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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

KE LI, YINYIN HE, YUANYUAN WEI
and MINGYU LI, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

US Elogistics Service Corp., a California
corporation; and DOES 1 to 100, inclusive

Defendant.

CASE NO.: CIVSB2307279

**CLASS ACTION FIRST AMENDED
COMPLAINT FOR:**

- (1) Failure To Provide Timely, Duty-Free Meal Period and/or Pay Meal Period Premiums for Late M Breaks (Labor Code §§ 226.7, 512; IWC Wage Order 4/9-2001;
- (2) Failure To Provide Timely, Duty-Free Rest Periods and/or Pay Rest Period Premiums (Labor Code § 226.7; IWC Wage Order 4/9-2001);
- (3) Violation Of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure To Pay All Wages);
- (4) Failure To Provide Accurate Itemized Wage Statements (Labor Code § 226);
- (5) Waiting Time Penalties (Labor Code § 201 – 203);
- (6) Failure To Pay Timely Wages (Labor Code §§ 204, 210);
- (7) UCL Violations (Bus. & Prof. Code §§ 17200-17204); and
- (8) Violations of the Private Attorney General Act at Labor Code Sections 2698 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs Ke Li, Yinyin He, Yuanyuan Wei, and Mingyu Li, on behalf of themselves, the State
2 of California, all other similarly situated (hereinafter “Class Members”) and Aggrieved
3 Employees, complain and allege on information and belief as follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiffs bring this action on behalf of themselves, all others similarly situated, as a class
6 action and fellow current and former Aggrieved Employees, defined pursuant to, and on behalf of the
7 California general public, against Defendant US Elogistics Service Corp., and DOES 1 to 100
8 (“Defendant”) for their (1) failure to provide timely and duty-free meal periods within the first five hours
9 and to provide lawful second meal periods for shifts worked in excess of ten hours and/or pay meal
10 period premiums for late meal breaks; (2) failure to provide timely, duty-free rest periods for every four
11 hours of work or major fraction thereof and/or pay rest period premiums; (3) failure to pay minimum
12 and overtime wages; (4) failure to provide accurate itemized wage statements within the one year prior
13 to the filing of this Complaint; (5) failure to pay all wages due to former employees based on the
14 foregoing; (6) failure to pay timely wages based on the foregoing; (7) unfair competition in violation of
15 Business and Professional Code § 17200 based upon the aforementioned unpaid wage and premium
16 claims; and (8) violations of California’s Private Attorney General Act (“PAGA”). As a result of the
17 foregoing, Defendant has violated California statutory laws as described below.

18 2. The “Class Period” is designated as the period from four years prior to the filing of this
19 action through the trial date. Defendant’s violations of California’s wage and hour laws and unfair
20 competition laws, as described more fully below, have been ongoing throughout the Class Period.

21 3. The “PAGA Period” is designated as the period from one year prior to the filing of
22 Plaintiffs Li and Wei notice of LWDA through the trial date. Defendant’s violations of California’s
23 wage and hour laws and unfair competition laws, as described more fully below, have been ongoing
24 throughout the PAGA Period.

25 VENUE

26 4. Venue is proper in this county under section 395.5 of the California Code of Civil
27 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
28 during the Class Period by Defendant in San Bernardino County. Defendant’s headquarters is located in

1 the City of Ontario within the San Bernardino County. Many of the acts alleged herein including
2 Defendant's failure to provide timely and duty-free meal and rest periods and pay meal and rest period
3 premiums, and failure to provide accurate itemized wage statements, occurred in San Bernardino
4 County. Venue is therefore proper in San Bernardino County.

5 JURISDICTION

6 5. Defendant is within the jurisdiction of this Court. Defendant transacts millions of dollars
7 of business by managing and operating numerous warehouses throughout the State of California,
8 including in the County of Ontario. Thus, Defendant has obtained the benefits of the laws of the State
9 of California. In addition, Plaintiffs assert no claims arising under federal law. Rather, Plaintiffs bring
10 causes of action based solely on, and arising from, California law. The claims of the Class and the claims
11 of the Aggrieved employees are also based solely on California law described herein. Furthermore, the
12 total amount at issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore,
13 jurisdiction is appropriate in San Bernardino County Superior Court.

14 THE PARTIES

15 A. The Plaintiffs

16 6. Plaintiffs are California residents and were non-exempt employees of Defendant in
17 California during the relevant time period. From at least four years from the filing of this complaint
18 through the present, and on-going, Defendant's non-exempt employees, including Plaintiffs during
19 their employment, were not provided timely and duty-free meal and rest periods and/or provided meal
20 and rest period premiums; were not provided accurate and/or complete wage statements; did not receive
21 all their wages and overtime wages; did not receive all of their wages due upon termination of
22 employment, and did not receive all wages timely.

23 7. Plaintiff Yinyin He worked for Defendant from August 1, 2017, until June 30, 2020, as
24 a warehouse employee. Plaintiff Yuanyuan Wei worked for Defendant from November 1, 2020, until
25 January 8, 2022, as a warehouse employee. Plaintiff Mingyu Li worked for Defendant from October 1,
26 2020, until May 15, 2021, as a warehouse employee. Plaintiff Ke Li worked for Defendant from October
27 22, 2021, until early February 2023, as a warehouse employee.

28 8. By way of this action, Plaintiffs also seek to represent the following Classes:

- a. All non-exempt individuals who or were employed by US Elogistics Services in the State of California during the Class Period. (hereinafter referred to as “Class Members” or the “Class”);
- b. All Class Members who were issued one or more wage statements from Defendant during the period from one year prior to the filing of this Complaint and continuing through judgment (hereinafter referred to as “Wage Statement Class Members”);
- c. All Class Members who did not receive their timely ten-minute, duty-free rest breaks while working for Defendant during the Class Period (hereinafter referred to as “Rest Break Class Members”);
- d. All Class Members who did not receive their timely thirty-minute meal break on or before the fifth hour of work while working for Defendant on shifts greater than five hours during the Class Period (hereinafter referred to as “Meal Break Class Members”); and,
- e. All Class Members who did not receive all their minimum wages and overtime wages during the Class Period;
- f. All Class Members whose employment with Defendant terminated during the period from three years prior to the filing of this Complaint and continuing into through judgment (hereinafter referred to “Waiting Time Penalty Class Members”).

B. The Defendant

9. Defendant US Elogistics Services is a corporation headquartered in City of Ontario, California. According to its website, <https://www.elogistic.com/usa>, US Elogistic Services provides fulfillment of shipping and packaging to the major online retailers such as Amazon and Ebay.

10. To operate its facilities, Defendant employs non-exempt employees, such as the Plaintiffs, the Class Members, and the Aggrieved Employees.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally

1 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court
2 to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter
3 as DOES when such identities become known.

4 12. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant acted
5 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
6 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
7 attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer
8 and/or joint employer of Plaintiffs, the Class, and the Aggrieved Employees.

9 13. Defendant was and is the employer of Plaintiffs, the Aggrieved Employees and Class
10 Members for all relevant time periods. At any one time during the Class Period, Defendant employed
11 approximately 250 non-exempt individuals in California. Due to turnover during the Class Period, the
12 total number of Class Members is estimated to be over 500.

13 CLASS ACTION ALLEGATIONS

14 14. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a
15 class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent Classes composed
16 of and defined as:

17 All non-exempt individuals who or were employed by US Elogistics Service in the State of
18 California during the Class Period and ending when notice to the Class is sent (hereinafter
19 referred to as “Class Members” or the “Class”).

- 20 a. All Class Members who were issued one or more wage statements from Defendant
21 during the period from one year prior to the filing of this Complaint through judgment
(hereinafter referred to as “Wage Statement Class Members”);
- 22 b. All Class Members who did not receive their timely ten-minute, duty free rest breaks
23 while working for Defendant during the Class Period (hereinafter referred to as “Rest
Break Class Members”);
- 24 c. All Class Members who did not receive their timely thirty-minute meal break on or
25 before the fifth hour of work while working for Defendant on shifts greater than five
26 hours during the Class Period (hereinafter referred to as “Meal Break Class
Members”);
- 27 d. All Class Members who did not receive their minimum wages and overtime wages
28 from Defendants during the Class Period (“Minimum Wage Employees”)

- e. All Class Members whose employment with Defendant terminated during the period from three years prior to the filing of this Complaint during the Class Period (hereinafter referred to “Waiting Time Penalty Class Members”).

15. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that Defendant has, on average, at any one time during the Class Period employed over 250 Class Members as non-exempt employees who were subject to Defendant’s unlawful policies. Due to turnover, the total number of Class Members is estimated to be more than 500. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiffs and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section 11 of IWC Wage Order No. 9 by failing to provide timely, duty-free meal periods to Plaintiffs and the members of the Meal Break Class in California during the Class Period;

ii. Whether Defendant violated Labor Code section 226.7 by failing to provide one hour of premium pay to each member of the Meal Break Class for each day that a timely, duty-free meal period was not provided in California during the Class Period;

iii. Whether Defendant violated Labor Code section 226.7 and Section 12 of IWC Wage Order No. 9 by failing to provide timely, duty-free rest periods to Plaintiffs and the members of the Rest Break Class in California during the Class Period;

iv. Whether Defendant violated Labor Code section 226.7 by failing to provide one hour of premium pay to each member of the Rest Break Class for each day that a timely, duty-free rest period was not provided in California during the Class Period;

1 v. Whether Defendant failed to provide Plaintiffs and the members of the
2 Wage Statement Class complete wage statements in violation of Labor Code Section 226(a);

3 vi. Whether Defendant violated Section 203 of the Labor Code by failing to pay
4 members of the Waiting Time Class for all wages due to them (including their unpaid meal and rest break
5 premiums) upon their separation of employment from Defendant;

6 vii. Whether Defendant violated Sections 204 and 210 of the Labor Code by
7 failing to pay member of the Class all wages due on a timely basis;

8 viii. Whether Defendant engaged in an unfair practice and violated section
9 17200 of the California Business and Professions Code by failing to provide Plaintiffs and the members
10 of the Meal Break Class with timely, duty-free meal breaks during the Class Period;

11 ix. Whether Defendant engaged in an unfair practice and violated section
12 17200 of the California Business and Professions Code by failing to provide Plaintiff and members of
13 the Meal Break Class with meal period premiums for each day they were not provided a compliant meal
14 break;

15 x. Whether Defendant engaged in an unfair practice and violated section
16 17200 of the California Business and Professions Code by failing to provide Plaintiff and the members
17 of the Rest Break Class with timely, duty-free rest breaks during the Class Period;

18 xi. Whether Defendant engaged in an unfair practice and violated section
19 17200 of the California Business and Professions Code by failing to provide Plaintiffs and members of
20 the Rest Break Class with rest period premiums for each day they were not provided a compliant meal
21 break;

22 xii. Whether Plaintiffs and the Class are entitled to restitution under Business
23 and Professions Code § 17200;

24 xiii. The proper formula(s) for calculating damages, interest, and restitution
25 owed to Plaintiff and the Class Members;

26 xiv. The nature and extent of class-wide damages.

27 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
28 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property rightly

1 belonging to them, arising out of and caused by Defendant's common course of conduct in violation of
2 law as alleged herein, in similar ways and for the same types of unpaid wages.

3 d. Adequacy of Representation: Plaintiffs are a member of the Class and will fairly
4 and adequately represent and protect the interests of the Class and Class Members. Plaintiffs' interests
5 do not conflict with those of Class and Class Members. Counsel who represents Plaintiffs are competent
6 and experienced in litigating large wage and hour class actions, including numerous cases virtually
7 identical to this one (i.e., wage and hour class action cases), and other employment class actions, and
8 will devote sufficient time and resources to the case and otherwise adequately represent the Class and
9 Class Members.

10 e. Superiority of Class Action: A class action is superior to other available means
11 for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not
12 practicable, and questions of law and fact common to the Class predominate over any questions affecting
13 only individual members of the Class. Each Class Member has been damaged or may be damaged in
14 the future by reason of Defendant's unlawful policies and/or practices. Certification of this case as a
15 class action will allow those similarly situated persons to litigate their claims in the manner that is most
16 efficient and economical for the parties and the judicial system. Certifying this case as a class action is
17 superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant has
18 enjoyed by maintaining its unlawful break and compensation policies and will thereby effectuate
19 California's strong public policy of protecting employees from deprivation or offsetting of
20 compensation earned in their employment. If this action is not certified as a Class Action, it will be
21 impossible as a practical matter, for many or most Class Members to bring individual actions to recover
22 monies unlawfully withheld from their lawful compensation due from Defendant, due to the relatively
23 small amounts of such individual recoveries relative to the costs and burdens of litigation.

24 **PAGA ADMINISTRATIVE PREREQUISITE**

25 16. The Private Attorney General Act ("PAGA") permits an "Aggrieved Employee" to
26 recover penalties on behalf of herself or himself as well as on behalf of all Aggrieved Employees as a
27 result of the employer's violation of certain sections of California Labor Code. In this case, Aggrieved
28 Employees are all non-exempt individuals who were employed by Defendant in the State of California

1 who worked one or more shifts of 3.5 hours or longer during the PAGA period.

2 17. Plaintiffs Li and Wei qualify as Aggrieved Employees as defined in Labor § 2699(a), in
3 that they were employed by Defendant in the state of California and worked one or more shifts or longer
4 during the PAGA period.

5 18. By this Complaint, Plaintiffs Li and Wei bring this case as a representative action seeking
6 civil penalties for the State of California in a representative capacity, as provided for in PAGA, to the
7 extent permitted by law, as an aggrieved employee and on behalf of all other aggrieved employees who
8 were employed by Defendants and subject to the violations set forth in Plaintiff's notice to the Labor
9 and Workforce Development Agency ("LWDA") and the employer, including but not limited to: Labor
10 Code §§202, 203, 204, 226, 226.7, 510, 512, 1174 and 1194 as well as IWC Wage Order 4/9-2001.

11 19. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA
12 only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been
13 violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days
14 have passed without notice from the LWDA.

15 20. On February 7, 2023, prior to the filing of the complaint in this action, Plaintiffs Li and
16 Wei gave written notice of the specified provisions of the Labor Code alleged to have been violated,
17 including the facts and theories to support the alleged violations, as required by Labor Code section
18 2699.3. This written notice was given via certified mail to Defendants and electronically to the LWDA,
19 LWDA Case No. LWDA-CM-934340-23. A true and correct copy of Plaintiff's notice to the LWDA
20 and to Defendants dated February 7, 2023, is attached hereto as Exhibit A.

21 21. Under Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other provision of
22 law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
23 under this part at any time within 60 days of the time periods specified in this part."

24 **FACTUAL ALLEGATIONS**

25 22. Defendant operates and, at all times during the Class Period, has done and does business
26 in California in California and throughout the world. Defendant, in the course of operating its business
27 in California during the Class Period employed Plaintiffs and the Class Members.

28 23. Labor Code § 512 requires employers to provide employees with a thirty (30) minute

1 uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover,
2 an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
3 minute uninterrupted and duty-free meal period.

4 24. Under Labor Code § 512, if an employer maintains a uniform policy that does not
5 authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for
6 under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable."
7 The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
8 an unlawful policy.

9 25. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage
10 Order 9-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or
11 before the fifth hour of work to Meal Break Class Members and failed to advise all other Meal Break
12 Class Members of their meal break rights with respect to the timing of meal breaks, failed to provide
13 Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first five (5) hours
14 of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant often
15 required employees to take their meal breaks at the end of their shifts without paying any late meal break
16 premiums. As a result of Defendant's failure to authorize or permit lawful and timely meal periods,
17 Plaintiffs and the other Meal Period Class Members frequently did not receive compliant duty-free meal
18 periods within the first five (5) hours of their work. Furthermore, when Defendant paid missed or late
19 meal break premiums, thereby admitting to 226.7 and 512 violations.

20 26. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
21 authorize and permit the amount of rest time on the schedule called for under the law (as specified in
22 Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker*
23 Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful
24 policy:

25 An employer is required to authorize and permit the amount of rest break time called for
26 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
27 policy authorizing and permitting only one rest break for employees working a seven-hour
28 shift when two are required—***it has violated the wage order and is liable.*** (*Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

1 27. Here, Defendant did not authorize Plaintiffs, the Rest Break Class Members to take their
2 ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts.
3 Moreover, Defendant's scheduling practices were often rest break preclusive for Rest Break Class
4 Members.

5 28. Moreover, Defendant had a policy in place to require Plaintiffs and the Class members
6 to combine their meal and rest breaks at the same time.

7 29. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to
8 furnish an itemized wage statement in writing showing:

- 9 (1) gross wages earned;
- 10 (2) total hours worked by the employee;
- 11 (3) the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece rate;
- 12 (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item;
- 13 (5) net wages earned;
- 14 (6) the inclusive dates of the period for which the employee is paid;
- 15 (7) the name of the employee and only the last four digits of his or her social security
number or an employee identification number other than a social security number;
- 16 (8) the name and address of the legal entity that is the employer...; and,
- 17 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

18 30. Defendant's wage statements issued fail to include the start date of each pay period in
19 violation of Labor Code § 226(a)(6). Moreover, due to, *inter alia*, Defendant's failure to pay Plaintiffs
20 and the other Aggrieved Employees for all meal and rest break premiums, the wage statements issued
21 by Defendant to Plaintiffs and the Wage Statement Class Members do not indicate the correct amount
22 of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period
and the corresponding number of hours worked at each hourly rate in violation of Labor Code §
23 226(a)(1), (2), (5) and (9).

24 31. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett v.*
25 *ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly
26 and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing
27 total hours worked to plaintiff or other employees paid on commission" even though it believed that
28 employees paid solely on commission or commission and salary "are exempt and therefore we do not

1 record hours on a wage statement”).

2 32. Defendant’s failure to furnish accurate itemized wage statements has caused Plaintiffs,
3 the Wage Statement Class Members to incur economic damages in that they were not aware that they
4 were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal
5 periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to
6 add up the daily hours shown on the time cards or other records so that the employee must perform
7 arithmetic computations to determine the total hours worked during the pay period, the requirements of
8 section 226 would not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal.
9 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked
10 giving rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B)
11 (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5),
12 among other provisions, and where employees cannot easily determine the gross or net wages earned by
13 the employee during the pay period).

14 33. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay
15 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed
16 \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the
17 employer fails to provide accurate itemized statements to the employee causing the employee to suffer
18 injury.

19 34. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that
20 “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the
21 amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
22 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
23 employer fails to provide the employee a wage deduction statement or fails to keep the required in
24 subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiffs, the
25 Wage Statement Class Members with accurate itemized wage statements.

26 35. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an
27 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for
28 up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

36. Due to Defendant's faulty policies described above, including its failure to pay for all meal and rest break premiums due, Defendant violated Labor Code § 203, for those employees whose employment ended within the last three years and ongoing (i.e., the Waiting Time Class Members) by willfully failing to pay them all wages due upon the termination of their employment.

37. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

38. Due to Defendant's failure to pay Plaintiffs, the Class all meal and rest break period premiums owed, Defendant violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

39. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiffs, and the Class are entitled to recover penalties under Labor Code § 210.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY MISSED
MEAL BREAK PREMIUMS
[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 9-2001 Section 11]
On behalf of Plaintiffs and the Meal Break Class Against Defendant

40. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

1 41. California Labor Code § 226.7(a) provides, “No employer shall require any employee to
2 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
3 Commission.”

4 42. Section 512(a) of the California Labor Code provides, in relevant part, that: An employer
5 may not employ an employee for a work period of more than five hours per day without providing the
6 employee with a meal period of not less than 30-minutes, except that if the total work period per day of
7 the employee is no more than six hours, the meal period may be waived by mutual consent of both the
8 employer and employee. An employer may not employ an employee for a work period of more than 10
9 hours per day without providing the employee with a second meal period of not less than 30-minutes,
10 except that if the total hours worked is no more than 12 hours, the second meal period may be waived
11 by mutual consent of the employer and the employee only if the first meal period was not waived.

12 43. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage
13 Order 9-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or
14 before the fifth hour of work for Meal Break Class Member and failed to advise all other Meal Break
15 Class Members of their meal break rights with respect to the timing of meal breaks, failed to provide
16 Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first five (5) hours
17 of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant often
18 required employees to take their breaks at the end of their shifts without paying any late meal break
19 premiums. As a result of Defendant’s failure to authorize or permit lawful and timely meal periods,
20 Plaintiffs and the other Class members and Meal Period Class Members frequently did not receive
21 compliant duty-free meal periods within the first five (5) hours of their work.

22 44. Defendant failed to pay an additional hour of pay to Plaintiffs and Class Members when
23 meal periods were interrupted and/or not taken as required by Labor Code section 226.7(c).

24 45. Plaintiffs individually, and on behalf of the Meal Break Class, request recovery of meal
25 period compensation pursuant to *Labor Code* section 226.7 which they are owed beginning four (4)
26 years prior to filing this action as well as the assessment of any statutory penalties against these
27 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.
28

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS
AND PAY MISSED REST BREAK PREMIUMS
[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 9-2001]
On behalf of Plaintiffs and the Rest Break Class Against Defendant

46. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

47. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

48. Here, Defendant did not authorize Plaintiffs and the Rest Break Class Members to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiffs and the Rest Break Class Members did not receive timely rest breaks during their shifts. Accordingly, Defendant is liable to Plaintiffs and the Rest Break Class Members for rest break premiums for all such shifts on which they were not able to take compliant rest breaks.

49. Plaintiffs, on behalf themselves and all employees similarly situated, request recovery of rest period compensation pursuant to *Labor Code* section 226.7, which they are owed beginning four (4) years prior to filing this action as well as the assessment of any statutory penalties against Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

THIRD CAUSE OF ACTION
FAILURE TO PAY ALL WAGES
(By Plaintiffs against All Defendants)

50. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein, as if fully alleged.

51. Any employee receiving less than the legal minimum wage or legal overtime compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys’ fees and

1 costs of suit. (Lab. Code, § 1194, subd. (a).)

2 52. Labor Code section 1182.12 provides for employers who employed 26 or more people
3 from January 18, 2018, to December 31, 2018, the minimum wage rate in California was eleven dollars
4 (\$11.00) per hour. From January 1, 2019, to December 31, 2019, the minimum wage rate in California
5 is twelve dollars (\$12.00) per hour. From January 1, 2020, to December 31, 2020, the minimum wage
6 rate in California is thirteen dollars (\$13.00) per hour. From January 1, 2021, to December 31, 2021, the
7 minimum wage rate in California is fourteen dollars (\$14.00) per hour. From January 1, 2022, the
8 minimum wage rate in California, is fifteen dollars (\$15.00) per hour. Plaintiffs are informed and
9 believes Defendants employed more than twenty-six (26) employees.

10 53. Notwithstanding any other provision of the Labor Code, hourly minimum wage rates are
11 set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay employees no
12 less than minimum wage for each hour worked. (Lab. Code, § 1194.)

13 54. In any action to recover payment of wages less than the minimum wage an employee
14 shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
15 interest thereon. (Lab. Code, § 1194.2.)

16 55. Any work in excess of eight (8) hours in any workday and any work in excess of forty
17 (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half times the
18 regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess of twelve (12)
19 hours in a workday shall be compensated at the rate of twice the regular rate of pay for an employee.
20 (Lab. Code, § 510, subd. (a).)

21 56. All wages earned in employment are due and payable twice during each calendar month
22 on dates designated in advance by the employer. (Lab. Code, § 204.)

23 57. In case of a dispute over wages, the employer shall pay, without condition and promptly
24 under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise
25 entitled to as to any balance claimed. (Lab. Code, § 206.)

26 58. At all relevant times herein, Plaintiffs and Class Members were and are paid as non-
27 exempt employees.

28 59. Defendant failed to compensate Plaintiffs and the Class for all wages worked.

Specifically, Defendant failed to include all remuneration when calculating Plaintiff and Plaintiff Class overtime and double-time. Specifically, Defendant had in place a rounding system that prevented Plaintiffs and the Class to receive all their compensation. The rounding system put in place by Defendant did not allow Plaintiffs and the Class to receive their compensation until after working 15 minutes. This resulted in Plaintiffs and the Class to not receive all their wages.

60. As a consequence, Defendant failed to pay Plaintiffs and the Class all minimum, regular, overtime, and/or double-time wages for all hours worked, including hours in excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, *inter alia*, 204, 510, 1182.12, and 1194, the Plaintiffs Class seeks the payment of all minimum, regular, overtime, and/or double-time compensation which they earned and accrued for four (4) years prior to filing this complaint, according to proof.

61. Additionally, Plaintiffs and the Class are entitled to liquidated damages, attorneys' fees and costs pursuant to Labor Code section 1194 and Code of Civil Procedure section 1021.5, and prejudgment interest.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a)]

On behalf of Plaintiffs and the Wage Statement Class Members Against Defendant

62. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

63. Section 226(a) of the California Labor Code provides, in relevant part:

64. Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all -deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his

1 or her social security number or an employee identification number other than a social security number,
2 (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee...

5 65. As set forth above, Defendant's wage statements issued fail to include the correct name
6 of Defendant on their paystubs. Additionally, Defendant's failure to pay Plaintiffs and the other Wage
7 Statement Class Members for all meal and rest break premiums), the wage statements issued by
8 Defendant to Plaintiff and the other Wage Statement Class Members do not indicate the correct amount
9 of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period
10 and the corresponding number of hours worked at each hourly rate in violation of Labor Code §
11 226(a)(1), (2), (5) and (9).

12 66. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett v.*
13 *ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly
14 and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing
15 total hours worked to plaintiff or other employees paid on commission" even though it believed that
16 employees paid solely on commission or commission and salary "are exempt and therefore we do not
17 record hours on a wage statement").

18 67. Defendant's failure to furnish accurate and complete itemized wage statements has
19 caused Plaintiffs and the other Wage Statement Class Members to incur economic damages in that they
20 were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory
21 rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left
22 to the employee to add up the daily hours shown on the time cards or other records so that the employee
23 must perform arithmetic computations to determine the total hours worked during the pay period, the
24 requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d
25 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia,
26 total hours worked giving rise to claims under both Section 226 and for PAGA penalties); Labor Code
27 § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1),
28 (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages

1 earned by the employee during the pay period).

2 68. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay
3 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed
4 \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the
5 employer fails to provide accurate itemized statements to the employee causing the employee to suffer
6 injury.

7 **FIFTH CAUSE OF ACTION**
8 **WAITING TIME PENALTIES FOR**
9 **FAILURE TO PAY WAGES DUE ON TERMINATION**
10 **[Cal. Labor Code §§ 201-203]**

11 **On Behalf of Plaintiffs and the Waiting Time Class Against Defendant**

12 69. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
13 preceding paragraphs.

14 70. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an
15 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for
16 up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

17 71. Due to Defendant's faulty policies described above, including its failure to pay for meal
18 and rest break premiums, Defendant violated Labor Code § 203, for those employees whose
19 employment ended within the last three years and ongoing (i.e., the Waiting Time Class Members) by
20 willfully failing to pay them all wages due upon the termination of their employment.

21 72. More than thirty (30) days have passed since Plaintiffs and formerly employed Class
22 Members have left Defendant's employ, and on information and belief, they have not received payment
23 pursuant to Labor Code section 203. As a consequence of Defendant's willful conduct in not paying all
24 earned wages, Plaintiffs and the affected Class Members are entitled to thirty (30) days wages as a
25 penalty under Labor Code section 203 for failure to pay legal wages.

26 73. Plaintiffs and the affected Class Members are also entitled to thirty (30) days wages as a
27 penalty under Labor Code section 203 for willful failure to pay one hour's wages in lieu thereof for
28 denied rest and meal periods, together with interest thereon and attorneys' fees and costs.

74. Plaintiffs and members of the Class who terminated employment with Defendant within
four (4) years of the filing of the action until the date of entry of judgment, without being paid the proper

1 payments are entitled to thirty (30) days of pay at their regular rate of pay as waiting time penalties.
2 Pursuant to Labor Code sections 203, Plaintiffs and the Class seek to recover in a civil action all
3 remedies to the fullest extent permissible.

4 **SIXTH CAUSE OF ACTION**
5 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
6 **[Cal. Labor Code §§ 204, 210]**

7 **On Behalf of Plaintiffs and the Wage Statement Class Against Defendant**

8 75. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
9 preceding paragraph.

10 76. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
11 employment are due and payable twice during each calendar month, on days designated in advance by
12 the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed
13 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
14 not more than seven calendar days following the close of the payroll period.

15 77. Due to Defendant’s failure to pay Plaintiffs and the Wage Statement Class all meal and
16 rest break period premiums owed, Defendant violated Labor Code § 204 by failing to pay all wages due
17 within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v.*
18 *Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2,
19 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code
20 §§ 203 and 204).

21 78. Labor Code § 210 provides that “in addition to, an entirely independent and apart from,
22 any other penalty provided in this article, every person who fails to pay the wages of each employee as
23 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation,
24 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or
25 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
26 plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and
27 practices described in detail above, Plaintiffs and the Class are entitled to recover penalties under Labor
28 Code § 210.

79. Labor Code section, 226 subdivision (e) provides that if an employer knowingly and

1 intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the total
2 hours worked by the employee and the applicable hourly overtime rates, causing the employee injury,
3 then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the
4 initial violation and one hundred dollars (\$100.00) for each subsequent violation, up to four thousand
5 dollars (\$4,000.00).

6 80. Industrial Welfare Commission (“IWC”) Wage Order Number 9-2001, paragraph (7)(3)
7 requires that every employer shall keep accurate information with respect to each employee, including
8 time records showing when each employee begins and ends each work period, the total daily hours
9 worked by each employee and the total hours worked in each payroll period, and applicable rates of pay.
10 Plaintiffs are informed and believes that Defendant willfully and intentionally failed to make and/or
11 keep records which accurately reflect the hours and wages worked by Plaintiffs and the Class.
12 Specifically, Plaintiffs believes that Defendant’s records do not accurately reflect the wages owed in the
13 form of the lawful minimum wage and statutory premiums for non-compliant meal and rest periods.

14 81. As described above, Plaintiffs are informed and believes that Defendant willfully failed
15 to make or keep accurate records for Plaintiffs and the Class by failing to pay all wages owed, including
16 minimum wage, overtime premiums and/or double time premiums, for worked performed off-the-clock
17 and thereby failing to maintain accurate records.

18 82. Plaintiffs are informed and believes that Defendant’s failure to keep and maintain
19 accurate records and information and to provide Plaintiffs and the Class accurate itemized wage
20 statements, as described above, was knowing and intentional, and Plaintiffs and the Class Members are
21 entitled to statutory penalties for each pay period in which a violation occurred. As such, Plaintiffs seek
22 penalties under Labor Code section 226, subdivision (e). Plaintiffs further seek recovery of attorneys’
23 fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by law.

24 **SEVENTH CAUSE OF ACTION**
25 **UNFAIR COMPETITION LAW VIOLATIONS**
26 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
27 **On Behalf of Plaintiffs, and the Class Against Defendant**

28 83. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
preceding paragraphs.

1 84. Section 17200 of the California Business & Professions Code prohibits any unlawful,
2 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who
3 has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the
4 UCL. Such a person may bring such an action on behalf of themselves, and others similarly situated
5 who are affected by the unlawful, unfair, or fraudulent business practice.

6 85. Under section 17208 of the California Business and Professions Code, the statute of
7 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
8 cause of action is four years prior to the filing of this Complaint through the present, and on-going until
9 the violations are corrected, or the Class is certified.

10 86. Section 90.5(a) of the Labor Code states that it is the public policy of California to
11 enforce vigorously minimum labor standards in order to ensure employees are not required to work
12 under substandard and unlawful conditions, and to protect employers who comply with the law from
13 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
14 with minimum labor standards.

15 87. As a direct and proximate result of Defendant’s unlawful business practices, Plaintiffs
16 and the Class Members have suffered economic injuries. Defendant has profited from its unlawful,
17 unfair, and/or fraudulent acts and practices.

18 88. Plaintiffs and similarly situated Class Members are entitled to monetary relief pursuant
19 to Business & Professions Code §§ 17203 and 17208 for unpaid meal and rest period premiums and
20 unreimbursed business expenses due and interest thereon, from at least four years prior to the filing of
21 this complaint through to the date of such restitution, at rates specified by law. Defendant should be
22 required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiffs
23 and Class Members, from whom they were unlawfully taken.

24 89. Through its actions alleged herein, Defendant has engaged in unfair competition within
25 the meaning of section 17200 of the California Business & Professions Code, because Defendant’s
26 conduct, as herein alleged has damaged Plaintiffs and the Class Members by wrongfully denying them
27 all meal and rest period premiums due, and therefore was substantially injurious to Plaintiffs and the
28 Class Members.

90. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the California Business & Professions Code by violating Sections 226.7 and 512 of the California Labor Code, and Sections 11 and 12 of the IWC Wage Order 4-2001.

91. Defendant's course of conduct, act and practice in violation of the California laws mentioned above constitute independent violations of sections 17200 et seq. of the California Business and Professions Code.

92. Plaintiffs and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

93. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendant in California. Plaintiffs' success in this action will enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs are appropriate pursuant to Code of Civil Procedure §1021.5.

EIGHTH CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)

[Cal. Lab. Code §§ 2698, et seq.]

(On Behalf of Plaintiffs Li and Wei, Aggrieved Employees, and Class Against All Defendants)

94. Plaintiffs Li and Wei and the Aggrieved Employees reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

95. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

1 96. Plaintiffs bring this Representative Action on behalf of the State of California with
2 respect to themselves, the Plaintiff Class, and all other current and former Aggrieved Employees
3 employed by Defendants during the PAGA Period.

4 97. At all relevant times, for the reasons described herein, and others, Plaintiffs, the Class
5 Members, and the Aggrieved Employees were aggrieved employees of Defendants within the meaning
6 of Labor Code Section 2699(c).

7 98. Labor Code Sections 2699(a) and (g) authorize an Aggrieved Employee, like Plaintiffs
8 Li and Wei, on behalf of themselves, the Class Members and other current or former employees, to bring
9 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section
10 2699.3.

11 99. Plaintiffs complied with the procedures for bringing suit specified in Labor Code Section
12 2699.3. By certified letter, return receipt requested and electronic mail, dated February 7, 2023,
13 Plaintiffs gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
14 Defendants of the specific provisions of the Labor Code alleged to have been violated, including the
15 facts and theories to support the alleged violations. See Exhibit #1, attached hereto and incorporated by
16 this reference herein.

17 100. As of May 15, 2023, more than sixty-five (65) days after serving the LWDA with notice
18 of Defendants’ violations, the LWDA has not provided any notice by certified mail of its intent to
19 investigate the Defendants’ alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A).
20 Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiffs may commence and are
21 authorized to pursue this cause of action.

22 101. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiffs and the Aggrieved Employees
23 are entitled to civil penalties for Defendants’ violations of Labor Code Section 201, 202, 203, 204, 210,
24 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, in the following amounts:

25 102. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100)
26 for each Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200) for
27 Aggrieved Employee per pay period for each subsequent violation [penalty per Labor Code Section
28 2699(f)(2)];

- a. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];
- b. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each Aggrieved Employee for any initial violation and two hundred dollars (\$200) for Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 210];
- c. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for the initial violation and hundred dollars (\$100) for each underpaid Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 558];
- d. For violations of Labor Code Section 2269(a), a civil penalty in the subsequent violation [penalty per Labor Code Section 226.3];
- e. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per Aggrieved Employee per pay period for the initial violation and two hundred dollars fifty (\$250) per Aggrieved Employee per pay period for each subsequent violation [penalty per Labor Code Section].

103. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation. Plaintiffs and the Aggrieved Employees are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

104. To the extent that any of the conduct and violations alleged herein did not affect Plaintiffs or Class Members during the PAGA period, Plaintiffs and Class Members seek penalties for those violations that affected other Aggrieved Employees. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor Code

violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).

JURY DEMAND

105. Plaintiffs hereby demand trial by jury of their, Class’s and the Aggrieved Employees claims against Defendant, and of all claims except for the UCL, claims which are subject to a bench trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves, the members of the Class and the Aggrieved Employees, pray for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§ 226.7, 512 and Section 11 of IWC Wage Order 9-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Meal Break Class Members for an hour of pay for each day that a timely, duty-free meal period was not provided during the Class Period.

3. On the Second Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code § 226.7, and Section 12 of IWC Wage Order 9-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Rest Break Class Members for an hour of pay for each day that a timely, duty-free rest period was not provided during the Class Period.

4. On the Third Cause of Action:

a. A Declaratory judgment that Defendant has violated California Labor Code sections 226.2 and 1194;

b. An award to Plaintiffs and the other members of the Class in the amount of their unpaid minimum wages.

c. Reasonable attorneys’ fees, costs of suit and prejudgment interest.

5. On the Fourth Cause of Action:

1 a. A declaratory judgment that Defendant violated California Labor Code §226 by
2 issuing inaccurate and/or incomplete wage statements that failed to include the start date for each pay
3 period, the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in
4 effect during the pay period and the corresponding number of hours worked at each hourly rate to
5 Plaintiff and the wage statement Class Members;

6 b. An award to Plaintiffs and Class Members of \$50 for each initial pay period, one
7 year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226
8 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint through
9 the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of
10 the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

11 6. On the Fifth Cause of Action:

12 a. A declaratory judgment that Defendant violated California Labor Code §§ 201-
13 203;

14 b. Pursuant to Cal. Labor Code §§ 201-203, an award to Plaintiffs and the Waiting
15 Time Class members for waiting time penalties in the amount of 30 days' wages per waiting time Class
16 Member.

17 7. On the Sixth Cause of Action:

18 a. A declaratory judgment that Defendant violated California Labor Code § 204 and
19 § 210;

20 b. Pursuant to Labor Code § 204 and § 210, an award to Plaintiffs and the Class for
21 penalties pursuant to Labor Code § 210.

22 8. On the Seventh Cause of Action:

23 a. That the Court find and declare that Defendant have violated the UCL and
24 committed unfair and unlawful business practices by failing to pay meal and rest break premiums;

25 b. Restitution, including, but not limited to, the relief permitted by section 226.7 of
26 the California Labor Code (i.e., pay as specified for meal and rest period premiums to Plaintiffs and the
27 members of the Class during the Class Period.

28 c. Reasonable attorneys' fees, costs of suit and prejudgment interest.

1 9. On the Eighth Cause of Action:

2 a. For reasonable attorney's fees and costs of suit to the extent permitted by law,
3 including pursuant to Labor Code § 2699, et seq.;

4 b. For civil penalties to the extent permitted by law pursuant to the Labor Code
5 under the Private Attorneys General Act; and

6 c. For such other relief as the Court deems just and proper.

7 10. All other relief as this Court deems proper.

8
9 Dated: May 15, 2023

Respectfully,

10 Employment Rights Law Group, APC
11 Mahoney Law Group

12 By: _____

13 Amir Seyedfarshi, Esq.
14 Kevin Mahoney
15 Katherine Odenbreit
16 Counsel for Plaintiffs, the Class, and the
17 Aggrieved Employees

EXHIBIT A



EMPLOYMENT RIGHTS LAW GROUP, APC

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T. (424) 777 - 0964

February 7, 2023

Via Online Filing with the LWDA, Certified Mail & Email to Defendant's counsel of record

US Elogistics Service Corp.

c/o 1505 Corporation
1567 Incorporating Services, Ltd
7801 Folsom Blvd., #202
Sacramento CA 95826

US Elogistics Service Corp.

1100 Cranbury
South River Rd
Monroe, NJ 08831

c/o Fei Drouyor, Esq.

Martenson, Hasbrouck & Simon LLP
fdrouyor@martensonlaw.com

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)
Ke Li and Yuanyuan Wei v. Us Elogistics Service Corp.

Dear Gentlepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1) of the California Labor Code, and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal

notice that may lead to actions against you and your company in a court of law and in administrative proceedings, or both, and the imposition of substantial penalties and other orders and remedies against you and your company.

This office, along with our co-counsel, Kevin Mahoney and Katherine Odenbreit of Mahoney Law Group, represents Ke Li and Yuanyuan Wei (“Plaintiffs”) and a proposed group (and subgroups) of current and former Aggrieved Employees, as defined below, of US Elogistics Service Corp., and its co-employers, successors in interest, and/or merged entities (“Defendants”) in connection with her individual and PAGA representative claims for civil penalties, based on, without limitation, Defendants’:

- (1) failure to provide timely duty-free rest periods within the first four (4) hours or major fraction thereof, and/or pay rest period premiums for late, on-duty or missed meal breaks in violation of Labor Code §§ 226.7 and applicable IWC Wage Order Section 12;
- (2) failure to provide timely meal periods on or before the fifth and/or tenth hours of work shifts in violation of Labor Code sections 226.7, 512 and Section 11 of the applicable IWC Wage Order;
- (3) failure to pay the correct overtime rate of pay in violation of Labor Code 510;
- (4) failure to pay employees all wages and premiums due on a bi-monthly basis when other wages were paid as required by Labor Code sections 204 and 210;
- (5) statutory penalties under California’s Private Attorney General Act (“PAGA”) based upon the foregoing under Labor Code sections 2698 et seq.
- (6) unfair competition in violation of Bus. & Prof. Code § 17200 based upon the foregoing unpaid wage and premium claims;

In connection with their PAGA claims, Plaintiffs seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the “PAGA Period”). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The “Aggrieved Employees”:

All non-exempt individuals who are or were employed by US Elogistics Service Corp. of California in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

DEFENDANTS’ MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer does not authorize and permit the amount of duty-

free mealtime called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.”

Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order Nos. 4 and 9 §11 by, among other things, failing to provide a thirty-minute duty-free meal breaks to Aggrieved Employees within the first five (5) hours of their shifts, and failing to pay meal break premiums for late meal breaks. As a result of Defendants’ failure to authorize or permit lawful meal periods, Plaintiffs and the other Class members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANTS’ REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten-minute duty free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Plaintiffs and the Rest Break Aggrieved Employees were not provided their first and second timely ten- minute duty-free rest breaks. Plaintiffs and the Rest Break Aggrieved Employees were instructed to remain always available and not take any breaks. Plaintiffs and the Rest Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was also often rest break-preclusive.

Here, Defendant did not authorize Plaintiffs and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiffs and the Aggrieved Employees were required and instructed by their supervisors to combine both their meal and rest breaks and only take a 45-minute rest break. Relying on the California Supreme Court’s guidance in *Brinker Restaurant Corp. v. Superior Court*, the appellate court in *Rodriguez v. E.M.E. Inc.* 246 Cal. App. 4th 1027 (2016) held that “rest breaks in an eight-hour shift should fall on either side of the meal break, absent factors rendering such scheduling impracticable.” There may be unusual or exceptional circumstances that will permit variation from the norm. The

Rodriguez court rejected, in ordinary circumstances, the combining of meal and rest breaks as incompatible with California law and the normal sequencing and timing of meal and rest breaks

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to *inter alia*, Defendants' failure to pay Plaintiffs and the other Aggrieved Employees for all hours worked (as a result of Defendant's automatic lunch deductions), and to provide them with lawful and timely meal periods (and/or pay late meal break premiums), the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Here, the wage statements do not reflect the correct rate of pay for overtime and meal break premiums. Under *Ferra v. Lowes*, "'regular rate of compensation,' as used in the statute and wage order requiring an employer to pay one additional hour of pay at an employee's regular rate of compensation as remedy for failure to provide mandatory meal, rest, or recovery period, was equivalent with 'regular rate of pay,' as used in the overtime statute, and, thus, nondiscretionary payments for work performed by employee were to be included when determining compensation for failure to provide a meal, rest, or recovery period." Ferra v. Loews Hollywood Hotel, LLC, 11 Cal. 5th 858, 489 P.3d 1166 (2021).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the

employee causing the employee to suffer injury.

DEFENDANTS' MINIMUM WAGE VIOLATIONS

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to pay each employee minimum wages *for all hours worked*. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Furthermore, pursuant to Labor Code § 1198, “[t]he 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.”

During the relevant time period, Plaintiffs and the Aggrieved Employees were paid on an hourly basis by the Defendants in the state of California.

Despite the fact that Defendants failed to provide Aggrieved Employees with timely meal periods of at least thirty (30) minutes in length, Defendants had a policy and practice of automatically deducting thirty (30) minutes from each shift worked in excess of six (6) hours, regardless of whether or not the employee received a meal period and/or the amount of time spent on the meal period, if any. Therefore, during those regular instances where Aggrieved Employees did not receive a full thirty-minute meal period (or did not receive a meal period at all), they were deprived of minimum wages for all hours worked during that shift.

Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

Plaintiffs and the other Minimum Wage Aggrieved Employees suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and Labor Code violations.

DEFENDANTS' OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as

all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order Nos. 4 and 9.

Here, Plaintiffs and the aggrieved employees had to work at least 15 minutes after the end of their eighth hour shift in order to receive overtime payment. Defendants have in place a system of rounding that would not allow Plaintiffs and the aggrieved employees to receive compensation for all hours worked until after fifteen minutes. In *Camp v. Home Depo*, the Court of Appeal held that “[b]ased on the particular facts of this case, and in view of the guidance and direction provided by more recent California Supreme Court opinions in *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 235 Cal.Rptr.3d 820, 421 P.3d 1114 (*Troester*) and *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 275 Cal.Rptr.3d 422, 481 P.3d 661 (*Donohue*), we conclude that Home Depot, in relying on its quarter-hour rounding policy, did not meet its burden to show that there was no triable issue of material fact regarding plaintiff Camp's claims for unpaid wages, where Home Depot could and did track the exact time in minutes that an employee worked each shift and those records showed that Camp was not paid for all the time he worked. We will therefore reverse the judgment against plaintiff Camp and direct the trial court to enter a new order denying Home Depot's summary judgment motion as to Camp.” Camp v. Home Depot U.S.A., Inc., 84 Cal. App. 5th 638, 644, 300 Cal. Rptr. 3d 548, 551 (2022)

Plaintiffs contend that the employer's rounding time policy denied them proper overtime pay for all hours worked and resulted in meal period violations for which premium pay was not paid.

DEFENDANT'S FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters, to the extent possible, and that is in the best interests of all parties. Please contact the undersigned by **February 28, 2023** so that we may discuss the possibility of entering into an informal discovery plan and the possibility of early mediation.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Amir Seyedfarshi', with a stylized, cursive script.

Amir Seyedfarshi
Katie Odenbreit