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County of Monterey
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

DANIEL ROSAS MOLINA, on behalf of himself and all similarly situated employees,

Plaintiff,

v.

DHT, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV002406

CLASS AND REPRESENTATIVE ACTION

COMPLAINT FOR DAMAGES, PENALTIES AND FOR INJUNCTIVE RELIEF

Plaintiff DANIEL ROSAS MOLINA, who on behalf of himself and all other similarly situated current and former employees, and members of the public, complain and allege as follows:

1. As used herein, the term "Plaintiff" includes DANIEL ROSAS MOLINA, who is the named Plaintiff and Class Representative herein.

2. Plaintiff and the Class Members alleged herein (collectively, "Class Members") seek remedies for all compensation and penalties due to the Class Members during the "Class Period," which is defined as four years from the filing date, through the date on which final judgment is entered, based upon information and belief that Defendants are continuing and will continue the unlawful employment practices as described herein.

3. Each Class Member is an identifiable, similarly-situated person who is now, or was during the Class Period, employed by Defendants as an administrative/office employee.

Plaintiff reserves the right to seek additional amendments of this Complaint to add as a named Plaintiff some or all of the persons who are members of the Class.

4. Plaintiff DANIEL ROSAS MOLINA ("Plaintiff") is a competent adult who is, and at all times mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff was employed by Defendants from approximately November 2018, through approximately November 2022, pursuant to an unwritten contract, some of the terms of which were the product of an oral agreement, with other terms implied from or incorporated from written materials and policies maintained by Defendants and from the conduct of the parties. The terms of this contract included working as a non-exempt employee, and at all times as an employee not exempted from the California Labor Code. Plaintiff is, and at all relevant times was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

5. Defendant DHT, INC. ("DHT") is, and at all times mentioned in this complaint has been, a corporation incorporated under the laws of the State of California and registered to do business in the State of California. Plaintiff is informed and believes and thereon alleges that JJ is authorized to and does conduct business throughout the State of California, including Monterey County, and has purposefully availed itself of the privileges and benefits of doing business in the State of California.

6. Plaintiff and the Class Members are ignorant of the true names, identities, capacities and relationships of the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff and the Class Members are informed and believe, and thereon allege, that each of these fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's and the Class Members' damages as herein alleged were proximately caused by DOES 1 through 50. Plaintiff and the Class Members will amend this Complaint to allege the true names and capacities of said DOE Defendants when such information is ascertained. Each reference to "Defendants," and each reference to any particular Defendant herein, shall be construed to refer to all Defendants, including, but not limited to, all of those fictitiously named herein as a

"DOE" Defendant, and each of them.

7. Plaintiff and the Class Members are informed and believe, and thereon allege, that each of the Defendants herein was at all times relevant to this action the agent, employee, representative, partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of the Defendants herein was at all times acting within the course and scope of that relationship. Plaintiff and the Class Members are further informed and believe, and thereon allege, that each of the Defendants herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants herein. The conduct of each of the Defendants was at all times herein in accordance with and represents the official policy of Defendants. Additionally, at all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants, which proximately caused the damages herein alleged. Plaintiff and the Class Members are further informed and believe, and thereon allege, that all of the Defendants jointly employed the Plaintiff and Class Members herein and/or carried out a joint scheme, business plan and/or uniform policy, and the acts and omissions of each Defendant are legally attributable to the other Defendants such that they are deemed a single integrated enterprise and agents of one another so that all Defendants are each jointly and severally liable for the acts and omissions hereinafter alleged.

8. Defendants DHT, and DOES 1 through 50 (collectively referred to herein as "Defendants") are, and at all times herein were, "persons" as defined in California Business and Professions Code § 17201.

9. At all times herein, Defendants directly or indirectly, or through an agent or representative, exercised control over the wages, hours and/or working conditions of the Plaintiff and the Class Members, and directly or indirectly or through an agent or other person engaged, suffered, or permitted Plaintiff and the Class Members to work.

JURISDICTION AND VENUE

10. Plaintiff brings this Complaint for violations of California law occurring in the County of Monterey, including without limitation violations of the California Labor Code, Business and Professions Code, Civil Code and common law, and the amount in controversy

exceeds the minimum jurisdictional amount of the Superior Court. Based on information and belief, Defendants have intentionally availed themselves of the benefits and privileges available within this State, economic or otherwise, so as to render the exercise of jurisdiction over them by the courts of the State of California consistent with traditional notations of fair play and substantial justice. Accordingly, this Court has jurisdiction over the parties and claims in this matter.

11. Pursuant to Code of Civil Procedure § 395(a), venue is proper in this judicial district because Defendants now, and all times relevant herein, reside and/or transact business in the County of Monterey. The conduct alleged herein and the damages resulting therefrom occurred in the County of Monterey, and at all times herein Defendants maintained their principal place of business in the County of Monterey, California.

ADMINISTRATIVE PROCEEDINGS

12. Pursuant to California Labor Code § 2699.3, Plaintiff gave written notice on November 18, 2022, by electronic filing with the Labor and Workforce Development Agency, and by certified mail to Defendant DHT of factual and legal basis for the labor law violations alleged in this Complaint.

13. Pursuant to California Labor Code § 2699.3, Plaintiff seeks all applicable penalties for violations which the Labor and Workforce Development Agency has failed or elected not to investigate and/or failed or elected not to issue a citation. Plaintiff has exhausted all administrative remedies required by the Labor and Workforce Development Agency as a prerequisite to filing this action.

GENERAL ALLEGATIONS

14. Defendants now, and at all times relevant herein, did, own, operate and control a business or establishment that employ persons within the meaning of all applicable wage orders, including, but not limited to, IWC Wage Order No. 9-2001 (California Code of Regulations, title 8, section 11090).

15. At all times relevant herein, Plaintiff and the Class Members were non-exempt employees of Defendants under the California Labor Code and were protected by the

provisions of the Wage Order.

16. At all times relevant herein, Plaintiff and the Class Members worked for Defendants without the provision of being compensated for all hours worked, without being paid overtime premium wages for all overtime hours worked, without being paid all wages on time, working without meal or rest breaks as required by law, without being compensated for missed meal and rest breaks, without being paid the full payment of wages owed at the end of their employment, and without having been provided with complete and accurate wage statements as required by law.

17. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently failed to pay Plaintiff and the Class Members their final wages on the last date of their employment. Rather, Defendant waited until the next normal payroll cycle to pay Plaintiff and the Class Members their final wages.

18. At all times relevant herein, Defendants maintained and enforced a uniform policy of requiring Plaintiff and the Class Members to work shifts of five hours or more within a single workday without providing a thirty (30) minute uninterrupted duty-free meal period within five (5) hours of the beginning of their shift. Defendants also failed to pay Plaintiff and the Class Members one hour of pay at their regular rate of compensation as required by California Labor Code § 226.7 and the Wage Order for each meal period that was not provided.

19. Likewise, at all times relevant herein, Defendants maintained and enforced a uniform policy by which they repeatedly failed to authorize, permit and provide Plaintiff and the Class Members with paid duty-free rest periods of at least ten (10) consecutive uninterrupted minutes during which Plaintiff and the Class Members were relieved of all duties for every four (4) hours worked or major fraction thereof and which were counted as hours worked for which there would be no deduction from wages, and failed to compensate Plaintiff and the Class Members one (1) hour of wages at their regular rate of compensation as required by California Labor Code § 226.7 and the Wage Order for each rest period not provided.

20. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently failed to pay Plaintiff and the Class Members overtime premium wages of one and one-half times their regular rate of pay for all overtime hours worked in a single workday and/or a single workweek, as required by California Labor Code §§ 510 and 1194 and the Wage Order.

21. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated Labor Code §§ 510, 558, 1194 by failing to pay Plaintiff and Class Members overtime wages at the correct regular rate of pay that incorporated any non-discretionary incentive payments..

22. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated Labor Code §§ 201-203 and 246 by failing to pay Plaintiff and the Class Members their sick pay at their regular rate of pay that incorporated any non-discretionary incentive payments.

23. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently failed to provide Plaintiff and the Class Members with complete and accurate itemized wage statements stating the total hours worked, regular and overtime hours worked, gross wages earned, net wages earned, all applicable rates of pay and the corresponding number of hours worked under each rate, all deductions, wages owed for missed rest and meal periods, and accurate accounting for all wages paid to Plaintiff and the Class Members.

24. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated California Labor Code §§ 201, 202, 204, 216, 218, 221, 223, 1194, 1198 and the Wage Order by unlawfully refusing to pay wages to Plaintiff and the Class Members.

25. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated California Labor Code §§ 201, 202, and 203 by failing to pay Plaintiff and the Class Members all owing and unpaid wages for work performed by them during their employment and at the end of their employment.

26. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated California Labor Code §§ 201, 202, 204, 218, 1194, 1198, 1199 and the Wage Order by failing to pay Plaintiff and the Class Members for all hours worked, overtime premium wages for all overtime hours worked, and compensation for missed meal and rest periods.

27. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated Labor Code § 2802 by failing to reimburse employees for all business expenses, including vehicle and phone-related expenses incurred in connection with mandatory work-related purposes.

28. Plaintiff and the Class Members are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees, and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law. Plaintiff and the Class Members are informed and believe, and thereon allege, that at all times relevant herein, Defendants knew or should have known that they had a duty to compensate Plaintiff and the Class Members and that Defendants had the financial ability to pay such compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and the Class Members that they were properly denied wages, all in order to increase Defendants' profits.

29. California Labor Code § 218 states that nothing in Article I of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him under this Article."

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of himself, the general public, and all other similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law. Plaintiff seeks to represent a class composed of and defined as follows:

A. Class:

All current and former non-exempt employees of Defendants who worked for Defendants in California at any time within four (4) years before the commencement of this action through the date on which final judgment is entered.

B. Overtime Regular Rate Subclass:
All current and former non-exempt employees of Defendants who worked for Defendants in California and who received a non-discretionary incentive payment which was not incorporated into the calculation of the regular rate of pay for overtime premium wages at any time within four (4) years before the commencement of this action through the date on which final judgment is entered.

C. Sick Pay Regular Rate Subclass:
All current and former non-exempt employees of Defendants who worked for Defendants in California and who were paid sick pay wages during the same time period in which the employee earned non-discretionary incentive wages, and whose employment ended (either voluntarily or involuntarily) at any time within three (3) years before the commencement of this action through the date on which final judgment is entered.

D. Meal Period Subclass:
All current and former non-exempt employees of Defendants who worked for Defendants in California who worked any work shift 5 hours or more at any time during the Class Period.

E. Meal Period Regular Rate Subclass:
All current and former non-exempt employees of Defendants who worked for Defendants in California and who received a non-discretionary incentive payment which was not incorporated into the calculation of the regular rate of pay for meal period premium wages at any time within four (4) years before the commencement of this action through the date on which final judgment is entered.

F. Rest Period Subclass:
All current and former non-exempt employees of Defendants who worked for Defendants in California who worked any work shift 3.5 hours or more at any time during the Class Period.

G. Rest Period Regular Rate Subclass:

All current and former non-exempt employees of Defendants who worked for Defendants in California and who received a non-discretionary incentive payment which was not incorporated into the calculation of the regular rate of pay for rest period premium wages at any time within four (4) years before the commencement of this action through the date on which final judgment is entered.

H. Unreimbursed Work-Related Expense Subclass:
All current and former non-exempt employees of Defendants who worked for Defendants in California and who were not reimbursed work-related expenses at any time within four (4) years before the commencement of this action through the date on which final judgment is entered.

I. Non-Compliant Wage Statement Subclass:
All current and former non-exempt employees who are or were employed by Defendants in California and who were paid any wages from Defendants at any time within one (1) year before the commencement of this action through the date on which final judgment is entered.

31. Plaintiff reserves the right under Code of Civil Procedure § 382 to amend or modify the class description with greater specificity, further division into subclasses or with limitations to particular issues.

32. This action has been brought and may be properly maintained as a class action under the provisions of Code of Civil Procedure § 382 because the questions of law and fact at issue herein are common and of general interest to Plaintiff and the Class Members, the parties are numerous, and it would be impracticable to bring the claims alleged herein before the court as individual claims or through some other than a class action.

A. Numerosity

33. The Class Members are so numerous that joinder of all the members of the class is not feasible and not practical. While the precise number the Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the Class Period regularly employed, more than 50 employees in California in

hourly wage or otherwise non-exempt positions. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment records. Moreover, the joinder of all members of the proposed class is not practicable, and individual damages for each member are not anticipated to be sufficiently high to allow for practical resolution through individualized litigation.

B. Commonality and Predominance

34. There are questions of law and fact common to each Class Member that predominates over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants violated California Labor Code §§ 226.7 and 512 and the Wage Order by failing to provide a 30 minute duty-free meal period within the first five hours of each workday to Plaintiff and the Class Members on days they worked in excess of five hours, and failing to compensate Plaintiff and the Class Members one hour of wages at their regular rate of pay for each such missed meal period that was not provided;

b. Whether Defendants violated Labor Code § 226.7 and the Wage Order by failing to provide a paid 10 minute duty-free rest period to Plaintiff and the Class Members for every four-hour work period or major fraction thereof, by either not paying wages to Plaintiff and the Class Members or reducing their wages for time spent during any rest period that was provided, and by failing to compensate Plaintiff and the Class Members one hour of wages for such missed and/or unpaid/underpaid rest periods;

c. Whether Defendants violated Labor Code §§ 1194 and 1198 and the Wage Order by failing to pay Plaintiff and the Class Members the appropriate premium overtime wages for all overtime hours worked;

d. Whether Defendants violated Labor Code §§ 510, 558, 1194 by failing to pay Plaintiff and Class Members overtime wages at the correct regular rate of pay that incorporated any non-discretionary incentive payments;

e. Whether Defendants violated Labor Code §§ 201-203 and 246 by failing to pay Plaintiff and the Class Members their sick pay at their regular rate of pay that

incorporated any non-discretionary incentive payments;

f. Whether Defendants violated California Labor Code § 226 by failing to provide accurate itemized wage statements to Plaintiff and the Class Members containing all of the information required by Labor Code § 226;

g. Whether Defendants violated California Labor Code §§ 201, 202, 204, 216, 218, 221, 1194, and 1198 by failing and refusing to pay Plaintiff and the Class Members agreed wages for all work performed by them, including minimum wage and/or overtime as compensation for any and all hours worked;

h. Whether Defendants violated Labor Code §§ 201, 202, 203, and 204 by failing to timely pay Plaintiff and the Class Members all wages for work performed by them during their employment and failing to timely pay Plaintiff and the Class Members at the end of their employment all wages for work performed by them during their employment;

i. Whether Defendants violated Labor Code §§ 201, 202, and 204 by failing to timely pay Plaintiff and the Class Members for all wages and hours worked during their employment;

j. Whether Defendants violated Labor Code § 2802 by failing to reimburse employees for all business expenses, including phone-related expenses incurred in connection with mandatory work-related phone calls;

k. Whether Defendants' failure to pay wages, and premiums in accordance with the California Labor Code and the Wage Order was willful;

l. Whether Defendants violated Labor Code § 1198 and the Wage Order for failing to keep accurate records with respect to each employee;

m. Whether Defendants' conduct as alleged throughout this complaint was willful or reckless;

n. The appropriate amount of damages, restitution and/or monetary penalties resulting from Defendants' violations of California law;

o. Whether Plaintiff and the Class members are entitled to equitable relief, including but not limited to, injunctive and declaratory relief, pursuant to Business and

Professions Code §§ 17200 et seq.; and

p. Whether Defendants violated Business and Professions Code §§ 17200 et seq., by failing to provide meal and rest periods; by failing to compensate for meal and rest periods not provided; by failing to pay regular and overtime wages for all hours worked; by failing to provide complete and accurate wage statements; by failing to pay agreed wages; by failing to pay all wages due upon termination; and by failing to timely provide all wages due.

C. Typicality

35. The claims of Plaintiff are typical of the claims of the Class Members. Plaintiff and the Class Members sustained injuries and damages arising out of and caused by the Defendants' common course of conduct in violation of statutes, common law, wage orders and/or regulations that have the force and effect of law, as alleged herein. Plaintiff has a well-defined community of interest with the Class Members and are qualified to, and will, fairly and adequately protect the interests of each Class Member.

D. Adequacy of Representation

36. Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Plaintiff acknowledges Plaintiff's obligation to make known to the Court any relationship, conflict, or difference with any Class Member. Plaintiff has incurred and throughout this action will continue to incur, costs and attorney's fees necessarily expended for the prosecution of this action for the substantial benefit of each Class Members. Counsel who represents Plaintiff is competent and experienced in litigating class actions, versed in the rules governing class action discovery certification, settlement and trial, and will vigorously and competently pursue the claims of Plaintiff and the Class Members.

E. Superiority

37. The nature of this action makes the use of class action adjudication superior to other methods. The class action will achieve economies of time, effort, and expense as compared with separate individual lawsuits on behalf of each Class Member, and will avoid inconsistent outcomes because the same issues will be adjudicated in the same manner and at the same time for the entire class.

F. Public Policy Consideration

38. Employers in the State of California violate employment and labor laws daily. Employees are often intimidated and afraid to assert their rights out of fear that they will be subjected to direct or indirect retaliation by their employers. Former employees (those who are no longer employed by a particular employer who had subjected them to employment and labor law violations) are fearful of bringing actions against their former employers because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide Class Members who are not named in the complaint with vindication of their rights while also protecting their privacy and shielding them from retaliation.

FIRST CAUSE OF ACTION
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and the Wage Order)
(Plaintiff and the Class Members against Defendants)

39. Plaintiff and the Class Members allege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

40. California Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission. Labor Code § 226.7 further provides that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

41. At all times relevant to this action, the Wage Order and California Labor Code § 1198 provided that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

42. Throughout the Class Period, Defendants and/or their authorized supervisors repeatedly failed to comply with the meal period requirements of the Labor Code and the

Wage Order by failing to provide Plaintiff and the Class Members with a thirty (30) minute uninterrupted duty-free meal period within five (5) hours of the beginning of their shift, in violation of Labor Code §§ 512, 226.7, and the Wage Order. Defendants also failed to compensate Plaintiff and the Class Members one (1) hour of wages for any of the missed meal periods not provided by Defendants, as alleged above, which failure also violated Labor Code §§512 and 226.7 and the Wage Order.

43. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff and the Class Members are entitled to recover from Defendants one (1) additional hour of pay at their regular hourly rate of compensation for each meal period violation as alleged herein.

44. Defendants were at all times aware of the Labor Code and Wage Order requirements that they provide Plaintiff and the Class Members with such meal periods and was aware that Plaintiff and the Class Members regularly worked more than five (5) hours in a shift without receiving mandated meal periods. Thus, Defendants willfully violated the provisions of Labor Code §§ 226.7 and 512 and the Wage Order.

45. As a result of the unlawful conduct of Defendants, Plaintiff and the Class Members have been deprived of wages and other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts.

46. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed for.

SECOND CAUSE OF ACTION
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and The Wage Order)
(Plaintiff and the Class Members against Defendants)

47. Plaintiff and the Class Members allege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

48. California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission. Labor Code Section 226.7 further provides that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee

one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

49. The Wage Order and California Labor Code § 226.7 provides that every employer shall provide and shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, and that the rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, unless the total daily work time is less than three and one-half hours.

50. Throughout the Class period, on days in which Plaintiff and the Class Members worked at least three and one half hours, Defendants regularly and repeatedly required Plaintiff and the Class Members to work four (4) hours and/or a major fraction thereof without providing, authorizing or permitting at least one ten (10) minute rest period during which Plaintiff's and the Class Members were relieved of all duties (hereafter "rest period") per each four (4) hour period, or a major fraction thereof, worked.

51. Throughout the Class Period, Defendants failed to pay Plaintiff and the Class Members a premium of one hour pay at their regular rate of pay for each rest period not provided, authorized, and permitted as alleged herein, pursuant to Labor Code § 226.7.

52. Defendants were at all times aware of the Labor Code and Wage Order requirements that they provide Plaintiff and the Class Members with the rest periods described above and were aware that Plaintiff and the Class Members regularly worked more than four (4) hours or major fraction thereof without receiving mandated rest periods. Defendants therefore at all times willfully violated the provisions of Labor Code § 226.7 and the Wage Order.

53. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff and the Class Members are entitled to recover from Defendants one (1) additional hour of pay at their regular hourly rate of compensation for each workday that a rest period was not provided. As a result of the unlawful conduct of Defendant, Plaintiff have been deprived of wages and compensation in amounts to be determined at trial, and are entitled to recovery of such

amounts.

54. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed for.

THIRD CAUSE OF ACTION
Failure to Pay Hourly and Overtime Wages
(California Labor Code §§ 1194 and 1198; and The Wage Order)
(Plaintiff and the Class Members against Defendants)

55. Plaintiff and the Class Members incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

56. Plaintiff and the Class Members base this cause of action upon Defendants' willful and intentional violations of the California Labor Code and Industrial Welfare Commission requirements that Defendants pay Plaintiff and the Class Members for all hours worked, including the requirement to pay premium overtime wages to Plaintiff and the Class Members for overtime hours worked in a workday and/or in a workweek, and/or on the seventh consecutive day in a workweek.

57. Pursuant to Labor Code § 204, as well as other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

58. Labor Code § 1198 provides that "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

59. Labor Code § 1194 provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

60. Throughout the Class Period, Defendants knew or had reason to know that Plaintiff and the Class Members were regularly and consistently worked overtime without being paid the appropriate premium overtime wage required by Labor Code §§ 1194 and 1198, and the Wage Order.

61. Throughout the Class Period, Defendants' conduct as alleged herein amounted to a uniform pattern of unlawful wage and hour practices which resulted from the implementation of uniform policies and practices by which Defendants failed to accurately record all hours worked by Plaintiff and the Class Members thereby denying payment of overtime premium wages to Plaintiff and the Class Members for overtime hours worked.

62. In committing the violations of the California Labor Code as alleged herein, Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

63. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff and the Class Members have been denied full compensation for all hours worked by them, including but not limited to premium overtime wages for overtime hours.

64. The Labor Code and the Wage order set forth various exemptions by which certain categories of employees are exempt from the protections of the overtime laws contained in the Labor Code. At no time during Plaintiff's employment did any of these exemptions apply to Plaintiff and the Class Members. Moreover, at no time were Plaintiff and the Class Members subject to a valid collective bargaining agreement that would preclude the causes of action set forth in this complaint. Rather, Plaintiff and the Class Members bring this action because of Defendants' violations of non-waivable rights guaranteed to them by the State of California.

65. As a direct consequence of Defendants' unlawful failure to pay Plaintiff and the Class Members the full and accurate amount of all earned wages at the appropriate rate for the true number of hours they worked, Plaintiff and the Class Members have suffered and will continue to suffer economic injuries in an amount which is presently unknown to them and which will be ascertained according to proof at trial.

66. In performing the acts and practices in violation of California labor laws as herein alleged, Defendants have acted and continue to act intentionally, oppressively and maliciously towards Plaintiff and the Class Members, with a conscious disregard for their legal

rights and the consequences to them, and with the intent of depriving them of their property and legal rights and otherwise causing them injury, in order to increase Defendants' profits at the expense of Plaintiff and the Class Members.

67. Plaintiff and the Class Members request recovery of all unpaid wages, including overtime premium wages, in an amount according to proof, interest on such amounts, statutory costs, and the assessment of any and all statutory penalties against Defendants, all in the sums as provided by the California Labor Code and/or other applicable statutes. In addition, to the extent that overtime compensation is owed Plaintiff and the Class Members whose employment has been terminated, Defendants' conduct violates Labor Code §§ 201 and/or 202, entitling Plaintiff and the Class Members to waiting time penalties under Labor Code § 203, which penalties are sought herein on behalf of Plaintiff and the Class Members.

68. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed for.

FOURTH CAUSE OF ACTION
Failure to Comply with Itemized Employee Wage Statement Requirements
(California Labor Code §§ 226, 1174 and 1175; and The Wage Order)
(Plaintiff and the Class Members against Defendants)

69. Plaintiff and the Class Members allege and incorporate by reference all of the allegations contained in the preceding paragraphs, as though fully set forth herein.

70. Labor Code § 226(a) and the Wage Order require Defendants to itemize in wage statements all deductions from payment of wages, to accurately report total hours worked, to report the rate of pay for hours worked, and keep the records on file at the place of employment or at a central location within the State of California. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a) and the Wage Order with respect to wage statements they have provided to Plaintiff and the Class Members.

71. Labor Code § 1174 and the Wage Order requires Defendants to maintain and preserve, at the place of employment or at a central location within the State of California, among other items, accurate records showing the names and addresses of all employees employed, payroll records accurately showing the hours worked daily and the wages paid to its employees. Defendants have knowingly and intentionally failed to comply with these

requirements in violation of Labor Code §§ 1174 and 1175 and the Wage Order.

72. Labor Code § 226(a) and the Wage Order provide that every employer shall, semimonthly or at the time of each payment of wages, furnish each of its employees an accurate itemized statement in writing showing gross wages earned, total hours worked by the employee, the number of piece rate units and the applicable rate, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the last four digits of the employee's social security number (or an employee identification number), the name and address of the legal entity that is the employer and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each hourly rate by the employee. Labor Code § 226(a) mandates that deductions made from payments of wages shall be recorded in ink, properly dated and a copy of the statement or a record of deductions be kept on file by the employer for at least three years. Moreover, the Wage Order requires Defendants to maintain time records for each employee showing, including but not limited to, an accurate report of the total hours worked by each employee, when the employee begins and ends each work period, meal periods, and total daily hours worked in itemized wage statements, and all deductions from payment of wages.

73. Throughout the Class Period, Defendants have regularly and consistently, intentionally and willfully, failed to provide Plaintiff and the Class Members with complete and accurate wage statements.

74. The Wage Order provides that an employer must keep accurate information with regard to each employee, which shall include time records showing when the employee begins and ends each work period, total daily hours worked and total hours worked in the pay period and the applicable rates of pay.

75. Throughout the Class Period, Defendants continually failed to keep accurate records and information regarding Plaintiff and the Class Members as required by the Wage Order. Defendants repeatedly provided Plaintiff and the Class Members with wage statements that, among other inaccuracies, failed to include complete and accurate information on the following: (1) gross wages earned; (2) total hours worked; (3) all deductions from wages; (4)

net wages earned; (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and (6) reimbursement for work-related expenses.

76. As a result of Defendants' violation of Labor Code §§ 226(a), 1174 and 1175, as well as the Wage Order, Plaintiff and the Class Members have suffered injury and damage to their statutorily-protected rights. These injuries and damages include, but are not limited to, the denial of their legal right to receive and their protected interest in receiving accurate, itemized wage statements under Labor Code § 226(a). Moreover, the inaccurate and incomplete wage statements provided by Defendants deceived Plaintiff and the Class Members about the wages and other compensation to which they were entitled and deprived them of such wages and compensation. As a further result of Defendants' failure to provide Plaintiff and the Class Members with accurate wage statements in accordance with Labor Code § 226 and to keep accurate time records as required by the Wage Order, Plaintiff and the Class Members have suffered injuries and are entitled to penalties under Labor Code § 226 and Labor Code § 226.3 which states that any employer who violates § 226 shall be subject to a civil penalty in the amount of $250.00 per employee per violation in an initial citation. The civil penalty provided for in this section is in addition to any other penalty provided by law, in an amount to be proven at trial. The injuries suffered by Plaintiff and the Class Members include, but are not limited to, having been, and continuing to be, forced to conduct investigations and perform mathematical computations in an attempt to reconstruct their time records; the inability to reconstruct their time records; the inability to discern the amount of wages they were paid and/or the applicable wage rate; the inability to determine the number of hours, including but not limited to, overtime hours they worked; the inability to determine the number of rest periods and meal periods they were forced to forego; the inability to determine whether they were compensated for all meal and rest periods of which they had been deprived; the inability to determine whether they were paid all wages due for work they performed; the inability to determine the amount of wages owing and unpaid; having been, and continuing to be, forced to hire attorneys and initiate a lawsuit in order to ascertain the aforementioned

information.

77. Plaintiff and the Class Members are further entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding $4,000.00.

78. Plaintiff and the Class Members are also entitled to injunctive relief to ensure compliance with this section, pursuant to Labor Code § 226(g).

79. Pursuant to Labor Code § 226(e), each employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or $50.00 for the initial pay period in which a violation occurs and $100.00 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000.00, and is entitled to an award of costs and reasonable attorneys' fees.

80. Moreover, an employee is entitled under the Labor Code § 226(g) to injunctive relief to ensure compliance with Labor Code § 226 and is entitled to an award of costs and reasonable attorneys' fees.

81. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed for.

FIFTH CAUSE OF ACTION
Failure to Pay All Wages Upon Termination
(California Labor Code §§ 201, 202 and 203; and The Wage Order)
(Plaintiff and the Class Members against Defendants)

82. Plaintiff and the Class Members incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

83. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

84. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

85. Labor Code § 202 provides that an employee is entitled to receive all unpaid

wages no later than 72 hours after an employee quits his or her employment, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

86. Defendants willfully failed to pay Plaintiff and the Class Members all their wages due, as alleged hereinabove and hereinafter, upon the termination of their employment within the times prescribed by Labor Code §§201 and 202 and are therefore subject to a waiting time penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

87. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed for.

SIXTH CAUSE OF ACTION
Violation of Labor Code § 2802
(Plaintiff and the Class Members against Defendants)

88. Plaintiff and the Class Members incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

89. Pursuant to Labor Code § 2802 an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the employee's discharge of his or her duties.

90. At all times herein alleged, Defendants regularly and consistently violated Labor Code § 2802 by failing to reimburse for expenses incurred in the performance of their duties, including expenses associated with the use of Plaintiff's and the Class Members' personal phones for mandatory work-related purposes.

91. Plaintiff and the Class Members were required to retain attorneys to bring this action and are entitled to an award of reasonable attorneys' fees pursuant to Labor Code § 2802(c).

SEVENTH CAUSE OF ACTION
California Labor Code Private Attorneys General Act of 2004
(California Labor Code § 2698)
(Plaintiff and the Aggrieved Employees against Defendant DHT)

92. Plaintiff alleges and incorporates by reference all of the allegations contained in

the preceding paragraphs as though fully set forth herein.

93. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5.

94. Plaintiff is an "aggrieved employee" pursuant to Labor Code § 2699, as Plaintiff has suffered violations including, but not limited to, violations of Labor Code §§ 201-204, 208, 216, 223, 226, 226.7, 233, 510, 512, 558, 1174, 1194, 1197-1199, 2698 et seq 2699(f) and (g), 2802, and the Wage Order.

95. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff and the employees, and the State of California against Defendants on behalf of himself and the employees.

96. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

EIGHTH CAUSE OF ACTION
Unfair Business Practices
(California Business and Professions Code §§ 17200 et seq. and Common Law)
(Plaintiff and the Class Members against Defendants)

97. Plaintiff and the Class Members hereby incorporate each of the preceding paragraphs of this Complaint as if fully alleged herein.

98. Plaintiff and the Class Members suffered direct injury as a result of the Defendants' conduct, as alleged in the preceding paragraphs, and bring this action under Code of Civil Procedure § 382. The deprivation by Defendants of Plaintiff and the Class Members of wages due and lawful meal and rest periods, and Defendants' provision of inaccurate wage statements, are unlawful business practices within the meaning of Business and Professionals Code § 17200, et seq. including, but not limited to, a violation of the Wage Order, regulations, and statutes, and further, whether or not in violation of the aforementioned Wage Order, regulation and statutes, amount to practices which are otherwise unfair.

99. Under Business and Professions Code § 17200, et seq., including, but not limited to §§ 17201, 17203, and 17208, Plaintiff asserts standing on behalf of himself and on the behalf of each of the members of the class alleged herein. Plaintiff and the Class Members

seek, among others, restitution of compensation due during the Class Period.

100. Throughout the Class Period, Defendants have committed violations of law, as described herein, including, but not limited to, violation of Labor Code §§ 204, 216, 221, 226.7, 510, 512(a), 1194, 1198, 2802 and the Wage Order.

101. These unlawful and unfair business practices defeat the public interest purposes of the State's labor laws, as set forth in the sections of the California Labor Code, the California Code of Regulation and the Wage Order referenced elsewhere in this complaint, all of which promote compliance with labor laws and employment regulations by participants in Defendants' industry.

102. Defendants' unfair and unlawful business practices thus have violated the sections of the Labor Code, California Code of Regulation, and the Wage Order referenced in this complaint and have imposed harm on their employees and their competitors and will continue to do so until abated. As a result of these unfair and unlawful business practices, Defendants have retained monies belonging to Plaintiff and the Class Members and they have been unjustly enriched at Plaintiff's and the Class Members' expense. Plaintiff and the Class Members are entitled to restitution of the wages and monies withheld and retained by Defendants during the Class Period and a preliminary and permanent injunction requiring Defendants to pay all wages and sums due to Plaintiff and the Class Members, to provide mandatory rest and meal periods, and to provide accurate and complete wage statements.

103. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class Members have suffered injury and loss of money.

104. This action will result in the enforcement of an important right affecting the public interest. The conduct of Defendants as alleged herein has been and continues to be unfair, unlawful and harmful to Plaintiff and the Class Members, and the general public. Accordingly, under Code of Civil Procedure § 1021.5, Plaintiff and the Class Members are entitled to an award of reasonable attorneys' fees according to proof.

105. WHEREFORE, Plaintiff and the Class Members request relief as hereinafter prayed for.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the Class Members

prays as follows:

1. For an order certifying this action as a class action and proposed Class;

2. For an order appointing Plaintiff as the representative of all the Class Members;

3. For an order appointing counsel for Plaintiff as Class Counsel.

4. As to the First and Second Cause of Action, for unpaid premium wages and penalties pursuant to Labor Code §§ 210, 226.7, 512, 1198 and the Wage Order;

5. As to the Third Cause of Action, for unpaid wages, including minimum and overtime wages, damages and/or penalties pursuant to Labor Code §§ 510, 558, 1194, 1197, 1197.1, and 1198, and the Wage Order;

6. As to the Fourth Cause of Action, for damages and/or penalties, attorneys' fees and costs pursuant to Labor Code §§ 226 and 226.3, and the Wage Order;

7. As to the Fifth Cause of Action, for failing to pay all wages upon termination pursuant to Labor Code §§ 201, 202, and 203;

8. As to the Sixth Cause of Action, for damages and/or penalties pursuant to Labor Code § 2802, and the Wage Order;

9. As to the Seventh Cause of Action, for civil penalties and attorneys' fees pursuant to Labor Code § 2698 et seq., and Labor Code § 226.3;

10. As to the Eighth Cause of Action, for restitution of unpaid wages and penalties to Plaintiff, and for prejudgment interest from the day such amounts were due and payable pursuant to Business and Professions Code § 17200 et seq.;

11. As to All Causes of Action, for attorneys' fees and costs provided by Labor Code §§ 218.5, 226, 1194 and Code of Civil Procedure § 1021.5; and

12. For such other and further relief as the Court may deem equitable and appropriate.

Dated: July 26, 2023

FITZPATRICK & SWANSTON

By: */s/ B. James Fitzpatrick*
B. James Fitzpatrick
Attorneys for Plaintiff,
DANIEL ROSAS MOLINA on behalf of himself and all similarly aggrieved employees