

October 31, 2024

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed Defendants)

Oasis Outsourcing, LLC
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Oasis Outsourcing, LLC
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California Distribution Center, LLC
George Martinez, Agent for Service of Process
4271 Edison Ave.
Chino, CA 91710
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California Distribution Center, LLC
240 Wall Street 201
West Long Branch, NJ 07764
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Re: Labor Code § 2699 Penalties
Prokopovich v. California Distribution Center, LLC et al.

Gentlepersons:

This office represents Plaintiff Ivan Micah Prokopovich (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of



California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq*, and 2810.3 provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq*.

The purpose of this letter is twofold: to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, California Distribution Center, LLC, Oasis Outsourcing, LLC, HR Outsourcing, LLC and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in San Bernardino Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff’s class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

The second purpose of this Notice letter is to provide Oasis Outsourcing, LLC (“OO”) and HR Outsourcing, LLC (“HR”) with notice pursuant to Labor Code §2810.3(d) that, upon the running of the 30-day notice period under Section 2810.3 and the running of the PAGA Notice period addressed below, Plaintiff will be adding claims under the Act against Defendants through an appropriate amendment to the attached Class Action Complaint. Plaintiff is asserting against Defendants all claims asserted in the Class Action Complaint, including claims for civil penalties and other relief under the PAGA as articulated in this Notice Letter.

Defendant California Distribution Center, LLC (“CDC”) is a privately held company that is a distributor. CDC supplements its labor force by using temporary workers supplied by various temporary staffing agencies, such as named defendants OO and HO. Plaintiff has alleged that these Defendants jointly employ Plaintiff and the putative Class Members and Aggrieved Employees, including those placed by OO and HO and any other Labor Contractors (collectively “staffing companies”) to perform work at CDC’s facilities. Plaintiff also asserts that the putative Class Members and Aggrieved Employees encompass both direct hires from CDC and those whom the staffing companies placed to work at CDC’s facilities, as they are all subject to uniform policies and practices and share common contentions as to the alleged violations that have arisen from them.



Plaintiff has therefore alleged that Defendant CDC is and has been a client employer within the definition of Labor Code § 2810.3 and shares with OO and HO and the other staffing companies, i.e., the labor contractors under Labor Code § 2810.3, all civil legal responsibility and civil liability for failure to pay all wages earned and related and derivative claims by Plaintiff and the putative Class Members and Aggrieved Employees. This correspondence also satisfies the notice requirements under Section 2810.3, and the following details and liability theories summarize Plaintiff's claims and provide notice to OO and HO and the other staffing companies under Labor Code 2810.3(d) and firmly establish they are and have been joint employers of the Class members and the Aggrieved Employees with CDC.

This correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in San Bernardino County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees. Plaintiff is also informed and believes that there are other aggrieved employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Aggrieved Employees were required to work during their meal periods without pay. Thus, Aggrieved Employees were required to work hours without wages.

Additionally, Aggrieved Employees were forced to work "pre-shift" and "post-shift" without compensation by picking up boxes prior to clocking. Aggrieved Employees would also have to have to close all warehouse doors and container doors and shut down all machinery after clocking out. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also failed to pay Aggrieved Employees proper overtime wages. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week including "pre-shift" and "post-shift". However, Aggrieved Employees were not always paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, employees were required to work through their meal periods which they were consistently denied. Moreover, as discussed above, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly,



Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Plaintiff and Aggrieved Employees were not paid for whatever rest breaks they were provided.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a), and Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Defendants failed to maintain a reasonable temperature in their facilities and to take all feasible measures to reduce excessive heat and/or humidity in their facilities resulting in Aggrieved Employees working in unreasonably hot temperatures in violation of Wage Order 9, paragraph 15(A)-(B).

Plaintiff and Aggrieved Employees complain of the following violations:

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.



California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were required to work during their meal periods without pay. Furthermore, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Aggrieved Employees were forced to work “pre-shift” and “post-shift” without compensation by picking up boxes prior to clocking. Aggrieved Employees would also have to have to close all warehouse doors and container doors and shut down all machinery after clocking out.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees. Moreover, Aggrieved Employees were not paid all wages they were owed, including for all work performed (resulting in “off the clock” work) and for all overtime hours worked.

During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.



In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, as discussed above including the time they worked off the clock without compensation Aggrieved Employees were required to work during meal periods causing Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week including "pre-shift" and "post-shift" hours, entitling Plaintiff and Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.



When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and 512 Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.



Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1)..

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements. Also, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) "[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." Defendants' did not allow Aggrieved Employees to leave the Defendants' location and this is directly at odds with *Augustus*, as it "tethered [employees] by time and policy to a particular location" and therefore fails to relieve employees of all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269. Additionally, Defendants' policy of requiring the Aggrieved Employees to keep their cell phones on throughout their rest breaks and to respond to any emergencies or other situations that needed to be addressed prevented Aggrieved Employees from taking their breaks.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. 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. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense



involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculate these premiums by not including all form of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage



statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.



Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages 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.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unreasonable and Excessive Warehouse Temperatures

Under the IWC's Wage Order 9, paragraph 15(A), "[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed." During their employ with Defendants, Plaintiff and Aggrieved Employees worked in facilities with unreasonably excessive temperatures due to Defendants' failure to "take all feasible means to reduce such excessive heat" in violation of Wage Order 9, paragraph 15(A)-(B).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above



addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq*, and 2810.3, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor



Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

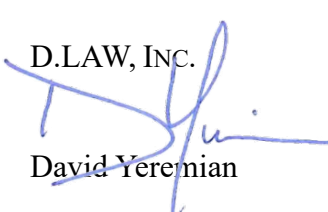
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against California Distribution Center, LLC, Oasis Outsourcing, LLC, HR Outsourcing, LLC, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.



David Yeremian

Cc: Above listed California Distribution Center, LLC, Oasis Outsourcing, LLC, and HR Outsourcing, LLC by Certified Mail

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Attorneys for Plaintiff
IVAN MICAH PROKOPOVICH
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

IVAN MICAH PROKOPOVICH, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

CALIFORNIA DISTRIBUTION CENTER,
LLC, a California limited liability company;
OASIS OUTSOURCING, LLC, a Florida
corporation; HR OUTSOURCING, LLC, a
Florida corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

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. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
7. Penalties Pursuant to Labor Code § 203;
8. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff IVAN MICAH PROKOPOVICH, (hereinafter “Plaintiff”) on behalf of himself
2 and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains
3 of Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all similarly situated current
6 and former employees within the State of California who, at any time four (4) years prior to the
7 filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants
8 CALIFORNIA DISTRIBUTION CENTER, LLC, a California Limited Liability Company,
9 OASIS OUTSOURCING, LLC, a Florida corporation; HR OUTSOURCING, LLC, a Florida
10 corporation, and DOES 1 through 50 (all defendants being collectively referred to herein as
11 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
12 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
13 California Business & Professions Code, and seeks redress.

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

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
26 and to perform work and remain under Defendants’ control during their meal and rest breaks,.
27 Defendants also failed to provide Plaintiff and the Class with lawful meal periods and failed to
28 authorize and permit them to take all required rest breaks, as Employees were not provided with

1 the opportunity to take uninterrupted and duty-free rest breaks and meal breaks or Defendants
2 failed to timely provide them as required by the Labor Code and applicable IWC Wage Orders.
3 Plaintiff and the Class members were also compelled to clock out for meal periods and return to
4 work off the clock or to otherwise work through meal periods and rest breaks while remaining
5 under Defendants' control due to the difficult work requirements and management demands
6 placed upon them. Defendants thus failed to pay Plaintiff and the Class members for all hours
7 worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class
8 from learning of these unlawful pay practices.

9 **THE PARTIES**

10 **A. The Plaintiff**

11 4. Plaintiff IVAN MICAH PROKOPOVICH has resided in California and during the
12 time period relevant to this Complaint was employed by Defendants as a non-exempt hourly
13 employee within the State of California at Defendants' facilities and offices in Chino, California.

14 **B. The Defendants**

15 5. Defendant CALIFORNIA DISTRIBUTION CENTER ("CDC") is a California
16 limited liability company with its principle executive offices in West Long Branch, New Jersey,
17 and has been listed as the employer on Plaintiff's paystubs during the relevant time period. CDC
18 lists an address in California address in West Long Branch, New Jersey with the California
19 Secretary of State, and employs Plaintiff and the Class members in San Bernardino County,
20 including at Defendants' offices and facilities in Chino, California, and throughout California and
21 Defendants conduct business throughout California.

22 6. Defendant OASIS OUTSOURCING, LLC ("OO") is a Florida corporation with its
23 principle executive offices in West Palm Beach, Florida, and has been listed as the employer on
24 Plaintiff's paystubs during the relevant time period. OO lists an address in Florida address in West
25 Palm Beach, Florida with the California Secretary of State, and employs Plaintiff and the Class
26 members in San Bernardino County, including at Defendants' offices and facilities in Chino,
27 California, and throughout California and Defendants conduct business throughout California.

28 7. Defendant HR OUTSOURCING, LLC ("HO") is a Florida corporation with its

1 principle executive offices in West Palm Beach, Florida, and has been listed as the employer on
2 Plaintiff's paystubs during the relevant time period. HO lists an address in Florida address in West
3 Palm Beach, Florida with the California Secretary of State, and employs Plaintiff and the Class
4 members in San Bernardino County, including at Defendants' offices and facilities in Chino,
5 California, and throughout California and Defendants conduct business throughout California.

6 8. Additionally, under California Labor Code § 2810.3, CDC shares with OO and HO,
7 and any other staffing agency it uses, in civil legal responsibility for all workers supplied to BIO
8 for their collective failure to pay all earned wages. California Labor Code § 2810.3 requires that
9 "A client employer shall share with a labor contractor all civil legal responsibility and civil
10 liability for all workers supplied by that labor contractor for...the payment of wages." A "labor
11 contractor" (here, OO and HO), is defined as "an individual or entity that supplies, either with or
12 without a contract, a client employer with workers to perform labor within the client employer's
13 usual course of business." "Client employer" (here CDC) is defined as "a business entity,
14 regardless of its form, that obtains or is provided workers to perform labor within its usual course
15 of business from a labor contractor." Upon information and belief, Defendant CDC is and has been
16 a client employer within the definition of Labor Code § 2810.3 and shares with OO and HO, the
17 labor contractor, all civil legal responsibility and civil liability for failure to pay all wages earned
18 by Plaintiff and the Class Members.

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

27 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried

1 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
2 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
3 all respects as the employers or joint employers of Employees. Defendants, and each of them,
4 exercised control over the wages, hours or working conditions of Employees, or suffered or
5 permitted Employees to work, or engaged, thereby creating a common law employment
6 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
7 employed Employees.

8 **JURISDICTION AND VENUE**

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

18 **FACTUAL BACKGROUND**

19 12. The Employees who comprise the Class, including Plaintiff, are nonexempt
20 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
21 work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff
22 and the Class members were either not paid by Defendants for all hours worked or were not paid
23 at the appropriate overtime rates. Specifically, Defendants required Employees to work “pre-shift”
24 and “post-shift”, in excess of their scheduled shifts for which they were not paid wages as
25 Employees were required to spend working hours under the control of Defendants by Employees
26 and were not compensated for this time.

27 13. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class
28 members all wages due and owing, failed to provide meal and rest breaks, and failed to furnish

1 accurate wage statements, all in violation of various provisions of the California Labor Code and
2 applicable Wage Order provisions.

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

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

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

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

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

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

14 19. 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 hourly rate of pay, for each meal period that
20 Defendants failed to provide or deficiently provided.

21 20. 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.

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

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

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

24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, and 1199.

25. 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

26. Plaintiff brings this class action on behalf of himself an 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, as non-exempt, hourly employees within the State of California.

27. 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. 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.

h. Subclass 8. 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.

28. 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.

29. 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

30. 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, during the time period relevant to this lawsuit, Defendants employed more than 100 individuals within the State of California.

31. Accounting for employee turnover during the relevant time period increases this

number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- f. Whether Defendants failed to keep required payroll records under Labor Code §§ 1174 and 1174.5;
- g. Whether Defendants violated Labor Code § 226(a);
- h. 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;
- i. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- j. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*;

C. Typicality

33. 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

1 law, as alleged herein.

2 **D. Adequacy of Representation**

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

6 **E. Superiority of Class Action**

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

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

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Against All Defendants)**

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

20 38. Defendants failed to pay Employees minimum wages for all hours worked.
21 Defendants had a consistent policy of misstating Employees time records and failing to pay
22 Employees for all hours worked. Specifically, Defendants had a consistent policy of failing to
23 pay Employees for hours worked during alleged meal periods for which Employees were
24 consistently denied. (see infra). Defendants also required Employees to work "pre-shift" and
25 "post-shift", in excess of their scheduled shifts for which they were not paid wages as Employees
26 were required to spend working hours under the control of Defendants by picking up boxes prior
27 to clocking. Employees would also have to have to close all warehouse doors and container doors
28 and shut down all machinery after clocking out. California Labor Code § 1197, entitled "Pay of

1 Less Than Minimum Wage” states:

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

5 39. The applicable minimum wages fixed by the commission for work during the
6 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
7 therefore entitled to double the minimum wage during the relevant period.

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

10 Notwithstanding any agreement to work for a lesser wage, any
11 employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of
14 this minimum wage or overtime compensation, including interest
15 thereon, reasonable attorney’s fees and costs of suit.

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

18 42. California Labor Code § 1194.2 also provides for the following remedies:

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 46. By their conduct, as set forth herein, Defendants violated California Labor Code §
7 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
8 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
9 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
10 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
11 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
12 (8) hours on any seventh day of work in a workweek.

13 47. Defendants had a consistent policy of not paying Employees wages for all hours
14 worked including time Employees were consistently required to work “pre-shift” and “post-shift”
15 hours, in excess of their eight-hour shift in a given work day as Employees had to clean boxes
16 prior to clocking. Employees would also have to have to close all warehouse doors and container
17 doors and shut down all machinery after clocking out. Employees were often not properly
18 compensated, nor were they paid overtime rates for all hours worked in excess of eight hours in a
19 given day, and/or forty hours in a given week.

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

26 49. Employees have been damaged by these violations of California Labor Code §§
27 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

28 50. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the

relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

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

54. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7.

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

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

1 full herein.

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

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

7 59. Moreover, Defendants did not compensate Employees with an additional hour of
8 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
9 with adequate rest breaks, as required under Labor Code § 226.7.

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

13 **FIFTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226(a)**
15 **(Against All Defendants)**

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

23 62. Defendants failed to provide Employees with accurate itemized wage statements in
24 writing, as required by the Labor Code. Specifically, the wage statements do not show the
25 overtime rate, a wage statement is provided along with an additional document that contains the
26 daily and weekly hours and overtime (this information is not on the wage statement), and the wage
27 statements show the start date of the pay period is the same as the end date. Additionally, the wage
28 statements given to Employees by Defendants failed to accurately account for wages, overtime,

1 and premium pay for deficient meal periods and rest breaks, all of which Defendants knew or
2 reasonably should have known were owed to Employees, as alleged hereinabove.

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

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

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

15 **AND 1174.5**

16 **(Against All Defendants)**

17 65. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
18 full herein.

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

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

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

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

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

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

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

72. 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.

73. 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.

EIGHTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.
(Against All Defendants)

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

75. 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.

76. 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

1 relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

23 82. As a proximate result of the above-mentioned acts of Defendants, Employees have
24 been damaged, in a sum to be proven at trial. Unless restrained by this Court Defendants will
25 continue to engage in such unlawful conduct as alleged above. Pursuant to the Business &
26 Professions Code this Court should make such orders or judgments, including the appointment of
27 a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of
28 any unlawful or deceptive practice prohibited by the Business & Professions Code, including but

1 not limited to the disgorgement of such profits as may be necessary to restore Employees to the
2 money Defendants have unlawfully failed to pay.

3 **RELIEF REQUESTED**

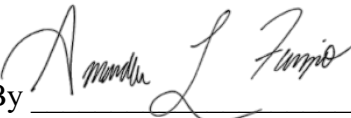
4 WHEREFORE, Plaintiff prays for the following relief:

- 5 1. For an order certifying this action as a class action;
- 6 2. For compensatory damages in the amount of the unpaid minimum wages for work
7 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
8 the filing of this action, as may be proven;
- 9 3. For liquidated damages in the amount equal to the unpaid minimum wage and
10 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 11 4. For compensatory damages in the amount of all unpaid wages, including overtime
12 and double-time pay, as may be proven;
- 13 5. For compensatory damages in the amount of the hourly wage made by Employees
14 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
15 years prior to the filing of this action, as may be proven;
- 16 6. For compensatory damages in the amount of the hourly wage made by Employees
17 for each day requisite rest breaks were not provided or were deficiently provided where no
18 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
19 be proven;
- 20 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 21 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
22 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 23 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 24 10. For restitution for unfair competition pursuant to Business & Professions Code
25 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 26 11. For an order enjoining Defendants and their agents, servants, and employees, and
27 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
28 duties adumbrated in this Complaint;

12. For all general, special, and incidental damages as may be proven;
13. For an award of pre-judgment and post-judgment interest;
14. For an award providing for the payment of the costs of this suit;
15. For an award of attorneys' fees; and
16. For such other and further relief as this Court may deem proper and just.

DATED: October 31, 2024

D.LAW, INC.

By 

Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
IVAN MICAH PROKOPOVICH
and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: October 31, 2024

D.LAW, INC.

By 
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
IVAN MICAH PROKOPOVICH
and the putative class