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Case #22CV407813
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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION
12

13 ANDRES GARCIA, on behalf of himself and
14 all others similarly situated, and the general
public,

15 *Plaintiff,*

16 v.

17 DHL EXPRESS (USA), INC., an Ohio
18 corporation; and DOES 1 through 50,
inclusive,

19 *Defendants.*
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Case No. 22CV407813

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Pay Wages Without Discount (Lab. Code § 212);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff ANDRES GARCIA ("Plaintiff"), on behalf of himself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against defendants DHL
5 EXPRESS (USA), INC., an Ohio corporation; and DOES 1 through 50, inclusive, (collectively
6 referred to as "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff
7 alleges that Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to pay them for all vested vacation pay;
- 20 (10) failed to provide them with accurate written wage statements; and
- 21 (11) failed to pay them all of their final wages following separation of employment.

22 Based on these alleged violations, Plaintiff now brings this class and representative action to
23 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
24 himself and all others similarly situated, all other aggrieved employees, and the State of California.

25 JURISDICTION AND VENUE

26 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
27 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
28 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure §§ 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

4. Plaintiff is and was, and at all relevant times mentioned herein, an individual residing in the State of California.

5. Plaintiff is informed and believes, and thereupon alleges, that Defendant DHL EXPRESS (USA), INC., is, and at all relevant times mentioned herein, an Ohio corporation doing business in the State of California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some or all of the other defendants, and, in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent, and ratification by such other defendants.

CLASS ALLEGATIONS

8. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is

unaware of any difficulties likely to be encountered in managing this case as a class action.

9. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

Vacation Pay Class: All persons employed by Defendants in California who earned paid vacation days, including but not limited to, "Floating Holidays," without receiving compensation for each vested paid vacation day during the **Relevant Time Period**.

Pay Card Class: All persons employed by Defendants in California who were paid wages with a pay card and were not paid all earned wages during the **Relevant Time Period**.

Regular Rate Class: All of Defendants' hourly, non-exempt employees who were not paid overtime wages for all overtime hours worked and/or premiums for meal and/or rest break violations as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, shift differentials, shift premiums, and/or non-discretionary bonuses.

10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

11. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of

1 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
2 exceeds the minimum required for numerosity under California law.

3 12. **Commonality and Predominance:** Common questions of law and fact exist as to all
4 class members and predominate over any questions that affect only individual class members. These
5 common questions include, but are not limited to:

- 6 i. Whether Defendants maintained a policy or practice of failing to provide employees
7 with their meal periods;
- 8 ii. Whether Defendants maintained a policy or practice of failing to provide employees
9 with their rest periods;
- 10 iii. Whether Defendants failed to pay premium wages to class members when they have
11 not been provided with required meal and/or rest periods;
- 12 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
13 as a result of policies that fail to provide meal periods in accordance with California
14 law;
- 15 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
16 for all time worked;
- 17 vi. Whether Defendants used payroll formulas that systematically fail to account for
18 non-discretionary bonuses and/or other applicable remuneration when calculating
19 regular rates of pay for class members;
- 20 vii. Whether Defendants failed to pay overtime wages to class members as a result of
21 incorrectly calculating their regular rates of pay;
- 22 viii. Whether Defendants failed to pay premium wages to class members based on their
23 respective “regular rates of compensation” by not including commissions and/or
24 other applicable remuneration in calculating the rates at which those wages are paid;
- 25 ix. Whether Defendants failed to provide proportionate accruals for vested vacation time
26 for class members as required by California law;
- 27 x. Whether Defendants subjected the vacation time and/or floating holidays they offer
28 to class members to forfeiture;

- 1 xi. Whether Defendants failed to provide class members with accurate written wage
2 statements as a result of providing them with written wage statements with
3 inaccurate entries for, among other things, amounts of gross and net wages, and total
4 hours worked;
- 5 xii. Whether Defendants failed to pay class members all wages without discount;
- 6 xiii. Whether Defendants used pay cards to pay class members;
- 7 xiv. Whether class members incurred fees in cashing pay cards;
- 8 xv. Whether class members have been able to redeem pay cards for their full cash value;
- 9 xvi. Whether Defendants applied policies or practices that result in late and/or incomplete
10 final wage payments;
- 11 xvii. Whether Defendants are liable to class members for waiting time penalties under
12 Labor Code section 203;
- 13 xviii. Whether class members are entitled to restitution of money or property that
14 Defendants may have acquired from them through unfair competition;
- 15 13. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff
16 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
17 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.
- 18 14. **Adequacy of Class Representative**: Plaintiff is an adequate class representative in
19 that he has no interests that are adverse to or otherwise conflict with the interests of absent class
20 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
21 and adequately represent and protect the interests of the other class members.
- 22 15. **Adequacy of Class Counsel**: Plaintiff's counsel are adequate class counsel in that
23 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
24 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
25 behalf of Plaintiff and absent class members.
- 26 16. **Superiority**: A class action is vastly superior to other available means for fair and
27 efficient adjudication of the class members' claims and would be beneficial to the parties and the
28 Court. Class action treatment will allow a number of similarly situated persons to prosecute their

1 common claims simultaneously and efficiently in a single forum without the unnecessary
2 duplication of effort and expense that numerous individual actions would entail. In addition, the
3 monetary amounts due to many individual class members are likely to be relatively small and would
4 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
5 Moreover, a class action will serve an important public interest by permitting class members to
6 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
7 potential for inconsistent or contradictory judgments inherent in individual litigation.

8 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9 17. Plaintiff worked for Defendants as an hourly, non-exempt employee during the
10 applicable statutory period.

11 **Security Check and Off-the-Clock**

12 18. Plaintiff and the putative class were required to utilize the general entrance to the
13 venues and required to go through a security check at the time of entering the premises on which
14 they worked. Plaintiff and the putative class were required to line up at the entrance of their
15 workplace and submit to a metal detector wand security check prior to entering. Furthermore,
16 Plaintiff and the putative class clocked-in for their work shifts using a fingerprint scanner, and
17 there was regularly a line of employees waiting to use the scanner to get clocked in. It often took
18 Plaintiff and the putative class approximately ten minutes from arriving at work until they were
19 actually clocked in.

20 19. Upon information and belief, Plaintiff also alleges that Plaintiff and the putative
21 class regularly received pay that shorted them hours they had actually worked. Defendants failed to
22 pay Plaintiff and the putative class for all hours they were suffered or to permitted to work, and
23 engaged in time-shaving.

24 20. The time spent getting through Defendants' required security procedures and lining
25 up at the fingerprint scanner was time that was not paid by Defendants.

26 21. Plaintiff and the putative class were required to go through the security check prior
27 to clocking in at the beginning of each work shift.

28 22. Based on the above, Defendants' security check practices, timeclock placement, and

1 time-shaving have resulted in substantial amounts of time not recorded as hours worked therefore
2 resulting in substantial amounts of wages not paid to Plaintiff and the putative class.

3 **Shortened Meal Periods**

4 23. Plaintiff alleges that, at all relevant times during the applicable limitations period,
5 Defendants maintained a policy or practice of requiring Plaintiff and the putative class to wait in a
6 line to clock in and out for their meal periods. Plaintiff and the putative class were required to
7 utilize the general entrance to the venues and required to go through the security procedure
8 described above at the time of entering the venues where they worked. Furthermore, as a result of
9 many employees taking their meal period at the same time, Plaintiff and the putative class were
10 required to wait in line to clock in and/or clock out for their meal periods using the fingerprint
11 scanner. Accordingly, Plaintiff and the putative class would typically have to wait in line before
12 they could clock in and out for their meal periods.

13 24. Accordingly, Plaintiff and the putative class were provided with shortened meal
14 periods due to the time spent entering and leaving the venues, waiting to clock in/out, undergoing
15 security checks, and returning to their workstations.

16 25. Plaintiff alleges that, at relevant times during the applicable limitations period,
17 Defendants maintained a policy or practice of disciplining Plaintiff and members of the putative
18 class, up to and including termination, if they did not clock back in from their meal periods on
19 time.

20 26. Plaintiff alleges that, at relevant times during the applicable limitations period, due
21 to Defendants' above-mentioned policy or practice, Plaintiff and the putative class did not receive
22 their full thirty (30) minute uninterrupted meal periods that they were entitled to under California
23 law.

24 **Missed Meal Periods**

25 27. Plaintiff and the putative class were not provided with meal periods of at least thirty
26 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
27 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
28 enough workers; (3) imposing so much work on each employee such that it made it unlikely that an

1 employee would be able to take their breaks if they wanted to finish their work on time; and (4) no
2 formal written meal and rest period policy that encouraged employees to take their meal and rest
3 periods. Furthermore, Plaintiff and the putative class were not provided a second meal period even
4 when working longer shifts where they should have been provided.

5 28. As a result of Defendants' policies and/or practices, Plaintiff and the putative class
6 were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each
7 five (5) hours worked.

8 **Missed, Late, and/or Shortened Rest Periods**

9 29. Upon information and belief, Plaintiff and the putative class were not provided with
10 rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction
11 thereof, due to (1) Defendants' chronically understaffing each work shift with not enough workers;
12 (2) imposing so much work on each employee such that it made it unlikely that an employee would
13 be able to take their breaks if they wanted to finish their work on time; and (3) requiring Plaintiff
14 and the putative class to submit to security procedures when they re-entered the premises.

15 30. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
16 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
17 worked.

18 **Vacation Pay**

19 31. Plaintiff and the putative class accrued vacation wages during their employment with
20 Defendants.

21 32. Vacation wages are considered a form of wages under Labor Code § 200. Vested
22 vacation pay and other similar forms of paid time off earned based on labor performed are
23 considered wages that cannot be subject to forfeiture without compensation for forfeited days at the
24 applicable rates required by law.

25 33. At all relevant times, Defendants maintained policies and/or practices that provide
26 for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v.*
27 *Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

28 34. Plaintiff and the putative class are entitled to vacation accrued during their

1 employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all
2 accrued vacation pay and/or PTO.

3 **Regular Rate of Pay**

4 35. The regular rate of pay under California law includes all remuneration for
5 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
6 not limited, to, commissions and non-discretionary bonuses.

7 36. Upon information and belief, during the applicable limitations period Defendants
8 violated the rights of Plaintiff and the putative class under the above-referenced Labor Code
9 sections by failing to pay them overtime wages for all overtime hours worked and/or premium
10 wages in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating
11 their regular rate of pay to include all applicable remuneration, including, but not limited to, non-
12 discretionary bonuses and/or “incentive” bonuses.

13 **Wage Statements**

14 37. Plaintiff and the putative class were not provided with accurate wage statements as
15 mandated by law pursuant to Labor Code § 226.

16 38. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
17 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
18 clock” work were not included.

19 39. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
20 worked by the employee” were not accurately reflected in that all hours worked, including overtime
21 and “off-the-clock” work were not included.

22 40. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
23 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
24 included when Plaintiff and the putative class were issued payment via paycards with associated
25 fees

26 41. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
27 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
28 clock” work were not included.

42. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

43. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

44. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

45. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

46. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

47. Compensation for missed meal periods constitutes wages within the meaning of Labor Code § 200.

48. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

49. Section 11 of the applicable Wage Order states:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the

1 meal period may be waived by mutual consent of the employer and employee.
2 Unless the employee is relieved of all duty during a 30 minute meal period, the
3 meal period shall be considered an 'on duty' meal period and counted as time
4 worked. An 'on duty' meal period shall be permitted only when the nature of
5 the work prevents an employee from being relieved of all duty and when by
6 written agreement between the parties an on-the-job paid meal period is agreed
7 to. The written agreement shall state that the employee may, in writing, revoke
8 the agreement at any time."

9 50. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
10 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
11 members were not subject to valid on-duty meal period agreements with Defendants.

12 51. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
14 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
15 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

16 52. Plaintiff alleges that, at all relevant times during the applicable limitations period,
17 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
18 **Class** members when they worked five (5) hours without clocking out for any meal period.

19 53. Plaintiff alleges that, at all relevant times during the applicable limitations period,
20 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
21 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and
22 failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage
23 Order.

24 54. Moreover, upon information and belief Defendants' written policies do not provide
25 that employees must take a meal period of at least thirty (30) minutes for each five (5) hour work
26 period, and that employees are entitled to a second meal period if they work a shift of over ten
27 hours, or that the second meal period must commence before the end of the tenth hour of work,
28 unless waived.

55. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
Class members additional premium wages, and/or were not paid premium wages at the employees'
regular rates of pay when required meal periods were not provided.

56. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

57. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Plaintiff and Rest Period Sub-Class)

58. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

59. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

60. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

61. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

62. Compensation for missed rest periods constitutes wages within the meaning of Labor Code § 200.

63. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

64. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**

1 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
2 as required by the applicable Wage Order.

3 65. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-**
4 **Class** members additional premium wages when required rest periods were not provided.

5 66. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
6 **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
7 costs of suit.

8 67. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
9 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest Period**
10 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

13 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

14 **(Plaintiff and Hourly Employee Class)**

15 68. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 69. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have
17 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
18 applicable Wage Order.

19 70. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
20 which an employee is subject to the control of the employer, and includes all the time the employee
21 is suffered or permitted to work, whether or not required to do so."

22 71. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
23 employees at least the minimum wage set forth therein for all hours worked, which consists of all
24 hours that an employer has actual or constructive knowledge that employees are working.

25 72. Labor Code § 1194 invalidates any agreement between an employer and an
26 employee to work for less than the minimum or overtime wage required under the applicable Wage
27 Order.

28 73. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages

1 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
2 underlying unpaid minimum wages and interest thereon.

3 74. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
4 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
5 period.

6 75. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
7 person acting either individually or as an officer, agent, or employee of another person to pay an
8 employee, or cause an employee to be paid, less than the applicable minimum wage.

9 76. Labor Code § 1198 makes it unlawful for employers to employ employees under
10 conditions that violate the applicable Wage Order.

11 77. Labor Code § 204 requires employers to pay non-exempt employees their earned
12 wages for the normal work period at least twice during each calendar month on days the employer
13 designates in advance and to pay non-exempt employees their earned wages for labor performed in
14 excess of the normal work period by no later than the next regular payday.

15 78. Labor Code § 223 makes it unlawful for employers to pay their employees lower
16 wages than required by contract or statute while purporting to pay them legal wages.

17 79. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
18 non-exempt employees overtime wages of no less than one and one-half times the employees'
19 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
20 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
21 seventh consecutive day of one workweek.

22 80. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
23 pay non-exempt employees overtime wages of no less than two times the employees' respective
24 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
25 worked in excess of eight hours on a seventh consecutive workday during the workweek.

26 81. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
27 centrally devised policies and practices to him and **Hourly Employee Class** members with respect
28 to working conditions and compensation arrangements.

1 82. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
2 **Employee Class** members for all time worked, including but not limited to, overtime hours at
3 statutory and/or agreed rates.

4 83. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
5 **Employee Class** members all earned wages every pay period at the correct rates, including
6 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
7 **Hourly Employee Class** members to perform off-the-clock work.

8 84. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
9 members have suffered damages in an amount subject to proof, to the extent they were not paid the
10 full amount of wages earned during each pay period during the applicable limitations period,
11 including overtime wages.

12 85. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
13 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
14 overtime wages, interest thereon, and costs of suit.

15 86. The regular rate of pay under California law includes all remuneration for
16 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
17 limited to, non-discretionary bonuses.

18 87. During the applicable limitations period, Defendants violated the rights of Plaintiff
19 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
20 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
21 and 1198 by not correctly calculating their regular rate of pay to include all applicable
22 remuneration, including but not limited to, non-discretionary bonuses.

23 88. California law uses the terms "compensation" and "pay" interchangeably and
24 requires that all applicable remuneration, including but not limited to, non-discretionary bonuses, be
25 included when calculating an employee's regular rate of pay.

26 89. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
27 compensation that did not reflect, among other things, non-discretionary bonuses as required by
28 Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when

1 Defendants paid him premium wages in lieu of meal and/or rest periods.

2 90. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
3 during the applicable limitations period, Defendants maintained a policy or practice of paying
4 **Hourly Employee Class** members premium wages based on rates of compensation that have not
5 reflected non-discretionary bonuses as required by Labor Code § 226.7(b) and §§ 11 and 12 of the
6 applicable Wage Order on the occasions when Defendants paid them premium wages in lieu of
7 meal and/or rest periods.

8 91. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
9 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Hourly**
10 **Employee Class** members, seeks to recover reasonable attorneys' fees.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO PAY VACATION WAGES**

13 **(Lab. Code § 227.3)**

14 **(Plaintiff and Vacation Pay Class)**

15 92. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 93. California Labor Code section 227.3 provides:

17 Unless otherwise provided by a collective-bargaining agreement, whenever a contract
18 of employment or employer policy provides for paid vacations, and an employee is
19 terminated without having taken off his vested vacation time, all vested vacation shall
20 be paid to him as wages at his final rate in accordance with such contract of
21 employment or employer policy respecting eligibility or time served; provided,
22 however, that an employment contract or employer policy shall not provide for
23 forfeiture of vested vacation time upon termination. The Labor Commissioner or a
24 designated representative, in the resolution of any dispute with regard to vested
25 vacation time, shall apply the principles of equity and fairness.

22 94. At all relevant times during the applicable limitations period, Plaintiff and members
23 of the **Vacation Pay Class** accrued vacation time during their employment with Defendants.

24 95. As a result of Defendants' reimbursement policies and practices, Plaintiff is
25 informed and believes and thereon alleges that Defendants failed to reimburse him and **Vacation**
26 **Pay Class** members for all accrued vacation wages.

27 96. By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are
28 entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of

1 the filing of the original Complaint until the date of entry of judgment.

2 97. Plaintiff, on behalf of himself and the members of the **Vacation Pay Class**, seeks
3 interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California
4 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil
5 Procedure section 1021.5.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

8 **(Lab. Code § 226)**

9 **(Plaintiff and Wage Statement Penalties Sub-Class)**

10 98. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

11 99. Labor Code § 226(a) states:

12 An employer, semimonthly or at the time of each payment of wages, shall furnish to
13 his or her employee, either as a detachable part of the check, draft, or voucher paying
14 the employee's wages, or separately if wages are paid by personal check or cash, an
15 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
16 worked by the employee, except as provided in subdivision (j), (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
18 rate basis, (4) all deductions, provided that all deductions made on written orders of
19 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid, (7) the name of the
21 employee and only the last four digits of his or her social security number or an
22 employee identification number other than a social security number, (8) the name and
23 address of the legal entity that is the employer and, if the employer is a farm labor
24 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
25 legal entity that secured the services of the employer, and (9) all applicable hourly
26 rates in effect during the pay period and the corresponding number of hours worked
27 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
28 temporary services employer as defined in Section 201.3, the rate of pay and the total
hours worked for each temporary services assignment. The deductions made from
payment of wages shall be recorded in ink or other indelible form, properly dated,
showing the month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For purposes of
this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.

100. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
the "detachable part of the check" provision and the "accurate itemized statement in writing"
provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
employee retains the right to elect to receive a written paper stub or record and that those who are

1 provided with electronic wage statements retain the ability to easily access the information and
2 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
3 Letter July 6, 2006.)

4 101. Plaintiff is informed and believes that, at all relevant times during the applicable
5 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
6 members with written wage statements as described above.

7 102. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
8 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
9 that Defendants had the ability to provide them with accurate wage statements but had intentionally
10 provided them with written wage statements that Defendants knew do not comply with Labor Code
11 § 226(a).

12 103. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
13 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
14 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
15 and wages earned. In addition, inaccurate information on their wage statements have prevented
16 immediate challenges to Defendants' unlawful pay practices, has required discovery and
17 mathematical computations to determine the amount of wages owed, has caused difficulty and
18 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
19 inaccurate information about wages and deductions to federal and state government agencies.
20 Furthermore, when Plaintiff and **Wage Statement Penalties Sub-Class** were paid using a paycard,
21 they did not receive a corresponding paystub.

22 104. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage**
23 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars
24 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
25 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §
26 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class
27 member.

28 105. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or

1 the common fund doctrine, Plaintiff, on behalf of himself and **Wage Statement Penalties Sub-**
2 **Class** members, seek awards of reasonable attorneys' fees and costs.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

5 **(Lab. Code §§ 201–203)**

6 **(Plaintiff and Waiting Time Penalties Sub-Class)**

7 106. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

8 107. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
9 have been entitled, upon the end of their employment with Defendants, to timely payment of all
10 wages earned and unpaid before termination or resignation.

11 108. At all relevant times, pursuant to Labor Code § 201, employees who have been
12 discharged have been entitled to payment of all final wages immediately upon termination.

13 109. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
14 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
15 all final wages at the time of resignation.

16 110. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
17 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
18 all final wages within seventy-two (72) hours' of giving notice of resignation.

19 111. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
20 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

21 112. Plaintiff is informed and believes that, at all relevant times during the applicable
22 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
23 members all of their final wages in accordance with the Labor Code.

24 113. Plaintiff is informed and believes that, at all relevant times during the applicable
25 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
26 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
27 §§ 201 or 202 by failing to timely pay them all final wages.

28 114. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to

1 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been
2 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
3 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
4 requirements.

5 115. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of himself and
6 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective
7 dates that their final wages had first become due until paid, up to a maximum of thirty days, and
8 interest thereon.

9 116. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
10 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time**
11 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES WITHOUT DISCOUNT**

14 **(Lab. Code § 212)**

15 **(Plaintiff and Pay Card Class)**

16 117. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

17 118. At all relevant times, Plaintiff and the **Pay Card Class** members have been entitled
18 to the protections of Labor Code § 212 which states:

19 (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to
20 become due, or as an advance on wages to be earned:

21 (1) Any order, check, draft, note, memorandum, or other acknowledgment of
22 indebtedness, unless it is negotiable and payable in cash, on demand, without
23 discount, at some established place of business in the state, the name and
24 address of which must appear on the instrument, and at the time of its issuance
25 and for a reasonable time thereafter, which must be at least 30 days, the maker
26 or drawer has sufficient funds in, or credit, arrangement, or understanding with
27 the drawee for its payment.

28 (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or
purporting to be payable or redeemable otherwise than in money.

29 119. Defendants violated the Labor Code § 212 by issuing wages due in a non-negotiable
manner that was not payable in cash at some place of business in the state without discount.

30 120. At times during his employment, Defendants paid Plaintiff wages on a "pay card" or

1 preloaded debit card. Plaintiff incurred fees when attempting to use the pay card. Plaintiff incurred
2 fees when attempting to cash the pay card.

3 121. Plaintiff was not given an itemized wage statement when paid with a pay card.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

7 **(Plaintiff and UCL Class)**

8 122. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

9 123. Business and Professions Code § 17200 defines “unfair competition” to include any
10 unlawful business practice.

11 124. Business and Professions Code §§ 17203–17204 allow a person who has lost money
12 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
13 Procedure § 382 to recover money or property that may have been acquired from similarly situated
14 persons by means of unfair competition.

15 125. California law requires employers to pay hourly, non-exempt employees for all hours
16 they are permitted or suffered to work, including hours that the employer knows or reasonably
17 should know that employees have worked.

18 126. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and
19 incorporates the FIRST, SECOND, THIRD, and FOURTH causes of action herein.

20 127. Plaintiff lost money and/or property as a result of the aforementioned unfair
21 competition.

22 128. Defendants have or may have acquired money by means of unfair competition.

23 129. Plaintiff is informed and believes and thereupon alleges that, by committing the
24 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
25 225, 226.6, 553, 1175, and 1199. Defendants thus committed misdemeanors by violating the Labor
26 Code as alleged herein.

27 130. Defendants have committed criminal conduct through their policies and practices of,
28 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-

1 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
2 work period of five or more hours, and by failing to pay non-exempt employees for all hours
3 worked.

4 131. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
5 employees and entitled to the full protections of both the Labor Code and the applicable Wage
6 Order.

7 132. Defendants' unlawful conduct as alleged in this Complaint amounts to and
8 constitutes unfair competition within the meaning of Business and Professions Code section 17200
9 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
10 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
11 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on
12 behalf of similarly situated persons in a class-action proceeding.

13 133. As a result of Defendants' violations of the Labor Code during the applicable
14 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
15 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
16 conduct.

17 134. Plaintiff is informed and believes that other similarly situated persons have been
18 subject to the same unlawful policies or practices of Defendants.

19 135. Due to the unfair and unlawful business practices in violation of the Labor Code,
20 Defendants have gained a competitive advantage over other comparable companies doing business
21 in the State of California that comply with their legal obligations.

22 136. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
23 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
24 that violates, or is considered unlawful under, any other state or federal law.

25 137. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
26 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
27 Defendants, and each of them, and their agents and employees, from further violations of the Labor
28 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an

1 order permanently enjoining Defendants, and each of them, and their respective agents and
2 employees, from further violations of the Labor Code and applicable Industrial Welfare
3 Commission Wage Orders.

4 138. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself
5 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
6 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
7 business practices.

8 139. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
9 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
10 attorneys' fees in connection with their unfair competition claims.

11 **NINTH CAUSE OF ACTION**

12 **CIVIL PENALTIES**

13 **(Lab. Code §§ 2698 *et seq.*)**

14 140. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

15 141. During the applicable limitations period, Defendants have violated Labor Code §§
16 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, and 1198.

17 142. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
18 himself and other current and former employees, to bring a representative civil action to recover
19 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
20 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

21 143. Plaintiff, a former employee against whom Defendants committed one or more of the
22 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
23 within the meaning of Labor Code § 2699(c).

24 144. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
25 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
26 ("LWDA") and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
27 intent to investigate.

28 145. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil

1 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
2 227.3, 510, 512, 1194, 1197, and 1198:

- 3 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, and
4 1198, one hundred dollars (\$100) for each employee per pay period for each
5 initial violation and two hundred dollars (\$200) for each employee per pay
6 period for each subsequent violation (penalties set by Labor Code §
7 2699(f)(2));
- 8 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
9 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 10 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
11 employee for each initial violation that was neither willful nor intentional,
12 two hundred dollars (\$200) for each employee, plus 25% of the amount
13 unlawfully withheld from each employee, for each initial violation that was
14 either willful or intentional, and two hundred dollars (\$200) for each
15 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
16 from each employee, for each subsequent violation, regardless of whether the
17 subsequent violation was either willful or intentional (penalties set by Labor
18 Code § 210);
- 19 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
20 employee for each initial violation that was neither willful nor intentional,
21 two hundred dollars (\$200) for each employee, plus twenty-five percent
22 (25%) of the amount unlawfully withheld from each employee, for each
23 initial violation that was either willful or intentional, and two hundred dollars
24 (\$200) for each employee, plus twenty-five percent (25%) of the amount
25 unlawfully withheld from each employee, for each subsequent violation,
26 regardless of whether the subsequent violation was either willful or
27 intentional (penalties set by Labor Code § 225.5);
- 28 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial

1 citation, two hundred and fifty dollars (\$250) for each employee for each
2 violation. Alternatively, if an initial citation or its equivalent occurred before
3 the filing of this action, one thousand dollars (\$1,000) for each employee for
4 each violation (penalties set by Labor Code § 226.3);

5 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
6 employee for each initial pay period for which the employee was underpaid,
7 and one hundred dollars (\$100) for each employee for each subsequent pay
8 period for which the employee was underpaid (penalties set by Labor Code §
9 558);

10 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
11 aggrieved employee for each initial violation of Labor Code § 1197 that was
12 intentional and two hundred and fifty dollars (\$250) for each aggrieved
13 employee per pay period for each subsequent violation of Labor Code §
14 1197, regardless of whether the initial violation was intentional (penalties set
15 by Labor Code § 1197.1);

16 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
17 attorneys' fees and costs in connection with Plaintiff's claims for civil
18 penalties.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
21 public, prays for relief and judgment against Defendants as follows:

- 22 (1) An order that the action be certified as a class action;
23 (2) An order that Plaintiff be appointed class representative;
24 (3) An order that counsel for Plaintiff be appointed class counsel;
25 (4) Unpaid wages;
26 (5) Actual damages;
27 (6) Liquidated damages;
28 (7) Restitution;

- 1 (8) Declaratory relief;
2 (9) Pre-judgment interest;
3 (10) Statutory penalties;
4 (11) Civil penalties;
5 (12) Costs of suit;
6 (13) Reasonable attorneys' fees; and
7 (14) Such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
10 demands a jury trial on all issues so triable.

11
12 Dated: February 9, 2023

SETAREH LAW GROUP

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14  2/10

15 SHAUN SETAREH
16 THOMAS SEGAL
17 FARRAH GRANT
Attorneys for Plaintiff
18 ANDRÉS GARCIA
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On February 9, 2023, I served the foregoing documents described as:

in this action by transmitting a true copy thereof addressed as follows:

[X] BY MAIL

I am readily familiar with the practice of Setareh Law Group for the collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with United States Postal Service the same day it is submitted for mailing with postage thereon fully prepaid at Beverly Hills, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 9, 2023, at Beverly Hills, California.

/s/ Wendy Sarabia
Wendy Sarabia