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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

PETER RUBOCZKI, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CDT SERVICE CORPORATION; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: S-CV-0053168

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES**

- (1) VIOLATION OF LABOR CODE §§ 226.7;
- (2) VIOLATION OF LABOR CODE § 226.7
and 512;
- (3) VIOLATION OF LABOR CODE § 226(a);
- (4) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*
AND
- (5) VIOLATION OF LABOR CODE § 2698,
ET SEQ.

DEMAND OVER \$25,000.00

ELECTRONICALLY FILED

Superior Court of California,
County of Placer

08/30/2024 at 04:13:50 PM

By: Cindy P Baldock
Deputy Clerk

1 Plaintiff Peter Ruboczki (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against CDT Service Corporation
3 (“Defendant”) and Does 1 through 50 (collectively, “Defendants”), on behalf of himself and a
4 class of all other similarly situated current and former employees of Defendants for penalties
5 and/or damages for violations of the California Labor Code and restitution for unfair business
6 practices in violation of Business and Professions Code § 17200, *et seq.*, as follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code sections 201, 202, 203, 226, 226.7, 512 and 2698 *et seq.*, Business and
10 Professions Code section 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the
11 California Industrial Welfare Commission (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code and Business and Professions Code against individuals
14 who worked for Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by: (a) failing to provide duty-free meal and rest periods,
18 in violation of Labor Code sections 226.7 and 512; (b) failing to provide accurate itemized wage
19 statements, in violation of Labor Code section 226(a); (c) failing to pay all earned wages upon
20 separation of employment, in violation of Labor Code sections 201, 202 and 203; and (d)
21 engaging in unfair business practices in violation of Business and Professions Code section
22 17200, *et seq.*

23 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 have engaged in, among other things a system of willful violations of the California Labor Code
25 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
26 customs that knowingly deny employees the above stated rights and benefits.

27 5. The policies, practices and customs of Defendants described above and below
28 have resulted in unjust enrichment of Defendants and an unfair business advantage over

1 businesses that routinely adhere to the strictures of the California Labor Code and the California
2 Business and Professions Code.

3 **JURISDICTION AND VENUE**

4 6. The Court has jurisdiction over the violations of the California Labor Code
5 sections 201, 202, 203, 226, 226.7, 512 and 2698 et seq., the UCL, and the applicable IWC Wage
6 Orders.

7 7. Venue is proper in Placer County because Defendant maintains operations in this
8 County and Plaintiff worked for Defendant in Loomis, California, which is located within this
9 County.

10 **PARTIES**

11 8. Plaintiff was employed by Defendant during the approximate period of June 2022
12 to on or about July 2, 2023. Throughout his employment, Plaintiff was an hourly, non-exempt
13 employee.

14 9. Plaintiff is informed and believes, and based thereon alleges, that CDT Service
15 Corporation was and is a California corporation that maintains operations in the State of
16 California.

17 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
19 and partnerships, licensed to do business and actually doing business in the State of California.
20 As such, and based upon all the facts and circumstances incident to Defendants' business,
21 Defendants are subject to the California Labor Code and the UCL.

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

1 injuries complained of herein.

2 12. At all times herein mentioned, each defendant participated in the doing of the acts
3 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
4 and each of them, were the agents, servants and employees of each of the other defendants, as
5 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
6 course and scope of said agency and employment.

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

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

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

24 **CLASS ACTION ALLEGATIONS**

25 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
26 California Code of Civil Procedure section 382, a class of the following current and former non-
27 exempt employees of Defendant:

28 a. All current and former non-exempt employees of Defendant in the State of

California who worked one or more shifts lasting 3.5 hours or more, during the period of July 9, 2020 through the present (“Rest Period Class” or “Rest Period Class Members”); and

b. All current and former non-exempt employees of Defendant in the State of California who worked one or more shifts exceeding 5 hours, during the period of July 9, 2020 through the present (“Meal Period Class” or “Meal Period Class Members”).¹

17. **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 Defendant’s records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendant: (a) failed to provide duty-free meal and rest periods, in violation of Labor Code sections 226.7 and 512; (b) failed to provide accurate itemized wage statements, in violation of Labor Code section 226(a); (c) failed to pay all earned wages upon separation of employment, in violation of Labor Code sections 201, 202 and 203; and (d) engaged in unfair business practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

18. **Adequacy of Representation:** 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.

19. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendant’s policy and practice of: (a) failing to provide duty-free meal and rest

¹ Together, the Meal Period Class and Rest Period Class constitute the “Class” or “Class Members.”

1 periods, in violation of Labor Code sections 226.7 and 512; (b) failing to provide accurate
2 itemized wage statements, in violation of Labor Code section 226(a); (c) failing to pay all earned
3 wages upon separation of employment, in violation of Labor Code sections 201, 202 and 203;
4 and (d) engaging in unfair business practices in violation of the UCL, the California Labor Code,
5 and the applicable IWC Wage Orders.

6 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
7 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
8 manner as the Class Members. As with other non-exempt employees, Plaintiff regularly worked
9 shifts in excess of five hours. However, Defendant failed to provide Plaintiff proper duty-free
10 meal and rest periods and/or pay meal and rest period premiums in lieu thereof. Specifically,
11 Defendant required Plaintiff to remain on the jobsite during his meal and rest breaks. As a result
12 of this policy, Plaintiff remained subject to Defendant's control, and received interrupted and
13 shortened breaks. To date, Plaintiff has not received the unpaid meal and rest period premiums
14 owed to him. Thus, Defendant is liable for waiting time penalties under Labor Code section 203.
15 Furthermore, as a result of the aforementioned meal and rest period violations, Plaintiff was
16 provided wage statements that failed to accurately reflect the total hours worked, the applicable
17 rates of pay, and gross/net wages earned, in violation of Labor Code section 226(a). As such,
18 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
19 Code sections 201, 202, 203, 226(a), 226.7 and 512, and the applicable IWC Wage Orders.

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

26 22. The nature of this action and the format of laws available to Plaintiff and
27 members of the Class identified herein make the class action format a particularly efficient and
28 appropriate procedure to redress the wrongs alleged herein. If each employee were required to

1 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
2 advantage since it would be able to exploit and overwhelm the limited resources of each
3 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
4 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
5 employees who would be disinclined to file an action against their former and/or current
6 employer for real and justifiable fear of retaliation and permanent damage to their careers at
7 subsequent employment.

8 23. The prosecution of separate actions by the individual class members, even if
9 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
10 to individual Class members against the Defendants and which would establish potentially
11 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
12 individual Class members which would, as a practical matter, be dispositive of the interest of the
13 other Class members not parties to the adjudications or which would substantially impair or
14 impede the ability of the Class members to protect their interests. Further, the claims of the
15 individual members of the Class are not sufficiently large to warrant vigorous individual
16 prosecution considering all of the concomitant costs and expenses.

17 24. Such a pattern, practice and uniform administration of corporate policy regarding
18 illegal employee compensation described herein is unlawful and creates an entitlement to
19 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
20 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
21 according to the mandate of California Labor Code sections 218.5 and 226(a), the applicable
22 IWC Wage Orders, and Code of Civil Procedure section 1021.5.

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

26 26. The Class is commonly entitled to a specific fund with respect to the
27 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
28 restitution of those funds being improperly withheld by Defendants. This action is brought for

1 the benefit of the entire class and will result in the creation of a common fund.

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 226.7**

4 **(BY PLAINTIFF AND THE REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

5 27. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set for herein.

7 28. At all relevant times, Defendant failed in its affirmative obligation to ensure that
8 Plaintiff and the Rest Period Class had the opportunity to take and were provided with off-duty
9 10-minute rest periods in accordance with the mandates of the California Labor Code and the
10 applicable IWC Wage Order. Specifically, Defendant required Plaintiff and Rest Period Class
11 Members to remain on work premises during their rest breaks. As a result of said policy and
12 practice, Plaintiff and Rest Period Class Members remained on-duty, and under Defendant's
13 control. In addition, as a pattern and practice, the employees' rest periods were frequently
14 interrupted and shortened by managers and/or supervisors. Defendant failed to pay Plaintiff and
15 the Rest Period Class premium compensation, as mandated by Labor Code section 226.7.

16 29. Such a pattern, practice and uniform administration of corporate policy as
17 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Rest
18 Period Class, in a civil action, for the unpaid balance of the premium compensation pursuant to
19 Labor Code section 226.7, and the applicable IWC Wage Order, including interest thereon,
20 penalties, reasonable attorneys' fees, and costs of suit.

21 30. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
22 willful failure to pay all rest period premium wages due and owing to Plaintiff and the Rest
23 Period Class upon separation from employment results in a continued payment of wages up to
24 thirty (30) days from the time the wages were due. Therefore, Plaintiff and Rest Period Class
25 Members who have separated from employment are entitled to penalties pursuant to Labor Code
26 section 203.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

3 **(BY PLAINTIFF AND THE MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)**

4 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set for herein.

6 32. At all relevant times, Defendant failed in its affirmative obligation to ensure that
7 Plaintiff and the Meal Period Class had the opportunity to take and were provided with off-duty
8 30-minute meal periods in accordance with the mandates of the California Labor Code and the
9 applicable IWC Wage Order. Specifically, Defendant required Plaintiff and Meal Period Class
10 Members to remain on work premises during their meal breaks. As a result of said policy and
11 practice, Plaintiff and Meal Period Class Members remained on-duty, and under Defendant's
12 control. In addition, as a pattern and practice, the employees' meal periods were frequently
13 interrupted and shortened by managers and/or supervisors. Defendant failed to pay Plaintiff and
14 the Meal Period Class premium compensation, as mandated by Labor Code section 226.7.

15 33. Such a pattern, practice and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Meal
17 Period Class, in a civil action, for the unpaid balance of the premium compensation pursuant to
18 Labor Code section 226.7, and the applicable IWC Wage Order, including interest thereon,
19 penalties, reasonable attorneys' fees, and costs of suit.

20 34. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
21 willful failure to pay all meal period premium wages due and owing to Plaintiff and the Meal
22 Period Class upon separation from employment results in a continued payment of wages up to
23 thirty (30) days from the time the wages were due. Therefore, Plaintiff and Meal Period Class
24 Members who have separated from employment are entitled to penalties pursuant to Labor Code
25 section 203.
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1 **THIRD CAUSE OF ACTION**

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

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

4 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 36. Defendant failed in its affirmative obligation to provide accurate itemized wage
7 statements, in violation of Labor Code section 226(a).

8 37. As a result of Defendant's failure to pay proper meal and rest period premiums, as
9 identified above, the wage statements issued to Plaintiff, Rest Period Class Members and Meal
10 Period Class Members failed to identify the correct hours worked, gross wages earned, net wages
11 earned, and hourly rates of pay, in violation of Labor Code section 226(a).

12 38. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by Plaintiff, the Rest Period
14 Class and Meal Period Class, in a civil action, for all damages or penalties pursuant to Labor
15 Code section 226, including interest thereon, attorneys' fees, and costs of suit according to the
16 mandate of California Labor Code section 226.

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

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

20 39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
21 though fully set forth herein.

22 40. Defendant has engaged and continue to engage in unfair and unlawful business
23 practices in California by practicing, employing, and utilizing the employment practices outlined
24 above, including by failing to provide duty-free meal and rest periods, in violation of Labor Code
25 sections 226.7 and 512.

26 41. Defendant's utilization of such unfair and unlawful business practices constitutes
27 unfair and unlawful competition and provides an unfair advantage over Defendant's competitors.

28 42. Plaintiff seeks, individually and on behalf of other members of the Class similarly

1 situated, full restitution of monies, as necessary and according to proof, to restore any and all
2 monies withheld, acquired and/or converted by the Defendant by means of the unfair practices
3 complained of herein.

4 43. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
6 proscribed by California Business & Professions Code section 17200, *et seq.*, including those set
7 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
8 working condition standards and conditions due to them under the California laws as specifically
9 described therein.

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATIONS OF LABOR CODE § 2698, *ET SEQ.***

12 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND ALL AGGRIEVED**
13 **EMPLOYEES, AGAINST ALL DEFENDANTS)**

14 44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 45. Plaintiff brings this cause of action as a proxy for the State of California, and in
17 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 28, 2023, through
18 the present, for Defendant's policy and practice of: (a) failing to provide duty-free meal and rest
19 periods, in violation of Labor Code sections 226.7 and 512; (b) failing to provide accurate
20 itemized wage statements, in violation of Labor Code section 226(a); and (c) failing to pay all
21 earned wages upon separation of employment, in violation of Labor Code sections 201, 202 and
22 203.

23 46. As a pattern and practice, Defendant required Plaintiff and Aggrieved Employees
24 to remain on work premises during their meal and rest breaks. As a result of said policy and
25 practice, Plaintiff and Aggrieved Employees remained on-duty, and under Defendant's control.
26 In addition, as a pattern and practice, the employees' meal and rest periods were frequently
27 interrupted and shortened by managers and/or supervisors. Defendant failed to pay Plaintiff and
28 Aggrieved Employees premium compensation, as mandated by Labor Code section 226.7.

47. As a result of Defendant's failure to pay proper meal and rest period premiums, as identified above, the wage statements issued to Plaintiff and Aggrieved Employees failed to identify the correct hours worked, gross wages earned, net wages earned, and hourly rates of pay, in violation of Labor Code section 226(a).

48. On or about June 28, 2024, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections 201, 202, 203, 226(a), 226.7 and 512, pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act (“PAGA”). More than sixty-five days has elapsed since Plaintiff sent written notice.

49. To date, the LWDA has not responded to Plaintiff's written notice. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203, 226(a), 226.7 and 512 for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203 and 226.7, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 226.7 and 512, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees
7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendant by means

1 of any acts or practices declared by this Court to be in violation of Business & Professions Code
2 section 17200, *et seq.*, and for costs and attorneys' fees;

3 8. Upon the fifth cause of action, for civil penalties according to proof pursuant to
4 Labor Code section 2698 *et seq.*, and for costs and attorneys' fees;

5 9. On all causes of action for attorneys' fees and costs as provided by California
6 Labor Code sections 218.5, 226(a) and 2698 *et seq.*, and Code of Civil Procedure section 1021.5;
7 and

8 10. For such other and further relief the Court may deem just and proper.
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10 DATED: August 30, 2024

DIVERSITY LAW GROUP, P.C.

11
12 By: _____

Kristen M. Agnew

13 Attorneys for Plaintiff, the Class and Aggrieved
14 Employees
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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 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On August 30, 2024, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES**
12 on the interested parties in this action as follows:

13 Ross Morton
14 5325 Elkhorn Boulevard
15 Private Mail Box 293
16 Sacramento, CA 95842
17 *Agent for Service of Process*

18 X BY MAIL: by placing _____ the original or X a true and correct copy
19 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 above
27 is true and correct. Executed on August 30, 2024, at Los Angeles, California.

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Erika Mejia