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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11 WILLIE SCOTT, on behalf of himself and all
12 others similarly situated, and the general
public,

13 *Plaintiff,*

14 v.

15 RANDSTAD IN HOUSE SERVICES, LLC, a
Delaware limited liability company,
16 RANDSTAD NORTH AMERICA, INC., a
Delaware corporation; DREYER'S GRAND
17 ICE CREAM, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

18 *Defendants.*

Case No. 22CV022986

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

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Pay Wages Without Discount (Lab. Code § 212);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff WILLIE SCOTT ("Plaintiff"), on behalf of himself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants RANDSTAD
5 INHOUSE SERVICES, LLC, a Delaware limited liability company, RANDSTAD NORTH
6 AMERICA, INC., a Delaware corporation; DREYER'S GRAND ICE CREAM, INC., a Delaware
7 corporation; and DOES 1 through 50, inclusive, (collectively referred to as "Defendants") for
8 alleged violations of the Labor Code. As set forth below, Plaintiff alleges that Defendants have

9 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
10 periods;

11 (2) failed to provide them with rest periods;

12 (3) failed to pay them premium wages for missed meal and/or rest periods;

13 (4) failed to pay them at least minimum wage for all hours worked;

14 (5) failed to pay them overtime wages at the correct rate;

15 (6) failed to pay them double time wages at the correct rate;

16 (7) failed to reimburse them for all necessary business expenses;

17 (8) failed to provide them with accurate written wage statements; and

18 (9) failed to pay them all of their final wages following separation of employment.

19 Based on these alleged violations, Plaintiff now brings this class and representative action to
20 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
21 himself and all others similarly situated, all other aggrieved employees, and the State of California.

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
24 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
25 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

26 3. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure §§
27 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are
28 the subject matter of this Complaint occurred therein and/or each defendant is found, maintains

1 offices, transacts business, and/or has an agent therein.

2 **PARTIES**

3 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
4 residing in the State of California.

5 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant
6 RANDSTAD INHOUSE SERVICES, LLC is, and at all relevant times mentioned herein, a
7 Delaware corporation doing business in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant
9 RANDSTAD NORTH AMERICA, INC. is, and at all relevant times mentioned herein, a Delaware
10 corporation doing business in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant
12 DREYER'S GRAND ICE CREAM, INC. is, and at all relevant times mentioned herein, a
13 Delaware corporation doing business in the State of California.

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

22 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
23 mentioned herein, some or all of the defendants were the representatives, agents, employees,
24 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
25 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
26 and scope of such relationship and with the full knowledge, consent, and ratification by such other
27 defendants.

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1 **CLASS ALLEGATIONS**

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

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

8 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing
9 agencies and/or any other third parties in hourly or non-exempt positions in California
during the **Relevant Time Period**.

10 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked
11 in a shift in excess of five hours during the **Relevant Time Period**.

12 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked
13 a shift of at least three and one-half (3.5) hours during the **Relevant Time**
Period.

14 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class**
15 members employed by Defendants in California during the period beginning
one year before the filing of this action and ending when final judgment is
entered.

16 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members
17 who separated from their employment with Defendants during the period
beginning three years before the filing of this action and ending when final
18 judgment is entered.

19 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in
California during the **Relevant Time Period**.

20 **Expense Reimbursement Class:** All persons employed by Defendants in California
21 who incurred business expenses during the **Relevant Time Period**.

22 **Pay Card Class:** All persons employed by Defendants in California who were paid
23 their wages with a pay card and were not paid all earned wages during the **Relevant**
Time Period.

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

27 13. **Numerosity:** The class members are so numerous that the individual joinder of each
28 individual class member is impractical. While Plaintiff does not currently know the exact number of

1 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
2 exceeds the minimum required for numerosity under California law.

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

- 6 i. Whether Defendants maintained a policy or practice of failing to provide employees
7 with their meal periods;
- 8 ii. Whether Defendants maintained a policy or practice of failing to provide employees
9 with their rest periods;
- 10 iii. Whether Defendants failed to pay premium wages to class members when they have
11 not been provided with required meal and/or rest periods;
- 12 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
13 as a result of policies that fail to provide meal periods in accordance with California
14 law;
- 15 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
16 for all time worked;
- 17 vi. Whether Defendants failed to reimburse class members for all necessary business
18 expenses incurred during the discharge of their duties;
- 19 vii. Whether Defendants failed to provide class members with accurate written wage
20 statements as a result of providing them with written wage statements with
21 inaccurate entries for, among other things, amounts of gross and net wages, and total
22 hours worked;
- 23 viii. Whether Defendants failed to pay class members all wages without discount;
- 24 ix. Whether Defendants used pay cards to pay class members;
- 25 x. Whether class members incurred fees in cashing pay cards;
- 26 xi. Whether class members have been able to redeem pay cards for their full cash value;
- 27 xii. Whether Defendants applied policies or practices that result in late and/or incomplete
28 final wage payments;

1 xiii. Whether Defendants are liable to class members for waiting time penalties under
2 Labor Code section 203;

3 xiv. Whether class members are entitled to restitution of money or property that
4 Defendants may have acquired from them through unfair competition;

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

8 16. **Adequacy of Class Representative**: Plaintiff is an adequate class representative in
9 that he has no interests that are adverse to or otherwise conflict with the interests of absent class
10 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
11 and adequately represent and protect the interests of the other class members.

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

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

26 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 19. Plaintiff worked for Defendants as an hourly, non-exempt employee from
28 approximately December 2021 through June 2022.

Security Check and Off-the-Clock

20. Plaintiff and the putative class were required to utilize an entrance by security to access the venues where they worked, and were required to go through a security check at the time of entering and leaving the premises on which they worked. The security check required Plaintiff and the putative class to first wait in a general purpose line where anyone who wanted to enter the venues were required to go through a badge screening.

21. Plaintiff and the putative class were allowed to pass through the security check upon displaying their employee badges.

22. Plaintiff and the putative class were required to spend at least five to fifteen minutes each time they went through the security check—time that was not paid by Defendants.

23. Plaintiff and the putative class were required to go through the security check prior to clocking in at the beginning of each work shift and upon information and belief were required to clock out first at the end of each work shift prior to going through the security check.

24. After entering the workplace and donning their boots, Plaintiff and the putative class then stood in another line near the time-clock. Plaintiff and the putative class swiped their badge at the time-clock in order to clock-in and clock-out of work each day. Occasionally, the time-clock would malfunction and did not read Plaintiff and the putative class' badge wipes. This caused additional delays.

25. Based on the above, Defendants' security check practices, time-clock placement, and malfunctioning equipment have resulted in substantial amounts of time not recorded as hours worked therefore resulting in substantial amounts of wages not paid to Plaintiff and the putative class.

Shortened Meal Periods

26. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of requiring Plaintiff and the putative class to wait in a line to clock in and out for their meal periods. Furthermore, they were required to utilize the general entrance to the venues and required to go through a security check at the time of entering and leaving the venues where they worked. The security check required Plaintiff and the putative

1 class to first wait in a general-purpose line where anyone who wanted to enter the venues were
2 required to go through a badge screening. Additionally, there was a time-clock placed on a wall
3 where employees would wipe their badge to clock-in and out. To access the time-clock, Plaintiff
4 and the putative class were required to wait in a line of other employees looking to clock in and/or
5 clock out at the same time. Accordingly, Plaintiff and the putative class would typically have to
6 wait in line before they could clock in and out for their meal periods.

7 27. Accordingly, Plaintiff and the putative class were provided with shortened meal
8 periods due to the time spent entering and leaving the venues, undergoing security checks, and
9 returning to their workstations.

10 28. Plaintiff alleges that, at relevant times during the applicable limitations period,
11 Defendants maintained a policy or practice of disciplining Plaintiff and members of the putative
12 class, up to and including termination, if they did not clock back in from their meal periods on
13 time.

14 29. Plaintiff alleges that, at relevant times during the applicable limitations period, due
15 to Defendants' above-mentioned policy or practice, Plaintiff and the putative class did not receive
16 their full thirty (30) minute uninterrupted meal periods that they were entitled to under California
17 law.

18 **Late and/or Missed Meal Periods**

19 30. Plaintiff and the putative class were not provided with meal periods of at least thirty
20 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
21 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
22 enough workers; (3) imposing so much work on each employee such that it made it unlikely that an
23 employee would be able to take their breaks if they wanted to finish their work on time; and (4) no
24 formal written meal and rest period policy that encouraged employees to take their meal and rest
25 periods.

26 31. Plaintiff and the putative class were required to wait to be released before they
27 could take their meal periods. Plaintiff and the putative class were often forced to wait until
28 another employee came back to ensure that there was always at least someone on the line.

32. As a result of Defendants' policies and/or practices, Plaintiff and the putative class were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked.

Missed Rest Periods

33. Plaintiff and the putative class were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

34. Plaintiff and the putative class were required to be released to go on break, and they were often denied the opportunity to go on break. Additionally, there were times when their breaks were cut short due to work demands, and times when they could not break until late into their shift.

35. As a result of Defendants' policy, Plaintiff and the putative class were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked.

Expense Reimbursement

36. Plaintiff and the putative class members were required to utilize their own personal protective equipment, including but not limited to masks to perform their job duties.

37. Defendants required that Plaintiff and the putative class members wear masks during their shifts, and did not provide masks or reimburse them for purchasing their own masks.

38. Defendants failed to reimburse Plaintiff and the putative class for such necessary business expenses incurred by them.

Wage Statements

39. Plaintiff and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code § 226. Plaintiff and the putative class were paid via a paycard where wages were deposited.

40. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

41. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

42. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

43. Defendants failed to comply with Labor Code section 226(a)(8) as “the name and address of the legal entity that is the employer” were not accurately reflected in that they were not included as a result of payment via a paycard.

44. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

45. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

46. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

47. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two

1 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

2 48. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
3 from requiring employees to work during required meal periods and require employers to pay non-
4 exempt employees an hour of premium wages on each workday that the employee is not provided
5 with the required meal period.

6 49. Compensation for missed meal periods constitutes wages within the meaning of
7 Labor Code § 200.

8 50. Labor Code § 1198 makes it unlawful to employ a person under conditions that
9 violate the applicable Wage Order.

10 51. Section 11 of the applicable Wage Order states:

11 “No employer shall employ any person for a work period of more than five (5)
12 hours without a meal period of not less than 30 minutes, except that when a
13 work period of not more than six (6) hours will complete the day’s work the
14 meal period may be waived by mutual consent of the employer and employee.
15 Unless the employee is relieved of all duty during a 30 minute meal period, the
16 meal period shall be considered an ‘on duty’ meal period and counted as time
worked. An ‘on duty’ meal period shall be permitted only when the nature of
the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.”

17 52. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
18 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
19 members were not subject to valid on-duty meal period agreements with Defendants.

20 53. Plaintiff alleges that, at all relevant times during the applicable limitations period,
21 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
22 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
23 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

24 54. Plaintiff alleges that, at all relevant times during the applicable limitations period,
25 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
26 **Class** members when they worked five (5) hours without clocking out for any meal period.

27 55. Plaintiff alleges that, at all relevant times during the applicable limitations period,
28 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**

1 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and
2 failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage
3 Order.

4 56. Moreover, Defendants' written policies do not provide that employees must take
5 their first meal period before the end of the fifth hour of work, that employees are entitled to a
6 second meal period if they work a shift of over ten hours, or that the second meal period must
7 commence before the end of the tenth hour of work, unless waived.

8 57. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
9 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
10 regular rates of pay when required meal periods were not provided.

11 58. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
12 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
13 costs of suit.

14 59. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
15 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal**
16 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

17 SECOND CAUSE OF ACTION

18 **FAILURE TO PROVIDE REST PERIODS**

19 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

20 **(Plaintiff and Rest Period Sub-Class)**

21 60. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

22 61. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
23 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
24 Code and the applicable Wage Order.

25 62. Section 12 of the applicable Wage Order imposes an affirmative obligation on
26 employers to permit and authorize employees to take required rest periods at a rate of no less than
27 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
28 in the middle of each work period insofar as practicable.

1 63. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
2 from requiring employees to work during required rest periods and require employers to pay non-
3 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
4 workday that the employee is not provided with the required rest period(s).

5 64. Compensation for missed rest periods constitutes wages within the meaning of Labor
6 Code § 200.

7 65. Labor Code § 1198 makes it unlawful to employ a person under conditions that
8 violate the Wage Order.

9 66. Plaintiff alleges that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
11 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
12 as required by the applicable Wage Order.

13 67. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-**
14 **Class** members additional premium wages when required rest periods were not provided.

15 68. Specifically, Defendants written policies do not provide that employees may take a
16 rest period for each four hours worked, or major fraction thereof, nor that rest periods should be
17 taken in the middle of each work period insofar as practicable.

18 69. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
19 **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
20 costs of suit.

21 70. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
22 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest Period**
23 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

26 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

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

28 71. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

4 73. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
5 which an employee is subject to the control of the employer, and includes all the time the employee
6 is suffered or permitted to work, whether or not required to do so.”

7 74. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
8 employees at least the minimum wage set forth therein for all hours worked, which consists of all
9 hours that an employer has actual or constructive knowledge that employees are working.

10 75. Labor Code § 1194 invalidates any agreement between an employer and an
11 employee to work for less than the minimum or overtime wage required under the applicable Wage
12 Order.

13 76. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
14 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
15 underlying unpaid minimum wages and interest thereon.

16 77. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
17 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
18 period.

19 78. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
20 person acting either individually or as an officer, agent, or employee of another person to pay an
21 employee, or cause an employee to be paid, less than the applicable minimum wage.

22 79. Labor Code § 1198 makes it unlawful for employers to employ employees under
23 conditions that violate the applicable Wage Order.

24 80. Labor Code § 204 requires employers to pay non-exempt employees their earned
25 wages for the normal work period at least twice during each calendar month on days the employer
26 designates in advance and to pay non-exempt employees their earned wages for labor performed in
27 excess of the normal work period by no later than the next regular payday.

28 81. Labor Code § 223 makes it unlawful for employers to pay their employees lower

1 wages than required by contract or statute while purporting to pay them legal wages.

2 82. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
3 non-exempt employees overtime wages of no less than one and one-half times the employees'
4 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
5 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
6 seventh consecutive day of one workweek.

7 83. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
8 pay non-exempt employees overtime wages of no less than two times the employees' respective
9 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
10 worked in excess of eight hours on a seventh consecutive workday during the workweek.

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

14 85. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
15 **Employee Class** members for all time worked, including but not limited to, overtime hours at
16 statutory and/or agreed rates.

17 86. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time
18 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
19 permitting him to work off-the-clock while putting on and taking off his work boots.

20 87. Plaintiff is informed and believes that, at all relevant times during the applicable
21 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
22 **Hourly Employee Class** members for all time worked, including but not limited to overtime wages,
23 at statutory and/or agreed rates by suffering or permitting them to work off-the-clock while putting
24 on and taking off required work boots.

25 88. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
26 **Employee Class** members all earned wages every pay period at the correct rates, including
27 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
28 **Hourly Employee Class** members to perform off-the-clock work.

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

5 90. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
6 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
7 overtime wages, interest thereon, and costs of suit.

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

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY**

13 **(Lab. Code § 2802)**

14 **(Plaintiff and Expense Reimbursement Class)**

15 92. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 93. Labor Code section 2802(a) states:

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

20 94. At all relevant times during the applicable limitations period, Plaintiff and the
21 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
22 including but not limited to, personal protective equipment as outlined above.

23 95. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
24 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the
25 discharge of their duties.

26 96. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
27 by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all
28 necessary business expenses incurred in the discharge of their duties.

97. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such expenditures.

98. Plaintiff is informed and believes that, during the applicable limitations period, Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense Reimbursement Class** members for all necessary business expenses.

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

100. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

101. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

102. Labor Code § 226(a) states:

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

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

9 103. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
10 the "detachable part of the check" provision and the "accurate itemized statement in writing"
11 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
12 employee retains the right to elect to receive a written paper stub or record and that those who are
13 provided with electronic wage statements retain the ability to easily access the information and
14 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
15 Letter July 6, 2006.)

16 104. Plaintiff is informed and believes that, at all relevant times during the applicable
17 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
18 members with written wage statements as described above.

19 105. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
20 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
21 that Defendants had the ability to provide them with accurate wage statements but had intentionally
22 provided them with written wage statements that Defendants knew do not comply with Labor Code
23 § 226(a).

24 106. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
25 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
26 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
27 and wages earned. In addition, inaccurate information and payment via a paycard have prevented
28 immediate challenges to Defendants' unlawful pay practices, has required discovery and
mathematical computations to determine the amount of wages owed, has caused difficulty and
expense in attempting to reconstruct time and pay records, and/or has led to the submission of
inaccurate information about wages and deductions to federal and state government agencies.

1 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
2 members all of their final wages in accordance with the Labor Code.

3 116. Plaintiff is informed and believes that, at all relevant times during the applicable
4 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
5 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
6 §§ 201 or 202 by failing to timely pay them all final wages.

7 117. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
8 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been
9 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
10 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
11 requirements.

12 118. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of himself and
13 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective
14 dates that their final wages had first become due until paid, up to a maximum of thirty days, and
15 interest thereon.

16 119. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
17 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time**
18 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WITHOUT DISCOUNT**

21 **(Lab. Code § 212)**

22 **(Plaintiff and Pay Card Class)**

23 120. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

24 121. At all relevant times, Plaintiff and the **Pay Card Class** members have been entitled
25 to the protections of Labor Code § 212 which states:

26 (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to
27 become due, or as an advance on wages to be earned:

28 (1) Any order, check, draft, note, memorandum, or other acknowledgment of
indebtedness, unless it is negotiable and payable in cash, on demand, without

1 discount, at some established place of business in the state, the name and
2 address of which must appear on the instrument, and at the time of its issuance
3 and for a reasonable time thereafter, which must be at least 30 days, the maker
4 or drawer has sufficient funds in, or credit, arrangement, or understanding with
5 the drawee for its payment.

6 (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or
7 purporting to be payable or redeemable otherwise than in money.

8 122. Defendants violated the Labor Code § 212 by issuing wages due in a non-negotiable
9 manner that was not payable in cash at some place of business in the state without discount.

10 123. At times during his employment, Defendants paid Plaintiff wages on a “pay card” or
11 preloaded debit card. Plaintiff incurred fees when attempting to use the pay card at various business
12 in California. Plaintiff incurred fees when attempting to cash the pay card.

13 124. Plaintiff was not given an itemized wage statement when paid with a pay card.

14 **EIGHTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

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

17 **(Plaintiff and UCL Class)**

18 125. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

19 126. Business and Professions Code § 17200 defines “unfair competition” to include any
20 unlawful business practice.

21 127. Business and Professions Code §§ 17203–17204 allow a person who has lost money
22 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
23 Procedure § 382 to recover money or property that may have been acquired from similarly situated
24 persons by means of unfair competition.

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

28 129. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and
incorporates the FIRST, SECOND, THIRD, and FOURTH causes of action herein.

130. Plaintiff lost money and/or property as a result of the aforementioned unfair

1 competition.

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

3 132. Plaintiff is informed and believes and thereupon alleges that, by committing the
4 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
5 226.6, 1175, 1199 and 2802. Defendants thus committed misdemeanors by violating the Labor
6 Code as alleged herein.

7 133. Defendants have committed criminal conduct through their policies and practices of,
8 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
9 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
10 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,
11 and by failing to reimburse them for all expenses.

12 134. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
13 employees and entitled to the full protections of both the Labor Code and the applicable Wage
14 Order.

15 135. Defendants' unlawful conduct as alleged in this Complaint amounts to and
16 constitutes unfair competition within the meaning of Business and Professions Code section 17200
17 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
18 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
19 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on
20 behalf of similarly situated persons in a class-action proceeding.

21 136. As a result of Defendants' violations of the Labor Code during the applicable
22 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
23 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
24 conduct.

25 137. Plaintiff is informed and believes that other similarly situated persons have been
26 subject to the same unlawful policies or practices of Defendants.

27 138. Due to the unfair and unlawful business practices in violation of the Labor Code,
28 Defendants have gained a competitive advantage over other comparable companies doing business

1 in the State of California that comply with their legal obligations.

2 139. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
3 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
4 that violates, or is considered unlawful under, any other state or federal law.

5 140. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
6 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
7 Defendants, and each of them, and their agents and employees, from further violations of the Labor
8 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
9 order permanently enjoining Defendants, and each of them, and their respective agents and
10 employees, from further violations of the Labor Code and applicable Industrial Welfare
11 Commission Wage Orders.

12 141. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself
13 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
14 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
15 business practices.

16 142. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
17 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
18 attorneys' fees in connection with their unfair competition claims.

19 **NINTH CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab. Code §§ 2698 *et seq.*)**

22 143. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

23 144. During the applicable limitations period, Defendants have violated Labor Code §§
24 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

1 146. Plaintiff, a former employee against whom Defendants committed one or more of the
2 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
3 within the meaning of Labor Code § 2699(c).

4 147. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
5 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
6 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
7 intent to investigate.

8 148. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
9 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
10 512, 1194, 1197, 1198 and 2802:

- 11 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and
12 2802, one hundred dollars (\$100) for each employee per pay period for each
13 initial violation and two hundred dollars (\$200) for each employee per pay
14 period for each subsequent violation (penalties set by Labor Code §
15 2699(f)(2));
- 16 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
17 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 18 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
19 employee for each initial violation that was neither willful nor intentional,
20 two hundred dollars (\$200) for each employee, plus 25% of the amount
21 unlawfully withheld from each employee, for each initial violation that was
22 either willful or intentional, and two hundred dollars (\$200) for each
23 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
24 from each employee, for each subsequent violation, regardless of whether the
25 subsequent violation was either willful or intentional (penalties set by Labor
26 Code § 210);
- 27 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
28 employee for each initial violation that was neither willful nor intentional,

1 two hundred dollars (\$200) for each employee, plus twenty-five percent
2 (25%) of the amount unlawfully withheld from each employee, for each
3 initial violation that was either willful or intentional, and two hundred dollars
4 (\$200) for each employee, plus twenty-five percent (25%) of the amount
5 unlawfully withheld from each employee, for each subsequent violation,
6 regardless of whether the subsequent violation was either willful or
7 intentional (penalties set by Labor Code § 225.5);

8 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
9 citation, two hundred and fifty dollars (\$250) for each employee for each
10 violation. Alternatively, if an initial citation or its equivalent occurred before
11 the filing of this action, one thousand dollars (\$1,000) for each employee for
12 each violation (penalties set by Labor Code § 226.3);

13 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
14 employee for each initial pay period for which the employee was underpaid,
15 and one hundred dollars (\$100) for each employee for each subsequent pay
16 period for which the employee was underpaid (penalties set by Labor Code §
17 558);

18 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
19 aggrieved employee for each initial violation of Labor Code § 1197 that was
20 intentional and two hundred and fifty dollars (\$250) for each aggrieved
21 employee per pay period for each subsequent violation of Labor Code §
22 1197, regardless of whether the initial violation was intentional (penalties set
23 by Labor Code § 1197.1);

24 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
25 attorneys' fees and costs in connection with Plaintiff's claims for civil
26 penalties.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

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

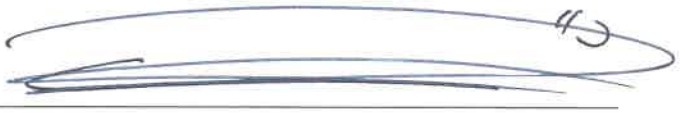
- 4 (1) An order that the action be certified as a class action;
5 (2) An order that Plaintiff be appointed class representative;
6 (3) An order that counsel for Plaintiff be appointed class counsel;
7 (4) Unpaid wages;
8 (5) Actual damages;
9 (6) Liquidated damages;
10 (7) Restitution;
11 (8) Declaratory relief;
12 (9) Pre-judgment interest;
13 (10) Statutory penalties;
14 (11) Civil penalties;
15 (12) Costs of suit;
16 (13) Reasonable attorneys' fees; and
17 (14) Such other relief as the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
20 demands a jury trial on all issues so triable.

21
22 Dated: February 6, 2023

SETAREH LAW GROUP

23
24 
25 _____
26 SHAUN SETAREH
27 JOSE MARIA D. PATINO, JR.
28 MAXIM GORBUNOV
Attorneys for Plaintiff
WILLIE SCOTT

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in the County of Los Angeles, State
3 of California. I am over the age of 18 and not a party to the within action. My business address
4 is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212.

5 On February 6, 2023, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 in this action by transmitting a true copy thereof addressed as follows:

8 Daniel Whang (dwhang@seyfarth.com)
9 SEYFARTH SHAW LLP
2029 Century Park E., Suite 3500
10 Los Angeles, California 90067-3021
11 **Counsel for Defendant Randstad InHouse
Services & Randstad North America, Inc.**

Justin T Curley (jcurley@seyfarth.com)
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**Counsel for Defendant Randstad InHouse
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13 (jnordlander@seyfarth.com)
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14 400 Capitol Mall, Suite 2300
15 Sacramento, California 95814-4428
16 **Counsel for Defendant Randstad InHouse
Services & Randstad North America, Inc.**

Dreyer's Grand Ice Cream, Inc.
CT Corporation System
330 N. Brand Blvd. Suite 700
Glendale, CA 91203
**Agent for Service of Process for Defendant
Dreyer's grand Ice Cream, Inc.
(BY MAIL)**

17
18 **[X] BY MAIL**

19 I am readily familiar with the practice of Setareh Law Group for the collection and
20 processing of correspondence for mailing with the United States Postal Service. It is the
21 practice that correspondence is deposited with United States Postal Service the same day it is
submitted for mailing with postage thereon fully prepaid at Beverly Hills, California. I am
aware that on motion of the party served, service is presumed invalid if postal cancellation date
22 or postage meter date is more than one day after date of deposit for mailing in affidavit.

23 **[X] BY E-MAIL OR ELECTRONIC TRANSMISSION**

24 Based on a Court order or on an agreement by the parties to accept service by e-mail or
25 electronic transmission, I caused the document(s) described above to be sent to the person(s)
listed at the address listed above. I did not receive, within a reasonable time after the
26 transmission, any electronic message or other indication that the transmission was unsuccessful.
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[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 6, 2023, at Beverly Hills, California.

/s/ Wendy Sarabia
Wendy Sarabia