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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/26/2023 at 11:42:50 AM
Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Attorneys for Plaintiff MARCELINO ORTUNO in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARCELINO ORTUNO, in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

DUNN-EDWARDS CORPORATION, a
Delaware Corporation; and DOES 1-10,
inclusive

Defendants

CASE NO. 37-2023-00048612-CU-OE-CTL

COMPLAINT FOR:

1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
4. WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.*
6. FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.*

Demand for Jury Trial

COMES NOW Plaintiff MARCELINO ORTUNO ("Plaintiff"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant DUNN-EDWARDS CORPORATION (Referred to herein as "Defendant" or "DUNN-EDWARDS"), was and is a California Corporation doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
2 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said
3 defendants. Wherever it is alleged herein that any act or omission was done or committed by
4 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
5 allege that the same act or omission was also done and committed by each and every defendant
6 named as a DOE, both separately and in concert with the named Defendant or Defendants.

- 7 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
8 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
9 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
10 legal entities which were licensed to do and/or were doing business in the County of San
11 Diego, State of California at all times relevant to the subject matter of this action.

12 **FACTUAL BACKGROUND**

- 13 7. Plaintiff was employed by Defendants from approximately April 17, 2023 through August 9,
14 2023. Throughout his employment with Defendants, Plaintiff performed his job in a capable,
15 and competent manner.
- 16 8. Throughout the term of their employment, Plaintiff and all other aggrieved employees were,
17 and currently are, denied the benefits and protections of the Labor Code due to Defendants'
18 institutionalized pay practices, standard as to all of Defendants' California-based employees.
- 19 9. On August 14, 2023, counsel for Plaintiff prepared and submitted via online filing a letter to
20 the California Labor & Workforce Development Agency ("LWDA"). Plaintiff also mailed a
21 courtesy copy of this letter to the LWDA via USPS Mail. A copy of the letter was mailed to
22 Defendant, via USPS Certified Mail. The letter contained the specific provisions of the
23 California Labor Code and Business and Professions Code violated by Defendants, as well as
24 the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and correct
25 copy of this letter.)
- 26 10. The statutory time period for the LWDA to investigate and/or respond, and for the employer
27 to respond, has concluded.
- 28

REPRESENTATIVE ALLEGATIONS

11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code due to Defendants' standard practices. Throughout his employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.
12. Plaintiff brings this action on the grounds that he and other current and former aggrieved employees of Defendants were and are improperly denied the mandated wages resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed One-Thousand (1000) members.
13. The approximately One-Thousand (1000) aggrieved employees are comprised of Defendants' current or former California-based employees.
14. The questions of law and fact common to all aggrieved employees arising from Defendants' actions include, among others, the following:
 - a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
 - b. Whether Defendants failed to pay its employees all compensation due and owing at termination of employment;

- 1 c. Whether Defendants failed to provide its employees with statutorily-compliant Meal
2 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
3 226.7, in that Defendants' written policies are not compliant with California law, and
4 Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;
- 5 d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in
6 accordance with law;
- 7 e. Whether Defendants failed to properly calculate and pay its employees overtime
8 compensation or Meal and Rest Period Premiums in accordance with law by failing to
9 properly calculate, into the Regular Rate of Pay, the value of all employee benefits and
10 other non-discretionary compensation; and
- 11 f. Whether Defendants failed to properly reimburse its employees for necessary business
12 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
13 Labor Code section 2802.
- 14 15. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial
15 Welfare Commission Wage Orders of the State of California, including, but not limited to,
16 California Labor Code section 2698 *et seq.*
- 17 16. At all times mentioned herein, Defendants are and were "employers" as that term is used
18 within the relevant sections of the California Labor Code.
- 19 17. Plaintiff has exhausted his administrative remedies and pre-filing requirements pursuant to
20 California Labor Code section 2699.3, and has also fulfilled all notice requirements under the
21 statute.
- 22 18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were
23 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
24 Defendants' standard practices. Said violations are set forth below.

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26 ///

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth herein.

20. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

21. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11070 (11)(A).

22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11070 (11).

23. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11070 (11).

24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11070 (11), (12).

25. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

- 1 26. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy,
2 and makes no attempt to ensure that its employees are either timely or wholly provided Meal
3 Periods or Rest Periods.
- 4 27. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest
5 Periods, based on order volume and coverage issues.
- 6 28. In addition, Defendants had notice of Plaintiff working outside of his scheduled and/or
7 reported hours, as well as within Meal and Rest Periods, but failed to provide any
8 compensation for this work-time.
- 9 29. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one
10 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
11 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 7 § (11),
12 (12).
- 13 30. Any payments made by Defendants for non-compliant Meal Periods were not paid at the
14 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
15 Orders. Instead, these payments were made at an employee's base rate and did not include the
16 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
17 example, non-discretionary compensation and other employee benefits.
- 18 31. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
19 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
20 proven at trial.
- 21 32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
22 behalf of himself and all other aggrieved employees by and through Labor Code section
23 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
24 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
25 Prayer For Relief.
- 26 33. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
27 pursuant to Labor Code sections 2699(a) for each of these employees.
- 28 34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code

1 section 2699(g)(1).

2 **SECOND CAUSE OF ACTION**
3 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
4 **Representative Action**
5 **(By Plaintiff against Defendants and DOES 1 through 10)**

6 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth
7 herein.

8 36. Defendants failed to pay its employees all compensation due in violation of, among other
9 statutes, Labor Code section 1197. California law holds that the failure to pay for any work
10 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal.
11 App.4th 314, 323. These violations were caused by and through Defendants' failure to
12 maintain accurate Time Records (as required by California law), to the detriment of the
13 employees. Specifically, although Defendants would receive "to-the-minute" start and end
14 times (from their employees' mandated timekeeping practices), Defendants would thereafter
15 alter - and deduct time from - the Time Records, prior to payment of compensation to the
16 employees. Additionally, the right to receive the proper minimum wage compensation was
17 impacted by Defendants knowingly failing to consider other work performed by the employees,
18 including all time employees were under Defendants' control. These actions, and instructions,
19 caused the employees to lose compensation, including proper minimum wage compensation
20 and overtime compensation.

21 37. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff
22 and all other aggrieved employees have been damaged in an amount to be proven at trial.

23 38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
24 behalf of himself and all other aggrieved employees by and through Labor Code section
25 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
26 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
27 Prayer For Relief.

28 39. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
pursuant to Labor Code sections 2699(a) for each of these employees.

1 40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
2 section 2699(g)(1).

3 **THIRD CAUSE OF ACTION**
4 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
5 **Representative Action**
6 **(By Plaintiff against Defendants and DOES 1 through 10)**

7 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth
8 herein.

9 42. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation,
10 including overtime compensation, due in violation of, among other statutes, Labor Code
11 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
12 whereby employees experienced monetary under-compensation. The systematic failure to
13 provide proper overtime compensation is a violation of California law.

14 43. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring
15 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
16 commissions, shift differentials, various forms of bonus and/or incentive pay, and the value
17 of employee benefits and employee discounts, in violation of Labor Code section 510.

18 44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
19 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
20 proved at trial.

21 45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
22 behalf of himself and all other aggrieved employees by and through Labor Code section
23 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
24 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
25 Prayer For Relief.

26 46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
27 pursuant to Labor Code sections 2699(a) for each of these employees.

28 47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
section 2699(g)(1).

FOURTH CAUSE OF ACTION
Wage Statement Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth herein.
49. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants' failure to accurately identify all applicable regular and overtime (including double-time) rates of pay in violation of section 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendants also failed to accurately list "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate," in violation of 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code section 226(a)(2). For example, Defendants had notice of employees working outside of their scheduled and/or reported hours, as well as within Meal and Rest Periods, but did not provide compensation.
50. Further, the Defendants' wage statement listings are confusing and employees cannot readily ascertain their total hours worked, applicable rates, and all gross and net wages. As one example, Defendants are apparently using a time calculating system other than "minutes", but without explanation to the employees within the wage statement.
51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

53. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

54. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

FIFTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth herein.

56. Defendants failed to reimburse their employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur mileage, purchase work supplies, and to use their own cell phones for work-related purposes, without reimbursement.

57. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

58. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

59. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

60. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

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SIXTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

61. Plaintiff hereby incorporates by reference paragraphs 1 through 60 as though fully set forth herein.
62. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above. Additionally, Defendants failed to pay Plaintiff, and other aggrieved employees, all wages actually owed at the time of termination including, but not limited to, holiday pay wages owed.
63. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
64. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.
65. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.
66. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all aggrieved employees, prays for judgment as follows:

1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);

- 1 2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
2 3. For such other relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby requests that this matter be heard and decided by trial by jury.

5
6 Dated: October 25, 2023

SULLIVAN & YAECKEL LAW GROUP, APC

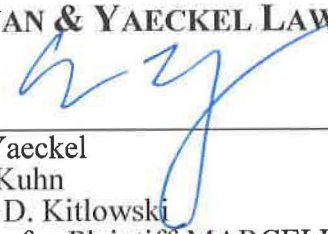
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8 _____
9 Eric K. Yaeckel
10 Ryan T. Kuhn
11 Karoline D. Kitlowski
12 Attorneys for Plaintiff MARCELINO ORTUNO in a
13 Representative capacity only, and on behalf of other
14 members of the general public similarly situated
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Exhibit 1

SULLIVAN & YAECKEL
LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

August 14, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Marcelino Ortuno V. Dunn-Edwards Corporation
Our File No.: 7366

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Dunn-Edwards Corporation, (hereinafter "Dunn-Edwards"), in the above referenced matter. This "written notice" is filed on behalf of Mr. Ortuno, and all current and former non-exempt employees employed by Dunn-Edwards. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Dunn-Edwards are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a),
226.7, 510, 512, 1194, 1197.1, and 2802, as well as IWC Wage Order
7, or any other applicable wage orders, codified as Title 8, California
Code of Regulations, section 11070 *et seq.*

Facts and theories supporting the allegations: Mr. Ortuno has been employed as a non-exempt employee for Dunn-Edwards from approximately April 17, 2023 through August 9, 2023.

Throughout the term of Mr. Ortuno's employment, Dunn-Edwards required Mr. Ortuno and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

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Minimum Wage and Overtime Violations

- Dunn-Edwards failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 7, or any other applicable wage orders. This illegal action is due, in part, to Dunn-Edwards's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Dunn-Edwards would instruct Mr. Ortuno to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Dunn-Edwards would often require Mr. Ortuno to work extended hours (beyond scheduled hours), without compensation. Further, Dunn-Edwards would regularly contact Mr. Ortuno outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.

- Additionally, among other issues, Dunn-Edwards has notice of Mr. Ortuno, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Ortuno was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time. Mr. Ortuno was not compensated for this time.

Failure to Provide Compliant Meal Periods

- Dunn-Edwards failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, or any other applicable wage orders. For example, Dunn-Edwards does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy or understaffed the employees were on a given day. Mr. Ortuno was frequently interrupted during his Meal Periods by supervisors to discuss work related matters.

- Dunn-Edwards would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to customers and supervisors at all times. Dunn-Edwards has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme Court held that "An employer's failure to

provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.). Even more recently, a 2020 California Supreme Court ruling stated that, "The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy 'does not excuse a section 226.7 violation.'" *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Dunn-Edwards failed to pay Meal Period Premiums at the proper rate, as Dunn-Edwards fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- Dunn-Edwards required its employees to constantly monitor their cell phones and be "on-call" at all times, specifically during Meal Periods. On occasion, Dunn-Edwards would interrupt, or cut short, its employees' Meal Periods and require them to return to work. Dunn-Edwards was frequently understaffed, this would result in Mr. Ortuno being required to respond to customers and supervisors about work related matters during his Meal Periods.
- Dunn-Edwards illegally retained control over its employees during Meal Periods. For example, Dunn-Edwards required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- Dunn-Edwards failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, or any other applicable wage orders. For example, Dunn-Edwards does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Dunn-Edwards makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Dunn-Edwards would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to customers and supervisors at all times. Mr. Ortuno often was required to work during Rest Periods in order to complete his daily duties before he ended his shift for the day. Dunn-

Edwards has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Dunn-Edwards would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Dunn-Edwards required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, Dunn-Edwards would interrupt, or cut short, its employees’ Rest Periods and require them to return to work. When Mr. Ortuno was able to take a Rest Period, his Rest Periods were often interrupted by supervisors and customers phone calls.
- Finally, Dunn-Edwards illegally retained control over its employees during Rest Periods. For example, Dunn-Edwards required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Rest Periods.

Wage Statement Violations

- Dunn-Edwards violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Ortuno, and other employees were not compensated for all hours worked (due in part to Dunn-Edwards’s requirement that employees list only *scheduled* work-times, not actual work-times.)
- Dunn-Edwards violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Dunn-Edwards (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Dunn-Edwards would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Dunn-Edwards violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Dunn-Edwards does not explain how its system describes “time worked” on the Wage Statement itself. As such, Plaintiffs cannot “readily ascertain” what these figures mean. This is because Dunn-Edwards is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent

what these figures (*i.e.* “.75”) are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, Dunn-Edwards failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Dunn-Edwards failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Ortuno, and other non-exempt employees, including expenses for cell-phone costs and mileage.

Willful Failure to Provide All Compensation to Ex-Employees

- Dunn-Edwards failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Dunn-Edwards failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

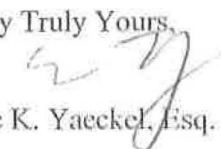
Failure to Comply with Personnel File Request

- Dunn-Edwards failed to provide a copy of Mr. Ortuno’s personnel file. On July 13, 2023, our office on behalf of Mr. Ortuno, made a request for his personnel file and time and wage records. (Please see **Exhibit A**). As of the current date it has been **32 days** since Mr. Ortuno has requested a copy of his personnel file. Accordingly, Dunn-Edwards is liable to Mr. Ortuno under Cal. Civ. Code section 1198.5.

18. To confirm, Dunn-Edwards is a “person” as defined within California Labor Code section

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,


Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

ROBERT HILL

Agent for Service of Process for
DUNN-EDWARDS CORPORATION
6119 E. Washington Blvd
Commerce, CA 90040

Exhibit A

SULLIVAN & YAECKEL
LAW GROUP
A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

July 13, 2023

ROBERT HILL
Agent for Service of Process for
DUNN-EDWARDS CORPORATION
6119 E. Washington Blvd
Commerce, CA 90040

Via Certified U.S. Mail

Re: Marcelino Ortuno
Our File no.: 7366

Dear Human Resources Director:

Please allow this correspondence to serve as a request for personnel records in possession of Dunn-Edwards Corporation, (hereinafter referred to as "Dunn-Edwards"). Our client, Marcelino Ortuno ("Mr. Ortuno"), requests (a) to inspect his personnel files and records, (b) to copy payroll records pertaining to his employment, and (c) that Dunn-Edwards produce copies of all instruments Mr. Ortuno signed relating to his employment. Thank you for your assistance in this matter.

Please find attached a copy of an Authorization to Disclose Information, signed by Mr. Ortuno.

The instant request is made pursuant to, among others, California Labor Code section 1198.5:

- (a) Every employee has **the right to inspect the personnel records** that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records **available to the employee at reasonable intervals and at reasonable times**. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available

at a time when the employee is actually required to render service to the employer.

(c) The employer **shall** do one of the following:

(1) Keep a copy of each employee's personnel records at the place where the employee reports to work.

(2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.

(3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

Additionally, Mr. Ortuno requests that Dunn-Edwards make his payroll records available for copying, pursuant to California Labor Code sections 226(a)-(b):

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (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. The deductions made from payments 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 or a 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.

(b) **An employer that is required** by this code or any regulation adopted pursuant to this code to **keep the information required by subdivision (a) shall afford** current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

Further, Mr. Ortuno requests that Dunn-Edwards make his time records available for copying, pursuant to California Code of Regulations, title 8, section 11070(7)(A)-(C):

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) **Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.** Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) **Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.**

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and 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. **An**

employee's records shall be available for inspection by the employee upon reasonable request.

Mr. Ortuno also requests that Dunn-Edwards produce copies of any instrument he signed relating to his employment with Dunn-Edwards pursuant to California Labor Code section 432:

If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.

Finally, please be aware of Labor Code sections 226, 432, and 1198.5. Section 226(c) states:

An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

Given the above, we respectfully request that you provide Mr. Ortuno's personnel files and Time Records for his inspection, and produce copies of all instruments signed by him relating to his employment with Dunn-Edwards. Please understand that unless we receive a formal reply by Thursday, August 3, 2023 we will have no option but to proceed formally, seeking all available remedies.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



Karoline D. Kitlowski

AUTHORIZATION TO DISCLOSE INFORMATION

This will authorize all employers, attorneys, government agencies, including the California Department of Motor Vehicles and the City of San Diego, credit bureaus, credit grantors, debt collection agencies and any and all persons to whom it may be presented to disclose to my attorneys Sullivan & Yaeckel Law Group, APC or to any authorized representative; any and all information records and reports concerning me, or any matter in which I am interested, including any and all debts, collections, employment, credit, debts, or any other matters, all as fully and as freely as you would disclose the same to me personally, it being my intent that this authorization is to serve as my consent to a full disclosure in any circumstances where my consent may be requested or required.

A copy of this authorization shall be accepted as the original. This authorization shall expire one year from the date of signature.

DATED:

7-12 M. Ortuno

Marcelino Ortuno