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on behalf of himself and others similarly situated

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County of Yolo,
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO**

GERIOLD LEVI, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

EAST PENN MANUFACTURING CO., a
Pennsylvania corporation; EXACT STAFF,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CV2024-1659

CLASS ACTION

Assigned for All Purposes To:

Hon. Timothy Fall

Dept.: 11

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code § 245 *et seq* and 246;
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; and
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff GERIOLD LEVI, (hereinafter "Plaintiff") on behalf of himself and all others
2 similarly situated (collectively, "Employees"; individually, "Employee") complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants EAST PENN
8 MANUFACTURING CO., a Pennsylvania corporation; EXACT STAFF, INC., a California
9 corporation, and DOES 1 through 50 (all defendants being collectively referred to herein as
10 "Defendants"). Plaintiff alleges that Defendants, and each of them, violated various provisions of
11 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and
12 California Business & Professions Code, and seeks redress, therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants' facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Yolo County, and in other nonexempt positions, throughout California
17 and, and consistently worked at Defendants' behest without being paid all wages due. More
18 specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants' control during their meal breaks. Defendants thus failed to pay
26 Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage
27 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.
28 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as

1 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
2 meal and rest periods as required by the Labor Code.

3 THE PARTIES

4 A. The Plaintiff

5 4. Plaintiff GERIOLD LEVI has resided in California and during the time period
6 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
7 the State of California.

8 B. The Defendants

9 5. Defendant EAST PENN MANUFACTURING CO., (“East Penn”) is a
10 Pennsylvania corporation with its principle executive offices in Lyon Station, Pennsylvania, and
11 has been listed as the employer on the wage statements issued to Plaintiff during the relevant time
12 period. East Penn lists an address in Lyon Station, Pennsylvania with the California Secretary of
13 State, and employs Plaintiff and the Employees in Yolo County, including at Defendants’ offices
14 and facilities in West Sacramento, California, and throughout California and Defendants conduct
15 business throughout California.

16 6. Defendant EXACT STAFF, INC., (“Exact”) is a California corporation with its
17 principle executive offices in Calabasas, California and has been listed as the employer on the
18 wage statements issued to Plaintiff during the relevant time period. Exact lists and address in
19 Calabasas, California with the California Secretary of State, and employs Plaintiff and the
20 Employees in Yolo County, including at Defendants’ offices and facilities in West Sacramento,
21 California, and throughout California and Defendants conduct businesses throughout California.

22 7. The true names and capacities, whether individual, corporate, associate, or
23 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
24 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
25 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
26 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
27 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
28 this Complaint to reflect the true names and capacities of the Defendants designated herein as

Does 1 through 50 when their identities become known.

8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Yolo County and Defendants maintain and operate company offices and facilities in Yolo County, and employ Plaintiff and other Class members in Yolo County and throughout California.

FACTUAL BACKGROUND

10. The Employees who comprise the Class and Collective, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff and Employees were not paid for the time that they worked off the clock without compensation by waiting in line to use the time clock, before clocking in and viewing training videos. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all

1 wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage
2 statements, all in violation of various provisions of the California Labor Code and applicable
3 Wage Orders.

4 11. During the course of Plaintiff and the Class members' employment with
5 Defendants, they were not paid all wages they were owed, including for all work performed and
6 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
7 labor budgets low.

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

19 13. As a result of the above described the daily work demands and pressures to work
20 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
21 Class members were not properly paid for all wages earned and for all wages owed to them by
22 Defendants, including when working more than eight (8) hours in any given day and/or more than
23 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
24 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
25 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
26 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
27 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
28 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the

1 Labor Code, applicable IWC Wage Orders.

2 14. Therefore, from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
5 by California Law.

6 15. Defendants also failed to pay Class Members all wages due and owing because
7 Defendants failed to incorporate shift differentials, non-discretionary bonuses and/or
8 commissions into the regular rate of pay. Contrary to the requirements of the Labor Code and
9 IWC Wage Orders under California law, Defendants did not incorporate these shift differentials,
10 non-discretionary bonuses and/or commissions paid to the Class Members into the regular rate of
11 pay Defendants used to calculate and pay for overtime, sick pay, and meal and rest break
12 premiums.

13 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay
15 Employees overtime compensation at premium overtime rates for all hours worked in excess of
16 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
17 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
18 sections of IWC Wage Orders.

19 17. As mentioned above, Defendants also paid Plaintiff and Employees non-
20 discretionary bonuses and/or commissions. However, upon information and belief, Defendants
21 failed to incorporate all remunerations, including shift differentials, non-discretionary bonuses
22 and/or commissions, into the calculation of the regular rate of pay for purposes of calculating the
23 overtime wage rate. Therefore, during times when Plaintiff and Employees worked overtime and
24 received shift differentials, non-discretionary bonuses and/or commissions, Defendants failed to
25 pay all overtime wages by paying a lower overtime rate than required.

26 18. Likewise, from at least four (4) years prior to the filing of this lawsuit and
27 continuing to the present, Defendants paid Employees non-discretionary bonuses and/or
28 commissions. However, upon information and belief, Defendants failed to incorporate all

1 remunerations, including shift differentials, non-discretionary bonuses and/or commissions, into
2 the calculation of the regular rate of pay for purposes of calculating sick pay. Therefore, during
3 times when Employees worked overtime and received shift differentials, non-discretionary
4 bonuses and/or commissions, Defendants failed to pay all sick pay by paying a lower overtime
5 rate than required.

6 19. Similarly, from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants paid Plaintiff and Employees non-discretionary bonuses
8 and/or commissions and/or shift differentials. However, upon information and belief, Defendants
9 failed to incorporate all remunerations, including non-discretionary bonuses, commissions and/or
10 shift differentials, into the calculation of the regular rate of from which vacation wages were
11 calculated and paid. Therefore, during times when Plaintiff and Employees worked overtime and
12 received non-discretionary bonuses, commissions and/or shift differentials, Defendants failed to
13 pay all vacation pay by paying a lower overtime rate than required.

14 20. Additionally from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants have regularly required Employees to work shifts in excess
16 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
17 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
18 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
19 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
20 Defendants failed to provide or deficiently provided.

21 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
22 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
23 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
24 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
25 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
26 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

27 22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
28 continuing to the present, Defendants have consistently failed to provide Employees with timely,

1 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

2 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
3 continuing to the present, Defendants have consistently failed to provide Employees with timely,
4 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

5 24. From at least four (4) years prior to the filing of this lawsuit and continuing to the
6 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
7 performance of their job duties for Defendants including, but not limited to, the purchase of steel
8 toe-boots and other gear included pocket knives which were necessary to perform their duties
9 under Defendants' employ in violation of Labor Code § 2802.

10 25. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to keep accurate time and wage
12 records as required by California wage-and-hour laws.

13 26. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
14 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
15 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
16 required by California wage-and-hour laws.

17 27. Further, the facilities where Defendants required Plaintiffs and the Employee Class
18 members to work were intolerably hot, and Plaintiffs and upon information and belief the
19 Employee Class members were concerned that they would suffer from heat-related injuries during
20 their work shifts. Defendants' management would not permit doors to be opened for security
21 reasons, and provided only a few fans which only circulated hot air. Employees were not provided
22 with sufficiently hygienic water or hydration choices, and were either limited in their ability to
23 bring their own water through security screening or were required to store it in a communal
24 refrigerator to keep it cold, where water or any other food items left were often taken by other
25 employees. By failing to maintain temperatures providing reasonable comfort levels consistent
26 with industry-wide standards for the nature and process of the work performed, Defendants
27 violated paragraph 15 of the applicable IWC Wage Orders, and are entitled to civil penalties as
28 appropriate.

28. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.4, 226.7, 245, *et seq.*, 246, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq.*, and 2802.

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

CLASS ALLEGATIONS

30. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, and have been employed by Defendants within the State of California.

31. Further, plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required

by California wage-and-hour laws.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

h. Subclass 8. Sick Pay Subclass. All class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures Subclass. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants which were necessary to perform their duties under Defendants' employ.

j. Subclass 10. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

33. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

34. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the

1 time period relevant to this lawsuit, employed more than 100 individuals were employed by
2 Defendant's within the State of California.

3 35. Accounting for employee turnover during the relevant time period increases this
4 number substantially. Plaintiff alleges that Defendants' employment records will provide
5 information as to the number and location of all class members.

6 **B. Commonality**

7 36. There are questions of law and fact common to the class that predominate over any
8 questions affecting only individual class members. These common questions of law and fact
9 include:

- 10 a. Whether Defendants failed to pay Employees minimum wages;
- 11 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 12 c. Whether Defendants failed to pay Employees overtime as required under Labor
13 Code § 510;
- 14 d. Whether Defendants failed to pay Employees vacation wages as required under
15 Labor Code § 227.3;
- 16 e. Whether Defendants failed to pay Employees sick pay as required under Labor
17 Code § 245
- 18 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
19 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
20 premium pay in lieu thereof;
- 21 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
22 Orders, by failing to provide Employees with requisite rest breaks or premium pay
23 in lieu thereof;
- 24 h. Whether Defendants violated Labor Code § 226(a);
- 25 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 26 j. Whether Defendants failed to reimburse Employees for necessary business
27 expenses;
- 28 k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay

wages and compensation due and owing at the time of termination of employment;

l. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;

m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

n. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

37. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

38. Plaintiff will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

39. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

40. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

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

1 42. Defendants failed to pay Employees minimum wages for all hours worked.
2 Defendants had a consistent policy of misstating Employees time records and failing to pay
3 Employees for all hours worked. Employees would work hours and not receive wages, including
4 as alleged above in connection with working during meal breaks, by waiting in line to use the
5 time clock, before clocking in and viewing training videos. Additionally, Defendants had a
6 consistent policy of failing to pay Employees for hours worked during alleged meal periods for
7 which Employees were consistently denied, as also addressed herein. Moreover, Defendants did
8 not pay Plaintiff and Employees at the applicable minimum wage for all hours worked.
9 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
10 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
11 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
12 wage pay.

13 43. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
14 states:

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

17 44. The applicable minimum wages fixed by the commission for work during the
18 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
19 therefore entitled to double the minimum wage during the relevant period.

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

22 Notwithstanding any agreement to work for a lesser wage, any
23 employee receiving less than the legal minimum wage or the legal
24 overtime compensation applicable to the employee is entitled to
25 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.

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

28 47. California Labor Code § 1194.2 also provides for the following remedies:

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

4 48. Defendants have the ability to pay minimum wages for all time worked and have
5 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
6 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

7 49. Wherefore, Employees are entitled to recover the unpaid minimum wages
8 (including double minimum wages), liquidated damages in an amount equal to the minimum
9 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
10 to California Labor Code § 1194(a).

11 **SECOND CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

16 51. By their conduct, as set forth herein, Defendants violated California Labor Code §
17 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
18 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
19 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
20 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
21 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
22 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
23 paying Employees wages for all hours worked including time off the clock specifically when
24 Plaintiff and Employees waited in line to use the time clock, before clocking in and viewing
25 training videos, and the uncompensated time included the time Employees worked off-the-clock
26 during meal periods. Employees regularly worked over 8 hours on a given day without receiving
27 overtime compensation.

28 52. Furthermore, on information and belief, Defendants did not pay Plaintiff and

1 Employees the correct overtime rate for the recorded overtime hours that they generated. In
2 addition to an hourly wage, Defendants paid Plaintiffs and Employees shift differentials,
3 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon
4 information and belief, Defendants failed to incorporate all remunerations, including shift
5 differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into
6 the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

7 53. Therefore, during times when Plaintiffs and Employees worked overtime and
8 received non-discretionary bonuses, commissions and/or shift differentials, Defendants failed to
9 pay all overtime wages by paying a lower overtime rate than required.

10 54. Defendants' failure to pay compensation in a timely fashion also constituted a
11 violation of California Labor Code § 204, which requires that all wages shall be paid
12 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
13 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
14 and overtime compensation earned by Employees. Each such failure to make a timely payment of
15 compensation to Employees constitutes a separate violation of California Labor Code § 204.

16 55. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

18 56. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
19 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
20 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
21 reasonable attorneys' fees and costs.

22 **THIRD CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 58. Employees regularly worked shifts greater than five (5) hours and greater than ten
28 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of

1 more than five (5) hours without providing him or her with a meal period of not less than thirty
2 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
3 meal period of not less than thirty (30) minutes.

4 59. Defendants failed to provide Employees with meal periods as required under the
5 Labor Code. Employees were consistently required to work through their meal periods which they
6 were consistently denied. Employees were also required to take meal periods after working well
7 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
8 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
9 period as required by law.

10 60. Moreover, Defendants failed to compensate Employees for each meal period not
11 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
12 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
13 employee a meal period in accordance with this section, the employer shall pay the employee one
14 hour of pay at the employee's regular rate of compensation for each workday that the meal period
15 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
16 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
17 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
18 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
19 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

20 61. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
21 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
22 period not provided or deficiently provided, a sum to be proven at trial.

23 **FOURTH CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 63. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the

1 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
2 not less than ten (10) minutes for each consecutive four (4) hour shift.

3 64. Defendants failed to provide Employees with timely rest breaks of not less than ten
4 (10) minutes for each consecutive four (4) hour shift.

5 65. Moreover, Defendants failed to compensate Employees for each rest period not
6 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
7 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
8 accordance with this section, the employer shall pay the employee one hour of pay at the
9 employee's regular rate of compensation for each workday that the rest period is not provided.
10 Defendants failed to compensate the Employees in the Class for each rest period not provided or
11 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
12 Order. Additionally, as detailed above, when Defendants did pay meal period premiums, they did
13 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
14 or by otherwise incorrectly calculating the regular rate.

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

18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO PAY VACATION WAGES**
20 **(Against All Defendants)**

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

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

27 69. Defendants paid non-discretionary bonuses, commissions and/or shift differentials
28 to Employees but Defendants failed to include these forms of remuneration in the regular rate of

1 pay upon which vacation wages were calculated and paid.

2 70. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
3 to Labor Code § 227.3.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

6 **(Against All Defendants)**

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

9 72. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
10 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
11 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
12 with the pay calculation under California Labor Code § 246(1).

13 73. Defendants paid non-discretionary bonuses, commissions and/or shift differentials
14 to Employees but Defendants failed to include these forms of remuneration in the regular rate of
15 pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick
16 time due when sick time is used according to the requirements set forth in California Labor Code §
17 246(1), Defendants paid sick leave to Employees at a lower rate, in violation of the law.

18 74. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
19 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

22 **IN VIOLATION OF LABOR CODE § 2802**

23 **(Against All Defendants)**

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

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

77. Employees incurred necessary expenditures in the performance of their job duties for Defendants, cell phone usage which were necessary to perform their duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

78. As a result of the unlawful acts of Defendants, Employees have been deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

80. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

81. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included non-discretionary bonuses, commissions and/or shift differentials earned, and the total amount of compensation of

1 their Employees. Specifically, Employees' wage statements did not include: the total hours
2 worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each
4 such rate in violation of Labor Code § 226 (a)(9). Thus, the wage statements provided to
5 Employees were confusing and required Employees to engage in discovery and refer to outside
6 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
7 Employees.

8 82. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
9 Employees suffered injuries, including among other things confusion over whether they received
10 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
11 forcing them to make mathematical computations to analyze whether the wages paid in fact
12 compensated them correctly for all hours worked.

13 83. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
14 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
15 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
16 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
17 award of costs and reasonable attorneys' fees.

18 84. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
19 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
20 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
21 employee for each pay period.

22 85. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
23 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
24 shown according to proof.

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

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

87. 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.

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

89. Defendants are also required by the California Labor Code § 1198 and the applicable Wage Order to maintain a tracking system that accurately records the times at which Employees works.

90. Defendants have maintained a common unlawful policy and practice of failing to accurately record meal breaks. At all times relevant hereto, Defendants had maintained an unlawful uniform policy and practice of editing the time records entered by its Employees to change the actual meal break times recorded by the employee, in order to make it appear as though Defendants' Employees took timely and compliant meal breaks.

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

92. 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.

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

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

94. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

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

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

97. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees 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 BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(Against All Defendants)

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

99. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

100. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

1 101. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
2 business practices.

3 102. Wage-and-hour laws express fundamental public policies. Paying employees their
4 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
5 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
6 to enforce minimum labor standards, to ensure that employees are not required or permitted to
7 work under substandard and unlawful conditions, and to protect law-abiding employers and their
8 employees from competitors who lower costs to themselves by failing to comply with minimum
9 labor standards.

10 103. Defendants have violated statutes and public policies. Through the conduct alleged
11 in this Complaint Defendants have acted contrary to these public policies, have violated specific
12 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
13 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
14 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
15 guaranteed to all employees under the law.

16 104. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
17 violation of the Business & Professions Code § 17200 *et seq.*

18 105. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
19 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
20 care should have known that their conduct was unlawful; therefore their conduct violates the
21 Business & Professions Code § 17200 *et seq.*

22 106. As a proximate result of the above-mentioned acts of Defendants, Employees have
23 been damaged, in a sum to be proven at trial.

24 107. Unless restrained by this Court Defendants will continue to engage in such
25 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
26 make such orders or judgments, including the appointment of a receiver, as may be necessary to
27 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
28 prohibited by the Business & Professions Code, including but not limited to the disgorgement of

1 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
2 failed to pay.

3 **TWELFTH CAUSE OF ACTION**
4 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**
5 **(Against All Defendants)**

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

8 109. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
9 2699(c)(1) in that they suffered the violations alleged in this Complaint and were employed by the
10 alleged violators, Defendants.

11 110. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
12 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
13 penalty provisions, without limitation, based on the following California Labor Code sections:
14 201, 202, 203, 204, 210, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
15 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

16 111. The penalties shall be allocated as follows: 65% to the Labor and Workforce
17 Development Agency (LWDA) and 35% to the affected employee.

18 112. Employees also seek any and all penalties and remedies set forth in Labor Code §
19 558, which states:

20 (a) Any employer or other person acting on behalf of an employer who
21 violates, or causes to be violated, a section of this chapter or any provision
22 regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial
24 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
25 which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
each underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages. (3)
Wages recovered pursuant to this section shall be paid to the affected employee.

26 (b) If upon inspection or investigation the Labor Commissioner determines that
27 a person had paid or caused to be paid a wage for overtime work in violation of any
28 provision of this chapter, or any provision regulating hours and days of work in any
order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for

1 citations or civil penalties issued by the Labor Commissioner for a violation of this
2 chapter shall be the same as those set out in Section 1197.1.

3 (c) The civil penalties provided for in this section are in addition to any other
4 civil or criminal penalty provided by law.

5 113. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
7 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
8 for each violation in a subsequent citation, for which the employer fails to provide the employee a
9 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
10 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

11 114. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
12 LWDA and Defendants postmarked on June 20, 2024. The LWDA has not provided notice of its
13 intent to investigate the alleged violations within 65 calendar days of the postmark date of the
14 letters.

15 **RELIEF REQUESTED**

16 WHEREFORE, Plaintiff prays for the following relief:

- 17 1. For an order certifying this action as a class action;
- 18 2. For compensatory damages in the amount of the unpaid minimum wages for work
19 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
20 the filing of this action, as may be proven;
- 21 3. For liquidated damages in the amount equal to the unpaid minimum wage and
22 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 23 4. For compensatory damages in the amount of the hourly wage made by Employees
24 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
25 years prior to the filing of this action, as may be proven;
- 26 5. For compensatory damages in the amount of the hourly wage made by Employees
27 for each day requisite rest breaks were not provided or were deficiently provided where no
28 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may

1 be proven;

2 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

3 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

4 8. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

5 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
6 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

7 10. For penalties pursuant to Labor Code § 227.3, as may be proven;

8 11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

9 12. For penalties pursuant to Labor Code § 1174.5, as may be proven;

10 13. For restitution for unfair competition pursuant to Business & Professions Code
11 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

12 14. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

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

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

19 17. For all general, special, and incidental damages as may be proven;

20 18. For an award of pre-judgment and post-judgment interest;

21 19. For an award providing for the payment of the costs of this suit;

22 20. For an award of attorneys' fees; and

23 21. For such other and further relief as this Court may deem proper and just.

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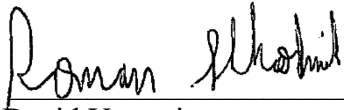
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1 DATED: January 15, 2025

D.LAW, INC.

2
3 By 
4 David Yeremian
5 Roman Shkodnik
6 Amanda Fazio
7 Attorneys for Plaintiff
8 GERIOLD LEVI
9 and the putative class
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DATED: January 15, 2025

By 
David Yeremian
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
GERIOLD LEVI
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 450 N Brand Blvd., Suite 840, Glendale, CA 91203.

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I **(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.

[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.


Kathryn Perez