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**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
Catanzaro v. Delta Air Lines, Inc., et al.
LWDA Case No.:**

Gentlepersons:

This office represents Plaintiff Zachary Catanzaro (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is 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, Delta Air Lines, Inc., Delta Air Lines Inc Department 216, Delta, 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 Los Angeles County 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.

Relevant Facts

Aggrieved Employees, including Plaintiff, were 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 Plaintiff and Aggrieved Employees minimum wages for all hours worked.

Additionally, Plaintiff and Aggrieved Employees were not paid for the time that they were under Defendants’ control while working without compensation by waiting to access timeclocks and working through meal periods. Additionally, Defendants required Plaintiffs and Employees to use their cell phones to respond to work demands outside of scheduled work hours, including requiring Plaintiffs and Employees to respond to calls and texts about scheduling, and Plaintiff and Employees were not compensated for this time. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

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

Additionally, Defendants did not pay Plaintiff and Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and Aggrieved Employees nondiscretionary commissions, incentive



pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiff and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay were calculated and paid.

Additionally, Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands and otherwise requiring Plaintiff and Aggrieved Employees to remain under Defendants' control during their meal periods, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and 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. Further, Defendants had a consistent policy and practice of rounding the time entries for Plaintiff's and Aggrieved Employees' meal periods. Rather than precisely tracking the time that Plaintiff and Aggrieved Employees clocked in and out for their meal periods, Defendants imposed a policy and practice of rounding the time entries such that the meal periods were shown to be exactly thirty or thirty-one minutes. Plaintiff alleges that this policy is not neutral and was done to the detriment of Plaintiff and Aggrieved Employees in that the rounded time entries undercounted the amount of time Plaintiff and Aggrieved Employees worked. As a result, Plaintiff and Aggrieved Employees were systematically undercompensated. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Plaintiff and 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, Plaintiff and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on duty due to Defendants' policy and practice of interrupting rest breaks with work demands and otherwise requiring Plaintiff and Aggrieved Employees to remain under Defendants' control during their meal periods. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants



failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Plaintiff and Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, nondiscretionary bonuses, and/or shift differentials earned, and the total amount of compensation of Plaintiff and Employees. Additionally, the wage statements given to Plaintiff and Employees, by Defendants, failed to include the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiff and Aggrieved Employees were confusing and required Plaintiff and Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by Plaintiff and the Aggrieved Employees. Moreover, the wage statements given to Plaintiff and Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked.

Moreover, Defendants failed to pay Plaintiff and 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.

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, including as alleged above in connection with working through meal periods and working without compensation by waiting to access timeclocks. Additionally, Defendants required Plaintiffs and Employees to use their cell phones to respond to work demands outside of scheduled work hours, including requiring Plaintiffs and Employees to respond to calls and texts about scheduling, and Plaintiff and Employees were not compensated for this time. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage 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 Plaintiff and Aggrieved Employees.

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 Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time discussed above, including the time they were under Defendants' control while working through meal periods, working without compensation by waiting to access timeclocks as well as answering work-related calls and texts outside scheduled work hours, caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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. 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 Aggrieved Employees a reasonable protocol for correcting time records when Aggrieved Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employees' 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 Aggrieved 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 and Penalties

Defendants have regularly required Plaintiff and 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, Plaintiff and Aggrieved Employees were forced to incur shortened meal periods, were provided with meal periods late and well after the fifth hour of work, could not be relieved to take their meal periods, or were required to remain on-duty at all times and were unable to take off-duty meal periods or were otherwise not provided with the opportunity to take required meal periods. Furthermore, Defendants had a consistent policy and practice of rounding the time entries for Plaintiff's and Aggrieved Employees' meal periods. Rather than precisely tracking the time that Plaintiff and Aggrieved Employees clocked in and out for their meal periods, Defendants imposed a policy and practice of rounding the time entries such that the meal periods were shown to be exactly thirty or thirty-one minutes. Plaintiff alleges that this policy is not neutral and was done to the detriment of Plaintiff and Aggrieved Employees in that the rounded time entries undercounted the amount of time Plaintiff and Aggrieved Employees worked. As a result, Plaintiff and Aggrieved Employees were systematically undercompensated.



On the occasions when Plaintiff and Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendants' control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. 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. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Plaintiff and 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. Furthermore, Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiff and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

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 Plaintiff and 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 Plaintiff and Aggrieved Employees to remain under Defendants' control. Furthermore, Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiff and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

Defendants also failed to pay Plaintiff and 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, Plaintiff and 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 Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiff and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Comply with Labor Code §§ 245 *et seq.* and 246

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Plaintiff and Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed to compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiff and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(l), Defendants paid sick leave to Plaintiff and Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.*, 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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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), Plaintiff and 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 Plaintiff and Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Plaintiff and Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and reflected incorrect hours worked. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the total amount of compensation of Plaintiff and Aggrieved Employees. The wage statements given to Plaintiff and Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Plaintiff and Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiff and Aggrieved Employees were confusing and required Plaintiff and Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Plaintiff and Aggrieved Employees.

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 Plaintiff and 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 Plaintiff and Aggrieved Employees, as well as the meal and rest periods taken by Plaintiff and Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Plaintiff and 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. Therefore, when Plaintiff and 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 Plaintiff and 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 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 §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by requiring off the clock work, by not providing proper meal and rest periods, by failing to provide accurate itemized wage statements, and by 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 Plaintiff and Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly 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 forgoing, 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, including Plaintiff, 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 or 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, 202, 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).

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, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*, 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) **Failure to Provide Paid Sick Days:** For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and



246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(d) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) 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, ...";

(f) 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);

(g) 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 Delta Air Lines, Inc., Delta Air Lines Inc Department 216, Delta, 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.



Mason Doidge

Cc: Delta Air Lines, Inc., Delta Air Lines Inc Department 216, and Delta by Certified Mail

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Attorneys for Plaintiff ZACHARY CATANZARO,
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ZACHARY CATANZARO, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC., a Delaware
corporation; DELTA AIR LINES INC
DEPARTMENT 216, an entity of unknown
form; DELTA, an entity of unknown form; 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. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et*
seq. and 246;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
9. Penalties Pursuant to Labor Code § 203; and
10. Violation of Business & Professions Code §
17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ZACHARY CATANZARO, (hereinafter “Plaintiff”) on behalf of himself and all
2 others 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 employees by Defendants DELTA AIR LINES,
8 INC., a Delaware corporation; DELTA AIR LINES INC DEPARTMENT 216, an entity of
9 unknown form; DELTA, an entity of unknown form; and DOES 1 through 50 (all defendants
10 being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each
11 of them, violated various provisions of the California Labor Code, relevant orders of the Industrial
12 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress,
13 therefore.

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

25 3. Defendants required Plaintiff and the Employees in the Class to perform work
26 while remaining under Defendants’ control before and after being on the clock for their daily work
27 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked and
28 provided them with inaccurate wage statements that prevented Plaintiff and the Class from

1 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
2 with lawful meal and rest periods, as employees were not provided with the opportunity to take
3 timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

4 **THE PARTIES**

5 **A. The Plaintiff**

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

9 **B. The Defendants**

10 5. Defendant DELTA AIR LINES, INC. is a Delaware corporation with its principle
11 executive offices in Atlanta, Georgia and has been listed as the employer on Plaintiff's wage
12 statements during the relevant time period. DELTA AIR LINES, INC. lists a mailing address in
13 Atlanta, Georgia with the California Secretary of State and employs Plaintiff and the Class
14 members at Defendants' offices and facilities in Los Angeles, California, and throughout
15 California and conducts business throughout California.

16 6. Defendant DELTA AIR LINES INC DEPARTMENT 216 is an entity of unknown
17 form and has been listed as the employer on Plaintiff's wage and tax statement during the relevant
18 time period. DELTA AIR LINES INC DEPARTMENT 216 does not list a mailing address with
19 the California Secretary of State but upon information and belief employs Plaintiff and the Class
20 members at Defendants' offices and facilities in Los Angeles, California, and throughout
21 California and conducts business throughout California.

22 7. Defendant DELTA is an entity of unknown form and has been listed as the
23 employer on Plaintiff's employment documents during the relevant time period. DELTA does not
24 list a mailing address with the California Secretary of State but upon information and belief
25 employs Plaintiff and the Class members at Defendants' offices and facilities in Los Angeles,
26 California, and throughout California and conducts business throughout California.

27 8. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

1 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
2 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
3 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
4 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
5 this Complaint to reflect the true names and capacities of the Defendants designated herein as
6 Does 1 through 50 when their identities become known.

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

16 **JURISDICTION AND VENUE**

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

26 **FACTUAL BACKGROUND**

27 11. The Employees who comprise the Class and Collective, including Plaintiff, are
28 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire

1 Employees who work in nonexempt positions at the direction of Defendants in the State of
2 California. Plaintiff and the Class members were either not paid by Defendants for all hours
3 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
4 Plaintiff and Employees were not paid for the time that they were under Defendants' control
5 working without compensation by waiting to access timeclocks and working through meal
6 periods. Additionally, Defendants required Plaintiffs and Employees to use their cell phones to
7 respond to work demands outside of scheduled work hours, including requiring Plaintiffs and
8 Employees to respond to calls and texts about scheduling, and Plaintiff and Employees were not
9 compensated for this time. Plaintiff also contends that Defendants failed to pay Plaintiff and the
10 Class members all wages due and owing, failed to provide meal and rest breaks, and failed to
11 furnish accurate wage statements, all in violation of various provisions of the California Labor
12 Code and applicable Wage Orders.

13 12. During the course of Plaintiff and the Class members' employment with
14 Defendants, they were not paid all wages they were owed, including for all work performed and
15 for all overtime hours worked and were forced to work during their meal periods. Defendants also
16 failed to maintain timekeeping records for Plaintiff that would permit him to discover the nature
17 and extent of Defendants' unlawful timekeeping practices. Additionally, Defendants paid
18 Plaintiff and Employees nondiscretionary commissions, incentive pay, nondiscretionary bonuses,
19 and/or shift differentials. However, upon information and belief, Defendants failed to incorporate
20 all remunerations, including nondiscretionary commissions, incentive pay, nondiscretionary
21 bonuses, and/or shift differentials, into the calculation of the regular rate of pay for purposes of
22 calculating the overtime wage rate. Therefore, during times when Plaintiff and Employees
23 worked overtime and received nondiscretionary commissions, incentive pay, nondiscretionary
24 bonuses, and/or shift differentials, Defendants failed to pay all overtime wages by paying a lower
25 overtime rate than required.

26 13. From at least four (4) years prior to the filing of this lawsuit and continuing to the
27 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
28 nondiscretionary bonuses, and/or shift differentials. However, upon information and belief,

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

7 14. From at least four (4) years prior to the filing of this lawsuit and continuing to the
8 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
9 nondiscretionary bonuses, and/or shift differentials. However, upon information and belief,
10 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
11 incentive pay, nondiscretionary bonuses, and/or shift differentials, into the calculation of the
12 regular rate of pay for purposes of calculating vacation pay. Therefore, during times when
13 Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive
14 pay, nondiscretionary bonuses, and/or shift differentials, Defendants failed to pay all vacation pay
15 by paying a lower overtime rate than required.

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

27 16. As a result of the daily work demands and pressures to work through breaks, and
28 the other wage violations they endured at Defendants' hands, Plaintiff and the Class members

1 were not properly paid for all wages earned and for all wages owed to them by Defendants,
2 including when working more than eight (8) hours in any given day and/or more than forty (40)
3 hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and
4 Class members incurred overtime hours worked for which they were not adequately and
5 completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and the
6 Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
7 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
8 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
9 Labor Code, applicable IWC Wage Orders.

10 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and
11 continuing to the present, Defendants had a consistent policy or practice of failing to pay Plaintiff
12 and the Class members for all hours worked and failing to pay minimum wage for all time worked
13 as required by California Law.

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

20 19. Additionally, from at least four (4) years prior to the filing of this lawsuit and
21 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
22 work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of
23 not less than thirty (30) minutes and shifts in excess of ten (10) hours without providing them with
24 second meal periods of not less than thirty minutes; nor did Defendants pay Plaintiff and the Class
25 members "premium pay," i.e. one hour of wages at each Employee's effective regular rate of pay,
26 for each meal period that Defendants failed to provide or deficiently provided. Further, Defendants
27 had a consistent policy and practice of rounding the time entries for Plaintiff's and Class
28 members' meal periods. Rather than precisely tracking the time that Plaintiff and Class members

1 clocked in and out for their meal periods, Defendants imposed a policy and practice of rounding
2 the time entries such that the meal periods were shown to be exactly thirty or thirty-one minutes.
3 Plaintiff alleges that this policy is not neutral and was done to the detriment of Plaintiff and Class
4 members in that the rounded time entries undercounted the amount of time Plaintiff and Class
5 members worked. As a result, Plaintiff and Class members were systematically
6 undercompensated.

7 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
8 present, Defendants have consistently failed to provide Plaintiff and the Class members with paid
9 rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive
10 hours; nor did Defendants pay Plaintiff and the Class members premium pay for each day on
11 which requisite rest breaks were not provided or were deficiently provided at one hour of wages at
12 each Employee's effective regular rate of pay, for each rest period that Defendants failed to
13 provide or deficiently provided.

14 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
15 continuing to the present, Defendants have consistently failed to provide Plaintiff and the Class
16 members with timely, accurate, and itemized wage statements as required by California wage-and-
17 hour laws. Specifically, the wage statements given to Plaintiff and the Class members by
18 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
19 periods and rest breaks all of which Defendants knew or reasonably should have known were
20 owed to Plaintiff and the Class members, as alleged hereinabove. Defendants failed in their
21 affirmative obligation to keep accurate records of the correct overtime wages based on proper
22 regular rate calculations that included nondiscretionary commissions, incentive pay,
23 nondiscretionary bonuses, and/or shift differentials earned, and the total amount of compensation
24 of Employees. Additionally, the wage statements given to Plaintiff and the Class members, by
25 Defendants, failed to include the total hours worked in violation of Labor Code § 226(a)(2) and
26 failed to accurately set forth all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9).
28 The wage statements provided to Plaintiff and the Class members were confusing and required

1 Plaintiff and the Class members to engage in discovery and refer to outside sources to verify
2 whether their pay was correct, potentially resulting in a miscalculation by Plaintiff and the Class
3 members.

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

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

11 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
12 Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1,
13 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, and 1199.

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

17 **CLASS ALLEGATIONS**

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

22 27. Further, Plaintiff seeks to represent the following Subclasses composed of and
23 defined as follows:

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

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

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

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

8 e. Subclass 5. Vacation Wages Subclass. All Class members who were not
9 compensated at the Employee's regular rate of pay for their vacation wages.

10 f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at
11 the Employee's regular rate of pay for their sick pay wages.

12 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
14 by California wage-and-hour laws.

15 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
16 applicable limitations period, were not provided with accurate itemized wage statements.

17 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
18 applicable limitations period, either voluntarily or involuntarily separated from their employment
19 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
20 termination.

21 k. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
22 result of Defendants' business acts and practices, to the extent such acts and practices are found to
23 be unlawful, deceptive, and/or unfair.

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

27 29. This action has been brought and may properly be maintained as a class action
28 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 members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, 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 pay Employees vacation wages as required under Labor Code § 227.3;
- g. Whether Defendants failed to pay Employees sick pay as required under Labor Code § 245;

- 1 h. Whether Defendants violated Labor Code § 226(a);
2 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
3 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
4 wages and compensation due and owing at the time of termination of employment;
5 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
6 l. Whether Employees are entitled to equitable relief pursuant to Business and
7 Professions Code § 17200 *et seq.*

8 **C. Typicality**

9 33. The claims of the named plaintiff are typical of those of the other Employees.
10 Employees, including Plaintiff, all sustained injuries and damages arising out of and caused by
11 Defendants' common course of conduct in violation of statutes, as well as regulations that have
12 the force and effect of law, as alleged herein.

13 **D. Adequacy of Representation**

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

17 **E. Superiority of Class Action**

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

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

26 ///

27 ///

28 ///

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

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

38. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Plaintiff's and Employees' time records and failing to pay Plaintiff and Employees for all hours worked. Plaintiff and Employees would work hours and not receive wages, including as alleged above in connection with working during meal periods and working without compensation by waiting to access timeclocks. Additionally, Defendants required Plaintiffs and Employees to use their cell phones to respond to work demands outside of scheduled work hours, including requiring Plaintiffs and Employees to respond to calls and texts about scheduling, and Plaintiff and Employees were not compensated for this time. Defendants thus regularly failed to pay minimum wages to Plaintiff and Class members. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

39. 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.

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

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

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

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

9 43. California Labor Code § 1194.2 also provides for the following remedies:

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

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

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

22 **SECOND CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 47. By their conduct, as set forth herein, Defendants violated California Labor Code §
28 510 (and 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 (8) hours in a
workday or in excess of forty (40) hours in any workweek or for the first eight (8) 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 (12) hours in any one (1) day or for hours worked in excess of eight

1 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
2 paying Plaintiff and Class members wages for all hours worked, including as alleged above in
3 connection with working during meal periods and working without compensation by waiting to
4 access timeclocks. Additionally, Defendants required Plaintiffs and Employees to use their cell
5 phones to respond to work demands outside of scheduled work hours, including requiring
6 Plaintiffs and Employees to respond to calls and texts about scheduling, and Plaintiff and
7 Employees were not compensated for this time. Plaintiff and Employees regularly worked over 8
8 hours on a given day or over 40 hours in a given week without receiving overtime compensation.

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

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

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

27 51. Employees have been damaged by these violations of California Labor Code §§
28 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

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

5 **THIRD CAUSE OF ACTION**

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

7 **(Against All Defendants)**

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

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

15 55. Defendants failed to provide Plaintiff and Class members with meal periods as
16 required under the Labor Code. Plaintiff and Class members were consistently required to work
17 through their meal periods which they were consistently denied. Employees were also required to
18 take meal periods after working well beyond the five (5) hour shifts. What meal periods were
19 provided were also not duty-free due to Defendants' policy and practice of interrupting the meal
20 period with work demands and otherwise requiring Plaintiff and Class members to remain under
21 Defendants' control during their meal periods. Additionally, Employees were regularly required to
22 work for more than 10 hours in a given shift without receiving a second uninterrupted thirty (30)
23 minute meal period as required by law. Furthermore, Defendants had a consistent policy and
24 practice of rounding the time entries for Plaintiff's and Class members' meal periods. Rather than
25 precisely tracking the time that Plaintiff and Class members clocked in and out for their meal
26 periods, Defendants imposed a policy and practice of rounding the time entries such that the meal
27 periods were shown to be exactly thirty or thirty-one minutes. Plaintiff alleges that this policy is
28 not neutral and was done to the detriment of Plaintiff and Class members in that the rounded time

1 entries undercounted the amount of time Plaintiff and Class members worked. As a result, Plaintiff
2 and Class members were systematically undercompensated.

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

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

17 **FOURTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

22 59. Plaintiff and Class members consistently worked consecutive four (4) hour shifts.
23 Pursuant to the Labor Code and the applicable IWC Wage Order, Plaintiff and Class members
24 were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4)
25 hour shift.

26 60. Defendants failed to provide Plaintiff and Class members with timely rest breaks of
27 not less than ten (10) minutes for each consecutive four (4) hour shift. What rest breaks were
28 provided were also not duty-free due to Defendants' policy and practice of interrupting rest breaks

1 with work demands and otherwise requiring Plaintiff and Class members to remain under
2 Defendants' control during their rest breaks.

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

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

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

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

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

26 65. Defendants paid nondiscretionary commissions, incentive pay, nondiscretionary
27 bonuses, and/or shift differentials to Plaintiff and Class members but Defendants failed to include
28 these forms of remuneration in the regular rate of pay upon which vacation wages were calculated

1 and paid, resulting in an underpayment of vacation wages to Plaintiff and Class members.

2 66. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
3 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 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 68. 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(l).

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

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

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 226(a)**

23 **(Against All Defendants)**

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

26 72. California Labor Code § 226(a) requires an employer to furnish each of his or her
27 employees with an accurate, itemized statement in writing showing the gross and net earnings,
28 total hours worked, and the corresponding number of hours worked at each hourly rate; these

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

5 73. Defendants failed to provide Plaintiff and Employees with accurate itemized wage
6 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
7 Plaintiff and Employees, by Defendants, failed to accurately account for wages, overtime, and
8 premium pay for deficient meal periods and rest breaks, and reflected incorrect hours worked, all
9 of which Defendants knew or reasonably should have known were owed to Plaintiff and
10 Employees, as alleged hereinabove. Additionally, Defendants failed in their affirmative obligation
11 to keep accurate records of the correct overtime wages based on proper regular rate calculations
12 that included nondiscretionary commissions, incentive pay, nondiscretionary bonuses, and/or shift
13 differentials earned, and the total amount of compensation of their Employees. The wage
14 statements given to Plaintiff and Employees, by Defendants, failed to include the requirements
15 enumerated above. Plaintiff and Employees' wage statements did not include: the total hours
16 worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable
17 hourly rates in effect during the pay period and the corresponding number of hours worked at each
18 such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiff and
19 Employees were confusing and required Plaintiff and Employees to engage in discovery and refer
20 to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation
21 by Plaintiff and the Employees.

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

27 75. Pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and Employees are entitled
28 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which

1 a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,
2 not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
3 award of costs and reasonable attorneys' fees.

4 76. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
5 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
6 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
7 employee for each pay period.

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

11 **EIGHTH CAUSE OF ACTION**

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

13 **AND 1174.5**

14 **(Against All Defendants)**

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

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

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

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

27 ///

28 ///

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

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

83. Numerous Employees, including Plaintiff, are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

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

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

86. 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 Plaintiff and the other former 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.

TENTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*

(Against All Defendants)

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

88. 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.

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

3 91. 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 92. 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.* Defendants' conduct has deprived
14 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
15 privileges guaranteed to all employees under the law.

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

18 94. 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 95. 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 96. 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
26 should make such orders or judgments, including the appointment of a receiver, as may be
27 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
28 deceptive practice prohibited by the Business & Professions Code, including but not limited to the

1 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
2 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 the hourly wage made by Employees
12 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
13 years prior to the filing of this action, as may be proven;
- 14 5. For compensatory damages in the amount of the hourly wage made by Employees
15 for each day requisite rest breaks were not provided or were deficiently provided and where no
16 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
17 be proven;
- 18 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 19 7. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 20 8. For penalties pursuant to Labor Code § 227.3, as may be proven;
- 21 9. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
- 22 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
23 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 24 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 25 12. For restitution for unfair competition pursuant to Business & Professions Code
26 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 27 13. For an order enjoining Defendants and their agents, servants, and employees, and
28 all persons acting under, in concert with, or for them, from acting in derogation of any rights or

1 duties adumbrated in this Complaint;

2 14. For all general, special, and incidental damages as may be proven;

3 15. For an award of pre-judgment and post-judgment interest;

4 16. For an award providing for the payment of the costs of this suit;

5 17. For an award of attorneys' fees; and

6 18. For such other and further relief as this Court may deem proper and just.

7
8 DATED: September 28, 2026

D.LAW, INC.

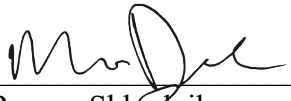
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10 By 
11 Roman Shkodnik
12 Mason Doidge
13 Attorneys for Plaintiff
14 ZACHARY CATANZARO
15 and the putative class
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28

DEMAND FOR JURY TRIAL

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

DATED: September 28, 2026

D.LAW, INC.

By 
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
ZACHARY CATANZARO
and the putative class