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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

MICHAEL PERRY, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

DAIKIN COMFORT TECHNOLOGIES
DISTRIBUTION, INC. dba DAIKIN
COMFORT TECHNOLOGIES DIST INC, a
Texas corporation; DAIKIN COMFORT
TECHNOLOGIES MANUFACTURING, L.P.
formerly GOODMAN MANUFACTURING
COMPANY, L.P., a Texas limited partnership;
GOODMAN DISTRIBUTION, INC. dba
GOODMAN, an entity of unknown form; and
DOES 1 through 50, inclusive,

Defendants.

Case No. C24-00141

Assigned for All Purposes To:

Hon. Charles S. Treat

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Violation of Labor Code § 227.3;
4. Failure to Comply with Labor Code § 245 *et seq.* 246;
5. Meal-Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174, and
1174.5;
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Labor Code § 1102.5;
12. Violation of Labor Code § 6310;
13. Violation of Labor Code § 6311;
14. Wrongful Discharge in Violation of Public
Policy; and
15. Violation of Business & Professions Code §
17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff MICHAEL PERRY, (hereinafter “Plaintiff”) an individual alleges as follows:

2 **INTRODUCTION**

3 1. At all times herein mentioned, and at the time the causes of action arose, Plaintiff
4 MICHAEL PERRY was and is an individual residing in the State of California.

5 2. At all times mentioned herein Defendant DAIKIN COMFORT TECHNOLOGIES
6 DISTRIBUTION, INC. dba DAIKIN COMFORT TECHNOLOGIES DIST INC., a Texas
7 corporation, is and was doing business in the State of California, County of Contra Costa.

8 3. At all times mentioned herein Defendant DAIKIN COMFORT TECHNOLOGIES
9 MANUFACTURING, L.P. formerly GOODMAN MANUFACTURING COMPANY, L.P., a
10 Texas limited partnership, is and was doing business in the State of California, County of Contra
11 Costa.

12 4. At all times mentioned herein Defendant GOODMAN DISTRIBUTION, INC. dba
13 GOODMAN, an entity of unknown form, is and was doing business in the State of California,
14 County of Contra Costa.

15 5. Hereinafter in this Complaint, unless otherwise specified, reference to a defendant
16 or defendants shall refer to all defendants, and each of them DAIKIN COMFORT
17 TECHNOLOGIES DISTRIBUTION, INC. dba DAIKIN COMFORT TECHNOLOGIES DIST
18 INC., DAIKIN COMFORT TECHNOLOGIES MANUFACTURING, L.P. formerly GOODMAN
19 MANUFACTURING COMPANY, L.P., GOODMAN DISTRIBUTION, INC. dba GOODMAN,
20 and DOES 1 through 50, inclusive shall hereinafter be collectively referred to as “Defendants.”

21 6. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
22 Procedure § 395.5 because the obligations giving rise to liability occurred in part in the County of
23 Contra Costa, State of California.

24 7. Plaintiff is unaware of the true names and capacities of the Defendants sued herein
25 as DOES 1 through 50, inclusive, and for that reason sues these Defendants by such fictitious
26 names under Code of Civil Procedure § 474. Plaintiff will file and serve an amendment to this
27 complaint alleging the true names and capacities of these fictitiously named Defendants when
28 such true names and capacities become known to Plaintiff.

8. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named Defendants is responsible in some manner for, and proximately caused, the harm and damages alleged herein below.

9. Plaintiff is informed and believe and thereon allege that Defendants, and each of them, exercised control over the working conditions of Plaintiff, or suffered or permitted Plaintiff, to work, or engaged, thereby creating a common law employment relationship, with Plaintiff. Therefore, Defendants, and each of them, employed or jointly employed Plaintiff.

10. Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

11. Whenever and wherever reference is made to individuals who are not named as Plaintiff or Defendants in this Complaint but were agents, servants, employees and/or supervisors of Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

12. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants named herein acted as the employee, agent, spouse, partner, alter-ego, and/or joint-venturer, of each of the other Defendant named herein and, in doing the acts and in carrying out the wrongful conduct alleged herein, each of the Defendants acted within the scope of their relationship with and with the permission, consent, and ratification of each of the other Defendants named herein.

FACTUAL BACKGROUND

13. Plaintiff began working for Defendants in or around May 2017 until approximately February 2023. Plaintiff worked for Defendants as an electrician. Plaintiff was at all times a hardworking employee who performed his duties in a competent and efficient manner within Defendant' rules and policies.

14. Plaintiff is a resident of California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California. Plaintiff worked for Defendants in

1 Contra Costa County, and in other nonexempt positions, throughout California and, and
2 consistently worked at Defendants' behest without being paid all wages due. More specifically,
3 Plaintiff was employed by Defendants and worked at Defendants' offices and other facilities
4 where the conduct giving rise to the allegations in this Class Action Complaint occurred.

5 15. As discussed in detail below, Defendants' employment practices resulted in (i)
6 Plaintiff's performing off-the-clock pre-shift and post-shift work without compensation, (ii) the
7 under-recording of all hours worked, resulting in failure to pay overtime wages, (iii) failure to
8 properly compensate for all overtime and double time hours worked, (iv) failure to furnish
9 accurate wage statements, (v) failure to provide timely, uninterrupted meal periods and rest breaks,
10 (vi) failure to properly distribute gratuity owed, and (vii) failure to reimburse all necessary
11 business expenses. Defendants' conduct thus violated various provisions of the California Labor
12 Code and applicable Wage Orders.

13 16. Defendants required Plaintiff to perform work while remaining under Defendants'
14 control during their meal breaks. Defendants further failed to accurately record time worked by
15 Plaintiff by failing to record all hours worked by Plaintiff. Defendants thus failed to pay Plaintiff
16 for all hours worked, and provided him with inaccurate wage statements that prevented Plaintiff
17 and the Class from learning of these unlawful pay practices. Defendants also failed to provide
18 Plaintiff with lawful meal and rest periods, as Plaintiff was not provided with the opportunity to
19 take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

20 17. Defendants own and operate a Daikin Comfort location in Concord within Contra
21 Cost County where Plaintiff was employed. Plaintiff's duties included but were not limited to
22 pulling orders for customers, shipping and receiving products, restocking inventory, and driving a
23 forklift.

24 18. Defendants also did not pay Plaintiff at the proper overtime and double rates for all
25 hours worked. Defendants' company policies and practices pressured or required Plaintiff to
26 perform work over eight (8) or nine (9) hours a day without being paid overtime, and Defendants
27 knew or should have known that Plaintiff was performing that work. To the extent Plaintiff
28 worked over eight (8) hours in a day and/or forty (40) hours in a week, he was paid his normal

1 hourly rate for all hours worked, as Defendants' corresponding time records and paystubs will
2 show. Therefore, Plaintiff was not properly paid all wages earned and for all hours worked more
3 than eight (8) hours in any given day and/or more than forty (40) hours in any given week

4 19. Plaintiff was required to work post-shift hours off the clock without being paid
5 minimum wages, regular wages, and applicable overtime wages at their required rates.
6 Specifically, Defendants had a policy prohibiting employees from clocking back in after they had
7 clocked out resulting in Defendants not compensating employees for this "post-shift" work they
8 performed, including assisting customers.

9 20. Plaintiff was also not paid for other off-the-clock work, including receiving work-
10 related phone calls from coworkers and contractors while off-the-clock and time spent working
11 while clocked out for meal breaks. Plaintiff also contends that Defendants failed to pay Plaintiff all
12 wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage
13 statements, all in violation of various provisions of the California Labor Code and applicable
14 Wage Orders.

15 21. Additionally, Defendants paid Plaintiff nondiscretionary commissions, incentive
16 pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
17 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
18 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
19 the overtime wage rate. Therefore, during times when Plaintiff worked overtime and received
20 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
21 to pay all overtime wages by paying a lower overtime rate than required.

22 22. Further, Defendants paid Plaintiff nondiscretionary commissions, incentive pay,
23 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
24 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
25 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
26 sick pay. Therefore, during times when Plaintiff worked overtime and received nondiscretionary
27 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all sick
28 pay by paying a lower overtime rate than required.

1 23. Defendants paid Plaintiff nondiscretionary commissions, incentive pay, and/or
2 nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate
3 all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary
4 bonuses, into the calculation of the regular rate of pay for purposes of calculating vacation pay.
5 Therefore, during times when Plaintiff worked overtime and received nondiscretionary
6 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all
7 vacation pay by paying a lower overtime rate than required.

8 24. During the course of Plaintiff's employment with Defendants, he was not paid all
9 wages he was owed, including for all work performed and for all overtime hours worked and was
10 forced to work during their meal and rest breaks.

11 25. As a matter of uniform Company policy, Plaintiff was required to work during their
12 meal and rest breaks which were not compensated by Defendants in violation of the California
13 Labor Code. In addition, Plaintiff was not permitted to leave the premises during rest breaks.
14 Plaintiff was also not paid regular wages and overtime for the time he was required to comply with
15 other requirements imposed upon him, which he had to complete while working through his meal
16 and rest breaks and without compensation. As a result, Plaintiff worked shifts over eight (8) hours
17 in a day and over forty (40) hours in a work week, but he was not paid at the appropriate overtime
18 rate for all such hours, including by being required to perform work duties and tasks without pay
19 and while off-the-clock. As a result, Plaintiff worked substantial overtime hours during their
20 employment with Defendants for which he was not compensated, in violation of the California
21 Labor Code, applicable IWC Wage Orders.

22 26. As a result of the daily work demands and pressures to work through breaks, and
23 the other wage violations he endured at Defendants' hands, Plaintiff was not properly paid for all
24 wages earned and for all wages owed to him by Defendants, including when working more than
25 eight (8) hours in any given day and/or more than forty (40) hours in any given week. As a result
26 of Defendants' unlawful policies and practices, Plaintiff incurred overtime hours worked for
27 which he was not adequately and completely compensated. To the extent applicable, Defendants
28 also failed to pay Plaintiff at an overtime rate of 1.5 times the regular rate for the first eight hours

1 of the seventh consecutive work day in a week and overtime payments at the rate of 2 times the
2 regular rate for hours worked over eight (8) on the seventh consecutive work day, as required
3 under the Labor Code, applicable IWC Wage Orders.

4 27. Therefore, Defendants had a consistent policy or practice of failing to pay Plaintiff
5 for all hours worked and failing to pay minimum wage for all time worked as required by
6 California Law.

7 28. Additionally, Defendants had a consistent policy or practice of failing to pay
8 Plaintiff overtime compensation at premium overtime rates for all hours worked in excess of eight
9 (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
10 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
11 sections of IWC Wage Orders.

12 29. Additionally, Defendants have regularly required Plaintiff to work shifts in excess
13 of five (5) hours without providing him with timely meal periods of not less than thirty (30)
14 minutes and shifts in excess of ten (10) hours without providing him with second meal periods of
15 not less than thirty minutes; nor did Defendants pay Plaintiff “premium pay,” i.e. one hour of
16 wages at Plaintiff’s effective regular rate of pay, for each meal period that Defendants failed to
17 provide or deficiently provided. Defendants would also avoid having to pay premiums for late or
18 missed meal periods by requiring Plaintiff to timely clock out for his thirty-minute meal periods
19 and continue working. What meal periods were provided were late and often less than thirty
20 minutes.

21 30. Defendants have consistently failed to provide Plaintiff with paid rest breaks of not
22 less than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
23 Defendant pay Plaintiff premium pay for each day on which requisite rest breaks were not
24 provided or were deficiently provided at one hour of wages at Plaintiff’s effective regular rate of
25 pay, for each rest period that Defendants failed to provide or deficiently provided. Additionally,
26 Defendants had a policy prohibiting Plaintiff from leaving the premises during their rest breaks.

27 31. Additionally, Defendants have consistently failed to provide Plaintiff with timely,
28 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

1 Specifically, Defendants failed in their affirmative obligation to keep accurate records of the
2 correct overtime wages based on proper regular rate calculations that included nondiscretionary
3 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of
4 compensation of Plaintiff. Additionally, the wage statements given to Plaintiff failed to accurately
5 account for unpaid wages, overtime, and premium pay for deficiently provided meal and rest
6 breaks all of which Defendants knew or reasonably should have known were owed to Plaintiff, as
7 alleged hereinabove. The wage statements provided to Plaintiff were confusing and required
8 Plaintiff to engage in discovery and refer to outside sources to verify whether their pay was
9 correct, potentially resulting in a miscalculation by Employees.

10 32. Defendants have failed to reimburse Plaintiff for expenses necessarily incurred in
11 the performance of his job duties for Defendants including, the cost of cellphone usage and vehicle
12 mileage and fuel, which were necessary to perform his duties under Defendants' employ in
13 violation of Labor Code § 2802.

14 33. Additionally, Defendants have consistently failed to keep accurate time and wage
15 records as required by California wage-and-hour laws.

16 34. Additionally, Defendants have had a consistent policy of failing to pay all wages
17 fur and owed to Plaintiff at the time of their termination or within seventy-two (72) hours of their
18 resignation, as required by California wage-and-hour laws.

19 35. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
20 Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 245 *et seq.* 246, 248, 510, 512, 558, 558.1,
21 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2802.

22 36. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
23 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
24 enjoyed from their violations of Labor Code.

25 37. During the duration of Plaintiff's employment, Mr. Perry consistently made verbal
26 complaints to his manager Rich (last name unknown) regarding various OSHA violations,
27 including: operating a forklift without wearing the seatbelt; not wearing steel-toed shoes and not
28 using the proper protective equipment.

38. In or around January 2023, Perry had received a verbal warning that third party company had complained about his behavior and was asked to sign a written notice of the verbal warning. Later that month he was told to sign a performance improvement plan and that everything would “go away”.

39. Approximately one month later following continuous complaints from Perry regarding safety concerns, Defendants terminated his employment.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

40. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

41. Defendants failed to pay Plaintiff minimum wages for all hours worked. Defendants had a consistent policy of misstating Plaintiff's time records and failing to pay Plaintiff for all hours worked. Plaintiff would work hours and not receive wages, including as alleged above in connection with working during meal breaks. Plaintiff also worked "post-shift" without compensation by assisting customers after clocking-out and being prohibited from clocking back in. Plaintiff also performed off-the-clock work including receiving work-related calls from coworkers and contractors while clocked out. Additionally, Defendants had a consistent policy of failing to pay Plaintiff for hours worked during alleged meal periods for which Plaintiff was denied, as also addressed herein. Moreover, Defendants did not pay Plaintiff at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

42. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

1 43. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 44. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage,
7 any employee receiving less than the legal minimum wage or the
8 legal overtime compensation applicable to the employee is entitled
9 to recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

10 45. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 46. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages
14 because of the payment of a wage less than the minimum wages
15 fixed by an order of the commission, an employee shall be entitled
16 to recover liquidated damages in an amount equal to the wages
17 unlawfully unpaid and interest thereon.

18 47. Defendants have the ability to pay minimum wages for all time worked and have
19 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
20 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff.

21 48. Wherefore, Plaintiff is entitled to recover the unpaid minimum wages (including
22 double minimum wages), liquidated damages in an amount equal to the minimum wages
23 unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to
24 California Labor Code § 1194(a).

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

27 **(Against All Defendants)**

28 49. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
full herein.

50. By their conduct, as set forth herein, Defendants violated California Labor Code §
510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Plaintiff: (a)

1 time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
2 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
3 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
4 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
5 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
6 paying Plaintiff wages for all hours worked including as alleged above in connection with working
7 during meal breaks. Plaintiff also worked "post-shift" without compensation by assisting
8 customers after clocking-out and being prohibited from clocking back in. Plaintiff also performed
9 off-the-clock work including receiving work-related calls from coworkers and contractors while
10 clocked out. As a result, Plaintiff regularly worked over 8 hours on a given day without receiving
11 overtime compensation.

12 51. Furthermore, on information and belief, Defendants did not pay Plaintiff the correct
13 overtime rate for the recorded overtime hours that he generated. In addition to an hourly wage,
14 Defendants paid Plaintiff nondiscretionary commissions, incentive pay, and/or nondiscretionary
15 bonuses. However, upon information and belief, Defendants failed to incorporate all
16 remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary
17 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime
18 wage rate.

19 52. Therefore, during times when Plaintiff worked overtime and received
20 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
21 to pay all overtime wages by paying a lower overtime rate than required.

22 53. Defendants' failure to pay compensation in a timely fashion also constituted a
23 violation of California Labor Code § 204, which requires that all wages shall be paid
24 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
25 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
26 and overtime compensation earned by Plaintiff. Each such failure to make a timely payment of
27 compensation to Plaintiff constitutes a separate violation of California Labor Code § 204.

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1 54. Plaintiff has been damaged by these violations of California Labor Code §§ 204
2 and 510 (and the relevant orders of the Industrial Welfare Commission).

3 55. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
4 relevant orders of the Industrial Welfare Commission), Defendants are liable to Plaintiff for the
5 full amount of all their unpaid wages and overtime compensation, with interest, plus their
6 reasonable attorneys' fees and costs.

7 **THIRD CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 227.3**
9 **(Against All Defendants)**

10 56. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
11 herein.

12 57. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
13 employment policy provides for paid vacation and an employee is terminated without having
14 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
15 in accordance with said contract of employment or policy respecting eligibility or time served.

16 58. Defendants paid nondiscretionary commissions, incentive pay, and/or
17 nondiscretionary bonuses to Plaintiff but Defendants failed to include these forms of remuneration
18 in the regular rate of pay upon which vacation wages were calculated and paid.

19 59. Therefore, Plaintiff seeks to recover penalties pursuant to Labor Code § 227.3.

20 **FOURTH CAUSE OF ACTION**
21 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET. SEQ* 246**
22 **(Against All Defendants)**

23 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 61. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
26 to Plaintiff, including at the amount, terms, and rate of compensation set forth in said law. At
27 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
28 with the pay calculation under California Labor Code § 246(l).

1 62. Defendants paid nondiscretionary commissions, incentive pay, and/or
2 nondiscretionary bonuses to Plaintiff but Defendants failed to include these forms of remuneration
3 in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the
4 amount of paid sick time due when sick time is used according to the requirements set forth in
5 California Labor Code § 246(1), Defendants paid sick leave to Plaintiff at a lower rate, in violation
6 of the law.

7 63. Therefore, Plaintiff seeks to recover penalties pursuant to Labor Code §§ 245 *et*
8 *seq.* and 246.

9 **FIFTH CAUSE OF ACTION**

10 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

11 **(Against All Defendants)**

12 64. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 65. Plaintiff regularly worked shifts greater than five (5) hours and greater than ten (10)
15 hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more
16 than five (5) hours without providing him with a meal period of not less than thirty (30) minutes or
17 for a shift of more than ten (10) hours without providing him with a second meal period of not less
18 than thirty (30) minutes.

19 66. Defendants failed to provide Plaintiff with meal periods as required under the
20 Labor Code. Plaintiff was required to work through his meal periods which he was consistently
21 denied. Plaintiff was also required to take meal periods after working well beyond the five (5)
22 hour shifts. In addition, Plaintiff's meal periods were consistently interrupted. Furthermore,
23 Plaintiff was regularly required to work for more than 10 hours in a given shift without receiving a
24 second uninterrupted thirty (30) minute meal period as required by law.

25 67. Moreover, Defendants failed to compensate Plaintiff for each meal period not
26 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
27 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
28 employee a meal period in accordance with this section, the employer shall pay the employee one

1 hour of pay at the employee's regular rate of compensation for each workday that the meal period
2 is not provided. Defendants avoided paying meal period premiums by requiring Plaintiff to timely
3 clock out for thirty-minute meal breaks and then return to work while clocked out. Thus,
4 Defendants failed to compensate Plaintiff for each meal period not provided or inadequately
5 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
6 Wage Order.

7 68. Therefore, pursuant to Labor Code § 226.7, Plaintiff is entitled to damages in an
8 amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period
9 not provided or deficiently provided, a sum to be proven at trial.

10 **SIXTH CAUSE OF ACTION**

11 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

12 **(Against All Defendants)**

13 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 70. Plaintiff consistently worked consecutive four (4) hour shifts. Pursuant to the Labor
16 Code and the applicable IWC Wage Order, Plaintiff was entitled to paid rest breaks of not less
17 than ten (10) minutes for each consecutive four (4) hour shift.

18 71. Defendants failed to provide Plaintiff with rest breaks of not less than ten (10)
19 minutes for each consecutive four (4) hour shift. Plaintiff was also not permitted by Defendants to
20 leave the premises during rest breaks.

21 72. Moreover, Defendants failed to compensate Plaintiff for each rest period not
22 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
23 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
24 accordance with this section, the employer shall pay the employee one hour of pay at the
25 employee's regular rate of compensation for each workday that the rest period is not provided.
26 Defendants failed to compensate Plaintiff for each rest period not provided or inadequately
27 provided, as required under Labor Code § 226.7 and the applicable IWC Wage Order.

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1 73. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
2 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
3 worked without the required rest breaks, a sum to be proven at trial.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
6 **IN VIOLATION OF LABOR CODE § 2802**
7 **(Against All Defendants)**

8 74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 75. Under Labor Code § 2802(a) an employer must indemnify its employees for all
11 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
12 of his or her duties, or of his or her obedience to the directions of the employer.

13 76. Plaintiff incurred necessary expenditures in the performance of their job duties for
14 Defendants, namely the cost of cell phone usage and vehicle mileage and fuel, which were
15 necessary to perform their duties under Defendants' employ. From four (4) years prior to the
16 original filing of this lawsuit and continuing to the present, Defendants consistently failed to
17 reimburse Plaintiff for these necessarily incurred business expenses.

18 77. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
19 reimbursement in amounts to be determined at trial; he is entitled to recovery of such amounts,
20 plus interest and penalties thereon, attorneys' fees, and costs.

21 **EIGHTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 226(a)**
23 **(Against All Defendants)**

24 78. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 79. California Labor Code § 226(a) requires an employer to furnish each of his or her
27 employees with an accurate, itemized statement in writing showing the gross and net earnings,
28 total hours worked, all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate; these statements must be appended to
2 the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's
3 wages; or, if wages are paid by cash or personal check, these statements may be given to the
4 employee separately from the payment of wages; in either case the employer must give the
5 employee these statements twice a month or each time wages are paid.

6 80. Defendants failed to provide Plaintiff with accurate itemized wage statements in
7 writing, as required by the Labor Code. Specifically, the wage statements given to Plaintiff by
8 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
9 periods and rest breaks, all of which Defendants knew or reasonably should have known were
10 owed to Plaintiff, as alleged hereinabove. Additionally, Defendants failed in their affirmative
11 obligation to keep accurate records of the correct overtime wages based on proper regular rate
12 calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary
13 bonuses earned, and the total amount of compensation of Plaintiff. The wage statements provided
14 to Plaintiff were confusing and required Employees to engage in discovery and refer to outside
15 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
16 Employees.

17 81. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
18 Plaintiff suffered injuries, including among other things confusion over whether he received all
19 wages owed to him, the difficulty and expense involved in reconstructing pay records, and forcing
20 him to make mathematical computations to analyze whether the wages paid in fact compensated
21 him correctly for all hours worked.

22 82. Pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff is entitled to recover the
23 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
24 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
25 exceeding an aggregate penalty of four thousand dollars (\$4,000). He is also entitled to an award
26 of costs and reasonable attorneys' fees.

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NINTH CAUSE OF ACTION
FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174
and 1174.5
(Against All Defendants)

83. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

84. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

85. During the course of Plaintiff's employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff as required by California Labor Code § 1174 by failing to pay Plaintiff proper wages, overtime, and premium pay as discussed above.

86. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay him.

87. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code including §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

TENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

89. Plaintiff is no longer employed by Defendants; as he was fired as detailed above.

90. Defendants failed to pay Plaintiff all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

91. The wages withheld from these Plaintiff by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

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92. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay him; this violation entitles Plaintiff to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 1102.5
(Against All Defendants)

93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

94. Plaintiff attempted to disclose and remedy Defendants' safety issues concerning the operation of a forklift without wearing seatbelts; not wearing steel-toed shoes and not using the proper PPE by objecting to and complaining about them. Plaintiff disclosed the violations to Defendants' manager Rich, an individual with authority over Plaintiff, and who had authority to investigate, discover, or correct the violation or noncompliance.

95. Defendants violated Labor Code § 1102.5 by, inter alia:

a. Making, adopting or enforcing a rule, regulation or policy preventing Plaintiff from disclosing information to a government or law enforcement agency, or to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, where Plaintiff had reasonable cause to believe that the information disclosed a violation of state or federal statute, or a violation or noncompliance with a state or federal regulation;

b. Retaliating against Plaintiff for disclosing information to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, where Plaintiff had reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation;

c. Retaliating against Plaintiff for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or

1 federal rule or regulation; and,

2 d. Retaliating against Plaintiff for having exercised his rights under the foregoing
3 paragraphs 19 a, b, and c.

4 96. Defendants resisted and opposed Plaintiff's attempts to disclose and remedy their
5 workplace safety and Labor Code violations. Indeed, Defendants retaliated against Plaintiff for
6 disclosing Defendants' violations and employment practices and for refusing to participate in them
7 by terminating his employment.

8 97. As a direct and proximate cause of Defendants' violation of Labor Code § 1102.5,
9 Plaintiff has suffered damages, including, but not limited to, lost wages and work benefits, in a
10 sum to be determined at trial.

11 98. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and
12 continues to suffer actual, consequential, and incidental financial losses, including without
13 limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and
14 embarrassment, all in an amount subject to proof at the time of trial.

15 99. The aforementioned acts of Defendants were willful, wanton, malicious,
16 intentional, oppressive, and despicable, and were done in willful and conscious disregard of the
17 rights of Plaintiff, and were done by managerial agents and employees of Defendants, or with the
18 express knowledge, consent, and ratification of managerial employees of Defendants, and thereby
19 justify the awarding of punitive and exemplary damages in an amount to be determined at the time
20 of trial.

21 **TWELFTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 6310**
23 **(Against All Defendants)**

24 100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 101. Pursuant to Labor Code § 6310, an employer is prohibited from discharging,
27 threatening to discharge, demoting, or in any other matter discriminating against an employee for
28 making any oral or written complaint, regarding the employee's safety or health, to his or her

1 employer.

2 102. Here, Plaintiff complained to Defendants regarding the health and safety dangers
3 associated with the operation of a forklift without wearing seatbelts; not wearing steel-toed shoes
4 and not using the proper PPE.

5 103. Defendants unlawfully terminated Plaintiff's employment because of these
6 complaints in violation of Section 6310.

7 104. As a direct and proximate cause of Defendant's adverse employment action,
8 Plaintiff has suffered and will continue to suffer damages in an amount within the jurisdiction of
9 this court, the exact amount to be proven at trial.

10 105. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
11 continues to suffer actual, consequential, and incidental financial losses, including without
12 limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and
13 embarrassment, all in an amount subject to proof at the time of trial.

14 106. The aforementioned acts of Defendants were willful, wanton, malicious,
15 intentional, oppressive, and despicable, and were done in willful and conscious disregard of the
16 rights of Plaintiff and were done by managerial agents and employees of Defendants, or with the
17 express knowledge, consent, and ratification of managerial employees of Defendants, and thereby
18 justify the awarding of punitive and exemplary damages in an amount to be determined at the time
19 of trial.

20 **THIRTEENTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 6311**
22 **(Against All Defendants)**

23 107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 108. Pursuant to Labor Code § 6311, "[n]o employee shall be laid off or discharged for
26 refusing to perform work in the performance of . . . any occupational safety or health standard or
27 any safety order of the division or standards board will be violated, where the violation would
28 create a real and apparent hazard to the employee or his or her fellow employees."

109. Here as discussed above, Plaintiff objected, complained, and refused to work due to safety concerns concerning the health and safety dangers associated with the operation of a forklift without wearing seatbelts; not wearing steel-toed shoes and not using the proper PPE, as discussed above.

110. Defendants unlawfully reduced Plaintiff's pay because of these complaints in violation of Section 6311.

111. As a direct and proximate cause of Defendant's adverse employment action, Plaintiff has suffered and will continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to be proven at trial.

112. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and continues to suffer actual, consequential, and incidental financial losses, including without limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and embarrassment, all in an amount subject to proof at the time of trial.

113. The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff, and were done by managerial agents and employees of Defendants, or with the express knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

FOURTEENTH CAUSE OF ACTION
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY
(Against all Defendants)

114. Plaintiff realleges and incorporates all preceding paragraphs as though fully set forth herein.

115. Plaintiff's complaints regarding Defendants multiple Labor Code and health and safety violations, all discussed above, were jointly and severally substantial factors in Defendant's decision to terminate Plaintiff's employment.

116. Plaintiff's discharge was wrongful in that it violated the fundamental public

1 policies of this State and of the United States prohibiting retaliation against employees for making
2 the very type of complaints discussed herein. These public policies are embodied under Cal.
3 OSHA and the Labor Code, enumerated above.

4 117. As a direct and proximate cause of Defendant's wrongful discharge, Plaintiff has
5 suffered and will continue to suffer damages in an amount within the jurisdiction of this court, the
6 exact amount to be proven at trial.

7 118. As a proximate result of the wrongful acts of Defendant, and each of them, Plaintiff
8 has suffered and continues to suffer actual, consequential and incidental financial losses, including
9 without limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish,
10 anger, and embarrassment, all in an amount subject to proof at the time of trial.

11 119. The aforementioned acts of Defendant were willful, wanton, malicious, intentional,
12 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
13 Plaintiff, and were done by managerial agents and employees of Defendant, or with the express
14 knowledge, consent, and ratification of managerial employees of Defendant, and thereby justify
15 the awarding of punitive and exemplary damages in an amount to be determined at the time of
16 trial.

17 **FIFTEENTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

19 **(Against All Defendants)**

20 120. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 121. California Business and Professions Code §§17200 et seq. (also referred to herein
23 as the "Unfair Business Practices Act," "Unfair Competition Law," or "UCL"), prohibits unfair
24 competition in the form of any unlawful, unfair, or fraudulent business acts or practices. 135.
25 California Business and Professions Code §17204 allows a person injured by the unfair business
26 acts or practices to prosecute a civil action for violation of the UCL.

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1 122. Defendant committed acts of unfair competition as defined by the Unfair Business
2 Practices Act, by engaging in the unlawful, unfair and fraudulent business acts and practices
3 described in this complaint, including, but not limited to:

- 4 a. Failure to Pay Minimum Wages;
- 5 b. Failure to Pay Wages and Overtime Under Labor Code § 510;
- 6 c. Violation of Labor Code § 227.3;
- 7 d. Failure to Comply with Labor Code § 245 *et seq.* 246;
- 8 e. Rest-Break Liability Under Labor Code § 226.7;
- 9 f. Meal Period Liability Under Labor Code § 226.7;
- 10 g. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
- 11 h. Violation of Labor Code § 226(a);
- 12 i. Failure to Keep Required Payroll Records Under Labor Code §§ 1174, and
13 1174.5;
- 14 j. Penalties Pursuant to Labor Code § 203;
- 15 k. Violation of Labor Code § 1102.5;
- 16 l. Violation of Labor Code § 6310;
- 17 m. Violation of Labor Code § 6311;
- 18 n. The violations of these laws and regulations, as well as of the fundamental
19 California public policies underlying them, serve as unlawful predicate acts and
20 practices for the purposes of Business and Professions Code §§17200 *et seq.*

21 123. The acts and practices alleged above have unlawfully deprived Plaintiff of the
22 rights due to them under the law while enabling Defendant to gain an unfair competitive
23 advantage over law-abiding employers and competitors.

24 124. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
25 has suffered a loss of money and property in the form of wages and benefits that he would have
26 continued to receive as an employee of Defendant.

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125. Plaintiff seeks an order of this Court awarding restitution, injunctive relief, and all other legal and equitable relief allowed under Business & Professions Code §17200 et seq., plus interest, attorneys' fees and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For all actual, consequential, and incidental damages, including but not limited to back pay, front pay, loss of earnings, and employee benefits, according to proof;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Plaintiff and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of the hourly wage made by Plaintiff for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Plaintiff for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
6. For penalties pursuant to Labor Code § 227.3;
7. For penalties pursuant to Labor Code §§ 245 *et seq.* 246;
8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
9. For penalties pursuant to Labor Code § 226.3, as may be proven;
10. For penalties pursuant to Labor Code § 203 for Plaintiff who was fired in an amount equal to his daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

1 13. For compensatory damages in the amount of all previously unreimbursed business
2 expenditures necessarily incurred by Plaintiff in the discharge of their job duties for Defendants
3 from four (4) years prior to the original filing of this action, as may be proven;

4 14. For an order enjoining Defendants and their agents, servants, and employees, and
5 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
6 duties adumbrated in this Complaint;

7 15. For all actual, consequential, and incidental damages, including but not limited to
8 loss of earnings, back pay, front pay, and employee benefits and damages for emotional distress,
9 according to proof;

10 16. For all general, special, and incidental damages as may be proven;

11 17. For an award of pre-judgment and post-judgment interest;

12 18. For an award providing for the payment of the costs of this suit;

13 19. For an award of attorneys' fees;

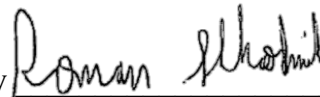
14 20. For pre-judgment and post-judgment interest, according to proof;

15 21. For punitive and exemplary damages, according to proof; and

16 22. For such other and further relief as this Court may deem proper and just.

17
18 DATED: April 26, 2024

D. LAW, INC.

19
20 By 

21 David Yeremian
22 Roman Shkodnik
23 Amanda Fazio
24 Emma Geesaman
25 Attorneys for Plaintiff
26 MICHAEL PERRY
27
28

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DATED: April 26, 2024

By Roman Shkodnik
David Yeremian
Roman Shkodnik
Amanda Fazio
Emma Geesaman
Attorneys for Plaintiff
MICHAEL PERRY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

On April 26, 2024, I served the foregoing: **FIRST AMENDED COMPLAINT** on Interested Parties in this action by placing a true copy thereof,

Justin T. Curley
jcurley@seyfarth.com
SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, California 94105

Phillip Ebsworth
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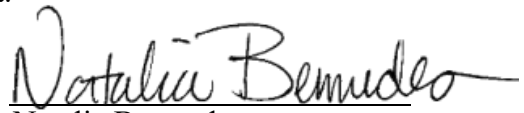
☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(ONLY BY ELECTRONIC TRANSMISSION)** I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 26, 2024, at Glendale, California.


Natalia Bermudes