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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAY 28 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By: Brigitte De La Rosa, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOSEPH GUEVARA, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

GLOBAL MAIL, INC., an Ohio
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 21STCV12053

[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Dept. 9]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) **FAILURE TO PAY WAGES IN
VIOLATION OF CAL. LABOR CODE
§§ 201-204, 510, 558, 1194, 1197 AND
1197.1;**
- (2) **VIOLATION OF CAL. LABOR CODE
§ 226(a);**
- (3) **VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, ET SEQ.;**
- (4) **VIOLATION OF CAL. LABOR CODE §
2698, ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Joseph Guevara (“Plaintiff”) hereby submits this First Amended Class Action
2 Complaint (“Complaint”) against Defendants Global Mail, Inc. and Does 1 through 50
3 (hereinafter collectively referred to as “Defendants”) as an individual and on behalf of the class
4 of all other similarly situated current and former employees of Defendants for minimum wages,
5 overtime wages, and penalties under the California Labor Code, and for restitution as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court’s jurisdiction under California Labor Code
8 §§ 201-204, 210, 218, 226, 510, 558, 1194, 1197, and 1197.1, 2698, *et seq.* the applicable Wage
9 Orders of the California Industrial Welfare Commission (“IWC”), and the California Unfair
10 Competition Law (the “UCL”), Business and Professions Code § 17200, *et seq.*

11 2. This complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code and the UCL against individuals who worked for
13 Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees in receiving wages for all hours worked, including
17 minimum wages and overtime wages, and timely payment of wages.

18 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 have engaged in, among other things a system of willful violations of the California Labor Code
20 and the UCL by creating and maintaining policies, practices and customs that knowingly deny
21 employees the above stated rights and benefits.

22 5. The policies, practices and customs of defendants described above and below
23 have resulted in unjust enrichment of Defendants and an unfair business advantage over
24 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

25 **JURISDICTION AND VENUE**

26 6. The Court has jurisdiction over the violations of the California Labor Code
27 §§ 201-204, 210, 218, 226, 510, 558, 1194, 1197, 1197.1, 2698, *et seq.*, and the UCL.

28 7. Venue is proper in Los Angeles County because Plaintiff performed work for

1 Defendant at its Distribution Center in Whittier, California, which is located in this County.

2 **PARTIES**

3 8. On or about November 18, 2020, Plaintiff was hired by Defendant to work as a
4 mail sorter at Defendant's Whittier facility. On or about December 17, 2020, Plaintiff's
5 employment with Defendant ended.

6 9. Defendant is a global logistics company which operates distribution and/or
7 shipping facilities throughout the United States, including in the State of California.

8 10. Plaintiff was and is the victim of the policies, practices, and customs of
9 Defendants complained of in this action in ways that have deprived Plaintiff of the rights
10 guaranteed by California Labor Code §§ 201-204, 210, 218, 226, 510, 558, 1194, 1197, 1197.1,
11 2698, *et seq.*, and the UCL.

12 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant is an
13 Ohio corporation, which provides shipping services throughout the United States, including
14 numerous locations in the State of California and in the County of Stanislaus.

15 12. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
17 individuals, and partnerships, licensed to do business and actually doing business in the State of
18 California. As such, and based upon all the facts and circumstances incident to Defendants'
19 business, Defendants are subject to California Labor Code §§ 201-204, 210, 218, 226, 510, 558,
20 1194, 1197, 1197.1, 2698, *et seq.*, and the UCL.

21 13. Plaintiff does not know the true names or capacities, whether individual, partner
22 or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason,
23 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
24 complaint when the true names and capacities are known. Plaintiff is informed and believes and
25 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
26 matters alleged herein and proximately caused Plaintiff and members of the general public and
27 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

28 14. At all times herein mentioned, each of said Defendants participated in the doing

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants and employees of each of the other
3 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
4 acting within the course and scope of said agency and employment.

5 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
7 joint venturer of, or working in concert with each of the other co-Defendants and was acting
8 within the course and scope of such agency, employment, joint venture, or concerted activity.
9 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
10 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
11 Defendants.

12 16. At all times herein mentioned, Defendants, and each of them, were members of,
13 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
14 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

15 17. At all times herein mentioned, the acts and omissions of various Defendants, and
16 each of them, concurred and contributed to the various acts and omissions of each and all of the
17 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
18 herein mentioned, Defendants, and each of them, ratified each and every act or omission
19 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
20 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
21 damages as herein alleged.

22 CLASS ACTION ALLEGATIONS

23 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
24 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes:

- 25 a. All current and former non-exempt employees who were employed by
26 Defendants in the State of California at any time from August 19, 2020,
27 through the present (the "Class");
28

b. All current and former non-exempt employees who were paid Surge Pay wages at any time from August 19, 2020, through the present (the “Surge Pay Wage Statement Class”).

19. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to provide accurate itemized wage statements in violation of Labor Code § 226(a); (b) failed to pay employees wages for all hours worked, including minimum and overtime wages, for time spent undergoing security checks before they were clocked-in and after they were clocked-out in violation of Labor Code §§ 204, 510, 558, 1194, 1197, and 1197.1; (c) violated Labor Code §§ 201-203 by failing to pay all wages owed and due to employees within the time requirements set forth in these statutes; and (d) engaged in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

21. Defendants uniformly administered a corporate policy, practice of: (a) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); (b) failing to pay or timely pay employees wages for all hours worked, including minimum and overtime wages, for time spent undergoing security checks before they clocked in and after they were clocked-out in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, and 1197.1; (c) violating Labor Code §§ 201-203 by failing to pay all wages owed and due to employees within the time requirements set forth in these statutes; and (d) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

1 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
2 conduct is accomplished with the advance knowledge and designed intent to willfully and
3 intentionally fail to accurately record proper rates of pay, hours worked, net wages, and
4 deductions.

5 23. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
7 concerning Defendant's policy and practice of: (a) failing to provide accurate itemized wage
8 statements in violation of Labor Code § 226(a); (b) failing to pay or timely pay employees wages
9 for all hours worked, including minimum and overtime wages, for time spent undergoing
10 security checks before they clocked in and after they were clocked-out in violation of Labor
11 Code §§ 204, 210, 510, 558, 1194, 1197, and 1197.1; (c) violating Labor Code §§ 201-203 by
12 failing to pay all wages owed and due to employees within the time requirements set forth in
13 these statutes; and (d) engaging in unfair business practices in violation of the California Labor
14 Code, the applicable IWC Wage Orders, and the UCL.

15 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
16 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
17 as the Class members. As with all other non-exempt employees in the State of California who
18 worked at and/or out of distribution, mailing and/or warehouse facilities, Plaintiff was required
19 to undergo security checks and walk through metal detectors before Plaintiff clocked in and after
20 Plaintiff clocked-out, *i.e.*, being required undergo the security check and walk through metal
21 detectors before Plaintiff clocked in and after Plaintiff clocked out after his shift ended.
22 Although Plaintiff was required to stay at work to undergo these checks, Plaintiff was not paid
23 any wages, including applicable minimum and/or overtime wages, for these security checks.
24 Although it is well-settled that Defendants should have paid applicable wages for time spent in
25 these security checks, Defendants failed to do so. Given that Defendants willfully failed to pay
26 Plaintiff and Class Members all wages owed, Defendants are liable for waiting time-penalties
27 pursuant to Labor Code §§ 201-203, including with respect to Plaintiff. Also, as a result of said
28 violations, Defendant failed to provide accurate itemized wage statements which reflected the

1 correct gross and net wages, total hours worked, hourly rates and hours worked for the time spent
2 undergoing the security inspections. Additionally, Defendant violated Labor Code § 226(a)(9)
3 by failing to list the hourly rates and hours worked for an item of hourly wages called “Surge
4 Pay,” on the wage statements furnished to Plaintiff and Class Members. Therefore, Plaintiff is a
5 member of the Class and have suffered the alleged violations of California Labor Code §§ 201-
6 204, 226, 510, 558, 1194, 1197, 1197.1, and the UCL.

7 25. The California Labor Code and upon which Plaintiff bases these claims are
8 broadly remedial in nature. These laws and labor standards serve an important public interest in
9 establishing minimum working conditions and standards in California. These laws and labor
10 standards protect the average working employee from exploitation by employers who may seek
11 to take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment.

13 26. The nature of this action and the format of laws available to Plaintiff and
14 members of the Class identified herein make the class action format a particularly efficient and
15 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
16 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
17 advantage since it would be able to exploit and overwhelm the limited resources of each
18 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
19 member to pursue an individual remedy would also discourage the assertion of lawful claims by
20 employees who would be disinclined to file an action against their former and/or current
21 employer for real and justifiable fear of retaliation and permanent damage to their careers at
22 subsequent employment.

23 27. The prosecution of separate actions by the individual class members, even if
24 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
25 to individual Class members against the Defendants and which would establish potentially
26 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
27 individual Class members which would, as a practical matter, be dispositive of the interest of the
28 other Class members not parties to the adjudications or which would substantially impair or

1 impede the ability of the Class members to protect their interests. Further, the claims of the
2 individual members of the Class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses.

4 28. Such a pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation described herein is unlawful and creates an entitlement to
6 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid minimum
7 wages, liquidated damages, overtime wages, applicable penalties, reasonable attorneys' fees, and
8 costs of suit according to the mandate of California Labor Code §§ 201-204, 218.5, 218.6, 226,
9 510, 558, 1194, 1197, 1197.1, and Code of Civil Procedure § 1021.5.

10 29. Proof of a common business practice or factual pattern, which the named Plaintiff
11 experienced and is representative of, will establish the right of each of the members of the
12 Plaintiff Class to recovery on the causes of action alleged herein.

13 30. The Plaintiff Class is commonly entitled to a specific fund with respect to the
14 compensation illegally and unfairly retained by Defendants. The Plaintiff Class is commonly
15 entitled to restitution of those funds being improperly withheld by Defendants. This action is
16 brought for the benefit of the entire class and will result in the creation of a common fund.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES**

19 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

20 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
21 though fully set forth herein.

22 32. This cause of action is brought pursuant to Labor Code §§ 201-204, 510, 558,
23 1194, 1197, and 1197.1 which require an employer to pay employees wages for all hours
24 worked, including minimum and overtime wages.

25 33. As a pattern and practice, Defendants suffered and permitted employees to work
26 without payment of wages for all hours worked in a workday and workweek. Specifically,
27 Defendants failed to pay for time spent by employees undergoing security checks and walking
28 through metal detectors before they had clocked-in at the beginning of their shifts and after they

1 had already clocked-out at the end of their shifts. Defendants had a uniform corporate pattern
2 and practice and procedure regarding the above practices in violation of Labor Code §§ 201-204,
3 510, 558, 1194, 1197, and 1197.1.

4 34. Plaintiff is informed and believes and based thereon alleges that Defendants'
5 willful failure to provide Plaintiff and Class Members the wages due and owing them upon
6 separation from employment results in a continued payment of wages up to thirty (30) days from
7 the time the wages were due. Therefore, Plaintiff and Class Members who have separated from
8 employment are entitled to compensation pursuant to Labor Code § 203.

9 35. Such a pattern, practice and uniform administration of corporate policy regarding
10 illegal employee compensation as described herein is unlawful and creates an entitlement to
11 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
12 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
13 to the mandate of California Labor Code §§ 218.5, 218.6, 1194, 1197, and 1197.1.

14 **SECOND CAUSE OF ACTION**

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

16 **(BY PLAINTIFF AND THE CLASS AND THE SURGE PAY WAGE STATEMENT**
17 **CLASS AGAINST ALL DEFENDANTS)**

18 36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as
19 though fully set forth herein.

20 37. Defendants failed in their affirmative obligation to provide accurate itemized
21 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
22 records in violation of Labor Code § 226 by failing as a matter of policy and practice to provide
23 accurate payroll records for Plaintiff and the Class.

24 38. Plaintiff and the Class were paid hourly. As such, the wage statements should
25 have reflected the applicable rates of pay and hours worked, total number of hours worked and
26 gross and net wages earned, pursuant to Labor Code § 226(a). The wage statements provided to
27 Plaintiff and the Class failed to identify such information, including without limitation, all wages
28 owed for the time spent undergoing security inspections and walking through metal detectors.

1 Additionally, Defendant violated Labor Code § 226(a)(9) by failing to list the hourly rates and
2 hours worked for an item of hourly wages called “Surge Pay,” on the wage statements furnished
3 to Plaintiff and Class Members.

4 39. Such a pattern, practice and uniform administration of corporate policy as
5 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
6 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
7 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
8 California Labor Code § 226.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***
11 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

12 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as
13 though fully set forth herein.

14 41. Defendants, and each of them, have engaged and continue to engage in unfair and
15 unlawful business practices in California by practicing, employing and utilizing the employment
16 practices outlined above, include, to wit, by failing to pay or timely pay employees wages for all
17 hours worked, including minimum and overtime wages, for time spent undergoing security
18 checks before they were clocked-in and after they were clocked-out in violation of Labor Code
19 §§ 204, 210, 218, 510, 1194, 1197, and 1197.1.

20 42. Defendants’ utilization of such unfair and unlawful business practices constitutes
21 unfair, unlawful competition and provides an unfair advantage over Defendants’ competitors.

22 43. Plaintiff seeks individually and on behalf of all other members of the Class
23 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
24 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
25 practices complained of herein.

26 44. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
28 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set

1 forth herein above thereby depriving Plaintiff and other members of the class the minimum
2 working condition standards and conditions due to them under the California laws as specifically
3 described therein.

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF CAL. LABOR CODE § 2698, ET SEQ.**

6 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL**
7 **DEFENDANTS)**

8 45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44 as
9 though fully set forth herein.

10 46. Pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act
11 (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this
12 capacity, Plaintiff seeks penalties on behalf of all Aggrieved Employees from August 19, 2020,
13 through the present for Defendant’s policy and practice of (a) failing to provide accurate
14 itemized wage statements in violation of Labor Code § 226(a); (b) failing to pay or timely pay
15 employees wages for all hours worked, including minimum and overtime wages, for time spent
16 undergoing security checks before they were clocked-in and after they were clocked-out in
17 violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, and 1197.1; (c) violating Labor
18 Code §§ 201-203 by failing to pay all wages owed and due to employees within the time
19 requirements set forth in these statutes.

20 47. On or about March 25, 2021, Plaintiff sent written notice to the California Labor
21 & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code
22 sections 201, 202, 203, 204, 226, 510, 558, 1194, 1197, and 1197.1. Plaintiff also sent written
23 notice to Defendant via certified mail pursuant to Labor Code § 2699.3. To date, the LWDA has
24 not responded to Plaintiff’s written notice.

25 48. As such, Plaintiff seeks recovery of any and all applicable civil penalties pursuant
26 to Labor Code sections 226.3 and 2699(a), (f), and (g) for Defendants’ violation of Labor Code
27 sections 201, 202, 203, 204, 226, 510, 558, 1194, 1197, and 1197.1 for the time period described
28 above, on behalf of himself and other Aggrieved Employees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment individually and on behalf of all others on
3 whose behalf this suit is brought against Defendants, jointly and severally, as follows:

4 1. For an order appointing Plaintiff as the representative of the classes as described
5 herein;

6 2. For an order appointing Counsel for Plaintiff as class counsel;

7 3. Upon the First Cause of Action, for damages, liquidated damages, and/or
8 penalties pursuant to statute as set forth in Labor Code §§ 201-204, 210, 510, 1194, 1197, and
9 1197.1 and for costs and attorneys' fees;

10 4. Upon the Second Cause of Action, for damages and/or penalties pursuant to
11 California Labor Code § 226, and for costs and attorneys' fees;

12 5. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly
13 effected members of the general public of all funds unlawfully acquired by Defendants by means
14 of any acts or practices declared by this Court to be in violation of Business and Professions
15 Code § 17200, *et seq.*;

16 6. Upon the Fourth Cause of Action, for penalties pursuant to Labor Code §§ 226.3
17 and 2699(a), (f), and (g), and for costs and attorneys' fees;

18 7. On all causes of action for attorneys' fees and costs as provided by California
19 Labor Code §§ 218.5, 226, 510, 558, 1194, 1197, and Code of Civil Procedure § 1021.5; and

20 8. For such other and further relief the Court may deem just and proper.
21

22 DATED: May 28, 2021

DIVERSITY LAW GROUP, P.C.

23
24 By: 

Larry W. Lee

25 Attorneys for Plaintiff and the Class
26
27
28

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On May 28, 2021, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** on the interested parties in
12 this action as follows:

13 Global Mail, Inc.
14 c/o CT Corporation System
15 818 West Seventh Street, Suite 930
16 Los Angeles, California 90017
17 *Agent for Service of Process*

18 X BY MAIL: by placing _____ the original or X a true and correct
19 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
20 attached mailing list. I am readily familiar with the firm's practice for collection and processing
21 of correspondence and other materials for mailing with the United States Postal Service. On this
22 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
23 collection and mailing on this date at the address above following our office's ordinary business
24 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
25 in the ordinary course of business.

26 I declare under penalty of perjury under the laws of the State of California that the
27 above is true and correct. Executed on May 28, 2021, at Los Angeles, California.

28

Erika Mejia