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RICHARD DOTY and MATTHEW DOTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ORANGE COUNTY – CIVIL COMPLEX CENTER

RICHARD DOTY, an Individual; and
MATTHEW DOTY, an Individual; on
behalf of themselves and Aggrieved
Employees,

Plaintiffs,

vs.

BLAIRS TOWING, INC., a California
Corporation; DAVID SAMONSET, an
Individual; BLAIRS TOWING IE, LLC, a
California Limited Liability Company; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 30-2024-01377651-CU-OE-CXC

COMPLAINT FOR DAMAGES

Assigned for All Purposes
Judge Lon F. Hurwitz
Dept. CX103

Plaintiffs RICHARD DOTY (“Plaintiff Richard”) and MATTHEW DOTY (“Plaintiff Matthew”) hereby submit the following Complaint against Defendants BLAIRS TOWING, INC. (hereinafter “BLAIRS INC.”), DAVID SAMONSET (hereinafter “SAMONSET”), BLAIRS TOWING IE, LLC (hereinafter “BLAIRS LLC”), and DOES 1 through 10 (collectively the “Defendants”) and allege as follows:

INTRODUCTION

1. Plaintiffs were employed as Tow Truck Drivers by Defendant entities, owned and operated by SAMONSET. Defendants violated various provisions of the California Labor Code in connection with the employment of the Plaintiffs.

1 2. As a result, Plaintiffs seek damages available to them under, *inter alia*, the
2 California Labor Code (including various statutory penalties), compensatory damages, punitive
3 damages, interest, attorney's fees and costs against Defendants.

4 3. Plaintiffs also seek civil penalties on behalf of themselves and Aggrieved
5 Employees for violations of the Private Attorney General Act (hereinafter "PAGA"), plus
6 attorney's fees and costs against Defendants.

7 **IDENTIFICATION OF ALL PARTIES**

8 4. Plaintiff RICHARD DOTY was at all relevant times herein an individual residing
9 in San Bernardino County, California.

10 5. Plaintiff MATTHEW DOTY was at all relevant times herein an individual
11 residing in San Bernardino County, California.

12 6. Defendant BLAIRS TOWING, INC., is, and at all relevant times was, a California
13 Corporation, established in 1994, and assigned Corporate ID Number 1755314, with its principal
14 place of business in Laguna Hills, California, and mailing address at 25422 Trabuco Rd, Suite
15 105-525 Lake Forest, CA 92630.

16 7. Defendant BLAIRS TOWING IE, LLC, is, and at all relevant times was, a
17 California Limited Liability Company, established in 2020, and assigned file number
18 202023010749, with its principal place of business at mailing address at 25422 Trabuco Rd,
19 Suite 105-525 Lake Forest, CA 92630.

20 8. Defendant DAVID SAMONSET, is, and at all relevant times was, an individual
21 residing in Landers, California, and director, officer, managing agent and/or owner of the entity
22 Defendants. SAMONSET is personally liable for the acts complained of herein on the basis of
23 California Labor Code §558.1 and as alter ego of the entity Defendants.

24 9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
25 DOES 1 through 10, and therefore sues these defendants by such fictitious names and capacities
26 until ascertained.

27 10. Plaintiff is informed and believes and, on that basis, alleges that each fictitiously
28 named defendant is responsible in some manner for the occurrences herein alleged and that
Plaintiff's injuries as herein alleged were proximately caused by the conduct of such defendants.

1 11. Plaintiff is informed and believes and thereupon alleges that at all times material
2 herein, each of the Defendants were the agent, employee and/or were working in concert with
3 their co-defendants and were acting within the course and scope of such agency, employment
4 and/or concerted activity.

5 12. To the extent that certain acts and omissions were perpetrated by certain
6 defendants, the remaining defendant or defendants confirmed and ratified said acts and
7 omissions.

8 13. Plaintiff is informed and believes and thereupon alleges that at all times material
9 herein, each defendant was completely dominated and controlled by his co-defendant, and each
10 was the alter ego of the other.

11 14. Whenever and wherever reference is made to individuals, who are not named as
12 Plaintiff or defendant(s) in this complaint but were employees/agents of each defendant, such
13 individuals at all relevant times acted on behalf of each defendant within the scope of their
14 employment.

15 15. At all times relevant, each defendant was the employer, joint employer, alter ego
16 and/or managing agent of each of the co-defendants.

17 **VENUE AND JURISDICTION**

18 16. Venue is proper in the County of Orange because the office is located there and
19 the incidents forming the basis of this complaint occurred in Orange County, California.

20 17. This Court has jurisdiction over the present matter because, as delineated within
21 this complaint, the nature of the claims and the amount in controversy meet the requirements for
22 jurisdiction in Orange County Superior Court.

23 18. This Court also has personal jurisdiction over the Defendants as Defendants all
24 reside in and do business in Orange County, California.

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 19. Plaintiff has complied with the PAGA notice provision outlined in Cal. *Lab.*
27 *Code* Section 2699.3(a)(1) by electronically submitting his written Notice on October 11, 2023
28 to the Labor and Workforce Development Agency (LWDA), and by certified mail to the
Defendants of the specific provisions of this code alleged to have been violated. The LWDA

1 provided an identification number of LWDA-CM-987170-23 but has not provided Plaintiff with
2 notice that it intends to investigate these violations. Therefore, since over 65 calendar days
3 have elapsed since the postmark date of Plaintiff's notice, Plaintiff is entitled to commence this
4 action under Cal. Lab. Code § 2699.3(a)(2)(A).

5 **GENERAL ALLEGATIONS**

6 20. On or about May 29, 2020, Plaintiff RICHARD began working for
7 DEFENDANTS. At all times herein relevant, Plaintiff RICHARD was employed as a full time
8 Tow Truck Driver for the DEFENDANTS.

9 21. On or about April 2020, Plaintiff MATTHEW began working for
10 DEFENDANTS, took a break in 2021, and returned to work for DEFENDANTS in
11 approximately 2022 until he quit in the summer of 2023. At all times herein relevant, Plaintiff
12 MATTHEW was employed as a full time Tow Truck Driver for the DEFENDANTS.

13 22. Plaintiffs were paid on a weekly basis.

14 23. Plaintiff RICHARD was paid at the starting rate of \$16.00/hr until approximately
15 October 2021, when his hourly rate increased to \$17/hr. On or about mid-April 2023, Plaintiff's
16 hourly rate was increased to \$19/hr.

17 24. Plaintiff MATTHEW was paid at the starting rate of \$15/hr until approximately
18 2021. Plaintiff's hourly rate at the end of his employment with DEFENDANTS in the summer
19 of 2023 was \$15.50/hr.

20 25. The job duties Plaintiff RICHARD performed in the position of Tow Truck Driver
21 were to recover vehicles, tow broken down vehicle or transport vehicles, and perform roadside
22 assistance. All duties were non-exempt in nature, and Plaintiff did not meet the salary basis for
23 any exemption under California law.

24 26. The job duties Plaintiff MATTHEW performed in the position of Tow Truck
25 Driver were to recover vehicles, tow broken down vehicle or transport vehicles, and perform
26 roadside assistance. All duties were non-exempt in nature, and Plaintiff did not meet the salary
27 basis for any exemption under California law.

28 27. Even though Plaintiff RICHARD was employed as a Tow Truck Driver, he
worked also as a dispatcher and performed work truck repairs for the benefit of DEFENDANTS,

1 the vast majority of the time performing this work off the clock as SAMONSET mandated and
2 expected.

3 28. Plaintiff RICHARD typically worked six (6) days per week from 6am – 6pm and
4 on Saturdays 8-5 or 8-4pm. Plaintiff RICHARD worked about 20 hours per week of overtime
5 on a regular basis for the Defendants off the clock until approximately June 2023, when his hours
6 of unpaid time / overtime were reduced to approximately 35 paid hours per week until the end
7 of Plaintiff RICHARD's employment.

8 29. Even though Plaintiff MATTHEW was employed as a Tow Truck Driver, he
9 worked was also required to perform any services required by SAMONSET outside of Plaintiff
10 MATTHEW's work shifts, as SAMONSET knew and took advantage of Plaintiff MATTHEW
11 staying on Employers' work premises overnight to sleep. The vast majority of the time Plaintiff
12 MATTHEW performed this work off the clock as SAMONSET mandated and expected.

13 30. Plaintiff MATTHEW typically worked six (6) days per week from 11am – 11pm.
14 Plaintiff MATTHEW's hours were reduced and unlawfully deducted so that he would reflect
15 about 8 hours a day or less worked. Plaintiff MATTHEW worked about 10-15 hours per week
16 of overtime on a regular basis for the Defendants off the clock.

17 31. While Plaintiff RICHARD was paid overtime and double-time for performance
18 of his work as a Tow Truck Driver, he rarely got paid for hours worked outside of that capacity
19 and was thus deprived of overtime and double-time compensation.

20 32. While Plaintiff MATTHEW was paid overtime and double-time for performance
21 of his work as a Tow Truck Driver, he rarely got paid for hours worked outside of that capacity
22 and was thus deprived of overtime and double-time compensation.

23 33. Plaintiffs rarely received compliant rest breaks during the time they worked under
24 SAMONSET. Plaintiff never received a rest period premium for missed, interrupted, or worked
25 through rest breaks.

26 34. Plaintiffs rarely received compliant meal periods during the time they worked
27 under SAMONSET. Plaintiffs never received a meal period premium for missed, interrupted, or
28 worked through meal periods.

35. During the last year of Plaintiffs' employment, Plaintiff RICHARD would

1 complain to SAMONSET that his brother MATTHEW's paychecks were being shorted on a
2 regular basis. Specifically, SAMONSET would schedule MATTHEW to come in at a certain
3 time but would only pay him starting when MATTHEW got his first dispatch call. SAMONSET
4 would also deduct time from MATTHEW's paycheck based on SAMONSET's perception of
5 how long a particular job should and should not take. SAMONSET would also not pay
6 MATTHEW for his overtime worked off the clock.

7 36. Plaintiff RICHARD would also complain about the gross safety violations that
8 SAMONSET would regularly ask Plaintiff RICHARD to engage in. Plaintiff RICHARD began
9 refusing to engage in illegal activity.

10 37. Plaintiff MATTHEW eventually could no longer work for DEFENDANTS
11 because he was being deprived of his lawfully earned wages, and SAMONSET would not
12 remedy the issue. Plaintiff MATTHEW also did not want to endanger his own life or that of
13 people on the road engaging in the conduct SAMONSET demanded of him. Consequently,
14 Plaintiff MATTHEW was constructively terminated in or around the summer of 2023.

15 38. Subsequently, SAMONSET reduced the work hours of Plaintiff RICHARD and
16 verbally harassed him to the point where Plaintiff RICHARD was constructively terminated on
17 October 4, 2023 when Plaintiff RICHARD submitted his resignation to SAMONSET.

18 **FIRST CAUSE OF ACTION**

19 **Violation of California *Labor Code* §§ 201 and 203**

20 **[Against all Defendants]**

21 39. Plaintiffs incorporate by reference and realleges all previous paragraphs,
22 inclusive, as though set forth fully herein.

23 40. California Labor Code § 201, in pertinent part, requires an employer to pay all
24 wages earned and unpaid to employees upon the discharge of the employee.

25 41. California Labor Code §203, in pertinent part, requires an employer who has
26 willfully failed to pay any employee wages to continue to pay the wages of the employee as a
27 penalty, in the same amount thereof until payment is made, or action commences, but not to
28 exceed 30 days.

42. Defendants willfully failed to pay all wages due and owing to Plaintiffs at the

1 end of the Plaintiffs' employment with Defendants.

2 43. As a result of the Defendants' violation of California Labor Code Section 203,
3 Plaintiffs are entitled to payment of statutory penalties provided for by law and attorneys' fees
4 and costs in an amount to be proven at trial.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California *Labor Code* § 226(a)**

7 **[Against all Defendants]**

8 44. Plaintiffs incorporate by reference and realleges all previous paragraphs,
9 inclusive, as though set forth fully herein.

10 45. Under California law, Defendants were required to provide Plaintiffs with an
11 itemized wage statement to accompany each of their paychecks that complied with California
12 Labor Code section 226(a).

13 46. Specifically, at the time of each payment of wages, Defendants were required to
14 furnish Plaintiffs an accurate itemized statement in writing showing (1) gross wages earned, (2)
15 total hours worked by the employee, (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
17 that all deductions made on written orders of the employee may be aggregated and shown as
18 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
19 paid, (7) the name of the employee and only the last four digits of his or her social security
20 number or an employee identification number other than a social security number, (8) the name
21 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
22 during the pay period and the corresponding number of hours worked at each hourly rate by the
23 employee.

24 47. An employee suffering injury as a result of a knowing and intentional failure by
25 an employer to comply with Labor Code Section 226(a) is entitled to recover the greater of all
26 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
27 one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
28 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of

costs and reasonable attorney's fees.

48. An employee is deemed to suffer injury for purposes of Labor Code Section 226 if (i) the employer fails to provide a wage statement, (ii) the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of Labor Code Section 226(a) and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of Labor Code Section 226(a).

49. Defendants did not provide Plaintiffs with an itemized wage statement that complied with Labor Code section 226(a), in that it did not reflect all hours Plaintiffs worked, amongst other things required by the California Labor Code.

50. Plaintiffs have been injured as a result of Defendants having failed to provide them with proper wage statements.

51. In addition, Plaintiffs were forced to retain attorneys to pursue their claim for statutory damages stemming from Defendants having failed to provide them proper itemized wage statements and are entitled to attorney's fees under the California Labor Code as a result.

THIRD CAUSE OF ACTION

Violation of California *Labor Code* § 226.7

[Against all Defendants]

52. Plaintiffs incorporate by reference and reallege all previous paragraphs, inclusive, as though set forth fully herein.

53. California *Labor Code* § 226.7 states, in pertinent part, that an employer shall not require an employee to work during a meal or rest period mandated pursuant to statute or order of the Industrial Welfare Commission.

54. Plaintiffs allege that Defendants rarely allowed meal periods or rest breaks for the Plaintiffs, and instead encouraged Plaintiffs to work through their meal and rest breaks or denied them an opportunity to take uninterrupted meal and rest breaks in direct violation of § 226.7.

1 55. Plaintiffs allege they never waived their right to a meal break or executed an on-
2 duty meal period agreement.

3 56. Plaintiffs allege they never waived their right to a rest break.

4 57. As a result, Plaintiffs are entitled to meal and rest period premiums provided for
5 by law, interest thereon, attorneys' fees, costs, and other remedies in an amount to be proven at
6 trial.

7 **FOURTH CAUSE OF ACTION**

8 **Violation of California *Labor Code* § 1194**

9 **[Against all Defendants]**

10 58. Plaintiffs incorporate by reference and realleges all previous paragraphs,
11 inclusive, as though set forth fully herein.

12 59. California *Labor Code* §1194 states, in pertinent part, that any employee receiving
13 less than the legal minimum wage or the legal overtime compensation applicable to the employee
14 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum
15 wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs
16 of suit.

17 60. Plaintiffs are informed and believe and thereon allege, that Defendants employed
18 less than 26 persons in the years 2020, 2021, 2022 and 2023.

19 61. Plaintiffs were paid on a weekly basis at a rate that did not meet the salary basis
20 for any exemption from the overtime requirements under California law.

21 62. California *Labor Code* § 510 provides, in pertinent part, that an employer must
22 pay an employee at a rate of one and one-half times the regular rate of pay for any employee
23 who works more than eight hours in one workday and forty hours in one workweek.

24 63. Plaintiffs allege that Defendants failed to pay one-and-one-half-time the regular
25 rate of pay for all hours Plaintiffs worked over eight hours in a workday or forty hours in a
26 workweek, or on the sixth consecutive day in direct violation of California *Labor Code* § 510.
27 Further, Defendants failed to pay double time for all hours worked over 12 in one day.

28 64. Plaintiff RICHARD'S overtime rate of pay should have been \$24/hr from his start
date to approximately October 2021, \$25.50/hr until approximately mid-April 2023, and then

1 \$28.50/hr until Plaintiff's last day worked, October 4, 2023. However, Plaintiff was rarely paid
2 overtime when he provided services as a dispatcher or when he performed repairs on the work
3 trucks at SAMONSET's direction.

4 65. Plaintiff MATTHEW's overtime rate of pay should have been \$22.50/hr from his
5 start date to approximately 2021, and \$23.25/hr from approximately 2022 until Plaintiff
6 MATTHEW's last day worked in the summer of 2023. However, Plaintiff MATTHEW was not
7 paid overtime when he provided services outside of his tow truck hours at SAMONSET's
8 direction.

9 66. Plaintiff MATTHEW also alleged that he was deprived of minimum wages for
10 regular time hours worked, in that SAMONSET would schedule MATTHEW to come in at a
11 certain time but would only pay him starting when MATTHEW got his first dispatch call.
12 SAMONSET would also deduct time from MATTHEW's paycheck based on SAMONSET's
13 perception of how long a particular job should and should not take.

14 67. As a result, Plaintiffs are entitled to those unpaid regular and overtime wages,
15 interest thereon, attorneys' fees, costs, and other remedies in an amount to be proven at trial,
16 including, but not limited to liquidated damages pursuant to California *Labor Code* § 1194.2.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of California *Labor Code* § 2802**

19 **[Against all Defendants]**

20 68. Plaintiffs incorporate by reference and reallege all previous paragraphs,
21 inclusive, as though set forth fully herein.

22 69. California *Labor Code* § 2802 requires, in pertinent part, that an employer
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
24 in direct consequence of the discharge of his duties.

25 70. Plaintiffs allege that Defendants failed to reimburse them for all expenditures and
26 losses they incurred in the discharge of their duties, including but not limited to cell phone
27 service in direct violation of California *Labor Code* § 2802.

28 71. As a result, Plaintiffs are entitled to reimbursement provided for by law, interest,
attorneys' fees, costs, and other remedies in an amount to be proven at trial.

1 **SIXTH CAUSE OF ACTION**

2 **Violation of *Business and Professions Code* § 17200**

3 **[Against BLAIRS INC, BLAIRS LLC and DOES 1 to 10]**

4 72. The allegations set forth in this complaint are hereby re-alleged and incorporated
5 by reference.

6 73. Defendant is a “person” as defined under *Business and Professions Code* § 17021.

7 74. Plaintiffs are informed and believe and based thereon allege that Defendants
8 committed unfair business practices, as defined by Cal. *Bus. & Prof. Code* § 17200, *et seq.*, by
9 violating laws alleged to have been violated in this Complaint and which allegations are
10 incorporated herein by reference and include, but are not limited to:

- 11 a. Defendants failed to provide meal and rest breaks;
- 12 b. Defendants failed to pay regular and overtime wages due and owing;
- 13 c. Defendants failed to reimburse business expenses necessarily incurred in the
14 performance of Plaintiff’s job duties; and
- 15 d. Defendants failed to provide accurate and itemized wage and payroll statements.

16 75. The practices described above are unfair within the meaning of Cal. *Bus. & Prof.*
17 *Code* § 17200, *et seq.*, because the acts were intentionally performed for the purpose of harming
18 Plaintiffs.

19 76. Further, such skirting of the California labor laws presents a threat to the general
20 public in that the enforcement of the labor laws is essential to ensure that all California employers
21 compete equally, and that no California employer receives an unfair competitive advantage at
22 the expense of its employees.

23 77. As a direct and legal result of the Defendants’ actions against them, Plaintiffs have
24 been harmed because they have suffered, in an amount to be determined according to proof at
25 trial.

26 78. As a result, Plaintiffs request that they be awarded restitution in an amount to be
27 proven at trial.

28 79. As a direct and proximate result of the aforesaid acts and conduct of said
Defendant, Plaintiff is entitled to and hereby seek attorneys’ fees as permitted by law and as

provided for by § 1021.5 of the California Code of Civil Procedure. For Defendant's misconduct as alleged herein, Plaintiff also seeks attorney's fees and costs in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 1102.5

[Against BLAIRS INC, BLAIRS LLC and DOES 1 to 10]

80. Plaintiff RICHARD incorporates by reference and realleges all previous paragraphs, inclusive, as though set forth fully herein.

81. California Labor Code 1102.5 prohibits Employers from retaliating against or taking adverse actions against any employee because the employee complained about conduct he reasonably perceived to be illegal to his supervisor and/or refused to engage in illegal conduct.

82. Plaintiff RICHARD engaged in a protected activity when he complained to SAMONSET that SAMONSET had no regard for any law or regulation regarding tow trucks because SAMONSET would ask Plaintiff RICHARD to tow vehicles 50 to 1,000 pounds over the limit in the medium duty tow truck he drove, demonstrating a total disregard for his safety and that of other people on the road.

83. Plaintiff RICHARD's complaints to this effect began approximately a year prior to his termination. SAMONSET had reduced Plaintiff RICHARD's work hours in response. The last complaint Plaintiff RICHARD made was approximately three weeks before an incident for which he was written up. Despite this, SAMONSET expected Plaintiff RICHARD to continue providing work off the clock to service his vehicles, etc.

84. Ultimately, Plaintiff RICHARD'S complaints were a contributing factor in the adverse employment actions taken against Plaintiff RICHARD, leading to his constructive termination.

85. Plaintiff RICHARD has been harmed as a result of these adverse employment actions.

86. Defendants' conduct was a substantial factor in causing Plaintiff RICHARD harm.

87. The Defendants are also guilty of oppression, fraud and/or malice such that an award of punitive damages is appropriate.

88. As a result, Plaintiff RICHARD is entitled to all compensatory damages provided for by law, interest, attorney's fees, costs, punitive damages, and all other remedies in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

Violation of *California Labor Code 98.6*

[Against BLAIRS INC, BLAIRS LLC and DOES 1 to 10]

89. Plaintiff RICHARD incorporates by reference and realleges all previous paragraphs, inclusive, as though set forth fully herein.

90. California *Labor Code* § 98.6, in pertinent part, prohibits an employer from retaliating against an employee because the employee made a written or oral complaint about unpaid wages or because of the exercise by the employee on behalf of herself any rights afforded him or his family member.

91. Plaintiff RICHARD engaged in a protected activity when he complained to Defendants about shorting Plaintiff MATTHEW'S paychecks and for otherwise asserting the rights afforded to his brother under the California Labor Code.

92. Plaintiff RICHARD alleges Defendants retaliated against Plaintiff RICHARD for making complaints and asserting the rights of his brother by reducing the hours, writing him up, and constructively terminating Plaintiff RICHARD, in direct violation of California *Labor Code* § 98.6.

93. As a direct and legal result of Defendants' actions against him, Plaintiff has been harmed because he has sustained and continues to sustain losses in earnings and other employment benefits.

94. Plaintiff RICHARD therefore, seeks reimbursement for lost wages and work benefits caused by the acts of Defendants. Additionally, Plaintiff seeks attorneys' fees, costs, and other remedies in an amount to be proven at trial.

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1 **NINTH CAUSE OF ACTION**

2 **Violation of *California Labor Code* § 248.6**

3 **[Against BLAIRS INC, BLAIRS LLC and DOES 1 to 10]**

4 95. Plaintiffs incorporate by reference and realleges all previous paragraphs,
5 inclusive, as though set forth fully herein.

6 96. *California Labor Code* § 248.6 required employers to pay Supplemental Paid Sick
7 Leave in connection with the COVID-19 pandemic for the period January 1, 2022 through
8 December 31, 2022. Specifically, this law required that employers provide 80-such hours of
9 supplemental COVID-19 sick leave.

10 97. Plaintiffs were not provided with supplemental paid sick leave even though they
11 notified Defendants of the qualifying event in a timely manner.

12 98. As a result, Plaintiffs are entitled to all compensatory damages provided for by
13 law, interest, attorney's fees, costs, and all other remedies in an amount to be proven at trial.

14 **TENTH CAUSE OF ACTION**

15 **[Representative Claim of Violation of *California Labor Code Section 2699* et seq.]**

16 **(Against all Defendants)**

17 99. Plaintiffs incorporate by reference and reallege all previous paragraphs,
18 inclusive, as though set forth fully herein.

19 100. Plaintiffs bring this cause of action as a representative action on behalf of
20 themselves and other aggrieved employees in the capacity as a private attorney general pursuant
21 to the Private Attorneys General Act of 2004, *California Labor Code* section 2698, et seq.
22 ("PAGA").

23 101. PAGA specifically provides for a private right of action to recover civil penalties
24 for violations of the Labor Code pursuant to *California Labor Code* Section 2699(a).

25 102. Defendants violated various provisions of the *California Labor Code* as to the
26 Plaintiff and other aggrieved employees. The aggrieved employees are all California based
27 non-exempt employees.

28 103. Plaintiff and the other specified employees are aggrieved employees as defined

1 by California Labor Code section 2699(c) in that they are all current or former employees of
2 Defendants and one or more of the alleged violations were committed against them.

3 104. During all times relevant to this cause of action, Defendants have routinely
4 subjected Plaintiff and the other aggrieved employees to violations of various sections of the
5 California Labor Code by:

6 a. Defendants required aggrieved employees to perform work off-the-clock
7 and failed to compensate the aggrieved employees for this work time. Accordingly, Defendants
8 failed to pay Plaintiffs and aggrieved employees even a minimum wage for time worked off-
9 the-clock in violation of California Labor Code sections 1182.12, 1194 and 1197.

10 b. Defendants failed to provide aggrieved employees with California
11 compliant rest periods on days when they worked shifts of more than 3.5 hours as required by
12 the Industrial Welfare Commission Wage Orders. In addition, Defendants failed to provide
13 aggrieved employees with California compliant meal periods on days when they worked shifts
14 of more than 5 hours in violation of California Labor Code section 512(a) and Industrial
15 Welfare Commission Wage Orders. California Labor Code sections 226.7 and 512 require
16 employers to pay an employee one additional hour of pay at the employee's regular rate of pay
17 for each meal or rest period that is not provided. Defendants failed to compensate aggrieved
18 employees properly for non-compliant meal and rest periods including, *inter alia*, short, late,
19 interrupted, and missed meal and rest periods.

20 c. California Labor Code sections 510 and 1198 require employers to pay
21 overtime at time-and-a-half or double time when an employee works more than 8 hours in a
22 day (or 12 in a day for double time hours) or more than 40 hours in a week and to include all
23 non-discretionary earnings in the regular rate of pay calculation when determining the overtime
24 rate. Defendants failed to properly compensate aggrieved employees for all overtime hours
25 worked by having Employees work overtime but not paying overtime compensation at the
26 appropriate overtime rate required by California law.

27 d. California Labor Code sections 201 and 202 provide that if an employer
28

1 discharges an employee, the wages earned and unpaid at the time of discharge are due and
2 payable immediately, and if an employee quits his or her employment, his or her wages shall
3 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
4 has given seventy-two (72) or more hours' notice of his or her intention to quit, in which case
5 the employee is entitled to his or her wages at the time of quitting. Defendants failed to pay
6 terminated Aggrieved Employees all wages due to them within the time period specified by
7 California Labor Code sections 201 and 202 upon the termination of their employment and paid
8 wages late to aggrieved employees. Defendants also failed to pay aggrieved employees the
9 waiting time penalty upon the late payment of wages.

10 e. California Labor Code section 204 requires that the payment of wages for
11 weekly employees be made not more than seven calendar days following the close of the payroll
12 period. During the employment of Aggrieved Employees, Employers failed to pay all wages
13 due to them within the time periods required by California Labor Code Section 204, including
14 earned and unpaid regular and overtime wages, and meal and rest period premium wages as
15 discussed above.

16 f. California Labor Code section 226(a) requires employers to make, keep
17 and provide complete and accurate itemized wage statements to their employees. During the
18 relevant time period, Employers failed to provide aggrieved employees with complete and
19 accurate itemized wage statements, as the wage statements that Defendants provided to
20 aggrieved employees did not contain all of the information required to be listed therein per
21 California Labor Code section 226(a). By way of example, the wage statements did not indicate
22 all hours worked by the Aggrieved Employees and did not therefore pay regular or overtime in
23 the correct amounts.

24 g. California Labor Code sections 2800 and 2802 require an employer to
25 reimburse its employees for all necessary expenditures incurred by the employee in direct
26 consequence of the discharge of his or her job duties or in direct consequence of his or her
27 obedience to the directions of the employer. During the relevant time period, aggrieved
28 employees incurred necessary business expenses and costs that were not fully reimbursed by

1 Defendants, including but not limited to the use of their personal cell phones for business
2 purposes.

3 h. California Labor Code 1102.5 provides that an employer, or any person
4 acting on behalf of the employer, shall not retaliate against an employee for disclosing
5 information, or because the employer believes that the employee disclosed or may disclose
6 information, to a government or law enforcement agency, to a person with authority over the
7 employee or another employee who has the authority to investigate, discover, or correct the
8 violation or noncompliance, or for providing information to, or testifying before, any public
9 body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
10 believe that the information discloses a violation of state or federal statute, or a violation of or
11 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
12 the information is part of the employee's job duties. Defendants violated this provision by
13 terminating aggrieved employees in retaliation for disclosing to supervisors what they
14 reasonably believed to be illegal conduct.

15 i. California Labor Code 98.6 prohibits Employers from retaliating or
16 taking adverse actions against any employee because the employee engaged in any exercise of
17 rights afforded by the California Labor Code. During the relevant time period, Aggrieved
18 Employees were retaliated against and/or suffered adverse employment actions by Defendants
19 because they made complaints about wage and hour violations (i.e., engaged in protected
20 activities under the California Labor Code).

21 j. Labor Code Section 248.6 required employers to pay Supplemental Paid
22 Sick Leave in connection with the COVID-19 pandemic for the period January 1, 2022 through
23 December 31, 2022. These laws required that employers provide 80-such hours of
24 supplemental COVID-19 sick leave. In addition, California Labor Code Section 248.2 provides
25 that employers must calculate paid sick leave using the highest of the following calculations
26 for nonexempt employees:

27 i. California Labor Code Section 248.8 provides that employers must calculate paid sick
28 leave using one of the following calculations for nonexempt employees:

- Supplemental COVID-19 sick leave calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek;
- Supplemental COVID-19 sick leave calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total non-overtime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.

Employers did not properly compensate aggrieved employees at their regular rate of pay for paid sick leave required by this statute.

- j. California Labor Code section 226(c) requires, "An employer who receives a written or oral request to inspect or receive a copy of 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." Employers did not provide paystubs or electronic time records in response to a demand for payroll records, in violation of this subsection.
- k. California *Labor Code* § 227.3 states that whenever a contract of employment or employer policy provides for paid vacations and an employee separate from employment without having full utilized his vested vacation time, all vested vacation must be paid to the employee at his final rate in accordance with such contract of employment or employer policy respecting vacation eligibility or time served. Aggrieved employees were not paid out all paid time off when they separated from employment with Employer.

105. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of the aggrieved employees and the State of California and to assess and collect the civil penalties owed by Defendants to the State of California and aggrieved employees. Plaintiffs therefore seek an award of reasonable attorney's fees and costs pursuant to California Labor Code section 2699(g)(1) and any other applicable statute.

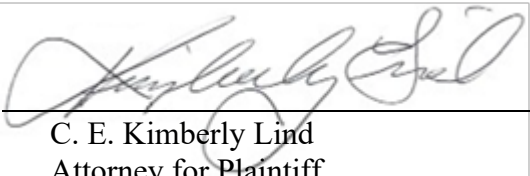
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs prays for judgment against enumerated Defendants as to all
3 causes of action as follows:

- 4 1. For compensatory damages – economic and emotional distress;
5 2. For liquidated damages on all unpaid minimum wages;
6 3. For interest on all unpaid wages;
7 4. For statutory and civil penalties under the California Labor Code;
8 5. For punitive damages;
9 6. For attorney’s fees;
10 7. For restitution / equitable relief;
11 8. For costs of suit herein incurred; and
12 9. For such other and further relief as the Court may deem just and proper.

13
14 Dated: February 5, 2024

KO LEGAL, INC.

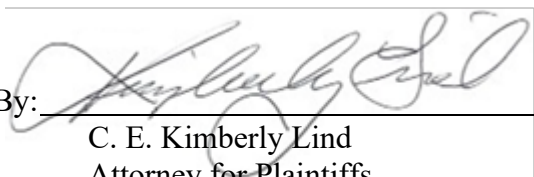
15
16 By: 
17 C. E. Kimberly Lind
18 Attorney for Plaintiff,
RICHARD DOTY and MATTHEW
DOTY

19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiffs hereby demand a trial by jury on all issues triable by a jury in the above-entitled
21 action, with the exception of the PAGA claim, which Plaintiffs submit is a bench trial.
22

23
24 Dated: February 5, 2024

KO LEGAL, INC.

25
26 By: 
27 C. E. Kimberly Lind
28 Attorney for Plaintiffs
RICHARD DOTY and MATTHEW
DOTY