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16 and all others similarly situated

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/21/2024

Clerk of the Court

BY: WILLIAM TRUPEK

Deputy Clerk

17 **SUPERIOR COURT OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**

19 AARON SOWEMIMO, an individual, and
20 PATRICK BROWN, an individual, on
21 behalf of themselves and all others similarly
22 situated,

23 Plaintiffs,

24 v.

25 DHL EXPRESS USA, INC., an Ohio
26 Corporation, and DOES 1-10, Inclusive,

27 Defendants.

Case No. CGC-24-613006

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:

- (1) **FAILURE TO PAY REGULAR AND/OR OVERTIME WAGES;**
- (2) **FAILURE TO PROVIDE MEAL PERIODS;**
- (3) **FAILURE TO PROVIDE REST PERIODS;**
- (4) **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- (5) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- (6) **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION;**
- (7) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), Bus. & Prof. Code § 17200 et seq., and**
- (8) **VIOLATION OF PRIVATE ATTORNEY GENERAL ACT (PAGA) (Labor Code §2699, et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiffs AARON SOWEMIMO and PATRICK BROWN (“Plaintiffs”), by and through
2 their attorneys of record, bring this Class Action Complaint against DHL EXPRESS USA, INC.,
3 EXEL, INC., DBA DHL SUPPLY CHAIN and DOES 2-10 (“DHL” or “Defendants”), and
4 respectfully allege the following:

5 **NATURE OF THE ACTION**

6 1. This is a class action for wage and labor violations arising out of Defendants’ failure
7 to pay wages for all time worked and failure to provide timely and uninterrupted meal and rest
8 periods, and for derivative claims.

9 2. As set forth below, Defendants: failed to pay its employees wages for all hours
10 worked, including overtime wages for work in excess of eight hours a day or forty hours a week,
11 for time they had to arrive early in order to secure a scanner, lifts and/or related equipment, which
12 was necessary to perform their job duties during their shift, time spent attending weekly pre-shift
13 meetings, and for time they were required to perform work during their meal and/or rest periods;
14 failed to provide timely and uninterrupted meal and rest periods to its California non-exempt
15 employees in violation of California Labor Code §§ 512 and 226.7, and the applicable Industrial
16 Wage Order; failed to pay its employees one hour of pay at the regular rate of compensation for
17 each instance that Defendant failed to provide statutorily mandated rest periods and timely off-duty
18 meal periods; failed to furnish timely and accurate wage statements; failed to reimburse its
19 California non-exempt employees for necessary business expenses incurred; failed to pay all wages
20 due upon termination; is in violation of California’s Unfair Competition Law (“UCL”) and the
21 Private Attorneys General Act of 2004 (“PAGA”).

22 3. Plaintiffs seek to represent all those similarly situated who are or were residents of
23 the State of California.

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over this action because this is a civil action where the
26 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
27 Court. The acts and omissions complained of in this action took place in the State of California.
28 Venue is proper because upon information and belief, Defendant conducts substantial business in

1 this county and maintains facilities in California in this county.

2 **PARTIES**

3 5. Plaintiff AARON SOWEMIMO is a resident of Los Angeles, California. Plaintiff
4 SOWEMIMO was employed at DHL’s facility in Los Angeles International Airport, California,
5 from approximately July 2020 to approximately September 2021, as an International Service
6 Agent/Cargo/Ramp/Warehouse Agent.

7 6. Plaintiff PATRICK BROWN is a resident of Hemet, California. Plaintiff BROWN was
8 employed at DHL’s facility in Ontario International Airport in Ontario, California, from approximately
9 October 2022 to approximately March 17, 2023, as an Order Filler Picker.

10 7. At all times material herein, Defendants DHL EXPRESS USA, INC., an Ohio
11 corporation and EXEL, INC., DBA DHL SUPPLY CHAIN, as Massachusetts Corporation, were
12 authorized to do business in California, including but not limited to conducting business within the
13 County of San Francisco. Defendants are in the Logistics and Courier Services Industry,
14 specializing in international shipping, courier services and transportation. Upon information and
15 belief, DHL operates throughout all fifty states, including in California. At all relevant times
16 alleged herein, Plaintiffs are informed and believe that Defendants are authorized to and conducts
17 business in California, including but not necessarily limited to the County of San Francisco.
18 Defendants employ/employed Agents and Order Filler Pickers all throughout the State of California.

19 8. Plaintiffs are informed and believe, and on that basis allege, that DHL is engaged in
20 transportation, selling, processing and shipping packages to customers as part of interstate and
21 international commerce.

22 9. Plaintiffs are currently unaware of the true names and capacities, whether individual,
23 corporate, associate, or otherwise, of the defendants sued herein under fictitious names Does 2
24 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will
25 seek leave to amend this complaint to allege the true names and capacities of said fictitiously
26 named defendants when their true names and capacities have been ascertained. Plaintiffs are
27 informed and believe and thereon allege that each of the fictitiously named defendants is legally
28 responsible in some manner for the events and occurrences alleged herein, and for the damages

1 suffered by the Class.

2 10. Plaintiffs are informed and believe and thereon allege that all defendants, including
3 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
4 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged
5 herein occurred within the course and scope of said agency, employment, partnership, and joint
6 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
7 consent, authorization and ratification of their co-defendants.

8 **FACTS**

9 11. Between approximately July 2020 to approximately September 2021, Plaintiff
10 SOWEMIMO was employed by DHL as a non-exempt, hourly-paid International Service
11 Agent/Cargo/Ramp/Warehouse Agent at DHL's warehouse in Los Angeles International Airport in
12 Los Angeles, California. Plaintiff SOWEMIMO's duties included, but were not limited to,
13 handling of material arriving and exiting the LAX Gateway. Plaintiff SOWEMIMO processed
14 time-sensitive materials for pick-up, transit, and delivery including sorting, loading, unloading, and
15 material handling. The packages Plaintiff SOWEMIMO handled included packages moving from
16 other states into California.

17 12. Plaintiff SOWEMIMO typically worked 12 hours per shift, six days per week;
18 however, on weekends, Plaintiff SOWEMIMO's shift would be 22 to 24 hours long.

19 13. Between approximately October 2022 to approximately March 2023, Plaintiff
20 BROWN was employed by DHL as a non-exempt, hourly-paid Order Filler Picker at DHL's
21 warehouse in Ontario International Airport in Ontario, California. Plaintiff BROWN's duties
22 included, but were not limited to, handling of material arriving and exiting the Ontario International
23 Airport. Plaintiff BROWN was responsible for filling customer orders, replenishing product, and
24 obtaining merchandise from bins or shelves to fill the order. The packages Plaintiff BROWN
25 handled included packages moving from other states into California.

26 14. Plaintiff BROWN typically worked 8 hours per shift, five days per week; however,
27 during the peak busy season, Plaintiff BROWN was required to work at least 10 hours per shift.

28 15. The Defendants are in the business of transporting, selling, processing, and shipping

1 packages to customers as part of interstate and international commerce. Defendants employ class
2 members, such as Plaintiffs, who handle packages to deliver to customers as part of international
3 and interstate commerce. Thus, Plaintiffs and members of the class are within a class of workers
4 engaged in interstate commerce, and any arbitration agreements with class action waivers signed by
5 Plaintiffs and class members, to the extent they exist, are not enforceable under the exemption in
6 section 1 of the Federal Arbitration Act. *See Southwest Airlines Co. v. Saxon*, 142 S.Ct. 1783
7 (2022).

8 16. Plaintiffs often had to arrive to work early - up to 45 minutes to one hour before a
9 shift started - in order to secure the equipment needed to use during their shifts, such as a scanner or
10 lift. If Plaintiffs did not arrive early, they risked not having the needed equipment to perform their
11 duties during their shift. Certain equipment was given out on a first-come, first-serve basis. In
12 addition, Plaintiffs were required to attend pre-shift meetings prior to clocking in for their shift.
13 Plaintiffs were not paid for this time, even though: (1) no practical administrative difficulty of
14 recording the additional time exists or existed for Defendants during the relevant time period; (2) it
15 is or was feasible for Defendants to determine or estimate the average time it takes each employee
16 to attend these pre-shift meetings, as class members at issue in this action were required to attend
17 pre-shift meetings prior to clocking in for the day. *See Troester v. Starbucks Corp.*, (2018) 5
18 Cal.5th 829.

19 17. Defendants failed to properly compensate Plaintiffs and class members for all hours
20 worked at the appropriate overtime rate for time that Plaintiffs and class members spent to arrive
21 early to secure equipment, in pre-shift meetings, and performing work during meal breaks,
22 including responding to interruptions from management.

23 18. At times, Plaintiffs were required to work through their meal breaks and/or received
24 short meal breaks. For example, when Plaintiff Sowemimo was able to take a meal break,
25 Plaintiff's supervisor would start the break time before Plaintiff was ready, as Plaintiff still had
26 tasks to finish, like parking the cart used to load/unload and transport packages, cutting his meal
27 break short. Additionally, when Plaintiffs were able to take their meal break, they were often
28 interrupted by their managers with work-related questions or to address work-related issues.

1 Supervisors would seek Plaintiffs out in the breakroom to interrupt them on their meal breaks. For
2 example, Plaintiff Brown would be interrupted when a rush shipment came in. Plaintiffs were not
3 paid a meal period premium for these missed, interrupted, and/or shortened meal periods.

4 19. Additionally, Defendants failed to provide Plaintiffs and other class members with
5 timely meal periods on shifts over 10 hours, in violation of California law. Plaintiffs and other class
6 members who worked shifts of over 10 hours are entitled to a second 30-minute uninterrupted meal
7 period. However, Plaintiffs and other class members worked shifts over 10 hours and no second
8 meal break was provided, nor any meal period premium paid. When Plaintiffs worked on the
9 weekends for up to 24 hours and/or during the peak busy season, they were only provided with one
10 30-minute meal break (at most). Plaintiffs frequently complained to managers and supervisors
11 regarding the above-mentioned claims, and nothing was ever done. Plaintiffs do not recall signing a
12 meal break waiver nor any other similar document.

13 20. Further, due to press of business and management interruptions, Defendants often
14 failed to provide Plaintiffs with rest breaks in violation of Labor Code § 226.7. Plaintiffs were not
15 paid a rest period premium for these non-compliant rest periods. Further, Plaintiffs often worked
16 shifts of over 10 hours and were not offered a third rest break as required under California law.
17 Plaintiffs were not paid rest break premiums for each workday over ten hours that a third rest break
18 was not provided.

19 21. Plaintiffs and other class members' wage statements failed to correctly state the rate
20 of pay for regular and/or overtime wages, meal and rest break premiums, and consequently the
21 gross and net wages due, among other required information. Because of Defendants' failure to list
22 the correct gross wages earned, net wages, and meal and rest break premiums earned on wage
23 statements, Plaintiffs and other class members have been prevented from verifying, solely from
24 information on the wage statements themselves, that they were paid correctly and in full.

25 22. Also, during the relevant time period, Plaintiffs and other class members were
26 required to use their personal cellphones for work purposes. Supervisors would call Plaintiffs and
27 class members on their personal cellphones. Plaintiffs would need to use their personal cellphones
28 to run the company application and/or send photos of the pallets to document compliance,

1 shipments and equipment to their supervisors. No company phone was provided. Plaintiffs and
2 class members have not been reimbursed for all cellphone expenses.

3 23. Upon information and belief, the above-mentioned unlawful employment practices
4 by Defendants were applied the same to all International Service Agents and Cargo Agents/Ramp
5 Agents/Warehouse Agents and Order Filler Pickers in all of Defendant’s warehouses in the State of
6 California.

7 24. Defendants’ conduct, as alleged here, has caused Plaintiffs and class members
8 damages including, but not limited to, loss of wages and compensation. Defendants are liable to
9 Plaintiffs and the class for failing to pay meal and rest break premiums, failing to pay all straight-
10 time and/or overtime wages owed for each pay period, failing to provide timely and accurate wage
11 statements, failing to pay all wages due upon termination, and unfair competition.

12 25. Plaintiffs are a member of, and seek to be representatives for, the class of similarly
13 situated employees who all have been exposed to, have suffered, and/or were permitted to work
14 under Defendants’ unlawful employment practices as alleged herein.

15 26. Plaintiff Brown exhausted the notice requirement by filing a complaint with the
16 Labor and Workforce Development Agency (“LWDA”) in his letter dated March 14, 2024, as
17 required under the *California Labor Code Private Attorney General Act* (“PAGA”). A true and
18 correct copy of Plaintiff Brown’s letter is attached hereto as **Exhibit A** and is incorporated herein
19 by reference. The LWDA did not assume jurisdiction over the applicable penalty claims alleged;
20 therefore, Plaintiff Brown has exhausted the procedural requirement under PAGA to pursue any
21 and all penalty claims as provided under PAGA.

22 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

23 27. Plaintiffs bring this action on behalf of themselves and on behalf of all others
24 similarly situated, and as members of the Class they seek to represent. The class period is from four
25 years prior to the filing of the Complaint in this action until the trial of this action (“class period.”)
26 The Class is defined as:

27 *All current and former non-exempt, hourly-paid International Service Agents and/or*
28 *Cargo Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or*
other non-exempt, hourly-paid employees who, in performance of their work duties

1 *handled packages and goods as part of international and/or interstate commerce,*
2 *employed by Defendants in California during the time period commencing four years*
3 *before this complaint was filed, and until the present (“Class Period”).*

4 28. Plaintiffs further seek to represent the following subclasses:

5 **The Regular Wages Subclass**

6 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
7 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
8 exempt, hourly-paid employees who, in performance of their work duties handled packages
9 and goods as part of international and/or interstate commerce, employed by Defendants in
10 California during the Class Period, and who worked at least one shift less than eight hours
11 in a workday and/or worked less than 40 hours during the workweek.”

12 **The Overtime Wages Subclass**

13 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
14 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
15 exempt, hourly-paid employees who, in performance of their work duties handled packages
16 and goods as part of international and/or interstate commerce, employed by Defendants in
17 California during the Class Period, and who worked at least one shift longer than eight
18 hours in a workday and/or worked more than 40 hours during the workweek.”

19 **The Meal Break Subclass**

20 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
21 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
22 exempt, hourly-paid employees who, in performance of their work duties handled packages
23 and goods as part of international and/or interstate commerce, employed by Defendants in
24 California during the Class Period, and who worked at least one shift longer than five hours
25 in a workday.”

26 **The Second Meal Break Subclass**

27 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
28 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
exempt, hourly-paid employees who, in performance of their work duties handled packages
and goods as part of international and/or interstate commerce, employed by Defendants in
California during the Class Period, and who worked at least one shift longer than ten hours
in a workday.”

The Rest Break Subclass

“All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
Agents/Ramp/Warehouse Agents, and/or Order Filler Pickers, and/or other non-exempt,
hourly-paid employees who, in performance of their work duties handled packages and
goods as part of international and/or interstate commerce, employed by Defendants in
California during the Class Period and who worked at least one shift longer than three and a
half hour in a workday.”

The Itemized Wage Statement Subclass

“All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
exempt, hourly-paid employees who, in performance of their work duties handled packages

1 and goods as part of international and/or interstate commerce, employed by Defendants in
2 California during the Class Period, and who have received at least one wage statement from
Defendants.”

3 **The Expense Reimbursement Subclass**

4 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
5 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
6 exempt, hourly-paid employees who, in performance of their work duties handled packages
and goods as part of international and/or interstate commerce, employed by Defendants in
California during the Class Period, and who incurred business expenses.”

7 **The Waiting Time Penalties Subclass**

8 “All members of the Class, the Regular Wages Subclass, Overtime Wages Subclass, Meal
9 Break Subclass, Second Meal Break Subclass, and the Rest Break Subclass who separated
employment with Defendants at any point during the past three (3) years prior to the filing
of this action.”

10 **The UCL Subclass**

11 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
12 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
13 exempt, hourly-paid employees who, in performance of their work duties handled packages
and goods as part of international and/or interstate commerce, employed by Defendants in
14 California during the Class Period, regarding whom Defendants has engaged in unlawful,
unfair and/or fraudulent business acts or practices prohibited by B&PC §17200, et seq. as
15 specifically described herein.”

16 29. Plaintiffs reserve the right to amend or otherwise alter the class definition, or to
17 propose or eliminate subclasses, in response to facts learned through discovery, legal arguments
18 advanced by Defendants or otherwise.

19 30. This action has been brought and may be properly maintained as a class action
20 pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

21 31. **Numerosity of the Class:** Pursuant to Code of Civil Procedure § 382, members of
22 the Class are so numerous that their individual joinder is impracticable. Plaintiffs estimate, on
23 information and belief, that there are several hundred current and former non-exempt employees of
24 Defendants employed in warehouses in California during the class period. The precise number of
25 Class members and their addresses are known to Plaintiffs or will be known to Plaintiffs through
26 discovery. Class members may be notified of the pendency of this action by mail, electronic mail,
27 the Internet, or published notice.

28 32. **Existence of Predominance of Common Questions of Law and Fact:** Pursuant

1 to Code of Civil Procedure § 382, common questions of law and fact and common answers exist as
2 to all members of the Class. These questions predominate over any questions affecting only
3 individual Class members. These common legal and factual questions and answers include:

- 4 a. Whether Plaintiffs and the members of the class were not paid all wages owed to them,
5 including regular and overtime wages;
- 6 b. Whether Defendants had a policy or practice of not paying for time spent securing
7 necessary equipment before the shift start, attending pre-shift meetings, and performing
8 work during meal breaks;
- 9 c. Whether Defendants violated Labor Code § 226.7 and/or 512, applicable California
10 Industrial Welfare Commission Order, and engaged in a pattern or practice of failing to
11 provide timely, off-duty thirty (30) minute meal periods to Plaintiffs and members of
12 the class;
- 13 d. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the
14 members of the class from taking statutory off-duty thirty (30) minute meal periods on a
15 timely basis;
- 16 e. Whether Defendants engaged in a pattern or practice of failing to properly compensate
17 Plaintiffs and the members of the class for missed, untimely or on-duty meal periods as
18 required by California law;
- 19 f. Whether Defendants engaged in a pattern or practice of failing to properly compensate
20 Plaintiffs and the members of the class for failing to provide ten (10) minute,
21 uninterrupted rest periods as contemplated by California law for work periods in excess
22 of three and one-half (3 ½) hours;
- 23 g. Whether Defendants had a policy or practice of not paying meal or rest period
24 premiums;
- 25 h. Whether Plaintiffs and the members of the class were not provided with accurate wage
26 statements as required by Labor Code section 226;
- 27 i. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized
28 wage statements to Plaintiffs and members of the class that failed to include payments

1 for missed, untimely, and/or on-duty meal periods among wages earned throughout the
2 Class Period;

3 j. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage
4 statements to Plaintiffs and members of the class that failed to include payment for all
5 hours worked;

6 k. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage
7 statements to Plaintiffs and members of the class that failed to accurately state the total
8 hours worked, to the detriment of Plaintiffs and the members of the class;

9 l. Whether Defendants failed to compensate, and therefore violated Labor Code § 226(a),
10 226.7, and the applicable Industrial Wage Order by failing to provide ten (10) minute,
11 uninterrupted rest periods as contemplated by California law for work periods in excess
12 of three and one-half (3 ½) hours;

13 m. Whether Defendants violated Labor Code §2802, by failing to reimburse Plaintiffs and
14 the members of the class incurred necessary business expenses, including for using their
15 personal cell phones to send messages to managers to prove compliance with their
16 work;

17 n. Whether Defendants violated Labor Code §§ 201-203 by failing to pay all wages due
18 upon termination to all Class Members who were terminated or voluntarily quit; and

19 o. Whether Defendants engaged in unfair practices and violated California Business &
20 Professions Code § 17200 by failing to provide Plaintiffs and the members of the class
21 with their statutory off-duty meal and rest periods on a timely basis;

22 p. Whether Defendants engaged in unfair practices and violated California Business &
23 Professions Code section 17200 by failing to pay Plaintiffs and the members of the class
24 for all time worked, failing to reimburse necessarily incurred business expenses, and
25 failing to provide meal and rest periods nor pay premiums; and

26 q. The nature and extent of class-wide injury and the measure of damages or restitution.

27 33. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the class
28 they seek to represent because Plaintiffs, as non-exempt employees of Defendants, were exposed

1 and subjected to the same unlawful business practices as other employees employed by Defendants
2 during the class period. Plaintiffs and the members of the class they seek to represent sustained the
3 same types of damages and losses.

4 34. **Adequacy:** Plaintiffs are adequate representatives of the class they seek to represent
5 because their interests do not conflict with the interests of the members of the class Plaintiffs seek
6 to represent. Plaintiffs have retained counsel competent and experienced in complex class action
7 litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of
8 the class will be fairly and adequately protected by Plaintiffs and their counsel.

9 35. **Superiority and Substantial Benefit:** The class action is superior to other
10 available means for the fair and efficient adjudication of Plaintiffs' and the Class members' claims.
11 The damages suffered by each individual Class member may be limited. Damages of such
12 magnitude are small given the burden and expense of individual prosecution of the complex and
13 extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible
14 for the Class members to redress the wrongs done to them on an individual basis. Even if members
15 of the Class themselves could afford such individual litigation, the court system could not.
16 Individualized litigation increases the delay and expense to all parties and the court system due to
17 the complex legal and factual issues of the case. By contrast, the class action device presents far
18 fewer management difficulties and provides the benefits of single adjudication, economy of scale,
19 and comprehensive supervision by a single court.

20 36. The Class should also be certified because:

- 21 a. The prosecution of separate actions by individual members of the Class would create a
22 risk of inconsistent or varying adjudications with respect to individual Class members
23 which would establish incompatible standards of conduct for Defendants;
- 24 b. The prosecution of separate actions by individual members of the Class would create a
25 risk of adjudication with respect to them, which would, as a practical matter, be
26 dispositive of the interests of the other Class members not parties to the adjudications,
27 or substantially impair or impede their ability to protect their interests; and
- 28 c. Defendants have acted or refused to act on grounds generally applicable to the Class,

1 and/or the general public, thereby making appropriate final and injunctive relief with
2 respect to the Class as a whole.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY REGULAR AND/OR OVERTIME WAGES**
5 **(Violation of Labor Code §§ 218, 218.5, 218.6, 510, 1194, 1194, 1198, and the applicable Wage**
6 **Order)**
7 **(Against all defendants)**

8 37. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
9 herein.

10 38. The California Labor Code establishes the fundamental right of all employees in
11 the State of California to be paid wages in a timely fashion for their work.

12 39. The applicable Industrial Wage Order provides that an employer may not pay
13 employees less than the applicable minimum wage for all hours worked.

14 40. Pursuant to the applicable Industrial Wage Order, Defendants are required to pay
15 Plaintiffs, and the members of the Class, for all hours worked, meaning the time which an
16 employee is subject to the control of the employer.

17 41. At all relevant times during the class period, Defendants failed to pay Plaintiffs and
18 other members of the class wages for all hours worked, in that Plaintiffs and the class were
19 interrupted with work-related issues while not clocked in to Defendants' timekeeping program,
20 resulting in unpaid wages. Further, Plaintiffs and other members of the class were not paid for the
21 time they had to arrive early to secure their equipment to use for their shift, and time spent
22 attending pre-shift meetings prior to clocking in. As a result, Plaintiffs and other class members
23 worked hours they were not paid for, including overtime in the instances Plaintiffs and other class
24 members worked over eight hours in a day and/or 40 hours a week. Plaintiffs and the Class
25 Members therefore seek unpaid wages and penalties.

26 42. Labor Code § 510 and the applicable Wage Order provide that employees in
27 California shall not be employed more than eight hours in any workday or forty hours in a
28 workweek unless they receive additional compensation beyond their regular wages in amounts
specified by law. Specifically, Labor Code § 510(a) requires that: Any work in excess of eight
hours in one workday and any work in excess of 40 hours in any one workweek shall be

1 compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee.

3 43. Labor Code § 1194 establishes an employee's right to recover unpaid overtime
4 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code
5 §1198 makes employment of an employee for longer hours than the IWC set or under conditions
6 the IWC prohibits unlawful.

7 44. During the class period, Plaintiffs and other class members have worked more than
8 eight hours in a workday, and/or more than forty hours in a workweek.

9 45. During the class period, Defendants have failed to pay Plaintiffs and other class
10 members the overtime compensation premium for those unpaid hours they have worked in excess
11 of the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the
12 applicable Wage Order.

13 46. In committing the violations of state law as herein alleged, Defendants have
14 knowingly and willfully refused to perform its obligations to compensate Plaintiffs and members
15 of the class for all wages earned and all hours worked. As a direct result, Plaintiffs and other
16 members of the class have suffered and continue to suffer, substantial losses related to the use and
17 enjoyment of such compensation, wages and lost interest on such monies and expenses and
18 attorney's fees in seeking to compel Defendants to fully perform their obligations under state law,
19 all to their respective damage in amounts according to proof at trial and within the jurisdiction of
20 this Court.

21 47. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of
22 the unpaid wages resulting from Defendants' regular and overtime wage violations including
23 interest thereon, reasonable attorney's fees and costs of suit, and liquidated damages to the fullest
24 extent permissible pursuant to Labor Code § 218, 218.5, 218.6, and 1194(a).

25 **SECOND CAUSE OF ACTION**
26 **FAILURE TO PROVIDE MEAL PERIODS**
27 **(Violation of Labor Code §§ 512, 226.7, and the Applicable Wage Order)**
28 **(Against all defendants)**

48. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth

1 herein.

2 49. California Labor Code § 226.7(b) provides, “An employer shall not require an
3 employee to work during a meal or rest period mandated pursuant to an applicable order of the
4 Industrial Welfare Commission”.

5 50. The applicable wage order provides, in pertinent part: “[n]o employer shall employ
6 any person for a work period of more than five (5) hours without a meal period of not less than 30
7 minutes, except that when a work period of not more than six (6) hours will complete the day’s
8 work the meal period may be waived by mutual consent of the employer and the employee.”

9 51. Labor Code § 512(a) provides, in pertinent part: “[a]n employer may not employ an
10 employee for a work period of more than five hours per day without providing the employee with a
11 meal period of not less than 30 minutes, except that if the total work period per day of the employee
12 is no more than six hours, the meal period may be waived by mutual consent of both the employer
13 and employee. An employer may not employ an employee for a work period of more than 10 hours
14 per day without providing the employee with a second meal period of not less than 30 minutes,
15 except that if the total hours worked is no more than 12 hours, the second meal period may be
16 waived by mutual consent of the employer and the employee only if the first meal period was not
17 waived.”

18 52. As alleged herein, Defendants failed to authorize and permit timely and
19 uninterrupted meal periods during the Class period. Plaintiffs and members of the class were
20 routinely required to work without a timely and uninterrupted meal break at the direction of
21 Defendants and/or with Defendants’ knowledge and acquiescence. Additionally, Plaintiffs were not
22 paid premiums for each instance their meal periods were interrupted, missed and/or untimely.

23 53. In addition, Defendants failed to authorize and permit timely second meal periods
24 during the Class period. Plaintiffs and members of the class regularly worked shifts over 10 hours
25 but were not offered a second meal period. Plaintiffs and members of the class were routinely
26 required to work without a timely second meal break at the direction of Defendants and/or with
27 Defendants’ knowledge and acquiescence. Plaintiffs did not waive their second meal break.

28 54. By its actions in requiring its employees to work through meal periods and/or its

1 failure to relieve the employees of their duties for their off-duty meal periods, Defendants have
2 violated California Labor Code §§ 226.7, 512 and the applicable wage order, and is liable to
3 Plaintiffs and the class.

4 55. As a result of the unlawful acts of Defendants, Plaintiffs and the class have been
5 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§
6 226.7(c), 512 and the applicable wage order, in the amount of one additional hour of pay at the
7 employee’s regular rate of compensation for each workday in which Defendants failed to provide
8 its employees with timely statutory off-duty meal periods.

9 56. Plaintiffs, and the other members of the class, are entitled to seek and recover
10 reasonable attorneys’ fees and costs pursuant to Labor Code §§ 226.7 and 512.

11 **THIRD CAUSE OF ACTION**
12 **FAILURE TO PROVIDE REST PERIODS**
13 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**
14 **(Against all defendants)**

15 57. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
16 herein.

17 58. California Labor Code § 226.7(b) provides, “An employer shall not require an
18 employee to work during a meal or rest period mandated pursuant to an applicable order of the
19 Industrial Welfare Commission”.

20 59. The applicable Industrial Wage Order provides, in pertinent part: “[e]very employer
21 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
22 the middle of each work period. The authorized rest period time shall be based on the total hours
23 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
24 thereof. However, a rest period need not be authorized for employees whose total daily work time is
25 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
26 worked for which there shall be no deduction from wages”.

27 60. The applicable Industrial Wage Order further provides: “[i]f an employer fails to
28 provide an employee with a rest period in accordance with the applicable provisions of this order,
the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of

1 compensation for each workday that the rest period is not provided”.

2 61. As alleged herein, Defendants failed to authorize and permit rest breaks during the
3 Class period. Plaintiffs and members of the class were routinely required to work through rest
4 periods at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.
5 Further, Plaintiffs often worked shifts of over 10 hours and were not offered a third rest break as
6 required under California law.

7 62. By its actions in requiring its employees during the class period to work through rest
8 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendants
9 violated the applicable Industrial Wage Order and California Labor Code § 226.7 and is liable to
10 Plaintiffs and the class.

11 63. Defendants’ unlawful conduct alleged herein occurred in the course of employment
12 of Plaintiffs and all others similarly situated and such conduct has continued through the filing of
13 this complaint.

14 64. As a direct and proximate result of Defendants’ unlawful actions, Plaintiffs and the
15 class have been deprived of timely rest periods and/or were not paid for rest periods taken during
16 the Class period, and are entitled to recovery under Labor Code § 226.7(c) in the amount of one
17 additional hour of pay at the employee’s regular rate of compensation for each workday in which
18 Defendant failed to provide employees with timely and/or paid rest periods.

19 65. Plaintiffs, and the other members of the class, are entitled to seek and recover
20 reasonable attorneys’ fees and costs pursuant to Labor Code § 226.7.

21 **FOURTH CAUSE OF ACTION**
22 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
23 **(Violation of Labor Code §226)**
24 **(Against all defendants)**

25 66. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
26 herein.

27 67. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or
28 at the time of each payment of wages, furnish each of his or her employees, either as a detachable
part of the check, draft, or voucher paying the employee’s wages, or separately when wages are

1 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
2 earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and
3 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
4 that all deductions made on written orders of the employee may be aggregated and shown as one
5 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
6 the name of the employee and only the last four digits of his or her social security number, [...], (8)
7 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate by
9 the employee...”.

10 68. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
11 initial pay period in which a violation of Labor Code § 226 occurs and \$100 for each subsequent
12 pay period, for all pay periods in which the employer knowingly and intentionally failed to provide
13 accurate itemized statements to the employee causing the employee to suffer injury.

14 69. Plaintiffs are informed, believe and thereon allege that at all times relevant,
15 Defendants knowingly and intentionally failed to furnish and continues to knowingly and
16 intentionally fail to furnish Plaintiffs and the members of the class with timely and accurate
17 itemized statements showing the gross wages earned by each of them, as required by Labor Code §
18 226(a), in that the premiums owed to Plaintiffs and the members of the class for missed meal and
19 rest periods were not included in gross wages earned by Plaintiffs and the members of the class.

20 70. Further, wages owed to Plaintiffs and the members of the class for time they worked
21 before their shift and the time spent working through meal breaks, were not included in gross wages
22 earned by Plaintiffs and the members of the class.

23 71. Defendants’ failure to provide Plaintiffs and members of the class with accurate
24 itemized wage statements during the class period has caused Plaintiffs and the members of the class
25 to incur economic damages in that they were not aware that they were owed and not paid
26 compensation for missed rest periods and on-duty meal periods, and for all hours worked. In
27 addition, Defendants provided inaccurate information regarding hours worked, which masked its
28 underpayment of wages to Plaintiffs and the members of the class.

1 72. As a result of Defendants' issuance of inaccurate itemized wage statements to
2 Plaintiffs and the members of the class in violation of Labor Code § 226(a), Plaintiffs and the
3 members of the class are each entitled to recover penalties pursuant to Labor Code § 226(e).

4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**
6 **(Violation of Labor Code § 2802, *et seq.*)**
7 **(Against all defendants)**

8 73. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
9 herein.

10 74. California Labor Code section 2802 provides that an employer must reimburse
11 employees for all necessary expenditures.

12 75. At all relevant times during the class period, Plaintiffs and the members of the class
13 incurred necessary business-related expenses and costs that were not fully reimbursed by
14 Defendants, including, but not limited to, personal cellphone usage.

15 76. Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and
16 the members of the class for necessary business-related expenses and costs. Defendants' conduct
17 violates California Labor Code Section 2802.

18 77. Plaintiffs and the members of the class are entitled to recover from Defendants their
19 business-related expenses incurred during the course and scope of their employment, plus interest,
20 pursuant to California Labor Code section 2802.

21 **SIXTH CAUSE OF ACTION**
22 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**
23 **(Violation of Labor Code §§ 201-203)**
24 **(Against all defendants)**

25 78. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
26 herein.

27 79. California Labor Code §§ 201-203 provide that if an employer discharges an
28 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
and that if an employee voluntarily leaves his or her employment, his or her wages shall become
due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-
two hours prior notice of his or her intention to quit in which case the employee is entitled to his or

1 her wages at the time of quitting.

2 80. During the Class period, Defendants willfully failed to pay Plaintiffs and the
3 members of the class who are no longer employed by Defendants all their earned wages,
4 specifically, meal and rest period premiums not paid for missed or interrupted meal and rest
5 periods, and wages for all hours worked, either at the time of discharge or within seventy-two hours
6 of their leaving Defendants' employ in violation of California Labor Code §§ 201, 202, and 203.

7 81. Therefore, Plaintiffs and the members of the class are entitled to waiting time
8 penalties for each day that has passed that they have not received all wages owed to them, up to 30
9 days.

10 **SEVENTH CAUSE OF ACTION**
11 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
12 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**
13 **(Against all defendants)**

14 82. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
15 herein.

16 83. Section 17200 of the California Business and Professions Code (the "UCL")
17 prohibits any unlawful, unfair, or fraudulent business practices.

18 84. Through its action alleged herein, Defendants have engaged in unfair competition
19 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful,
20 unfair, and/or fraudulent business practices under the UCL.

21 85. Defendants' unlawful conduct under the UCL includes, but is not limited to,
22 violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not
23 limited to, failure to pay members of the class wages and compensation they earned through labor
24 provided, and failing to otherwise compensate members of the class as alleged herein. Defendants'
25 fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or
26 misleading information about the time the members of the class worked and the amount of wages
27 or compensation due, failing to provide meal and rest breaks, and failing to reimburse necessarily
28 incurred expenses.

86. Plaintiffs have standing to assert this claim because they have suffered injury in fact

1 and have lost money as a result of Defendants’ conduct.

2 87. Plaintiffs and the members of the class seek restitutionary disgorgement from
3 Defendants of monies owed for all hours worked and for unpaid meal and rest period premiums.

4 88. Plaintiffs have assumed the responsibility of enforcement of the laws and public
5 policies specified here by suing on behalf of themselves and other similarly situated class members
6 previously or presently working for Defendants in California. Plaintiffs’ success in this action will
7 enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in
8 pursuing this action in the public interest. Therefore, an award of reasonable attorneys’ fees to
9 Plaintiffs is appropriate pursuant to Code of Civil Procedure § 1021.5.

10 **EIGHTH CAUSE OF ACTION**
11 **VIOLATION OF PRIVATE ATTORNEY GENERAL ACT (PAGA)**
12 **(Cal. Lab. Code §§2698 and 2699, *et. seq.*)**
13 **(Against all defendants)**

14 89. Plaintiff Brown re-alleges and incorporates all preceding paragraphs as if fully set
15 forth herein.

16 90. Labor Code §§ 2698 and 2699 (The California Private Attorney General Act of
17 2004, or “PAGA”), expressly establish that any provision of the California Labor Code which
18 provides for a civil penalty to be assessed and collected by The Labor and Workforce Development
19 Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or
20 employees for a violation of the California Labor Code, may be recovered through a civil action
21 brought by an aggrieved employee on behalf of himself or herself, and other current or former
22 employees.

23 91. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
24 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is
25 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
26 a civil penalty.

27 92. Plaintiff Brown is an “aggrieved employee” as defined by Labor Code § 2699,
28 because he is an employee of DHL, and one or more of the Labor Code violations was committed
against him.

- 1 2. For other compensatory damages and/or statutory damages and statutory penalties resulting
- 2 from improper compensation according to proof;
- 3 3. For statutory attorney fees according to proof;
- 4 4. For statutory interest according to proof; and
- 5 5. For reasonable attorneys' fees and costs pursuant to the California Labor Code.

6 **ON THE SECOND CAUSE OF ACTION**

- 7 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
- 8 more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal
- 9 period;
- 10 2. For waiting time penalties according to proof;
- 11 3. For statutory costs according to proof; and
- 12 4. For statutory interest according to proof.

13 **ON THE THIRD CAUSE OF ACTION**

- 14 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
- 15 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten
- 16 (10) minute rest period for each four (4) hours or major fraction thereof worked;
- 17 2. For waiting penalties according to proof;
- 18 3. For statutory costs according to proof; and
- 19 4. For statutory interest according to proof.

20 **ON THE FOURTH CAUSE OF ACTION**

- 21 1. For statutory compensation for any harm caused;
- 22 2. For compensatory damages and interest thereon for actual harm caused; and
- 23 3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and
- 24 costs.

25 **ON THE FIFTH CAUSE OF ACTION**

- 26 1. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
- 27 2. For statutory interest according to proof; and
- 28 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

1 **ON THE SIXTH CAUSE OF ACTION**

- 2 1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for
3 all wages not timely paid upon termination;
4 2. For penalty enhancement for willful conduct;
5 3. For statutory interest according to proof; and
6 4. For reasonable attorney's fees and costs pursuant to the Labor Code.

7 **ON THE SEVENTH CAUSE OF ACTION**

- 8 1. For the equitable, injunctive and declaratory relief;
9 2. For liquidated damages pursuant to Labor Code § 1194.1; and
10 3. For restitutionary disgorgement pursuant to the UCL.

11 **ON THE EIGHTH CAUSE OF ACTION**

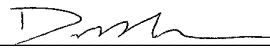
- 12 1. For penalties for each violation of the Private Attorneys General Act ("PAGA");
13 2. For interest on statutory penalties from the date of violation until paid in full; and
14 3. For reasonable attorneys' fees, expenses, and costs pursuant to the Labor Code.

15 **ON ALL CAUSES OF ACTION**

- 16 1. An order that this action may proceed and be maintained as a class action;
17 2. Reasonable attorney's fees;
18 3. General, special and consequential damages, to the extent allowed by law;
19 4. Costs of suit;
20 5. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5;
21 6. Prejudgment interest at the maximum legal rate; and
22 7. Such other relief as the Court may deem just and proper.

23 DATED: May 21, 2024

THE MARKHAM LAW FIRM

24 By:  _____

25 David R. Markham

26 Lisa Brevard

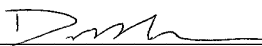
27 *Attorneys for Plaintiffs and all others*
28 *similarly situated*

DEMAND FOR JURY TRIAL

1 Plaintiffs demand a trial by jury for themselves and the members of the class on all claims
2 so triable.
3

4
5 DATED: May 21, 2024

THE MARKHAM LAW FIRM

6 By: 

7 David R. Markham
8 Lisa Brevard
9 *Attorneys for Plaintiffs*
10 *and all others similarly situated*

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EXHIBIT A

THE MARKHAM LAW FIRM

- 888 Prospect Street, Suite 200 • La Jolla, California 92037 •
- Phone: (619) 399-3995 • Fax: (619) 323-1684 •
- Email: *contact@markham-law.com* •

March 14, 2024

Via Online Filing:

https://dir.tfaforms.net/260

Labor and Workforce Development Agency

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, California 94612

Re: Wage/Hour Claims of Patrick Brown (“Employee”), on behalf of himself and other aggrieved employees in California against DHL Express USA, Inc. (“DHL” or “Employer”)

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency
 (“LWDA”)

From: Patrick Brown, on behalf of himself and other aggrieved employees of DHL in California, who were subjected to the wage and hour practices as set forth below

Pursuant to California Labor Code § 2699.3, this letter is intended to provide written notice of intent to file a representative civil action by an aggrieved employee pursuant to subdivisions (a) and (f) of California Labor Code § 2699. The aggrieved employee is Patrick Brown. The provisions of the California Labor Code that have been violated, including the facts and theories to support the alleged violations, are set forth below. For a detailed description of Employee’s factual and legal allegations, please see attached complaint in this action filed on March 11, 2024, in the Superior Court of California, County of San Francisco, Case number CGC-24-613006 (**Exhibit A**), which will be subsequently amended to add a cause of action under PAGA.

Mr. Brown is a resident of California. From approximately October 2022 to March 17, 2023, Mr. Brown was employed at Defendant’s facility in Ontario International Airport in Ontario, California as a non-exempt, hourly-paid Warehouse Employee, including as an Order Filler Picker. Mr. Brown’s job duties consisted of handling material arriving and exiting the Ontario International Airport. Mr. Brown was responsible for filling customer orders, replenishing product, and obtaining merchandise from bins or shelves to fill the orders. Mr. Brown was scheduled to work five days per week, for eight hours per day; however, during the peak busy season, Mr. Brown was required to work at least 10 hours per shift.

DHL employs numerous non-exempt, hourly-paid Order Filler Pickers, International Service Agents, Cargo Agents/Ramp Agents/Warehouse Agents, and other employees with similar job titles and/or duties, who in performance of their work duties handled packages and goods as part

of international and/or interstate commerce, at Employer's locations in California, which are aggrieved employees in this proposed action. During the relevant time period, the Employer utilized consistent policies and procedures regarding the Employee and others similarly situated, in violation of Labor Code §§ 201-203, 226, 226.7, 510, 512, 1194, 1198, and 2802 as follows:

First, Employer did not pay Employee and other aggrieved employees for all hours worked. Employee and other aggrieved employees were required to arrive to work early – up to 45 minutes to one hour before their shifts started – in order to secure the equipment needed to use during their shifts, such as a scanner or lift. However, Employee and other aggrieved employees were not able to clock in until their scheduled shift time, forcing Employee and other aggrieved employees to work off the clock. Further, Employee was frequently interrupted and called back to work during his meal breaks and was not paid for that time worked nor the premium payments he was entitled to. As such, in violation of Labor Code §§ 510(a), 1194, 1998 and the applicable Industrial Wage Orders, the Employer, by failing to pay the Employee and all others similarly situated for all hours worked, failed to pay all straight time and/or overtime wages due.

Second, Employer's policies and procedures prevented Employee and other aggrieved employees from taking timely and uninterrupted meal breaks. Labor Code § 512 states that "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of at least 30 minutes..." Employer failed to provide Employee and other aggrieved employees with timely and off-duty meal periods of at least 30 minutes, in violation of California law. Employee was often interrupted during meal periods with work-related questions or to address work-related issues, such as when a rush shipment would come in. Employee and other aggrieved employees were not paid meal break premiums for those interrupted and/or shortened meal breaks, in violation of Labor Code § 226.7(c).

Additionally, Employer failed to provide Employee and other aggrieved employees with timely and off-duty meal periods on shifts over 10 hours, in violation of California law. Employee and other aggrieved employees that worked shifts of over 10 hours are entitled to a second 30-minute uninterrupted meal period. However, Employee and other aggrieved employees were not provided with one. Employee did not sign a meal break waiver nor any other similar document.

Third, due to press of business and management interruptions, often, Employee was not allowed to take rest breaks as provided by Labor Code § 226.7 and the applicable Wage Order. Further, Employee did not receive a third rest break on shifts over 10 hours as required under California law. Employees and other aggrieved employees were not paid rest break premiums for those non-complaint rest breaks, in violation of Labor Code § 226.7(c).

In addition, California Labor Code § 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (Labor Code § 226(a)(1)), "net wages earned" (Labor Code § 226(a)(5)), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." (Labor Code § 226(a)(9)). Here, because the Employer failed to pay for all regular and/or overtime hours worked at the appropriate straight time, overtime and/or double-time rate, and failed to pay meal and rest break premiums, improper paystubs were issued to Employee and other aggrieved employees. Employee alleges that the Employer has violated Labor Code § 226(a) and Employee is entitled to recover civil penalties pursuant to Labor Code § 226.3.

Further, Employer failed to pay all aggrieved employees, whose employment with DHL terminated within the applicable time period, all their earned wages, specifically meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, at the appropriate rate, either at the time of discharge or within seventy-two hours of their leaving Employer's employ, in violation of California Labor Code § 201, 202, and 203. To the extent allowed by law, Employee seeks wages as penalties pursuant to Labor Code § 558 and expressly preserves Employee's right to do so.

Lastly, during the applicable time period, Employee and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of DHL. Expenses include, but are not limited to, cellphone charges. Supervisors would call Employee and other aggrieved employees on their personal cellphones. Employee and other aggrieved employees would need to use their personal cellphones to run the company application(s) and/or to send photos of the work performed to their supervisors to document compliance, shipments and equipment. No company phone was provided. This violates California Labor Code § 2802, which provides that the "[E]mployer 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."

Employee and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 201-203, 226(e), 226.7, 512, 1021.5, 1194, 2802, and/or 2699(a), (f)-(g).

Mr. Brown, as an aggrieved employee and on behalf of himself and all other current or former non-exempt, hourly paid Order Filler Pickers, International Service Agents, Cargo Agents/Ramp Agents/Warehouse Agents, and/or employees with similar job duties and/or titles who in performance of their work duties handled packages and goods as part of international and/or interstate commerce, seeks all penalties or remedies as may be allowed under PAGA, and by this letter gives written notice of his PAGA claim pursuant to Labor Code § 2699.3. Please advise within sixty (60) calendar days of the postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code § 2699.

Mr. Brown is represented in this matter by The Markham Law Firm and United Employees Law Group.

cc: (via Certified Mail)
CT Corporation System
Agent for Service of Process for
DHL Express USA, Inc.
330 N Brand Blvd, Ste 700
Glendale, CA 91203

Very truly yours,
THE MARKHAM LAW FIRM



David R. Markham
Lisa Brevard

DHL Express USA, Inc.
Attn: Legal Department
1210 South Pine Island Road, 1st Fl.
Legal Dept
Plantation, FL 33324

cc: (via email)
walter@uelglaw.com

EXHIBIT A

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12 8605 Santa Monica Blvd., #63354
13 North Hollywood, CA 90069
14 Telephone: (562) 256-1047/Facsimile: (562) 256-1006
15 Attorneys for Plaintiffs on behalf of themselves
16 and all others similarly situated

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
03/11/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

11
12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO**

CGC-24-613006

14 AARON SOWEMIMO, an individual, and
15 PATRICK BROWN, an individual, on
16 behalf of themselves and all others similarly
17 situated,

18 Plaintiffs,

19 v.

20 DHL EXPRESS USA, INC., an Ohio
21 Corporation, and DOES 1-10, Inclusive,

22 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

- 23 (1) **FAILURE TO PAY REGULAR AND/OR OVERTIME WAGES;**
- 24 (2) **FAILURE TO PROVIDE MEAL PERIODS;**
- 25 (3) **FAILURE TO PROVIDE REST PERIODS;**
- 26 (4) **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- 27 (5) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 28 (6) **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION;**
- (7) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), Bus. & Prof. Code § 17200 et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiffs AARON SOWEMIMO and PATRICK BROWN (“Plaintiffs”), by and through
2 their attorneys of record, bring this Class Action Complaint against DHL EXPRESS USA, INC.
3 (“DHL” or “Defendant”), and respectfully allege the following:

4 **NATURE OF THE ACTION**

5 1. This is a class action for wage and labor violations arising out of Defendant’s failure
6 to pay wages for all time worked and failure to provide timely and uninterrupted meal and rest
7 periods, and for derivative claims.

8 2. As set forth below, Defendant: failed to pay its employees wages for all hours
9 worked, including overtime wages for work in excess of eight hours a day or forty hours a week,
10 for time they had to arrive early in order to secure a scanner, lifts and/or related equipment, which
11 was necessary to perform their job duties during their shift, time spent attending weekly pre-shift
12 meetings, and for time they were required to perform work during their meal and/or rest periods;
13 failed to provide timely and uninterrupted meal and rest periods to its California non-exempt
14 employees in violation of California Labor Code §§ 512 and 226.7, and the applicable Industrial
15 Wage Order; failed to pay its employees one hour of pay at the regular rate of compensation for
16 each instance that Defendant failed to provide statutorily mandated rest periods and timely off-duty
17 meal periods; failed to furnish timely and accurate wage statements; failed to reimburse its
18 California non-exempt employees for necessary business expenses incurred; failed to pay all wages
19 due upon termination; and, is in violation of California’s Unfair Competition Law (“UCL”).

20 3. Plaintiffs seek to represent all those similarly situated who are or were residents of
21 the State of California.

22 **JURISDICTION AND VENUE**

23 4. This Court has jurisdiction over this action because this is a civil action where the
24 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
25 Court. The acts and omissions complained of in this action took place in the State of California.
26 Venue is proper because upon information and belief, Defendant conducts substantial business in
27 this county and maintains facilities in California in this county.

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PARTIES

5. Plaintiff AARON SOWEMIMO is a resident of Los Angeles, California. Plaintiff SOWEMIMO was employed at Defendant’s facility in Los Angeles International Airport, California, from approximately July 2020 to approximately September 2021, as an International Service Agent/Cargo/Ramp/Warehouse Agent.

6. Plaintiff PATRICK BROWN is a resident of Hemet, California. Plaintiff BROWN was employed at Defendant’s facility in Ontario International Airport in Ontario, California., from approximately October 2022 to approximately March 17, 2023, as an Order Filler Picker.

7. At all times material herein, Defendant was an Ohio corporation authorized to do business in California, including but not limited to conducting business within the County of San Francisco. Defendant is in the Logistics and Courier Services Industry, specializing in international shipping, courier services and transportation. Upon information and belief, DHL operates throughout all fifty states, including in California. At all relevant times alleged herein, Plaintiffs are informed and believe that Defendant is authorized to and conducts business in California, including but not necessarily limited to the County of San Francisco. Defendant employs/employed Agents and Order Filler Pickers all throughout the State of California.

8. Plaintiffs are informed and believe, and on that basis allege, that DHL is engaged in transportation, selling, processing and shipping packages to customers as part of interstate and international commerce.

9. Plaintiffs are currently unaware of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein under fictitious names Does 1 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named defendants when their true names and capacities have been ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by the Class.

10. Plaintiffs are informed and believe and thereon allege that all defendants, including

1 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
2 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged
3 herein occurred within the course and scope of said agency, employment, partnership, and joint
4 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
5 consent, authorization and ratification of their co-defendants.

6 **FACTS**

7 11. Between approximately July 2020 to approximately September 2021, Plaintiff
8 SOWEMIMO was employed by Defendant, as a non-exempt, hourly-paid International Service
9 Agent/Cargo/Ramp/Warehouse Agent at Defendant's warehouse in Los Angeles International
10 Airport in Los Angeles, California. Plaintiff SOWEMIMO's duties included, but were not limited
11 to, handling of material arriving and exiting the LAX Gateway. Plaintiff SOWEMIMO processed
12 time-sensitive materials for pick-up, transit, and delivery including sorting, loading, unloading, and
13 material handling. The packages Plaintiff SOWEMIMO handled included packages moving from
14 other states into California.

15 12. Plaintiff SOWEMIMO typically worked 12 hours per shift, six days per week;
16 however, on weekends, Plaintiff SOWEMIMO's shift would be 22 to 24 hours long.

17 13. Between approximately October 2022 to approximately March 2023, Plaintiff
18 BROWN was employed by Defendant, as a non-exempt, hourly-paid Order Filler Picker at
19 Defendant's warehouse in Ontario International Airport in Ontario, California. Plaintiff BROWN's
20 duties included, but were not limited to, handling of material arriving and exiting the Ontario
21 International Airport. Plaintiff BROWN was responsible for filling customer orders, replenishing
22 product, and obtaining merchandise from bins or shelves to fill the order. The packages Plaintiff
23 BROWN handled included packages moving from other states into California.

24 14. Plaintiff BROWN typically worked 8 hours per shift, five days per week; however,
25 during the peak busy season, Plaintiff BROWN was required to work at least 10 hours per shift.

26 15. The Defendant is in the business of transporting, selling, processing, and shipping
27 packages to customers as part of interstate and international commerce. Defendant employs class
28 members, such as Plaintiffs, who handle packages to deliver to customers as part of international

1 and interstate commerce. Thus, Plaintiffs and members of the class are within a class of workers
2 engaged in interstate commerce, and any arbitration agreements with class action waivers signed by
3 Plaintiffs and class members, to the extent they exist, are not enforceable under the exemption in
4 section 1 of the Federal Arbitration Act. *See Southwest Airlines Co. v. Saxon*, 142 S.Ct. 1783
5 (2022).

6 16. Plaintiffs often had to arrive to work early - up to 45 minutes to one hour before a
7 shift started - in order to secure the equipment needed to use during their shifts, such as a scanner or
8 lift. If Plaintiffs did not arrive early, they risked not having the needed equipment to perform their
9 duties during their shift. Certain equipment was given out on a first-come, first-serve basis. In
10 addition, Plaintiffs were required to attend pre-shift meetings prior to clocking in for their shift.
11 Plaintiffs were not paid for this time, even though: (1) no practical administrative difficulty of
12 recording the additional time exists or existed for Defendant during the relevant time period; (2) it
13 is or was feasible for Defendant to determine or estimate the average time it takes each employee to
14 attend these pre-shift meetings, as class members at issue in this action were required to attend pre-
15 shift meetings prior to clocking in for the day. *See Troester v. Starbucks Corp.*, (2018) 5 Cal.5th
16 829.

17 17. Defendant failed to properly compensate Plaintiffs and class members for all hours
18 worked at the appropriate overtime rate for time that Plaintiffs and class members spent to arrive
19 early to secure equipment, in pre-shift meetings, and performing work during meal breaks,
20 including responding to interruptions from management.

21 18. At times, Plaintiffs were required to work through their meal breaks and/or received
22 short meal breaks. For example, when Plaintiff Sowemimo was able to take a meal break,
23 Plaintiff's supervisor would start the break time before Plaintiff was ready, as Plaintiff still had
24 tasks to finish, like parking the cart used to load/unload and transport packages, cutting his meal
25 break short. Additionally, when Plaintiffs were able to take their meal break, they were often
26 interrupted by their managers with work-related questions or to address work-related issues.
27 Supervisors would seek Plaintiffs out in the breakroom to interrupt them on their meal breaks. For
28 example, Plaintiff Brown would be interrupted when a rush shipment came in. Plaintiffs were not

1 paid a meal period premium for these missed, interrupted, and/or shortened meal periods.

2 19. Additionally, Defendant failed to provide Plaintiffs and other class members with
3 timely meal periods on shifts over 10 hours, in violation of California law. Plaintiffs and other class
4 members who worked shifts of over 10 hours are entitled to a second 30-minute uninterrupted meal
5 period. However, Plaintiffs and other class members worked shifts over 10 hours and no second
6 meal break was provided, nor any meal period premium paid. When Plaintiffs worked on the
7 weekends for up to 24 hours and/or during the peak busy season, they were only provided with one
8 30-minute meal break (at most). Plaintiffs frequently complained to managers and supervisors
9 regarding the above-mentioned claims, and nothing was ever done. Plaintiffs do not recall signing a
10 meal break waiver nor any other similar document.

11 20. Further, due to press of business and management interruptions, Defendant often
12 failed to provide Plaintiffs with rest breaks in violation of Labor Code § 226.7. Plaintiffs were not
13 paid a rest period premium for these non-compliant rest periods. Further, Plaintiffs often worked
14 shifts of over 10 hours and were not offered a third rest break as required under California law.
15 Plaintiffs were not paid rest break premiums for each workday over ten hours that a third rest break
16 was not provided.

17 21. Plaintiffs and other class members' wage statements failed to correctly state the rate
18 of pay for regular and/or overtime wages, meal and rest break premiums, and consequently the
19 gross and net wages due, among other required information. Because of Defendant's failure to list
20 the correct gross wages earned, net wages, and meal and rest break premiums earned on wage
21 statements, Plaintiffs and other class members have been prevented from verifying, solely from
22 information on the wage statements themselves, that they were paid correctly and in full.

23 22. Also, during the relevant time period, Plaintiffs and other class members were
24 required to use their personal cellphones for work purposes. Supervisors would call Plaintiffs and
25 class members on their personal cellphones. Plaintiffs would need to use their personal cellphones
26 to run the company application and/or send photos of the pallets to document compliance,
27 shipments and equipment to their supervisors. No company phone was provided. Plaintiffs and
28 class members have not been reimbursed for all cellphone expenses.

1 exempt, hourly-paid employees who, in performance of their work duties handled packages
2 and goods as part of international and/or interstate commerce, employed by Defendant in
3 California during the Class Period, and who worked at least one shift longer than eight
4 hours in a workday and/or worked more than 40 hours during the workweek.”

5 **The Meal Break Subclass**

6 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
7 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
8 exempt, hourly-paid employees who, in performance of their work duties handled packages
9 and goods as part of international and/or interstate commerce, employed by Defendant in
10 California during the Class Period, and who worked at least one shift longer than five hours
11 in a workday.”

12 **The Second Meal Break Subclass**

13 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
14 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
15 exempt, hourly-paid employees who, in performance of their work duties handled packages
16 and goods as part of international and/or interstate commerce, employed by Defendant in
17 California during the Class Period, and who worked at least one shift longer than ten hours
18 in a workday.”

19 **The Rest Break Subclass**

20 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
21 Agents/Ramp/Warehouse Agents, and/or Order Filler Pickers, and/or other non-exempt,
22 hourly-paid employees who, in performance of their work duties handled packages and
23 goods as part of international and/or interstate commerce, employed by Defendant in
24 California during the Class Period and who worked at least one shift longer than three and
25 a half hour in a workday.”

26 **The Itemized Wage Statement Subclass**

27 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
28 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
exempt, hourly-paid employees who, in performance of their work duties handled packages
and goods as part of international and/or interstate commerce, employed by Defendant in
California during the Class Period, and who have received at least one wage statement from
Defendant.”

The Expense Reimbursement Subclass

“All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
exempt, hourly-paid employees who, in performance of their work duties handled packages
and goods as part of international and/or interstate commerce, employed by Defendant in
California during the Class Period, and who incurred business expenses.”

The Waiting Time Penalties Subclass

“All members of the Class, the Regular Wages Subclass, Overtime Wages Subclass, Meal
Break Subclass, Second Meal Break Subclass, and the Rest Break Subclass who separated
employment with Defendant at any point during the past three (3) years prior to the filing of
this action.”

1 **The UCL Subclass**

2 “All current and former non-exempt, hourly-paid International Service Agents and/or Cargo
3 Agents/Ramp Agents/Warehouse Agents, and/or Order Filler Pickers, and/or other non-
4 exempt, hourly-paid employees who, in performance of their work duties handled packages
5 and goods as part of international and/or interstate commerce, employed by Defendant in
6 California during the Class Period, regarding whom Defendant has engaged in unlawful,
7 unfair and/or fraudulent business acts or practices prohibited by B&PC §17200, et seq. as
8 specifically described herein.”

9 28. Plaintiffs reserve the right to amend or otherwise alter the class definition, or to
10 propose or eliminate subclasses, in response to facts learned through discovery, legal arguments
11 advanced by Defendant or otherwise.

12 29. This action has been brought and may be properly maintained as a class action
13 pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

14 30. **Numerosity of the Class:** Pursuant to Code of Civil Procedure § 382, members of
15 the Class are so numerous that their individual joinder is impracticable. Plaintiffs estimate, on
16 information and belief, that there are several hundred current and former non-exempt employees of
17 Defendant employed in warehouses in California during the class period. The precise number of
18 Class members and their addresses are known to Plaintiffs or will be known to Plaintiffs through
19 discovery. Class members may be notified of the pendency of this action by mail, electronic mail,
20 the Internet, or published notice.

21 31. **Existence of Predominance of Common Questions of Law and Fact:** Pursuant
22 to Code of Civil Procedure § 382, common questions of law and fact and common answers exist as
23 to all members of the Class. These questions predominate over any questions affecting only
24 individual Class members. These common legal and factual questions and answers include:

- 25 a. Whether Plaintiffs and the members of the class were not paid all wages owed to them,
26 including regular and overtime wages;
- 27 b. Whether Defendant had a policy or practice of not paying for time spent securing
28 necessary equipment before the shift start, attending pre-shift meetings, and performing
 work during meal breaks;
- c. Whether Defendant violated Labor Code § 226.7 and/or 512, applicable California

1 Industrial Welfare Commission Order, and engaged in a pattern or practice of failing to
2 provide timely, off-duty thirty (30) minute meal periods to Plaintiffs and members of
3 the class;

4 d. Whether Defendant engaged in a pattern or practice of impeding Plaintiffs and the
5 members of the class from taking statutory off-duty thirty (30) minute meal periods on a
6 timely basis;

7 e. Whether Defendant engaged in a pattern or practice of failing to properly compensate
8 Plaintiffs and the members of the class for missed, untimely or on-duty meal periods as
9 required by California law;

10 f. Whether Defendant engaged in a pattern or practice of failing to properly compensate
11 Plaintiffs and the members of the class for failing to provide ten (10) minute,
12 uninterrupted rest periods as contemplated by California law for work periods in excess
13 of three and one-half (3 ½) hours;

14 g. Whether Defendant had a policy or practice of not paying meal or rest period premiums;

15 h. Whether Plaintiffs and the members of the class were not provided with accurate wage
16 statements as required by Labor Code section 226;

17 i. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized
18 wage statements to Plaintiffs and members of the class that failed to include payments
19 for missed, untimely, and/or on-duty meal periods among wages earned throughout the
20 Class Period;

21 j. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
22 statements to Plaintiffs and members of the class that failed to include payment for all
23 hours worked;

24 k. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
25 statements to Plaintiffs and members of the class that failed to accurately state the total
26 hours worked, to the detriment of Plaintiffs and the members of the class;

27 l. Whether Defendant failed to compensate, and therefore violated Labor Code § 226(a),
28 226.7, and the applicable Industrial Wage Order by failing to provide ten (10) minute,

1 uninterrupted rest periods as contemplated by California law for work periods in excess
2 of three and one-half (3 ½) hours;

3 m. Whether Defendant violated Labor Code §2802, by failing to reimburse Plaintiffs and
4 the members of the class incurred necessary business expenses, including for using their
5 personal cell phones to send messages to managers to prove compliance with their
6 work;

7 n. Whether Defendant violated Labor Code §§ 201-203 by failing to pay all wages due
8 upon termination to all Class Members who were terminated or voluntarily quit; and

9 o. Whether Defendant engaged in unfair practices and violated California Business &
10 Professions Code § 17200 by failing to provide Plaintiffs and the members of the class
11 with their statutory off-duty meal and rest periods on a timely basis;

12 p. Whether Defendant engaged in unfair practices and violated California Business &
13 Professions Code section 17200 by failing to pay Plaintiffs and the members of the class
14 for all time worked, failing to reimburse necessarily incurred business expenses, and
15 failing to provide meal and rest periods nor pay premiums; and

16 q. The nature and extent of class-wide injury and the measure of damages or restitution.

17 32. **Typicality:** Plaintiffs’ claims are typical of the claims of the members of the class
18 they seek to represent because Plaintiffs, as non-exempt employees of Defendant, were exposed
19 and subjected to the same unlawful business practices as other employees employed by Defendant
20 during the class period. Plaintiffs and the members of the class they seek to represent sustained the
21 same types of damages and losses.

22 33. **Adequacy:** Plaintiffs are adequate representatives of the class they seek to represent
23 because their interests do not conflict with the interests of the members of the class Plaintiffs seek
24 to represent. Plaintiffs have retained counsel competent and experienced in complex class action
25 litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of
26 the class will be fairly and adequately protected by Plaintiffs and their counsel.

27 34. **Superiority and Substantial Benefit:** The class action is superior to other
28 available means for the fair and efficient adjudication of Plaintiffs’ and the Class members’ claims.

1 The damages suffered by each individual Class member may be limited. Damages of such
2 magnitude are small given the burden and expense of individual prosecution of the complex and
3 extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible
4 for the Class members to redress the wrongs done to them on an individual basis. Even if members
5 of the Class themselves could afford such individual litigation, the court system could not.
6 Individualized litigation increases the delay and expense to all parties and the court system due to
7 the complex legal and factual issues of the case. By contrast, the class action device presents far
8 fewer management difficulties and provides the benefits of single adjudication, economy of scale,
9 and comprehensive supervision by a single court.

10 35. The Class should also be certified because:

- 11 a. The prosecution of separate actions by individual members of the Class would create a
12 risk of inconsistent or varying adjudications with respect to individual Class members
13 which would establish incompatible standards of conduct for Defendant;
- 14 b. The prosecution of separate actions by individual members of the Class would create a
15 risk of adjudication with respect to them, which would, as a practical matter, be
16 dispositive of the interests of the other Class members not parties to the adjudications,
17 or substantially impair or impede their ability to protect their interests; and
- 18 c. Defendant has acted or refused to act on grounds generally applicable to the Class,
19 and/or the general public, thereby making appropriate final and injunctive relief with
20 respect to the Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY REGULAR AND/OR OVERTIME WAGES**

23 **(Violation of Labor Code §§ 218, 218.5, 218.6, 510, 1194, 1194, 1198, and the applicable Wage
Order)**

24 **(Against all defendants)**

25 36. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
herein.

26 37. The California Labor Code establishes the fundamental right of all employees in
27 the State of California to be paid wages in a timely fashion for their work.

28 38. The applicable Industrial Wage Order provides that an employer may not pay

1 employees less than the applicable minimum wage for all hours worked.

2 39. Pursuant to the applicable Industrial Wage Order, Defendant is required to pay
3 Plaintiffs, and the members of the Class, for all hours worked, meaning the time which an
4 employee is subject to the control of the employer.

5 40. At all relevant times during the class period, Defendant failed to pay Plaintiffs and
6 other members of the class wages for all hours worked, in that Plaintiffs and the class were
7 interrupted with work-related issues while not clocked in to Defendant's timekeeping program,
8 resulting in unpaid wages. Further, Plaintiffs and other members of the class were not paid for the
9 time they had to arrive early to secure their equipment to use for their shift, and time spent
10 attending pre-shift meetings prior to clocking in. As a result, Plaintiffs and other class members
11 worked hours they were not paid for, including overtime in the instances Plaintiffs and other class
12 members worked over eight hours in a day and/or 40 hours a week. Plaintiffs and the Class
13 Members therefore seek unpaid wages and penalties.

14 41. Labor Code § 510 and the applicable Wage Order provide that employees in
15 California shall not be employed more than eight hours in any workday or forty hours in a
16 workweek unless they receive additional compensation beyond their regular wages in amounts
17 specified by law. Specifically, Labor Code § 510(a) requires that: Any work in excess of eight
18 hours in one workday and any work in excess of 40 hours in any one workweek shall be
19 compensated at the rate of no less than one and one-half times the regular rate of pay for an
20 employee.

21 42. Labor Code § 1194 establishes an employee's right to recover unpaid overtime
22 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code
23 §1198 makes employment of an employee for longer hours than the IWC set or under conditions
24 the IWC prohibits unlawful.

25 43. During the class period, Plaintiffs and other class members have worked more than
26 eight hours in a workday, and/or more than forty hours in a workweek.

27 44. During the class period, Defendant has failed to pay Plaintiffs and other class
28 members the overtime compensation premium for those unpaid hours they have worked in excess

1 of the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the
2 applicable Wage Order.

3 45. In committing the violations of state law as herein alleged, Defendant has
4 knowingly and willfully refused to perform its obligations to compensate Plaintiffs and members
5 of the class for all wages earned and all hours worked. As a direct result, Plaintiffs and other
6 members of the class have suffered and continue to suffer, substantial losses related to the use and
7 enjoyment of such compensation, wages and lost interest on such monies and expenses and
8 attorney's fees in seeking to compel Defendant to fully perform their obligation under state law,
9 all to their respective damage in amounts according to proof at trial and within the jurisdiction of
10 this Court.

11 46. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of
12 the unpaid wages resulting from Defendant's regular and overtime wage violations including
13 interest thereon, reasonable attorney's fees and costs of suit, and liquidated damages to the fullest
14 extent permissible pursuant to Labor Code § 218, 218.5, 218.6, and 1194(a).

15 **SECOND CAUSE OF ACTION**
16 **FAILURE TO PROVIDE MEAL PERIODS**
17 **(Violation of Labor Code §§ 512, 226.7, and the Applicable Wage Order)**
18 **(Against all defendants)**

19 47. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
20 herein.

21 48. California Labor Code § 226.7(b) provides, "An employer shall not require an
22 employee to work during a meal or rest period mandated pursuant to an applicable order of the
23 Industrial Welfare Commission".

24 49. The applicable wage order provides, in pertinent part: "[n]o employer shall employ
25 any person for a work period of more than five (5) hours without a meal period of not less than 30
26 minutes, except that when a work period of not more than six (6) hours will complete the day's
27 work the meal period may be waived by mutual consent of the employer and the employee."

28 50. Labor Code § 512(a) provides, in pertinent part: "[a]n employer may not employ an
employee for a work period of more than five hours per day without providing the employee with a

1 meal period of not less than 30 minutes, except that if the total work period per day of the employee
2 is no more than six hours, the meal period may be waived by mutual consent of both the employer
3 and employee. An employer may not employ an employee for a work period of more than 10 hours
4 per day without providing the employee with a second meal period of not less than 30 minutes,
5 except that if the total hours worked is no more than 12 hours, the second meal period may be
6 waived by mutual consent of the employer and the employee only if the first meal period was not
7 waived.”

8 51. As alleged herein, Defendant failed to authorize and permit timely and uninterrupted
9 meal periods during the Class period. Plaintiffs and members of the class were routinely required to
10 work without a timely and uninterrupted meal break at the direction of Defendant and/or with
11 Defendant’s knowledge and acquiescence. Additionally, Plaintiffs were not paid premiums for each
12 instance their meal periods were interrupted, missed and/or untimely.

13 52. In addition, Defendant failed to authorize and permit timely second meal periods
14 during the Class period. Plaintiffs and members of the class regularly worked shifts over 10 hours
15 but were not offered a second meal period. Plaintiffs and members of the class were routinely
16 required to work without a timely second meal break at the direction of Defendant and/or with
17 Defendant’s knowledge and acquiescence. Plaintiffs did not waive their second meal break.

18 53. By its actions in requiring its employees to work through meal periods and/or its
19 failure to relieve the employees of their duties for their off-duty meal periods, Defendant has
20 violated California Labor Code §§ 226.7, 512 and the applicable wage order, and is liable to
21 Plaintiffs and the class.

22 54. As a result of the unlawful acts of Defendant, Plaintiffs and the class have been
23 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§
24 226.7(c), 512 and the applicable wage order, in the amount of one additional hour of pay at the
25 employee’s regular rate of compensation for each workday in which Defendant failed to provide its
26 employees with timely statutory off-duty meal periods.

27 55. Plaintiffs, and the other members of the class, are entitled to seek and recover
28 reasonable attorneys’ fees and costs pursuant to Labor Code §§ 226.7 and 512.

1 **THIRD CAUSE OF ACTION**
2 **FAILURE TO PROVIDE REST PERIODS**
3 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**
4 **(Against all defendants)**

5 56. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
6 herein.

7 57. California Labor Code § 226.7(b) provides, “An employer shall not require an
8 employee to work during a meal or rest period mandated pursuant to an applicable order of the
9 Industrial Welfare Commission”.

10 58. The applicable Industrial Wage Order provides, in pertinent part: “[e]very employer
11 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
12 the middle of each work period. The authorized rest period time shall be based on the total hours
13 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
14 thereof. However, a rest period need not be authorized for employees whose total daily work time is
15 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
16 worked for which there shall be no deduction from wages”.

17 59. The applicable Industrial Wage Order further provides: “[i]f an employer fails to
18 provide an employee with a rest period in accordance with the applicable provisions of this order,
19 the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
20 compensation for each workday that the rest period is not provided”.

21 60. As alleged herein, Defendant failed to authorize and permit rest breaks during the
22 Class period. Plaintiffs and members of the class were routinely required to work through rest
23 periods at the direction of Defendant and/or with Defendant’s knowledge and acquiescence.
24 Further, Plaintiffs often worked shifts of over 10 hours and were not offered a third rest break as
25 required under California law.

26 61. By its actions in requiring its employees during the class period to work through rest
27 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendant
28 violated the applicable Industrial Wage Order and California Labor Code § 226.7 and is liable to
Plaintiffs and the class.

1 initial pay period in which a violation of Labor Code § 226 occurs and \$100 for each subsequent
2 pay period, for all pay periods in which the employer knowingly and intentionally failed to provide
3 accurate itemized statements to the employee causing the employee to suffer injury.

4 68. Plaintiffs are informed, believe and thereon allege that at all times relevant,
5 Defendant knowingly and intentionally failed to furnish and continues to knowingly and
6 intentionally fail to furnish Plaintiffs and the members of the class with timely and accurate
7 itemized statements showing the gross wages earned by each of them, as required by Labor Code §
8 226(a), in that the premiums owed to Plaintiffs and the members of the class for missed meal and
9 rest periods were not included in gross wages earned by Plaintiffs and the members of the class.

10 69. Further, wages owed to Plaintiffs and the members of the class for time they worked
11 before their shift and the time spent working through meal breaks, were not included in gross wages
12 earned by Plaintiffs and the members of the class.

13 70. Defendant's failure to provide Plaintiffs and members of the class with accurate
14 itemized wage statements during the class period has caused Plaintiffs and the members of the class
15 to incur economic damages in that they were not aware that they were owed and not paid
16 compensation for missed rest periods and on-duty meal periods, and for all hours worked. In
17 addition, Defendant provided inaccurate information regarding hours worked, which masked its
18 underpayment of wages to Plaintiffs and the members of the class.

19 71. As a result of Defendant's issuance of inaccurate itemized wage statements to
20 Plaintiffs and the members of the class in violation of Labor Code § 226(a), Plaintiffs and the
21 members of the class are each entitled to recover penalties pursuant to Labor Code § 226(e).

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**
24 **(Violation of Labor Code § 2802, et seq.)**
25 **(Against all defendants)**

26 72. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
27 herein.

28 73. California Labor Code section 2802 provides that an employer must reimburse
employees for all necessary expenditures.

1 **SEVENTH CAUSE OF ACTION**
2 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
3 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**
4 **(Against all defendants)**

5 81. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
6 herein.

7 82. Section 17200 of the California Business and Professions Code (the "UCL")
8 prohibits any unlawful, unfair, or fraudulent business practices.

9 83. Through its action alleged herein, Defendant has engaged in unfair competition
10 within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful,
11 unfair, and/or fraudulent business practices under the UCL.

12 84. Defendant's unlawful conduct under the UCL includes, but is not limited to,
13 violating the statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not
14 limited to, failure to pay members of the class wages and compensation they earned through labor
15 provided, and failing to otherwise compensate members of the class as alleged herein. Defendant's
16 fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or
17 misleading information about the time the members of the class worked and the amount of wages
18 or compensation due, failing to provide meal and rest breaks, and failing to reimburse necessarily
19 incurred expenses.

20 85. Plaintiffs have standing to assert this claim because they have suffered injury in fact
21 and have lost money as a result of Defendant's conduct.

22 86. Plaintiffs and the members of the class seek restitutionary disgorgement from
23 Defendant of monies owed for all hours worked and for unpaid meal and rest period premiums.

24 87. Plaintiffs have assumed the responsibility of enforcement of the laws and public
25 policies specified here by suing on behalf of themselves and other similarly situated class members
26 previously or presently working for Defendant in California. Plaintiffs' success in this action will
27 enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in
28 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
Plaintiffs is appropriate pursuant to Code of Civil Procedure § 1021.5.

1 **PRAYER**

2 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for
3 judgment against Defendant as to the appropriate causes of action as follows:

4 **ON THE FIRST CAUSE OF ACTION**

- 5 1. For all straight-time and/or overtime wages owed to Plaintiffs and each Class Member for
6 all hours worked;
- 7 2. For other compensatory damages and/or statutory damages and statutory penalties resulting
8 from improper compensation according to proof;
- 9 3. For statutory attorney fees according to proof;
- 10 4. For statutory interest according to proof; and
- 11 5. For reasonable attorneys' fees and costs pursuant to the California Labor Code.

12 **ON THE SECOND CAUSE OF ACTION**

- 13 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
14 more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal
15 period;
- 16 2. For waiting time penalties according to proof;
- 17 3. For statutory costs according to proof; and
- 18 4. For statutory interest according to proof.

19 **ON THE THIRD CAUSE OF ACTION**

- 20 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
21 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten
22 (10) minute rest period for each four (4) hours or major fraction thereof worked;
- 23 2. For waiting penalties according to proof;
- 24 3. For statutory costs according to proof; and
- 25 4. For statutory interest according to proof.

26 **ON THE FOURTH CAUSE OF ACTION**

- 27 1. For statutory compensation for any harm caused;
- 28 2. For compensatory damages and interest thereon for actual harm caused; and

1 3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and
2 costs.

3 **ON THE FIFTH CAUSE OF ACTION**

- 4 1. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
5 2. For statutory interest according to proof; and
6 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

7 **ON THE SIXTH CAUSE OF ACTION**

- 8 1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for
9 all wages not timely paid upon termination;
10 2. For penalty enhancement for willful conduct;
11 3. For statutory interest according to proof; and
12 4. For reasonable attorney's fees and costs pursuant to the Labor Code.

13 **ON THE SEVENTH CAUSE OF ACTION**

- 14 1. For the equitable, injunctive and declaratory relief;
15 2. For liquidated damages pursuant to Labor Code § 1194.1; and
16 3. For restitutionary disgorgement pursuant to the UCL.

17 **ON ALL CAUSES OF ACTION**

- 18 1. An order that this action may proceed and be maintained as a class action;
19 2. Reasonable attorney's fees;
20 3. General, special and consequential damages, to the extent allowed by law;
21 4. Costs of suit;
22 5. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5;
23 6. Prejudgment interest at the maximum legal rate; and
24 7. Such other relief as the Court may deem just and proper.

25 DATED: March 11, 2024

THE MARKHAM LAW FIRM

26 By:  _____

27 David R. Markham

Lisa Brevard

*Attorneys for Plaintiffs and all others
similarly situated*

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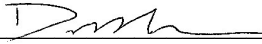
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and the members of the class on all claims so triable.

DATED: March 11, 2024


THE MARKHAM LAW FIRM

By: 
David R. Markham
Lisa Brevard
*Attorneys for Plaintiffs
and all others similarly situated*

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