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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN BERNARDINO

12
13 DURIEL CARR, on behalf of herself and all
14 others similarly situated, and the general
public,

15 *Plaintiff,*

16 v.

17 KOOL PAK, LLC, an Oregon corporation;
18 and DOES 1 through 50, inclusive,

19 *Defendants.*
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23
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Case No.: CIVSB2404915

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay Wages (Lab. Code §§ 223, 1194, 1194.2, 1197, 1197.1 and 1198);
2. Failure to Provide Accurate Wage Statements (Lab. Code §§ 226(a));
3. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
4. Failure to Indemnify (Lab. Code § 2802); and
5. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*).
6. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff DURIEL CARR (“Plaintiff”), on behalf of herself, all others similarly situated, the
2 State of California, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants KOOL PAK,
5 LLC, an Oregon corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 “Defendants”) for alleged violations of the California Labor Code and California Business and
7 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 8 a. failed to pay all wages owed for all time worked;
- 9 b. failed to provide accurate wage statements;
- 10 c. failed to reimburse for necessary business expenditures; and
- 11 d. failed to timely pay all final wages owed following separation of employment.

12 Based on these alleged Labor Code violations, Plaintiff now brings this class and
13 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
14 restitution, and related relief on behalf of herself, all others similarly situated, and the general public.

15 **JURISDICTION AND VENUE**

16 2. This Court has subject matter jurisdiction to hear this case because the monetary
17 damages and restitution sought by Plaintiff from Defendants’ conduct exceeds the minimal
18 jurisdiction of the Superior Court of the State of California.

19 3. Venue is proper in the County of San Bernardino pursuant to Code of Civil Procedure
20 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
21 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
22 maintains offices, transacts business and/or has an agent therein.

23 4. Venue is proper in San Bernardino County because Defendants’ have at all times
24 alleged herein, conducted business in San Bernardino County, and throughout California. As such,
25 venue is proper in any county in California.

26 **PARTIES**

27 5. Plaintiff DURIEL CARR is, and at all relevant times mentioned herein, an individual
28 residing in the State of California.

1 6. Plaintiff is informed and believes, and thereupon alleges that Defendant KOOL PAK,
2 LLC is, and at all relevant times mentioned herein, an Oregon corporation doing business in the State
3 of California.

4 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
5 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
6 will amend this Complaint to allege the true names and capacities of the DOE defendants when
7 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
8 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
9 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
10 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
11 defendants when ascertained.

12 8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
13 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
14 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
15 or all of the other defendants, and in doing the things alleged herein, were acting within the course
16 and scope of such relationship and with the full knowledge, consent, and ratification by such other
17 defendants.

18 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
19 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
20 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
21 and omissions alleged herein.

22 10. This action has been brought and may be maintained as a class action pursuant to Code
23 of Civil Procedure section 382 because there is a well-defined community of interest among the
24 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
25 unaware of any difficulties likely to be encountered in managing this case as a class action.

26 11. **Relevant Time Period:** The relevant time period is defined as the time period
27 beginning four years prior to the filing of this action until judgment is entered.

28 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or

separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California four years prior to the filing of this action and ending on the date that final judgment is entered in this action ("Hourly Employee Class").

- b. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.
- c. **Wage Statement Class:** All persons employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.
- d. **Expense Reimbursement Class:** All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.
- e. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

13. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

14. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- a. Whether Defendants failed to pay minimum wages to class members for all time worked;
- b. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with wage statements containing inaccurate entries for, among other things, amounts of gross and net wages, total hours worked, and applicable hourly rates of pay;
- c. Whether Defendants applied policies or practices that result in late and/or

1 incomplete final wage payments;

2 d. Whether Defendants failed to reimburse class members for all necessary business
3 expenses incurred during the discharge of their duties;

4 e. Whether Defendants are liable to class members for waiting time penalties under
5 Labor Code section 203; and

6 f. Whether class members are entitled to restitution of money or property that
7 Defendants may have acquired from them through unfair competition.

8 15. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
9 is informed and believes, and thereupon alleges that Defendants have a policy or practice of failing
10 to comply with the California Labor Code and Business and Professions Code as alleged in this
11 Complaint.

12 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative and
13 has no interests that are adverse to, or otherwise conflict with, the interests of absent class members
14 and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and
15 adequately represent and protect the interests of the other class members.

16 17. **Adequacy of Class Counsel:** Plaintiff's counsel is adequate class counsel in that they
17 have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage
18 and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
19 Plaintiff and absent class members.

20 18. **Superiority:** A class action is vastly superior to other available means for fair and
21 efficient adjudication of the class members' claims and would be beneficial to the parties and the
22 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
23 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
24 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
25 due to many individual class members are likely to be relatively small and would thus make it
26 difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a
27 class action will serve an important public interest by permitting class members to effectively pursue
28 the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent

1 or contradictory judgments inherent in individual litigation.

2 **GENERAL ALLEGATIONS**

3 19. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
4 statutory periods.

5 20. Defendants had a common policy and practice of systemically failing to pay Plaintiff
6 and Class Members wages owed for all hours worked.

7 21. Specifically, Defendants implemented an unlawful time-rounding policy and practice
8 which unlawfully rounded to the quarter hour and reduced the actual working hours recorded by
9 Plaintiff and Class Members, and upon which their pay was based, and generally did so to the
10 detriment of the Plaintiff and Class Members, and these unlawfully rounded time entries were inputted
11 into Defendants' payroll system from which wage statements and payroll checks were created.
12 Defendants did so with the ostensible intent of paying Plaintiff and Class members only for the hours
13 they were scheduled to work, rather than the hours they were actually under Defendants' control.
14 Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Plaintiff and
15 Class members by systematically undercompensating them.

16 22. Plaintiff and Class Members are entitled to this uncompensated time, which they were
17 systemically denied.

18 23. Plaintiff and Class Members were not provided with accurate wage statements as
19 mandated by law pursuant to Labor Code section 226.

20 24. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
21 earned" were not accurately reflected in that: all hours worked were not included.

22 25. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
23 by the employee" were not accurately reflected in that: all hours worked were not included.

24 26. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
25 were not accurately reflected in that: all hours worked were not included.

26 27. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each
28 hourly rate by the employee" were not accurately reflected in that: all hours worked and applicable

1 hourly rates were not included.

2 28. Finally, Plaintiff and Class Members were not reimbursed for business expenses
3 incurred in executing their duties under Defendants' employ. Specifically, Plaintiff and Class
4 Members were required to purchase cold gear required for working in refrigerated trucks, including
5 but not limited to, rubber boots, jackets, ski masks and gloves, all necessary to perform their duties
6 under Defendants' employ. Plaintiff and Class Members were also required to purchase their own
7 safety equipment, including but not limited to, work gloves, reflective vest, hammer and hand tools,
8 all necessary to perform their duties under Defendants' employ. However, Plaintiff and Class
9 members were not reimbursed for these necessary work-related expenses.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES**

12 **(Lab. Code §§ 223, 1194, 1197 and 1198)**

13 **(Plaintiff and Hourly Employee Class)**

14 29. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 30. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
17 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
18 applicable Wage Order.

19 31. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
20 which an employee is subject to the control of the employer, and includes all the time the employee
21 is suffered or permitted to work, whether or not required to do so."

22 32. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
23 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
24 that an employer has actual or constructive knowledge that employees are working.

25 33. Labor Code section 1194 invalidates any agreement between an employer and an
26 employee to work for less than the minimum wage required under the applicable Wage Order.

27 34. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
28 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition

1 to the underlying unpaid minimum wages and interest thereon.

2 35. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
3 than the minimum wage required under the applicable Wage Order for all hours worked during a
4 payroll period.

5 36. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
6 person acting either individually or as an officer, agent or employee of another person, to pay an
7 employee, or cause an employee to be paid, less than the applicable minimum wage.

8 37. Labor Code section 1198 makes it unlawful for employers to employ employees under
9 conditions that violate the applicable Wage Order.

10 38. Labor Code section 223 makes it unlawful for employers to pay their employees lower
11 wages than required by contract or statute while purporting to pay them legal wages.

12 39. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
13 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
14 working conditions and compensation arrangements.

15 40. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
16 **Employee Class** members for all time worked at statutory and/or agreed rates.

17 41. Plaintiff and **Hourly Employee Class** members were not paid proper wages and all
18 hours worked.

19 42. Specifically, Defendants implemented an unlawful time-rounding policy and practice
20 which unlawfully rounded to the quarter hour and reduced the actual working hours recorded by
21 Plaintiff and **Hourly Employee Class** members, and upon which their pay was based, and generally
22 did so to the detriment of the Plaintiff and **Hourly Employee Class** members, and these unlawfully
23 rounded time entries were inputted into Defendants' payroll system from which wage statements and
24 payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and
25 **Hourly Employee Class** members only for the hours they were scheduled to work, rather than the
26 hours they were under Defendants' control. Plaintiff contends this policy is not neutral and results,
27 over time, to the detriment of the Plaintiff and **Hourly Employee Class** members by systematically
28 undercompensating them.

1 43. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
2 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
3 full amount of wages earned during each pay period during the applicable limitations period.

4 44. Pursuant to Labor Code sections 218.6, 223, 1194 and 1194.2, Plaintiff, on behalf of
5 herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and interest
6 thereon and costs of suit.

7 45. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
8 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
9 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

12 **(Lab. Code § 226)**

13 **(Plaintiff and Wage Statement Penalties Sub-Class)**

14 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 47. Labor Code section 226(a) states:

17 An employer, semimonthly or at the time of each payment of wages,
18 shall furnish to his or her employee, either as a detachable part of the
19 check, draft, or voucher paying the employee's wages, or separately if
20 wages are paid by personal check or cash, an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours
22 worked by the employee, except as provided in subdivision (j), (3) the
23 number of piece-rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis, (4) all deductions, provided that
25 all deductions made on written orders of the employee may be
26 aggregated and shown as one item, (5) net wages earned, (6) the
27 inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a
social security number, (8) the name and address of the legal entity that
is the employer and, if the employer is a farm labor contractor, as
defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
employee and, beginning July 1, 2013, if the employer is a temporary
services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment. The
deductions made from payment of wages shall be recorded in ink or

1 other indelible form, properly dated, showing the month, day, and year,
2 and a copy of the statement and the record of the deductions shall be
3 kept on file by the employer for at least three years at the place of
4 employment or at a central location within the State of California. For
5 purposes of this subdivision, 'copy' includes a duplicate of the itemized
6 statement provided to an employee or a computer-generated record that
7 accurately shows all of the information required by this subdivision.

8 48. Plaintiff is informed and believes that, at all relevant times during the applicable
9 limitations period, Defendants have failed to provide Plaintiff and **Wage Statement Class** members
10 with accurate statements as the wage statements issued to class members failed to account for the
11 unpaid minimum wages and applicable rates, described above.

12 49. Plaintiff is informed and believes that Defendants' failure to provide Plaintiff and
13 **Wage Statement Class** members with accurate written wage statements was intentional in that
14 Defendants have the ability to provide them with accurate wage statements but have intentionally
15 provided them with written wage statements that Defendants have known do not comply with Labor
16 Code section 226(a).

17 50. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
18 Defendants have violated their legal rights to receive accurate wage statements and have misled them
19 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
20 statements has prevented immediate challenges to Defendants' unlawful pay practices, has required
21 discovery and mathematical computations to determine the amount of wages owed, has caused
22 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
23 submission of inaccurate information about wages and deductions to federal and state government
24 agencies.

25 51. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
26 **Statement Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period in
27 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
28 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
\$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

3 **(Lab. Code §§ 201-203)**

4 **(Plaintiff and Waiting Time Penalties Sub-Class)**

5 52. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 53. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
8 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
9 earned and unpaid before termination or resignation.

10 54. At all relevant times, pursuant to Labor Code section 201, employees who have been
11 discharged have been entitled to payment of all final wages immediately upon termination.

12 55. At all relevant times, pursuant to Labor Code section 202, employees who have
13 resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to
14 payment of all final wages at the time of resignation.

15 56. Plaintiff is informed and believes that, at all relevant times during the applicable
16 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
17 members all their final wages in accordance with the Labor Code.

18 57. Plaintiff is informed and believes that, at all relevant times during the applicable
19 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
20 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
21 sections 201 or 202 by failing to timely pay them all final wages.

22 58. Plaintiff is informed and believes, and thereupon alleges that Defendants' failure to
23 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members has been willful
24 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
25 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
26 requirements.

27 59. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
28 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the dates that their

final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

60. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seeks awards of reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Reimbursement Class)

61. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

62. Labor Code section 2802(a) states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

63. Plaintiff and **Expense Reimbursement Class** members were not reimbursed for business expenses incurred in executing their duties under Defendants' employ. Specifically, Plaintiff and **Expense Reimbursement Class** members were required to purchase cold gear required for working in refrigerated trucks, including but not limited to, rubber boots, jackets, ski masks and gloves, all necessary to perform their duties under Defendants' employ. Plaintiff and **Expense Reimbursement Class** members were also required to purchase their own safety equipment, including but not limited to, gloves, reflective vest, hammer and hand tools, all necessary to perform their duties under Defendants' employ. However, Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for these necessary work-related expenses.

64. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of the Complaint and until the date of entry of judgment.

65. Plaintiff, on behalf of herself, and **Expense Reimbursement Class** members, seeks interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees and

costs pursuant to Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Plaintiff and UCL Class)

66. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

67. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

68. Business and Professions Code sections 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

69. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

70. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST and FOURTH causes of action herein.

71. Plaintiff lost money or property as a result of the aforementioned unfair competition.

72. Defendants have or may have acquired money by means of unfair competition.

73. Plaintiff is informed and believes, and thereupon alleges that by committing the Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225, 226.6, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 as well as applicable Wage Orders, which make it a misdemeanor to commit the violations alleged herein.

74. Defendants have committed criminal conduct through their policies and practices of, *inter alia*, failing to comport with their affirmative obligations as an employer to: pay for all hours worked; and reimburse for necessary business expenditures.

75. Defendants’ unlawful conduct as alleged in this Complaint amounts to and constitutes

1 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
2 Business and Professions Code section 17200 *et seq.* protects against unfair competition and allows
3 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
4 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
5 similarly situated persons in a class action proceeding.

6 76. As a result of Defendants' violations of the Labor Code during the applicable
7 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
8 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

9 77. Plaintiff is informed and believes that other similarly situated persons have been
10 subject to the same unlawful policies or practices of Defendants.

11 78. Due to the unfair and unlawful business practices in violation of the Labor Code,
12 Defendants have gained a competitive advantage over other comparable companies doing business in
13 the State of California that comply with their legal obligations.

14 79. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
15 relief for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
16 violates or is considered unlawful under any other state or federal law.

17 80. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
18 Plaintiff requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
19 Defendants, and each of them, and their agents and employees, from further violations of the Labor
20 Code and applicable Wage Orders.

21 81. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
22 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
23 Defendants, and each of them, and their agents and employees, from further violations of the Labor
24 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seeks
25 an order permanently enjoining Defendants, and each of them, and their respective agents and
26 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
27 Wage Orders.

28 82. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of

1 herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
2 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
3 and unfair business practices.

4 83. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
5 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
6 reasonable attorneys' fees in connection with their unfair competition claims.

7 84. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
8 herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
9 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
10 and unfair business practices.

11 85. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
12 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
13 reasonable attorneys' fees in connection with their unfair competition claims.

14 **SIXTH CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(Lab. Code §§ 2698, *et seq.*)**

17 86. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

18 87. During the applicable limitations period, Defendants have violated Labor Code §§
19 201, 202, 203, 204, 226, 226.3, 510, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197,
20 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

21 88. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself
22 and other current and former employees, to bring a representative civil action to recover civil penalties
23 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
24 maintained as a class action pursuant to Code of Civil Procedure section 382.

25 _____
26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
27 Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

1 89. Plaintiff, a former employee against whom Defendants committed one or more of the
2 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
3 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
4 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
5 Defendants within the state of California from one year prior to the date of this letter and continuing
6 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
7 “Aggrieved Employees”)

8 90. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
9 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
10 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
11 investigate.

12 91. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
13 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 510, 1174,
14 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 15 i. For violations of Labor Code §§ 201, 202, 203, 1174, 1194, 1198 and 2802,
16 one hundred dollars (\$100) for each employee per pay period for each initial
17 violation and two hundred dollars (\$200) for each employee per pay period for
18 each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- 19 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
20 (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 21 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
22 employee for each initial violation that was neither willful nor intentional, two
23 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
24 withheld from each employee, for each initial violation that was either willful
25 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
26 five percent (25%) of the amount unlawfully withheld from each employee,
27 for each subsequent violation, regardless of whether the subsequent violation
28 was either willful or intentional (penalties set by Labor Code § 210);

- iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);
- v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);
- vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);
- vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);
- viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
3 public, prays for relief and judgment against Defendants as follows:

- 4 a. An order that the action be certified as a class action;
5 b. An order that Plaintiff be appointed class representative;
6 c. An order that counsel for Plaintiff be appointed class counsel;
7 d. Unpaid wages;
8 e. Actual damages;
9 f. Liquidated damages;
10 g. Unreimbursed expenses;
11 h. Restitution;
12 i. Declaratory relief;
13 j. Pre-judgment interest;
14 k. Statutory penalties;
15 l. Civil penalties;
16 m. Costs of suit;
17 n. Reasonable attorneys' fees; and
18 o. Such other relief as the Court deems just and proper.

19
20 Dated: April 11, 2024

D.LAW, INC.

21
22 

23 _____
24 Emil Davtyan
25 David Yeremian
26 David Keledjian
27 Kevin Burns
28 Attorneys for Plaintiff
DURIEL CARR and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, the State of California, and the general public, hereby demands a jury trial on all issues so triable.

Dated: April 11, 2024

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
Kevin Burns
Attorneys for Plaintiff
DURIEL CARR and the putative class

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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.

KOOL PAK, LLC
c/o CT Corporation System
Agent for Service of Process
330 N. Brand Blvd
Glendale, CA 91203

[] (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.

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


Jordan Floyd