12 for each hour worked beyond 8 hours in a day and/or 40 hours in a week, in
13 violation of California Labor Code section 1197 and Wage Order 15, (*see Cal.*
14 *Lab. Code §§ 1197.1 & 2699(a)*);
- 15 c. Failing and/or refusing to pay all wages earned by Plaintiffs within the time
16 limits prescribed by California Labor Code section 204, (*see Cal. Lab. Code*
17 *§§ 210 & 2699(a)*);
- 18 d. Failing and/or refusing to pay all wages earned by Plaintiffs within the time
19 limits prescribed by California Labor Code section 204, (*see Cal. Lab. Code*
20 *§§ 558 & 2699(a)*);
- 21 e. Failing and/or refusing to provide meal and rest period compensation within
22 the time limits described by California Labor Code section 204, (*see Cal. Lab.*
23 *Code §§ 226.7 & 2699(a)*);
- 24 f. Failing and/or refusing to indemnify/reimburse necessary expenditures
25 incurred during discharge of work duties within the time limits described by
26 California Labor Code section 204, (*see Cal. Lab. Code §§ 2802 & 2699(a)*);
- 27 g. Unlawfully withholding accrued wages owed to Plaintiffs, in violation of
28 California Labor Code section 216, (*see Cal. Lab. Code §§ 225.5 & 2699(a)*);

- 1 h. Failing and/or refusing to properly maintain records of, and furnish to
2 Plaintiffs, accurate, itemized wage statements, in violation of California Labor
3 Code section 226, (*see Cal. Lab. Code §§ 226.3 & 2699(a)*); and
4 i. Other violations of the Labor Code as may be disclosed in discovery.

5 108. On October 3, 2022, a letter was sent by certified mail to Defendant Xpress, and to
6 the California Labor and Workforce Development Agency, (hereafter, “LWDA”), giving notice of
7 Defendants’ violations of the California Labor Code, and of Mr. Giahi’s intent to bring a civil
8 claim for civil penalties under PAGA.

9 109. The LWDA has declined to investigate Defendants’ violations of the California
10 Labor Code. Plaintiffs will prosecute this PAGA cause of action against Defendants, pursuant to
11 California Labor Code section 2699.3 subdivision (a)(2)(A).

12 110. Plaintiffs were compelled to retain the services of counsel to file this court action to
13 protect his interest, and to assess and collect the civil penalties owed by Defendants. Plaintiff has
14 thereby incurred attorneys’ fees and costs, which he is entitled to recover under Labor Code §
15 2699.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby prays that the Court enter judgment in his favor and against Defendants, and each of them, in the amount no less than \$500,000.00, as follows:

1. For payment of earned wages, meal and rest period compensation, waiting time compensation, and other damages according to proof in an amount to be ascertained at trial, and in excess of the jurisdictional limit of this court; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts;

3. For payment of all statutory obligations and penalties as required by law;

4. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;

5. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and condemning Defendants' discriminatory practices;

6. For "civil penalties" to the extent permitted by law and Labor Code §§ 2698 and Section 2699 et seq.;

7. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

8. For costs of suit, attorneys' fees, and expert witness fees;

9. For post-judgment interest; and

10. For any other relief that is just and proper.

DATED: March 20, 2023

EMPLOYEES FIRST LABOR LAW

By:



Jonathan P. LaCour, Esq.

Lisa Noveck, Esq.

Jameson Evans, Esq.

Amanda M. Thompson, Esq.

Attorneys for Plaintiff,

OMID GIAHI

JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: March 20, 2023

EMPLOYEES FIRST LABOR LAW

By: _____



Jonathan P. LaCour, Esq.

Lisa Noveck, Esq.

Jameson Evans, Esq.

Amanda M. Thompson, Esq.

Attorneys for Plaintiff,

OMID GIAHI