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Attorneys for Plaintiff ALEXANDER PEGUES, JR.

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

ALEXANDER PEGUES, JR., an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

ELINK RECRUITING SOLUTIONS, INC., a
Georgia Corporation; GLOBAL MAIL, INC.,
an Ohio Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 22STCV18259

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB.

- CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
9) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

Plaintiff ALEXANDER PEGUES, JR. ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant ELINK RECRUITING SOLUTIONS, INC. ("Defendant eLink") is a Georgia corporation that provides recruiting services and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, including in Los Angeles County where PLAINTIFF worked.

2. Defendant GLOBAL MAIL, INC. ("Defendant Global Mail") is an Ohio corporation that provides logistics services, operates distribution and shipping facilities, and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, including in Los Angeles County where PLAINTIFF worked.

3. Defendant eLink and Defendant Global Mail were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as "DEFENDANTS" and/or "DEFENDANT."

4. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible
3 in some manner for one or more of the events and happenings that proximately caused the injuries
4 and damages hereinafter alleged.

5 5. The agents, servants, and/or employees of the DEFENDANTS and each of them
6 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
7 authority as the agent, servant and/or employee of the Defendants, and personally participated in
8 the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged
9 herein. Consequently, the acts of each Defendant are legally attributable to the other
10 DEFENDANT and all DEFENDANTS are jointly and severally liable to PLAINTIFF and the
11 other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the
12 conduct of the Defendants’ agents, servants and/or employees.

13 6. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
14 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
15 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
17 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
18 at all relevant times.

19 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
20 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
21 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
22 employee a wage less than the minimum fixed by California state law, and as such, are subject to
23 civil penalties for each underpaid employee.

24 8. PLAINTIFF was employed by DEFENDANTS in California from October 2021
25 to November 2021 as an outbound mailer, and at all times was classified by DEFENDANTS as a
26 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
27 periods and payment of minimum and overtime wages due for all time worked.

28 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
defined as all persons who are or previously were employed by Defendant eLink who performed
work for Defendant Global Mail in California and classified as non-exempt employees (the

1 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
2 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).
3 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
4 under five million dollars (\$5,000,000.00).

5 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
6 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
7 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to
8 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
9 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS
10 retained and continue to retain wages due PLAINTIFF and the other members of the
11 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek
12 an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
13 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
14 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal
15 and equitable relief.

16 11. DEFENDANTS’ uniform policies and practices alleged herein were unlawful,
17 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
18 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

19 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
20 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
21 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
22 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
23 equitable relief.

24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
27 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
28 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

1 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
2 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
3 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
4 in this County and/or conducts substantial business in this County, and (ii) committed the
5 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

6 **THE CONDUCT**

7 15. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
9 matter of company policy, practice and procedure, intentionally, knowingly and systematically
10 failed to provide legally compliant meal and rest periods, failed to accurately compensate
11 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
12 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
13 time worked, failed to compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
14 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
15 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
16 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
17 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
18 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
19 applicable hourly rates in effect during the pay periods and the corresponding amount of time
20 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
21 purposefully avoid the accurate and full payment for all time worked as required by California
22 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
23 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
24 the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
25 accordingly.

26 **A. Meal Period Violations**

27 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
28 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
3 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
4 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
5 result of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing,
6 DEFENDANTS required PLAINTIFF to work during what was supposed to be PLAINTIFF's
7 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
8 partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
9 minimum wage and overtime wages by regularly working without their time being accurately
10 recorded and without compensation at the applicable minimum wage and overtime rates.
11 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
12 CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

13 17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
14 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
15 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
16 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
17 other CALIFORNIA CLASS Members were required from time to time to perform work as
18 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
19 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
20 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
21 these employees were required by DEFENDANT to work ten (10) hours of work from time to
22 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
23 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
24 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
25 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other
26 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
27 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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1 **B. Rest Period Violations**

2 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these
6 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
7 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
8 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
9 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
10 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
11 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
12 on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not
13 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
14 DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members
15 were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
16 managers.

17 **C. Unreimbursed Business Expenses**

18 19. DEFENDANTS as a matter of corporate policy, practice, and procedure,
19 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
20 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
21 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
22 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
23 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
24 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
26 of his or her duties, or of his or her obedience to the directions of the employer, even though
27 unlawful, unless the employee, at the time of obeying the directions, believed them to be
28 unlawful."

1 20. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
3 furtherance of their job duties as employees for DEFENDANTS. But for the use of their own
4 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
5 their essential job duties. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF
6 and other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result,
7 in the course of their employment with DEFENDANTS, the PLAINTIFF and other
8 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
9 to, costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
10 DEFENDANTS.

11 **D. Wage Statement Violations**

12 21. California Labor Code Section 226 requires an employer to furnish its employees
13 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
14 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
15 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
16 of the employee and only the last four digits of the employee's social security number or an
17 employee identification number other than a social security number, (8) the name and address of
18 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the employee.

20 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
21 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
22 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
23 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
24 wage statements which failed to show, among other things, the total hours worked and all
25 applicable hourly rates in effect during the pay period and the corresponding amount of time
26 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
27 periods.
28

23. DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

24. As a result, DEFENDANTS issued PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

25. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours worked.

26. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited to, undergoing COVID-19 health screenings, which included temperature checks and health questionnaires before the beginning of his shift, and spending time under DEFENDANTS' control for which he was not compensated. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

27. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

28. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

29. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed, including but not limited to, submitting to pre-shift COVID-19 health screenings.

30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

1 31. DEFENDANTS’ policies and practices deprived PLAINTIFF and the other
2 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
3 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
5 hours per day, DEFENDANT’s policies and practices also deprived them of overtime pay.

6 32. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

8 33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due them for all hours worked at DEFENDANT’s direction, control and benefit
10 for the time spent working while off-the-clock. DEFENDANT’s uniform policy and practice to
11 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
12 in accordance with applicable law is evidenced by DEFENDANT’s business records.

13 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

15 34. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
16 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
17 members for their overtime and double time hours worked, meal and rest period premiums, and
18 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
19 due them for working overtime without compensation at the correct overtime and double time
20 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS’ uniform policy and
21 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
22 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
23 law is evidenced by DEFENDANTS’ business records.

24 35. State law provides that employees must be paid overtime at one-and-one-half times
25 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee’s performance.
28

1 36. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

7 37. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
9 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
10 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
11 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
12 rather than just all non-overtime hours worked. Management and supervisors described the
13 incentive/bonus program to potential and new employees as part of the compensation package.
14 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
15 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
16 in a systematic underpayment of overtime and double time compensation, meal and rest period
17 premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
18 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
19 for non-employees shall be calculated in the same manner as the regular rate of pay for the
20 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
21 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
22 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
23 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
24 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

25 38. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
2 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
3 payment of the correct overtime and double time compensation, meal and rest period premiums,
4 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
5 gain an unfair advantage over competitors who complied with the law. To the extent equitable
6 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
7 the CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 39. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
12 DEFENDANTS violated Labor Code § 221.

13 **H. Violations for Untimely Payment of Wages**

14 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
15 CALIFORNIA CLASS members were entitled to timely payment of wages during their
16 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
17 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
18 meal period premium wages, and rest period premium wages within permissible time period.

19 **I. Failure to Provide Personnel Files**

20 41. Subsequent to PLAINTIFF'S termination, on January 28, 2022, PLAINTIFF
21 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
22 personnel and employment records, including but not limited to (1) payroll records; (2)
23 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

24 42. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
25 personnel records, payroll records, employment contracts, and entire employment file within (30)
26 days of all his requests stated above. In fact, as of the date of filing of this complaint,
27 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
28 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide

1 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
2 employees) have the right to inspect personnel records maintained by the employer “related to the
3 employee’s performance or to any grievance concerning the employee.” Employers must allow
4 inspection or copying within thirty (30) days of the request. PLAINTIFF requested his
5 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
6 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
7 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

8 **J. Plaintiff’s Individual Claims**

9 43. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
10 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
11 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
12 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
13 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
14 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
15 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
16 the rest break. DEFENDANTS’ policy caused PLAINTIFF to remain on-call, on-duty and/or on-
17 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
18 forfeited meal and rest breaks without additional compensation and in accordance with
19 DEFENDANTS’ strict corporate policy and practice. Moreover, DEFENDANTS also provided
20 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
21 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
22 the use of his personal cell phone, on behalf of and in furtherance of his employment with
23 DEFENDANTS. Further, failed to provide and/or make available to PLAINTIFF his personnel
24 records, payroll records, employment contracts, and entire employment file within (30) days of
25 all his request on January 28, 2022. To date, DEFENDANTS have not fully paid PLAINTIFF the
26 minimum, overtime and double time compensation still owed to him or any penalty wages owed
27 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
28 not exceed the sum or value of \$75,000.

1 44. In or around October of 2021, and continuing throughout the rest of PLAINTIFF's
2 employment, PLAINTIFF engaged in protected activity by submitting multiple inquiries to
3 DEFENDANTS regarding his wages, including but not limited to, inquiries about what he
4 believed to be unlawful deductions DEFENDANTS made to his wages. Subsequent to
5 PLAINTIFF'S participation in protective activity by inquiring about what he believed to be
6 unlawful deductions made to his wages, DEFENDANT subjected PLAINTIFF to adverse
7 employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF inquired
8 about allegedly unlawful deductions to his wages to DEFENDANTS, DEFENDANT refused to
9 respond to PLAINTIFF'S inquiries and terminated PLAINTIFF'S employment with
10 DEFENDANT in November of 2021. As a result, there is a causal link between the protected
11 activity and DEFENDANT'S decision to terminate his employment, which is against public
12 policy.

13 **K. CLASS ACTION ALLEGATIONS**

14 45. PLAINTIFF brings the First through Eighth Causes of Action as a class action
15 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
16 previously were employed by Defendant eLink who performed work for Defendant Global Mail
17 in California and classified as non-exempt employees ("CALIFORNIA CLASS") during the
18 period beginning four years prior to the filing of the Complaint and ending on a date determined
19 by the Court ("CLASS PERIOD").

20 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
21 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
22 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
23 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
24 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
25 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

26 47. The members of the class are so numerous that joinder of all class members is
27 impractical.
28

1 48. Common questions of law and fact regarding DEFENDANTS' conduct, including
2 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
3 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
4 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
5 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
6 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
7 minimum wage and overtime, exist as to all members of the class and predominate over any
8 questions affecting solely any individual members of the class. Among the questions of law and
9 fact common to the class are:

- 10 a. Whether DEFENDANTS maintained legally compliant meal period policies and
11 practices;
- 12 b. Whether DEFENDANTS maintained legally compliant rest period policies and
13 practices;
- 14 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate premium payments for missed meal and rest periods;
- 16 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate overtime wages;
- 18 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
19 CLASS Members at least minimum wage for all hours worked;
- 20 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
21 CALIFORNIA CLASS Members for required business expenses;
- 22 g. Whether DEFENDANTS issued legally compliant wage statements;
- 23 h. Whether DEFENDANTS committed an act of unfair competition by
24 systematically failing to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked;
- 26 i. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record all meal and rest breaks missed by PLAINTIFF
28 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed

1 the benefit of this work, required employees to perform this work and permits or
2 suffers to permit this work;

3 j. Whether DEFENDANTS committed an act of unfair competition in violation of
4 the UCL, by failing to provide the PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
7 a result of DEFENDANTS' conduct and actions alleged herein.

8 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
9 the same interests as the other members of the class.

10 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 52. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 53. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
15 interests of the other CALIFORNIA CLASS Members.

16 54. There is a strong community of interest among PLAINTIFF and the members of
17 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
18 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
19 sustained.

20 55. The questions of law and fact common to the CALIFORNIA CLASS Members
21 predominate over any questions affecting only individual members, including legal and factual
22 issues relating to liability and damages.

23 56. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because joinder of all class members is impractical. Moreover,
25 since the damages suffered by individual members of the class may be relatively small, the
26 expense and burden of individual litigation makes it practically impossible for the members of the
27 class individually to redress the wrongs done to them. Without class certification and
28 determination of declaratory, injunctive, statutory and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

- 3 a. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of conduct
5 for the parties opposing the CALIFORNIA CLASS; and/or,
- 6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
7 which would as a practical matter be dispositive of the interests of the other
8 members not party to the adjudication or substantially impair or impeded their
9 ability to protect their interests.

10 57. Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
12 the conduct of DEFENDANTS.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

15 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 59. Each of the DEFENDANTS is a “person” as that term is defined under Cal. Bus.
21 And Prof. Code § 17021.

22 60. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
23 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
24 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
25 as follows:

26 Any person who engages, has engaged, or proposes to engage in unfair competition
27 may be enjoined in any court of competent jurisdiction. The court may make such
28 orders or judgments, including the appointment of a receiver, as may be necessary
to prevent the use or employment by any person of any practice which constitutes
unfair competition, as defined in this chapter, or as may be necessary to restore to
any person in interest any money or property, real or personal, which may have

1 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
2 17203).

3 61. By the conduct alleged herein, DEFENDANTS have engaged and continue to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
7 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
9 constitute unfair competition, including restitution of wages wrongfully withheld.

10 62. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
11 unfair in that these practices violated public policy, were immoral, unethical, oppressive
12 unscrupulous or substantially injurious to employees, and were without valid justification or
13 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
14 of the California Business & Professions Code, including restitution of wages wrongfully
15 withheld.

16 63. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
17 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
18 mandated meal and rest periods and the required amount of compensation for missed meal and
19 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
20 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
21 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
22 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

23 64. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
24 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANTS.

27 65. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
28 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide

1 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
2 as required by Cal. Lab. Code §§ 226.7 and 512.

3 66. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
5 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
6 each workday in which a second off-duty meal period was not timely provided for each ten (10)
7 hours of work.

8 67. PLAINTIFF further demands on behalf of himself and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
10 not timely provided as required by law.

11 68. By and through the unlawful and unfair business practices described herein,
12 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
13 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
14 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
15 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
16 to unfairly compete against competitors who comply with the law.

17 69. All the acts described herein as violations of, among other things, the Industrial
18 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
19 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
20 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
21 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 70. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
23 and do, seek such relief as may be necessary to restore to them the money and property which
24 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
25 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
26 business practices, including earned but unpaid wages for all time worked.

27 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

3 72. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
5 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
6 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
8 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

12 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

14 73. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
18 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
19 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
20 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

21 75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
22 policy, an employer must timely pay its employees for all hours worked.

23 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
25 the minimum so fixed is unlawful.

26 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
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1 78. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS.

6 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

10 80. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately calculated the amount of time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
14 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations.

16 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANTS.

19 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
21 failure to pay all earned wages.

22 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them, and which will be ascertained according to proof at trial.

27 84. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS are under-compensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
3 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

6 85. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
8 and provide them with the requisite compensation, DEFENDANTS acted and continue to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

14 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
15 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent minimum wage
18 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
19 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
20 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
21 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
22 Members. DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good
23 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
24 recover statutory costs.

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1 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
3 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
4 (12) hours in a workday, and/or forty (40) hours in any workweek.

5 94. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
10 regulations.

11 95. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
13 compensation for overtime worked.

14 96. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
15 from the overtime requirements of the law. None of these exemptions are applicable to the
16 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
18 agreement that would preclude the causes of action contained herein this Complaint. Rather,
19 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
20 DEFENDANTS' violations of non- negotiable, non-waivable rights provided by the State of
21 California.

22 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
24 constituting a failure to pay all earned wages.

25 98. DEFENDANTS failed to accurately pay the PLAINTIFF and the other members
26 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
27 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
2 evidenced by DEFENDANTS' business records and witnessed by employees.

3 99. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
5 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are
7 presently unknown to them, and which will be ascertained according to proof at trial.

8 100. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
10 DEFENDANTS systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
12 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

14 101. In performing the acts and practices herein alleged in violation of California labor
15 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
16 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
17 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
18 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
19 or the consequences to them, and with the despicable intent of depriving them of their property
20 and legal rights, and otherwise causing them injury in order to increase company profits at the
21 expense of these employees.

22 102. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
23 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a
25 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
26 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
27 Members who have terminated their employment, DEFENDANTS' conduct also violates Labor
28 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
2 CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

9 103. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 104. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
21 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which these employees were
23 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other
24 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
25 and in accordance with DEFENDANTS' strict corporate policy and practice.

26 105. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order,

1 one additional hour of compensation at each employee's regular rate of pay for each workday that
2 a meal period was not provided.

3 106. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 107. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
23 compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required
24 by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide
25 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
26 periods is evidenced by DEFENDANTS' business records.

27 109. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

1 Members who were not provided a rest period, in accordance with the applicable Wage Order,
2 one additional hour of compensation at each employee's regular rate of pay for each workday that
3 rest period was not provided.

4 110. As a proximate result of the aforementioned violations, PLAINTIFF and
5 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
6 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Provide Accurate Itemized Statements**

9 **(Cal. Lab. Code §§ 226)**

10 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

11 111. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 112. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
- 16 b. (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment
18 of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission,
- 20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
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1 employee identification number other than social security number may be shown
2 on the itemized statement,

3 h. the name and address of the legal entity that is the employer, and

4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

6 113. When DEFENDANTS did not accurately record PLAINTIFF's and other
7 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANTS
8 violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage
9 statement in writing that properly and accurately itemizes all wages, and missed meal and rest
10 periods and reporting time wages owed to PLAINTIFF and the other members of the
11 CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the
12 employees.

13 114. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct
16 wages for all missed meal and rest breaks and the amount of employment taxes which were not
17 properly paid to state and federal tax authorities. These damages are difficult to estimate.
18 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
19 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
20 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
21 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
22 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
23 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 116. Cal. Lab. Code § 200 provides that:

9 As used in this article:

- 10 (d) "Wages" includes all amounts for labor performed by employees of every
11 description, whether the amount is fixed or ascertained by the standard of time,
12 task, piece, Commission basis, or other method of calculation.
13 (e) "Labor" includes labor, work, or service whether rendered or performed under
14 contract, subcontract, partnership, station plan, or other agreement if the to be
15 paid for is performed personally by the person demanding payment.

16 117. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
17 an employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately."

19 118. Cal. Lab. Code § 202 provides, in relevant part, that:

20 If an employee not having a written contract for a definite period quits his or her
21 employment, his or her wages shall become due and payable not later than 72 hours
22 thereafter, unless the employee has given 72 hours previous notice of his or her intention
23 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
24 Notwithstanding any other provision of law, an employee who quits without providing a
25 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
26 designates a mailing address. The date of the mailing shall constitute the date of payment
27 for purposes of the requirement to provide payment within 72 hours of the notice of
28 quitting.

29 119. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
30 Members' employment contract.

31 120. Cal. Lab. Code § 203 provides:

32 If an employer willfully fails to pay, without abatement or reduction, in accordance with
33 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
34 quits, the wages of the employee shall continue as a penalty from the due date thereof at
35 the same rate until paid or until an action therefor is commenced; but the wages shall not
36 continue for more than 30 days.

121. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANTS have not tendered payment of wages to these employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as required by law.

EIGHTH CAUSE OF ACTION

123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

125. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANTS within the course and scope of their
3 employment for DEFENDANTS. These expenses were necessary to complete their principal job
4 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
6 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
8 is required to do under the laws and regulations of California.

9 126. PLAINTIFF therefore demands reimbursement on behalf of the members of the
10 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
11 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANTS, with
12 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **NINTH CAUSE OF ACTION**

14 **Wrongful Termination in Violation of Public Policy**

15 **(By PLAINTIFF Against All Defendants)**

16 127. PLAINTIFF realleges and incorporates by reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 128. In or around October of 2021, and continuing throughout the rest of PLAINTIFF's
19 employment, PLAINTIFF engaged in protected activity by submitting multiple inquiries to
20 DEFENDANTS regarding his wages, including but not limited to, inquiries about what he
21 believed to be unlawful deductions DEFENDANTS made to his wages. Subsequent to
22 PLAINTIFF'S participation in protective activity by inquiring about what he believed to be
23 unlawful deductions made to his wages, DEFENDANT subjected PLAINTIFF to adverse
24 employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF inquired
25 about allegedly unlawful deductions to his wages to DEFENDANTS, DEFENDANT refused to
26 respond to PLAINTIFF'S inquiries and terminated PLAINTIFF'S employment with
27 DEFENDANT in November of 2021. As a result, there is a causal link between the protected
28

1 activity and DEFENDANT'S decision to terminate his employment, which is against public
2 policy.

3 129. PLAINTIFF raised the inquiries while he worked for DEFENDANTS and was
4 believed to be willing to raise the inquiries, and DEFENDANTS retaliated against him by taking
5 adverse employment actions, including employment termination, against him.

6 130. As a proximate result of DEFENDANTS' willful, knowing, and intentional
7 conduct, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and
8 mental and physical pain and anguish, all to his damage in a sum according to proof.

9 131. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF,
10 PLAINTIFF has suffered general and special damages in sums according to proof.

11 132. DEFENDANT'S misconduct was committed intentionally, in a malicious,
12 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
13 DEFENDANT.

14 **TENTH CAUSE OF ACTION**

15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

16 **(Cal. Lab. Code §§2698 et seq.)**

17 **(Alleged by PLAINTIFF against all Defendants)**

18 133. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
19 herein, the prior paragraphs of this Complaint.

20 134. PAGA is a mechanism by which the State of California itself can enforce state
21 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
22 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
23 fundamentally a law enforcement action designed to protect the public and not to benefit private
24 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
25 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
26 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
27 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
28 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

1 135. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to himself
4 and all non-exempt and exempt employees who worked for Defendant eLink who performed
5 work for Defendant Global Mail in California during the time period of April 1, 2021 until the
6 present (the "AGGRIEVED EMPLOYEES").

7 136. On April 1, 2022, PLAINTIFF gave written notice by certified mail to the Labor
8 and Workforce Development Agency (the "Agency") and the employer of the specific
9 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
10 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
11 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to
12 Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant
13 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
14 EMPLOYEES as herein defined.

15 137. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and other
17 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
18 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
19 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES at the correct regular rate of
20 pay, (d) failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time
21 worked, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections
22 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203,
23 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194,
24 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Cal. Bus. & Prof. Code §§17200 and 17203,
25 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
26 result of such conduct. PLAINTIFF hereby seek recovery of civil penalties as prescribed by the
27 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
28 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

///

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wage and overtime compensation, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of PLAINTIFF for the Ninth cause of action:

a. Compensatory damages, according to proof at trial, but in excess of \$25,000.

b. Special and General damages according to proof;

c. Statutory damages, penalties and attorney's fees;

d. For punitive damages in an amount necessary to make an example of and to punish DEFENDANTS and deter DEFENDANTS from engaging in future similar conduct;

e. For loss of earnings (both past and future); and,

f. For interest at the legal rate in an amount according to proof.

4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004.

5. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: March 14, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

///

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: March 14, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



Client #49001

April 1, 2022

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

ELINK RECRUITING SOLUTIONS, INC.

c/o Brenda Jennings

3535 Peachtree Road NE, Suite 520-549

Atlanta, Georgia 30326

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3681

GLOBAL MAIL, INC.

c/o CT Corporation System

330 N Brand Boulevard, Suite 700

Glendale, California 91203

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3698

c/o CT Corporation System

4400 Easton Commons Way, Suite 125

Columbus, OH 43219

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3704

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ALEXANDER PEGUES, JR. ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants ELINK RECRUITING SOLUTIONS, INC. ("Defendant eLink") and GLOBAL MAIL, INC. ("Defendant Global Mail") (hereinafter collectively "Defendants"). Plaintiff was employed by Defendants in California from October 2021 to November 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant eLink and/or Defendant Global Mail in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
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Attorneys for Plaintiff ALEXANDER PEGUES, JR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALEXANDER PEGUES, JR., an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

ELINK RECRUITING SOLUTIONS, INC., a
Georgia Corporation; GLOBAL MAIL, INC.,
an Ohio Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802;
9) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

Plaintiff ALEXANDER PEGUES, JR. ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant ELINK RECRUITING SOLUTIONS, INC. ("Defendant eLink") is a Georgia corporation that provides recruiting services and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, including in Los Angeles County where PLAINTIFF worked.

2. Defendant GLOBAL MAIL, INC. ("Defendant Global Mail") is an Ohio corporation that provides logistics services, operates distribution and shipping facilities, and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, including in Los Angeles County where PLAINTIFF worked.

3. Defendant eLink and Defendant Global Mail were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as "DEFENDANTS" and/or "DEFENDANT."

4. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,

1 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible
2 in some manner for one or more of the events and happenings that proximately caused the injuries
3 and damages hereinafter alleged.

4 5. The agents, servants, and/or employees of the DEFENDANTS and each of them
5 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
6 authority as the agent, servant and/or employee of the Defendants, and personally participated in
7 the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged
8 herein. Consequently, the acts of each Defendant are legally attributable to the other
9 DEFENDANT and all DEFENDANTS are jointly and severally liable to PLAINTIFF and the
10 other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the
11 conduct of the Defendants’ agents, servants and/or employees.

12 6. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
13 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
14 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
16 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
at all relevant times.

17 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
18 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee.

22 8. PLAINTIFF was employed by DEFENDANTS in California from October 2021
23 to November 2021 as an outbound mailer, and at all times was classified by DEFENDANTS as a
24 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
25 periods and payment of minimum and overtime wages due for all time worked.

26 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
27 defined as all persons who are or previously were employed by Defendant eLink and/or Defendant
28 Global Mail in California and classified as non-exempt employees (the “CALIFORNIA CLASS”)
at any time during the period beginning four (4) years prior to the filing of this Complaint and

1 ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in
2 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
3 dollars (\$5,000,000.00).

4 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
5 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
6 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to
7 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
8 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS
9 retained and continue to retain wages due PLAINTIFF and the other members of the
10 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek
11 an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
12 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
13 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal
14 and equitable relief.

15 11. DEFENDANTS’ uniform policies and practices alleged herein were unlawful,
16 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
17 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

18 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
19 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
20 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
21 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
22 equitable relief.

23 **JURISDICTION AND VENUE**

24 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
26 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
27 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

28 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and

1 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
2 in this County and/or conducts substantial business in this County, and (ii) committed the
3 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4 **THE CONDUCT**

5 15. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
7 matter of company policy, practice and procedure, intentionally, knowingly and systematically
8 failed to provide legally compliant meal and rest periods, failed to accurately compensate
9 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
10 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
11 time worked, failed to compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
12 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
13 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
14 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
15 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
16 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
17 applicable hourly rates in effect during the pay periods and the corresponding amount of time
18 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
19 purposefully avoid the accurate and full payment for all time worked as required by California
20 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
21 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
22 the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
23 accordingly.

24 **A. Meal Period Violations**

25 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
26 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS

1 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
2 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
3 result of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing,
4 DEFENDANTS required PLAINTIFF to work during what was supposed to be PLAINTIFF's
5 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
6 partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
7 minimum wage and overtime wages by regularly working without their time being accurately
8 recorded and without compensation at the applicable minimum wage and overtime rates.
9 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
10 CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

11 17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
12 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
13 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
14 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
15 other CALIFORNIA CLASS Members were required from time to time to perform work as
16 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
17 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
18 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
19 these employees were required by DEFENDANT to work ten (10) hours of work from time to
20 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
21 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
22 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
23 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other
24 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
25 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

26 **B. Rest Period Violations**

27 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required from time to time to work in excess of four

1 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
2 requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these
3 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
4 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
5 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
6 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
7 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
8 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
9 on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not
10 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
11 DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members
12 were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
13 managers.

14 **C. Unreimbursed Business Expenses**

15 19. DEFENDANTS as a matter of corporate policy, practice, and procedure,
16 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
17 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
18 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
19 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
20 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
21 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
22 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
23 of his or her duties, or of his or her obedience to the directions of the employer, even though
24 unlawful, unless the employee, at the time of obeying the directions, believed them to be
25 unlawful."

26 20. In the course of their employment, DEFENDANTS required PLAINTIFF and
27 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
28 furtherance of their job duties as employees for DEFENDANTS. But for the use of their own

1 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
2 their essential job duties. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF
3 and other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result,
4 in the course of their employment with DEFENDANTS, the PLAINTIFF and other
5 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
6 to, costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
7 DEFENDANTS.

8 **D. Wage Statement Violations**

9 21. California Labor Code Section 226 requires an employer to furnish its employees
10 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
11 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
12 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
13 of the employee and only the last four digits of the employee's social security number or an
14 employee identification number other than a social security number, (8) the name and address of
15 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate by the employee.

17 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
18 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
19 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
20 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
21 wage statements which failed to show, among other things, the total hours worked and all
22 applicable hourly rates in effect during the pay period and the corresponding amount of time
23 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
24 periods.

25 23. DEFENDANTS, from time to time, failed to provide PLAINTIFF and the
26 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

27 24. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,

1 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
2 unintentional payroll error due to clerical or inadvertent mistake.

3 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

4 25. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
5 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
6 CLASS for all hours worked.

7 26. During the CLASS PERIOD, from time-to-time DEFENDANTS required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
9 including but not limited to, undergoing COVID-19 health screenings, which included
10 temperature checks and health questionnaires before the beginning of his shift, and spending time
11 under DEFENDANTS' control for which he was not compensated. This resulted in PLAINTIFF
12 and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

13 27. DEFENDANTS directed and directly benefited from the uncompensated off-the-
14 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

15 28. DEFENDANTS controlled the work schedules, duties, protocols, applications,
16 assignments, and employment conditions of PLAINTIFF and the other members of the
17 CALIFORNIA CLASS.

18 29. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
19 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
20 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
21 wages earned and owed for all the work they performed, including but not limited to, submitting
22 to pre-shift COVID-19 health screenings.

23 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
24 exempt employees, subject to the requirements of the California Labor Code.

25 31. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
26 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
27 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
28

1 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
2 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

3 32. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

5 33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
6 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
7 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
8 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
9 in accordance with applicable law is evidenced by DEFENDANT's business records.

10 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
11 **Sick Pay**

12 34. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
13 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
14 members for their overtime and double time hours worked, meal and rest period premiums, and
15 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
16 due them for working overtime without compensation at the correct overtime and double time
17 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and
18 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
19 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
20 law is evidenced by DEFENDANTS' business records.

21 35. State law provides that employees must be paid overtime at one-and-one-half times
22 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
23 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
24 employee's performance.

25 36. The second component of PLAINTIFF's and other CALIFORNIA CLASS
26 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
27 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
28 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by
2 DEFENDANTS.

3 37. However, from-time-to-time, when calculating the regular rate of pay, in those pay
4 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
5 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
6 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
7 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
8 rather than just all non-overtime hours worked. Management and supervisors described the
9 incentive/bonus program to potential and new employees as part of the compensation package.
10 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
11 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
12 in a systematic underpayment of overtime and double time compensation, meal and rest period
13 premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
14 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
15 for non-employees shall be calculated in the same manner as the regular rate of pay for the
16 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
17 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
18 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
19 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
20 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

21 38. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
26 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
27 payment of the correct overtime and double time compensation, meal and rest period premiums,
28 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and

1 gain an unfair advantage over competitors who complied with the law. To the extent equitable
2 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
3 the CLASS PERIOD should be adjusted accordingly.

4 **G. Unlawful Deductions**

5 39. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
6 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
7 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
8 DEFENDANTS violated Labor Code § 221.

9 **H. Violations for Untimely Payment of Wages**

10 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
11 CALIFORNIA CLASS members were entitled to timely payment of wages during their
12 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
13 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
14 meal period premium wages, and rest period premium wages within permissible time period.

15 **I. Failure to Provide Personnel Files**

16 41. Subsequent to PLAINTIFF'S termination, on January 28, 2022, PLAINTIFF
17 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
18 personnel and employment records, including but not limited to (1) payroll records; (2)
19 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

20 42. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
21 personnel records, payroll records, employment contracts, and entire employment file within (30)
22 days of all his requests stated above. In fact, as of the date of filing of this complaint,
23 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
24 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
25 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
26 employees) have the right to inspect personnel records maintained by the employer "related to the
27 employee's performance or to any grievance concerning the employee." Employers must allow
28 inspection or copying within thirty (30) days of the request. PLAINTIFF requested his

1 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
2 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
3 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing this action.

4 **J. Plaintiff's Individual Claims**

5 43. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
6 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
7 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
8 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
9 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
10 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
11 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
12 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call, on-duty and/or on-
13 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
14 forfeited meal and rest breaks without additional compensation and in accordance with
15 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
16 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
17 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
18 the use of his personal cell phone, on behalf of and in furtherance of his employment with
19 DEFENDANTS. Further, failed to provide and/or make available to PLAINTIFF his personnel
20 records, payroll records, employment contracts, and entire employment file within (30) days of
21 all his request on January 28, 2022. To date, DEFENDANTS have not fully paid PLAINTIFF the
22 minimum, overtime and double time compensation still owed to him or any penalty wages owed
23 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
24 not exceed the sum or value of \$75,000.

25 44. In or around October of 2021, and continuing throughout the rest of PLAINTIFF's
26 employment, PLAINTIFF engaged in protected activity by submitting multiple inquiries to
27 DEFENDANTS regarding his wages, including but not limited to, inquiries about what he
28 believed to be unlawful deductions DEFENDANTS made to his wages. Subsequent to

1 PLAINTIFF'S participation in protective activity by inquiring about what he believed to be
2 unlawful deductions made to his wages, DEFENDANT subjected PLAINTIFF to adverse
3 employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF inquired
4 about allegedly unlawful deductions to his wages to DEFENDANTS, DEFENDANT refused to
5 respond to PLAINTIFF'S inquiries and terminated PLAINTIFF'S employment with
6 DEFENDANT in November of 2021. As a result, there is a causal link between the protected
7 activity and DEFENDANT'S decision to terminate his employment, which is against public
8 policy.

9 **K. CLASS ACTION ALLEGATIONS**

10 45. PLAINTIFF brings the First through Eighth Causes of Action as a class action
11 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
12 previously were employed by Defendant eLink and/or Defendant Global Mail in California and
13 classified as non-exempt employees ("CALIFORNIA CLASS") during the period beginning four
14 years prior to the filing of the Complaint and ending on a date determined by the Court ("CLASS
15 PERIOD").

16 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
17 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
18 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
19 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
20 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
21 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

22 47. The members of the class are so numerous that joinder of all class members is
23 impractical.

24 48. Common questions of law and fact regarding DEFENDANTS' conduct, including
25 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
26 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
27 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
28 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure

1 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
2 minimum wage and overtime, exist as to all members of the class and predominate over any
3 questions affecting solely any individual members of the class. Among the questions of law and
4 fact common to the class are:

- 5 a. Whether DEFENDANTS maintained legally compliant meal period policies and
6 practices;
- 7 b. Whether DEFENDANTS maintained legally compliant rest period policies and
8 practices;
- 9 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
10 CLASS Members accurate premium payments for missed meal and rest periods;
- 11 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
12 CLASS Members accurate overtime wages;
- 13 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
14 CLASS Members at least minimum wage for all hours worked;
- 15 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
16 CALIFORNIA CLASS Members for required business expenses;
- 17 g. Whether DEFENDANTS issued legally compliant wage statements;
- 18 h. Whether DEFENDANTS committed an act of unfair competition by
19 systematically failing to record and pay PLAINTIFF and the other members of the
20 CALIFORNIA CLASS for all time worked;
- 21 i. Whether DEFENDANTS committed an act of unfair competition by
22 systematically failing to record all meal and rest breaks missed by PLAINTIFF
23 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
24 the benefit of this work, required employees to perform this work and permits or
25 suffers to permit this work;
- 26 j. Whether DEFENDANTS committed an act of unfair competition in violation of
27 the UCL, by failing to provide the PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with the legally required meal and rest periods.

1 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANTS' conduct and actions alleged herein.

3 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
4 the same interests as the other members of the class.

5 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 52. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 53. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
10 interests of the other CALIFORNIA CLASS Members.

11 54. There is a strong community of interest among PLAINTIFF and the members of
12 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

15 55. The questions of law and fact common to the CALIFORNIA CLASS Members
16 predominate over any questions affecting only individual members, including legal and factual
17 issues relating to liability and damages.

18 56. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy because joinder of all class members is impractical. Moreover,
20 since the damages suffered by individual members of the class may be relatively small, the
21 expense and burden of individual litigation makes it practically impossible for the members of the
22 class individually to redress the wrongs done to them. Without class certification and
23 determination of declaratory, injunctive, statutory and other legal questions within the class
24 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
25 create the risk of:

- 26 a. Inconsistent or varying adjudications with respect to individual members of the
27 CALIFORNIA CLASS which would establish incompatible standards of conduct
28 for the parties opposing the CALIFORNIA CLASS; and/or,

1 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
2 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
3 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
4 constitute unfair competition, including restitution of wages wrongfully withheld.

5 62. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
6 unfair in that these practices violated public policy, were immoral, unethical, oppressive
7 unscrupulous or substantially injurious to employees, and were without valid justification or
8 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
9 of the California Business & Professions Code, including restitution of wages wrongfully
10 withheld.

11 63. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
12 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
13 mandated meal and rest periods and the required amount of compensation for missed meal and
14 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
15 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
16 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
17 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

18 64. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
19 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANTS.

22 65. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
23 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
24 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
25 as required by Cal. Lab. Code §§ 226.7 and 512.

26 66. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 67. PLAINTIFF further demands on behalf of himself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 68. By and through the unlawful and unfair business practices described herein,
7 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
9 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
10 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
11 to unfairly compete against competitors who comply with the law.

12 69. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
14 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
15 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
16 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 70. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all time worked.

22 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 72. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

9 73. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
13 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
15 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

16 75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
17 policy, an employer must timely pay its employees for all hours worked.

18 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
20 the minimum so fixed is unlawful.

21 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
22 including minimum wage compensation and interest thereon, together with the costs of suit.

23 78. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
24 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
25 they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
26 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
27 the CALIFORNIA CLASS.
28

1 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

5 80. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately calculated the amount of time worked and consequently underpaid the actual time
7 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
8 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
9 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
10 laws and regulations.

11 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
13 minimum wage compensation for their time worked for DEFENDANTS.

14 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
16 failure to pay all earned wages.

17 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
18 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
19 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
20 suffered and will continue to suffer an economic injury in amounts which are presently unknown
21 to them, and which will be ascertained according to proof at trial.

22 84. DEFENDANTS knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS are under-compensated for their time worked.
24 DEFENDANTS systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
26 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
27 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
28 for their time worked.

1 85. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
3 and provide them with the requisite compensation, DEFENDANTS acted and continue to act
4 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
6 consequences to them, and with the despicable intent of depriving them of their property and legal
7 rights, and otherwise causing them injury in order to increase company profits at the expense of
8 these employees.

9 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
10 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
11 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
12 California Labor Code and/or other applicable statutes. To the extent minimum wage
13 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
14 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
15 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
16 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
17 Members. DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good
18 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
19 recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

22 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

24 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANTS' willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

4 89. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
5 public policy, an employer must timely pay its employees for all hours worked.

6 90. Cal. Lab. Code § 510 further provides that employees in California shall not be
7 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
8 unless they receive additional compensation beyond their regular wages in amounts specified by
9 law.

10 91. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
11 including minimum wage and overtime compensation and interest thereon, together with the costs
12 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
13 than those fixed by the Industrial Welfare Commission is unlawful.

14 92. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
15 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
16 they worked, including overtime work.

17 93. DEFENDANTS' uniform pattern of unlawful wage and hour practices
18 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
19 implementing a uniform policy and practice that failed to accurately record overtime worked by
20 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
21 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
22 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
23 (12) hours in a workday, and/or forty (40) hours in any workweek.

24 94. In committing these violations of the California Labor Code, DEFENDANTS
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
27 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
28

1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

3 95. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
4 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
5 compensation for overtime worked.

6 96. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
7 from the overtime requirements of the law. None of these exemptions are applicable to the
8 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
9 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
10 agreement that would preclude the causes of action contained herein this Complaint. Rather,
11 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
12 DEFENDANTS' violations of non- negotiable, non-waivable rights provided by the State of
13 California.

14 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
16 constituting a failure to pay all earned wages.

17 98. DEFENDANTS failed to accurately pay the PLAINTIFF and the other members
18 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
19 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
20 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
21 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
22 evidenced by DEFENDANTS' business records and witnessed by employees.

23 99. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
24 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
25 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
26 CLASS have suffered and will continue to suffer an economic injury in amounts which are
27 presently unknown to them, and which will be ascertained according to proof at trial.

28

1 100. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANTS systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

7 101. In performing the acts and practices herein alleged in violation of California labor
8 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
9 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
10 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
12 or the consequences to them, and with the despicable intent of depriving them of their property
13 and legal rights, and otherwise causing them injury in order to increase company profits at the
14 expense of these employees.

15 102. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
16 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
17 statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a
18 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
19 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
20 Members who have terminated their employment, DEFENDANTS' conduct also violates Labor
21 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
22 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
23 CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
24 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
25 Members are entitled to seek and recover statutory costs.

26
27 ///

1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 103. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 104. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
9 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
10 required by the applicable Wage Order and Labor Code. The nature of the work performed by
11 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
12 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
13 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
14 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
15 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
16 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
17 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
18 Members with a second off-duty meal period in some workdays in which these employees were
19 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other
20 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
21 and in accordance with DEFENDANTS' strict corporate policy and practice.

22 105. DEFENDANTS further violated California Labor Code §§ 226.7 and the
23 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
24 Members who were not provided a meal period, in accordance with the applicable Wage Order,
25 one additional hour of compensation at each employee's regular rate of pay for each workday that
26 a meal period was not provided.

1 106. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
3 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

8 107. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
10 Complaint.

11 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
12 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
13 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
14 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
15 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
17 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
18 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
20 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
21 compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required
22 by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide
23 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
24 periods is evidenced by DEFENDANTS' business records.

25 109. DEFENDANTS further violated California Labor Code §§ 226.7 and the
26 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
27 Members who were not provided a rest period, in accordance with the applicable Wage Order,
28

1 one additional hour of compensation at each employee's regular rate of pay for each workday that
2 rest period was not provided.

3 110. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 111. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

12 112. Cal. Labor Code § 226 provides that an employer must furnish employees with an
13 "accurate itemized" statement in writing showing:

- 14 a. Gross wages earned,
- 15 b. (2) total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment
17 of overtime under subdivision (a) of Section 515 or any applicable order of
18 the Industrial Welfare Commission,
- 19 c. the number of piece-rate units earned and any applicable piece rate if the employee
20 is paid on a piece-rate basis,
- 21 d. all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
- 23 e. net wages earned,
- 24 f. the inclusive dates of the period for which the employee is paid,
- 25 g. the name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number of an
27 employee identification number other than social security number may be shown
28 on the itemized statement,

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 113. When DEFENDANTS did not accurately record PLAINTIFF's and other
5 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANTS
6 violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage
7 statement in writing that properly and accurately itemizes all wages, and missed meal and rest
8 periods and reporting time wages owed to PLAINTIFF and the other members of the
9 CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the
10 employees.

11 114. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 CLASS. These damages include, but are not limited to, costs expended calculating the correct
14 wages for all missed meal and rest breaks and the amount of employment taxes which were not
15 properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
17 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
18 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
19 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
20 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
21 of the CALIFORNIA CLASS herein).

22 **SEVENTH CAUSE OF ACTION**

23 **Failure To Pay Wages When Due**

24 **(Cal. Lab. Code §§ 203)**

25 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

26 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

116. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

117. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

118. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

119. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

120. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

121. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANTS have not tendered payment of wages to these employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as required by law.

122. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all

employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

124. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her 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

125. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
2 is required to do under the laws and regulations of California.

3 126. PLAINTIFF therefore demands reimbursement on behalf of the members of the
4 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
5 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANTS, with
6 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

7 **NINTH CAUSE OF ACTION**

8 **Wrongful Termination in Violation of Public Policy**

9 **(By PLAINTIFF Against All Defendants)**

10 127. PLAINTIFF realleges and incorporates by reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

12 128. In or around October of 2021, and continuing throughout the rest of PLAINTIFF's
13 employment, PLAINTIFF engaged in protected activity by submitting multiple inquiries to
14 DEFENDANTS regarding his wages, including but not limited to, inquiries about what he
15 believed to be unlawful deductions DEFENDANTS made to his wages. Subsequent to
16 PLAINTIFF'S participation in protective activity by inquiring about what he believed to be
17 unlawful deductions made to his wages, DEFENDANT subjected PLAINTIFF to adverse
18 employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF inquired
19 about allegedly unlawful deductions to his wages to DEFENDANTS, DEFENDANT refused to
20 respond to PLAINTIFF'S inquiries and terminated PLAINTIFF'S employment with
21 DEFENDANT in November of 2021. As a result, there is a causal link between the protected
22 activity and DEFENDANT'S decision to terminate his employment, which is against public
23 policy.

24 129. PLAINTIFF raised the inquiries while he worked for DEFENDANTS and was
25 believed to be willing to raise the inquiries, and DEFENDANTS retaliated against him by taking
26 adverse employment actions, including employment termination, against him.

130. As a proximate result of DEFENDANTS' willful, knowing, and intentional conduct, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

131. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to proof.

132. DEFENDANT’S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against DEFENDANT.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

c. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wage and overtime compensation, due to PLAINTIFF and

1 the other members of the CALIFORNIA CLASS, during the applicable CLASS
2 PERIOD plus interest thereon at the statutory rate;

3 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
4 the applicable IWC Wage Order;

5 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
6 which a violation occurs and one hundred dollars (\$100) per each member of the
7 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
8 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
9 violation of Cal. Lab. Code § 226

10 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
11 penalty from the due date thereof at the same rate until paid or until an action
12 therefore is commenced, in accordance with Cal. Lab. Code § 203.

13 3. On behalf of PLAINTIFF for the Ninth cause of action:

14 a. Compensatory damages, according to proof at trial, but in excess of \$25,000.

15 b. Special and General damages according to proof;

16 c. Statutory damages, penalties and attorney's fees;

17 d. For punitive damages in an amount necessary to make an example of and to punish
18 DEFENDANTS and deter DEFENDANTS from engaging in future similar
19 conduct;

20 e. For loss of earnings (both past and future); and,

21 f. For interest at the legal rate in an amount according to proof.
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1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 5

6 DATED: April 1, 2022

7 **ZAKAY LAW GROUP, APLC**

8 By: 

9 Shani O. Zakay

10 Attorney for PLAINTIFF

11 **DEMAND FOR A JURY TRIAL**

12 PLAINTIFF demands a jury trial on issues triable to a jury.

13

14 DATED: April 1, 2022

15 **ZAKAY LAW GROUP, APLC**

16 By: 

17 Shani O. Zakay

18 Attorney for PLAINTIFF

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Global Mail, Inc.
C/O CT Corp. System
330 N. Brand Blvd., Ste 700
Glendale, CA 91203



9590 9402 6815 1074 9829 51

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3698

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 5 2022

002-310-4112-PAGA

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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all
Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Elink recruiting solutions, inc
c/o Brenda Jennings
3535 Peachtree Rd. NE, Ste 510
Atlanta, Georgia 30326



9590 9402 6815 1074 9829 44

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3681

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature] ☒ Agent
☐ Addressee

B. Received by (Printed Name)

I Dawson

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Paya
Pegues 002-310 4.1.22

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Global Mail, Inc.
40 CT Corp. System
4400 Easton Commons Way, Ste 125
Columbus, OH 43219



9590 9402 6815 1074 9829 68

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3704

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Daniel D. Kelley

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery

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Domestic Return Receipt