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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

**HUY DIEP, Individually and On Behalf of
All Others Similarly Situated,**

Plaintiffs,

v.

**POLARIS PHARMACY SERVICES, LLC,)
a FL limited liability company; POLARIS)
PHARMACY SERVICES OF SAN DIEGO,)
LLC, a CA limited liability company; MED-)
PLUS PHARMACY, INC., a CA)
corporation; MED-PLUS PHARMACY,)
LLC, a CA limited liability company; and)
DOES 1 through 50, inclusive,**

Defendants.

Case No. 37-2024-00004618-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
COMPENSATORY DAMAGES,
PENALTIES, RESTITUTION &
INJUNCTIVE RELIEF:**

- 1. Failure to Pay Accrued and Unused
Vacation Pay (Cal. Labor Code § 227.3);**
- 2. Failure to Provide Accurate Itemized
Wage Statements (Cal. Labor Code §
226);**
- 3. Failure to Pay Compensation When Due
at Time of Separation of Employment
(Cal. Labor Code §§ 201-203);**
- 4. Unlawful and Unfair Business Practices
(Cal. Bus. & Prof. Code § 17200 et seq.);
and**

) 5. Labor Code Private Attorneys General
) Act of 2004 (Labor Code § 2698 et seq.)
)

) JURY TRIAL DEMANDED
) [Unlimited Civil Action]
)

Plaintiff, HUY DIEP, on his own behalf, all others similarly situated, and on behalf of the general public, allege causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS

1. This is a class action brought by Plaintiff HUY DIEP (“Plaintiff”) individually and on behalf of current and former employees of Defendants POLARIS PHARMACY SERVICES, LLC; POLARIS PHARMACY SERVICES OF SAN DIEGO, LLC; MED-PLUS PHARMACY, INC.; MED-PLUS PHARMACY, LLC; and (“Defendants”) in the State of California during the period of January 19, 2020 to the present (“Class Period”).

2. At all relevant times, Defendants have failed to comply with California's strict employee protection laws and regulations. Specifically, Plaintiff and other similarly situated employees in California have been subjected to unlawful vacation (termed "Floating Holiday Hours" by Defendants) forfeiture policies and practices. It is well-settled in California that since vacation pay is to be treated as a form of wages, employers cannot implement “use it or lose it” policies in which unused days of vacation do not carryover from year to year or are forfeited by a certain date. *See Boothby v Atlas Mechanical, Inc.* (1992) 6 CA4th 1595; *DLSE Opinion Letter* 1991.01.07.

3. The policies and practices of Defendants, as alleged herein, are unlawful, unfair and deceptive business practices whereby Defendants have retained wages due to Plaintiff and other similarly situated employees for all hours worked, including accrued vacation pay. Defendants’ unlawful, unfair and deceptive employment and wage practices cheat Plaintiff and other members of the proposed Class out of their lawful compensation due, as required by California law. Plaintiff therefore seeks an injunction enjoining such conduct by Defendants in the future, restitution for the named Plaintiff and all members of the proposed Class, and all other appropriate equitable relief.

1 4. Defendants' retention of wages due to Plaintiff and other similarly situated employees
2 for owed vacation time also resulted in Defendants' intentional issuance of inaccurate wage
3 statements to Plaintiff and other similarly situated employees, and willful failure to pay all wages
4 due and owing to such employees at the time of separation of employment.

5 **IDENTIFICATION OF THE PARTIES**

6 5. Plaintiff HUY DIEP is a competent adult who resides in the City of Escondido,
7 County of San Diego, State of California. From approximately May 2022 to January 2023, Plaintiff
8 was employed by Defendants as a pharmacist.

9 6. Plaintiff is informed and believes, and thereon alleges, that Defendant POLARIS
10 PHARMACY SERVICES, LLC is Florida limited liability company with its principal place of
11 business in Fort Lauderdale, Florida.

12 7. Plaintiff is informed and believes, and thereon alleges, that Defendant POLARIS
13 PHARMACY SERVICES OF SAN DIEGO, LLC is California limited liability company with its
14 principal place of business in San Diego, California.

15 8. Plaintiff is informed and believes, and thereon alleges, that Defendant MED-PLUS
16 PHARMACY, INC. is California corporation with its principal place of business in San Diego,
17 California.

18 9. Plaintiff is informed and believes, and thereon alleges, that Defendant MED-PLUS
19 PHARMACY, LLC is California limited liability company with its principal place of business in
20 San Diego, California.

21 10. According to Defendants' website, www.polarisrx.com, Defendants employ
22 pharmacists, technicians, nurses and customer care representatives throughout the State of
23 California, including locations in Alameda, Los Angeles and San Diego counties.

24 11. Plaintiff does not know the true names and capacities of Defendants sued herein as
25 DOES 1 through 50, inclusive, and will amend this Complaint to set forth the true names and
26 capacities of said Defendants, along with the appropriate charging allegations when the same have
27 been ascertained.

1 12. Plaintiff is informed and believes, and on that basis alleges, that each of the
2 fictitiously named Defendants was in some manner legally responsible for the actionable and
3 unlawful actions, policies and practices as alleged herein. Plaintiff will amend this Complaint to set
4 forth the true names and capacities of said Defendants, along with the appropriate charging
5 allegations, when the same have been ascertained.

6 13. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
7 herein, all Defendants, and each of them, were acting as the agent and/or employee of each remaining
8 co-defendant, and were acting with permission and consent of each other, and within the course and
9 scope of said agency and/or employment. Plaintiff is further informed and believes that each co-
10 defendant, by and through its officers, directors or managing agents, ratified, authorized and
11 approved, expressly or implicitly, all of the conduct alleged herein.

12 14. When in this Complaint reference is made to any act of the “Defendants,” such shall
13 be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants
14 named in this lawsuit committed or authorized such acts, or failed and omitted to adequately
15 supervise or properly control or direct their employees while engaged in the management, direction,
16 operation or control of the affairs of the Defendants and did so while acting within the scope of their
17 employment or agency.

18 15. When in this Complaint reference is made to any act by a “Defendant” or
19 “Defendants,” such allegations and reference shall also be deemed to mean the acts and failures to
20 act of each of the named Defendants acting individually, jointly and severally.

21 16. Each of the named Defendants are closely related entities, all located at the corporate
22 office at 2900 NW 60th St., Fort Lauderdale, FL 33309. At all relevant times, Defendants have
23 jointly employed Plaintiff and the proposed California class of employees mentioned herein, and
24 have exercised control over Plaintiff's and the class members' wages, hours and working conditions
25 by the following policies, procedures and conduct, including, but not limited to: (a) management at
26 Defendant POLARIS PHARMACY SERVICES, LLC has had the authority to hire and terminate
27 Plaintiff and class members; (b) officers, directors and managers at the Defendant POLARIS

1 PHARMACY SERVICES, LLC has exercised substantial authority over the terms and conditions
2 of, and set work rules governing, Plaintiff's and class members' wages, hours and working conditions,
3 including all rules and conditions set forth in the applicable employee handbooks, (c) at all relevant
4 times, Defendant POLARIS PHARMACY SERVICES, LLC has directly managed and controlled
5 all Human Resources, Payroll and Employee Benefits duties and responsibilities with respect to
6 Plaintiff and all class members throughout California; (d) at all relevant times, officers, directors and
7 managing agents at Defendant POLARIS PHARMACY SERVICES, LLC, otherwise employed and
8 exercised control over Plaintiff's and all class members' wages, hours and working conditions; (e)
9 the decision to implement the unlawful "use it or lose it" vacation policy, in violation of California
10 Labor Code § 227.3, which deprived Plaintiff and similarly situated California employees of
11 receiving earned wages at the time of their separation of employment, was made by officers,
12 directors and managers at the Defendant POLARIS PHARMACY SERVICES, LLC.

13 **JURISDICTION AND VENUE**

14 17. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs

15 18. This Court has jurisdiction over all causes of action asserted herein pursuant to
16 California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to other
17 trial courts.

18 19. This Court has jurisdiction over Defendants because each co-defendant is a
19 corporation, limited liability company or other business entity authorized to do business in the State
20 of California and registered with the California Secretary of State to do sufficient business with
21 sufficient minimum contacts in California, and/or otherwise intentionally avail itself of the California
22 market through its operation of numerous direct sales office locations in California, to render the
23 exercise of jurisdiction by the California courts consistent with traditional notions of fair play and
24 substantial justice

25 20. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
26 Civil Procedure § 395. Defendants' actionable and unlawful employment practices as to Plaintiff
27 and numerous other employees occurred at pharmacy and office locations in the County of San
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1 Diego, State of California.

2 **CLASS ACTION ALLEGATIONS**

3 21. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

4 22. Plaintiff brings this suit as a class action pursuant to California Code of Civil
5 Procedure § 382 on behalf of himself and all individuals who are or previously were employed by
6 Defendants in the State of California. The class period applicable to the Classes is defined as the
7 period beginning four years prior to the filing of this Complaint and ending on the date as determined
8 by the Court. As a matter of company policy and practice, Defendants have subjected these
9 employees to unlawful vacation forfeiture policies and practices.

10 23. The putative class and subclass Plaintiff will seek to certify is currently composed of
11 and defined as follows:

12 **a. All current and former California-based employees who were**
13 **employed by Defendants between January 19, 2020 and the present**
14 **(hereinafter, the “CLASS”).**

15 **b. All former California-based employees who separated their**
16 **employment with Defendants between January 19, 2021 and the**
17 **present (hereinafter, the “FORMER EMPLOYEE SUBCLASS”).**

18 24. Numerosity: The potential number of members of the CLASS and SUBCLASS as
19 defined is so numerous that joinder of all members would be unfeasible and unpractical. The
20 disposition of their claims through this class action will benefit both the parties and this Court. The
21 quantity of members of the CLASS and SUBCLASSES is currently unknown to Plaintiff; however,
22 it is estimated that there are at least 250 members in the CLASS; and at least 200 members in the
23 FORMER EMPLOYEE SUBCLASS. The quantity and identity of such membership is readily
24 ascertainable via inspection of Defendants’ employment records, which Defendants are required to
25 maintain under California law.

26 25. Typicality: The claims of Plaintiff are typical of the claims of all members of the
27 CLASSES and SUBCLASS mentioned herein because all members of the CLASS and SUBCLASS
28 sustained injuries and damages arising out of Defendants’ common course of conduct in violation of
California wage and hour law, and the injuries and damages of all members of the CLASS and

1 SUBCLASS were caused by Defendants' wrongful conduct in violation of California statutory and
2 regulatory law, as alleged herein.

3 26. Adequacy: Plaintiff is an adequate representative of the CLASS and SUBCLASS
4 and will fairly protect the interests of the members of the CLASS and SUBCLASS, and has no
5 interests antagonistic to the members of the CLASS and SUBCLASS, and will vigorously pursue
6 this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.
7 Plaintiff understands that he assumes a fiduciary responsibility to the CLASS and SUBCLASS to
8 represent their interests fairly and adequately. Plaintiff recognizes that he must represent and
9 consider the interests of the CLASS and SUBCLASS just as he would represent and consider his
10 own interests. Plaintiff understands that when making decisions regarding the conduct of the
11 litigation and possible settlement, he must not favor his own individual interest over the interests of
12 the CLASS and SUBCLASS as a whole. Plaintiff recognizes that any resolution of a class action
13 must be in the best interest of the class. Plaintiff understands that in order to provide adequate
14 representation, he must be informed of developments in litigation, cooperate with class counsel, and
15 testify at deposition and/or trial.

16 27. Superiority. The nature of this action and the nature of the laws available to Plaintiff
17 make the use of the class action format a particularly effective and appropriate procedure to afford
18 relief to Plaintiff for the wrongs alleged herein:

19 28. This case involves large corporate Defendants and a large number of individual class
20 members with common issues of law and fact.

- 21 a. If each individual member of the CLASS was required to file an individual
22 lawsuit, the large corporate Defendants would necessarily gain an
23 unconscionable advantage because Defendants would be able to exploit and
24 overwhelm the limited resources of each member of the CLASS and
25 SUBCLASS with Defendants' vastly superior financial and legal resources.
- 26 b. Requiring each individual member of the CLASS and SUBCLASS to pursue
27 an individual remedy would also discourage the assertion of lawful claims by
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1 the members of the CLASS and SUCCLASS who would be disinclined to
2 pursue an action against Defendants because of an appreciable and justifiable
3 fear of retaliation and permanent damage to their lives, careers and well being;

4 c. Proof of a common business practice or factual pattern, of which the members
5 of the CLASS and SUBCLASS experienced, is representative of the CLASS
6 and SUBCLASS herein and will establish the right of each of the members of
7 CLASS and SUBCLASS to recover on the causes of action alleged herein;
8 and

9 d. The prosecution of separate actions by the individual members of the CLASS
10 and SUCCLASS, even if possible, would create a substantial risk of
11 inconsistent and varying verdicts or adjudications with respect to the
12 individual members of the CLASS and SUCCLASS against Defendants, which
13 would establish potentially incompatible standards of conduct for Defendants
14 and/or legal determinations with respect to individual members of the CLASS
15 and SUBCLASS

16 29. Existence and Predominance of Common Questions of Fact and Law:

17 There are common questions of fact and law as to the members of the CLASS, which
18 predominate over questions affecting only individual members of the CLASS including, without
19 limitation:

- 20 a. Whether Defendants subjected the members of the CLASS to unlawful vacation pay
21 forfeiture, or "use or lose it," policies and practices, and whether such policies and
22 practices violate Labor Code § 227.3;
- 23 b. Whether accrued vacation pay of the members of the CLASS was unlawfully
24 reduced by Defendants;
- 25 c. Whether Defendants knowingly and intentionally failed to furnish accurate,
26 itemized wage statements to members of the CLASS;
- 27 d. Whether Defendants paid all wages due and owing to members of the FORMER
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1 EMPLOYEE SUBCLASS at the time of separation of employment, in accordance
2 with Labor Code §§ 201-203;

- 3 e. Whether Defendants' conduct constituted unfair or unlawful business practices
4 within the meaning of Business & Professions Code § 17200 *et seq.*;
- 5 f. Whether the members of the CLASS and SUBCLASS are entitled to compensatory
6 damages, and if so, the means of measuring such damages;
- 7 g. Whether the members of the CLASS and SUBCLASS are entitled to injunctive
8 relief, including affirmative relief that reinstates previously forfeited vacation time
9 on behalf of presently employed CLASS members;
- 10 h. Whether the members of the CLASS and SUBCLASS are entitled to restitution;
- 11 i. Whether the members of the CLASS and SUBCLASS are entitled to disgorgement
12 of profits;
- 13 j. Whether the members of the FORMER EMPLOYEE SUBCLASS are entitled to
14 "waiting time penalties;"
- 15 k. Whether Defendants are liable for pre-judgment interest; and
- 16 l. Whether Defendants are liable for attorneys' fees and costs.

17 **FIRST CAUSE OF ACTION**

18 ***Failure to Pay Accrued and Unused Vacation Pay***
19 **(California Labor Code §227.3)**
20 **(On Behalf of Plaintiff and the CLASS)**

21 30. Plaintiff hereby incorporates by reference all preceding paragraphs as alleged above
22 as if fully set forth herein.

23 31. California Labor Code section 227.3 requires an employer that provides paid vacation
24 wages, including "floating holiday hours," to pay all vested and unused vacation to the employee as
25 wages upon the employee's termination. Furthermore, in addition to prohibiting the forfeiture of
26 vested vacation benefits upon termination of employment as to former employees, Section 227.3 has
27 been extended by case law to protect current employees because vacation is merely a form of
28 deferred wages. *See Molina v. Lexmark International, Inc.* (C.D. Cal. Sept. 30, 2008) 2008 WL

1 4447678 at *21, fn 73 (termination of employment is the event that converts unused vacation to a
2 right of payment; however, the absence of this event does not prevent the reinstatement of forfeited
3 vacation to current employees).

4 32. It is well-settled under California law that leave time which is provided without
5 condition is presumed to be vacation pay, covered by Labor Code Section 227.3, regardless of the
6 name the employer gives to the leave time. Before the forfeiture, Defendants did not place any
7 restrictions on when "Floating Holiday Hours" could be used and did not tether the use of "Floating
8 Holiday Hours" to the occurrence of a particular event or holiday. As a result, California law
9 recognizes Defendants' "Floating Holiday Hours" as vested wages.

10 33. Defendants terminated Plaintiff's employment on or about February 2023. At the time
11 of the separation of his employment with Defendants, Plaintiff had accrued "Floating Holiday
12 Hours," which he had not yet used as direct and proximate result of Defendants' unlawful forfeiture,
13 or "use it or lose it," policies and practices, as described herein.

14 34. Defendants did not pay Plaintiff all of his vested and unused vacation as wages
15 immediately upon his termination and to date has not paid Plaintiff owed wages.

16 35. Defendant is liable to Plaintiff and the members of the CLASS for payment of all
17 vested and unused vacation time, including unused "Floating Holiday Hours," paid at Plaintiff's and
18 the members of the CLASS' regular rates of pay as of the date of termination, plus interest.

19 **SECOND CAUSE OF ACTION**

20 ***Failure to Provide Accurate Itemized Wage Statements***

21 **(Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)**

22 **(On Behalf of Plaintiff and the CLASS)**

23 36. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

24 37. Labor Code Section 226 requires an employer to keep accurate, itemized pay
25 statements. Under California law, gross wages earned, the precise, actual number of hours and
26 minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the
27 pay period, the name of the employee, the name and address of the legal entity that is the employer,
28 and all applicable hourly rates in effect during the pay period must be accurately itemized on each
pay statement.

38. During the applicable statutory period, Defendants routinely failed to provide the members of the CLASS, including Plaintiff, at the time of each payment of wages, an accurate itemized statement in writing showing the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. Defendants' failure to provide accurate itemized wage statements to the members of the CLASS, including Plaintiff, has been the intentional result of Defendants' unlawful policies and practices, including, but not limited to, Defendants' vacation forfeiture, or "use it or lose it," policies and practices. Defendants' failure to provide accurate itemized wage statements to members of the CLASS, including Plaintiff, has been knowing and intentional, and was in clear violation of Labor Code § 226(a).

39. The members of the CLASS, including Plaintiff, have suffered injuries as a result of the knowing and intentional failure of Defendants to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that Defendants' failure to provide Plaintiff and CLASS Members with accurate itemized wage statements made it impossible for Plaintiff and the members of the CLASS to know whether they were being paid all earned vacation wages.

40. Defendants' knowing and intentional failure to furnish the members of the CLASS with accurate itemized wage statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7). Labor Code § 226(e) entitles Plaintiff and the members of the CLASS to recover the greater of their actual damages caused by Defendants' violations, or \$50 per employee for the initial pay period in which the violation occurred, and \$100 per employee for each violation in subsequent pay periods, not exceeding an aggregate penalty of \$4,000 per employee.

THIRD CAUSE OF ACTION

Failure to Pay Compensation When Due at Time of Separation of Employment **(Labor Code §§ 201-203)**

(On Behalf of Plaintiff and the FORMER EMPLOYEE SUBCLASS)

41. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

42. California Labor Code Section 201 requires an employer who discharges an employee to pay compensation due and owing said employee immediately upon discharge. California Labor Code Section 202 requires an employer to promptly pay compensation due and owing an employee within 72 hours of that employee's separation of employment by resignation. California Labor Code

1 Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge
2 or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is
3 liable to said employee for waiting time penalties.

4 43. Plaintiff alleges, on the basis of information and belief, that Defendants have willfully
5 failed and have refused to pay all compensation and wages due and owing, including vacation wages,
6 to members of the FORMER EMPLOYEE SUBCLASS, including Plaintiff, upon their separation
7 of employment.

8 44. Defendants' failure to timely pay compensation and wages to members of the
9 FORMER EMPLOYEE SUBCLASS, including Plaintiff, at the time of their separation of
10 employment has been willful. As a result, Defendants are liable to members of the FORMER
11 EMPLOYEE SUBCLASS, including Plaintiff, for "waiting time penalties" under California Labor
12 Code Section 203, in an amount to be ascertained at trial.

13 **FOURTH CAUSE OF ACTION**
14 ***Unlawful and Unfair Business Practices***
(Business & Professions Code §§ 17200 et seq.)

15 (On behalf of Plaintiff and the CLASS)

16 45. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

17 46. Within each of the four years prior to the commencement of this action, Plaintiff is
18 informed and believes, and thereon alleges, that Defendants have unlawfully failed to pay all vested
19 vacation to the members of the CLASS, including Plaintiff, in violation of Labor Code § 227.3.

20 47. Defendants' above-described constitutes unfair competition including, without
21 limitation, unlawful, unfair and fraudulent business acts or practices in violation of California
22 Business Professions Code § 17200.

23 48. By committing the alleged acts and/or omissions as described in this Complaint,
24 Defendants have engaged, and continue to engage, in unlawful and/or unfair business practices
25 within the meaning of California Business & Professions Code § 17200 et seq.

26 49. Plaintiff alleges, on the basis of information and belief, that by and through
27 Defendants' alleged acts and/or omissions as described in this Complaint, Defendants have obtained
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valuable property, money, and services from Plaintiff and members of the CLASS, have deprived Plaintiff and members of the CLASS of valuable rights and benefits guaranteed by law and contract, all to Plaintiff's and CLASS members' detriment and to the benefit of Defendants.

50. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.* Thus, on behalf of Plaintiff and members of the CLASS, and on behalf of the general public, Plaintiff seeks injunctive relief (including, without limitation, reinstatement of any forfeited vacation resulting from the improper use it or lose it PTO policy), restitution of all unlawfully withheld funds, and the disgorgement of all unlawfully earned profits obtained by Defendants as a result of Defendants' alleged unlawful and unfair acts and/or omissions described in this Complaint.

51. Plaintiff is informed and believes, and thereon alleges, that unless restrained and ordered to pay restitution and disgorge profits derived from these unlawful and unfair employment practices, Defendants will continue to engage in the unlawful and unfair acts and/or omissions described in this Complaint.

FIFTH CAUSE OF ACTION
(Labor Code Private Attorneys General Act of 2004: Labor Code § 2698 *et seq.*)
(On Behalf of Plaintiff, All Aggrieved Employees and the State of California)

52. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants have violated, and continue to violate, several provisions of the California Labor Code, including but not limited to:

- a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);
- b. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
- c. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements
- d. Section 227.3 (Failure to Pay Vacation Wages); and
- e. Section 558 (Penalties for Violations in IWC Wage Orders).

64. Pursuant to Labor Code § 2699, Plaintiff bring this cause of action on behalf of himself and all other current or former employees of Defendants against whom one or more of the alleged violations was committed and/or is being committed ("aggrieved employees," as defined by

1 Section 2699(c)).

2 65. Pursuant to Labor Code Section 2699, Plaintiff seeks to recover from Defendants civil
3 penalties for *each* Labor Code violation. The civil penalties are to be calculated at the rate at which
4 the civil penalty is to be assessed and collected by the Labor and Workforce Development Agency
5 or any of its departments, divisions, commissions, boards, agencies, or employees.

6 66. Pursuant to Labor Code Section 2699, for all provisions of the California Labor Code
7 that do not specifically provide for a civil penalty to be assessed and collected by the Labor and
8 Workforce Development Agency or any of its departments, divisions, commissions, boards,
9 agencies, or employees, Plaintiff seeks to recover from Defendants civil penalties for *each* Labor
10 Code violation at the following rate: one hundred dollar (\$100) for each aggrieved employee per pay
11 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
12 period for each subsequent violation.

13 67. Pursuant to Labor Code Section 2699, Plaintiff seeks an award of reasonable
14 attorney's fees and costs for bringing this cause of action on behalf of himself, the State of California
15 and Defendants' other current and former aggrieved employees against whom one or more of the
16 alleged violations was committed.

17 68. In compliance with Labor Code Section 2699.3, on January 31, 2024, Plaintiff
18 provided Defendants and the California Labor & Workforce Development Agency ("LWDA") with
19 written notice, via online filing and via certified mail, of the specific provisions of the Labor Code
20 alleged to have been violated by Defendants, and the facts and theories to support the allegations.
21 The LWDA assigned this matter Case No. LWDA-CM-1008507-24.

22 69. More than 65 days have elapsed since Plaintiff notified the LWDA of the specific
23 provisions of the Labor Code alleged to have been violated by Defendants. To date, the LWDA has
24 not notified Plaintiff nor Defendants that it intends to investigate the alleged violations contained in
25 Plaintiff's January 31, 2024 notice.

1 70. Pursuant to California Labor Code § 2699.3, Plaintiff may commence a civil action
2 against Defendants for civil penalties on behalf of himself, the State of California and Defendants'
3 other current and former aggrieved employees.

4 71. Plaintiff may maintain this cause of action against Defendants for civil penalties
5 under Labor Code Section 2698 *et seq.* regardless of whether Plaintiff's allegations contained herein
6 are certified for class treatment.

7 72. Plaintiff has not alleged any violation of Division 5 (commencing with Section 6300)
8 of the Labor Code.

9 73. In compliance with Labor Code Section 2699.3, Plaintiff's January 31, 2024 notice
10 also provided Defendants and the LWDA, with written notice, via online filing and via certified mail,
11 of the specific provisions of the Labor Code—not specified in Labor Code Section 2699.5—alleged
12 to have been violated by Defendants, including Labor Code Sections 226.3 and 558, as well as the
13 facts and theories to support the allegations.

14 74. To date, Defendants have not cured any of the alleged violations, and Defendants
15 have not abated any of the violations alleged by Plaintiff in his January 31, 2024 notice. At all
16 relevant times, Defendants have not been in compliance with the underlying statutes as specified in
17 Plaintiff's January 31, 2024 notice. At all relevant times, no aggrieved employee has been made
18 whole for the Labor Code violations described in Plaintiff's January 31, 2024 notice.

19 75. To date, Defendants have not given written notice to Plaintiff nor the LWDA that any
20 Labor Code violation alleged by Plaintiff in his January 31, 2024 notice has been cured.

21 76. Pursuant to California Labor Code § 2699.3(c)(2)(A), Plaintiff may commence a civil
22 action against Defendants for civil penalties on behalf of himself, the State of California and
23 Defendants' other current and former aggrieved employees with respect to the specific provisions of
24 the Labor Code—not specified in Labor Code Section 2699.5—alleged to have been violated by
25 Defendants, including Labor Code Sections 226.3 and 558.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf, and on behalf of all others similarly situated, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS and FORMER EMPLOYEE SUBCLASS, appointing the named Plaintiff as representative of all others similarly situated and appointing the law firms representing the named Plaintiff, Blanchard, Krasner and French and the Law Office of David A. Huch, as counsel for members of the CLASS and FORMER EMPLOYEE SUBCLASS;

2. For compensatory damages according to proof to Plaintiff and the members of the CLASS;

3. For prejudgment interest at the legal rate pursuant to Civil Code §§ 3287, 3288 & 3289, and any other legal rate that may be applicable to Plaintiff's causes of action;

4. For an Order compelling Defendants to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution), as well as reinstatement of any forfeited vacation pay, to each of the members of the CLASS who have suffered as a result of Defendants' unlawful and unfair employment practices alleged herein;

5. For an order compelling Defendants to disgorge and pay over to Plaintiff and the members of the CLASS all profits and savings resulting from Defendants' unlawful and unfair business practices alleged herein;

6. For issuance of a permanent injunction enjoining Defendants, and each of them, from continuing to engage in the unlawful and unfair business practices alleged herein;

7. For attorneys' fees and litigation expenses pursuant to all applicable statutes, including Labor Code sections 218.5, 226, 1194 and 2699, and as otherwise permitted by law;

8. For waiting time penalties pursuant to Labor Code sections 201-203; and

9. For civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004; and

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10. For such other and further relief as the court deems just and proper.

DATED: April 17, 2024 BLANCHARD, KRASNER & FRENCH

David Hawkes

DAVID C. HAWKES

Attorneys for Plaintiff HUY DIEP, Individually, on
behalf of all others similarly situated, on behalf of the
general public.

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