

1 EVAN R. MOSES, CA, Bar No. 198099
evan.moses@ogletree.com
2 ALEXANDER M. CHEMERS, CA Bar No. 263726
alexander.chemers@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213-239-9800
Facsimile: 213-239-9045
6

7 Attorneys for Defendant
FEDEX GROUND PACKAGE SYSTEM, INC.

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 ERNEST CUADRA, on behalf of himself and
others similarly situated,

12 Plaintiff,

13 v.

14 FEDEX GROUND PACKAGE SYSTEM,
15 INC., a Delaware corporation; FEDEX, a
business entity unknown; and DOES 1 to 100,
16 Inclusive,

17 Defendant.
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Case No. 4:20-cv-2089

**DEFENDANT'S NOTICE OF REMOVAL
OF CIVIL ACTION TO FEDERAL COURT
PURSUANT TO 28 U.S.C. §§ 1332, 1441,
1446 AND 1453**

[Filed concurrently with Declarations of Andrea
K. Cox and Alexander Chemers, Certification of
Interested Entities or Persons, and Civil Case
Cover Sheet]

Complaint Filed: December 3, 2019
Trial Date:

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT**
2 **OF CALIFORNIA, AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** defendant FedEx Ground Package System, Inc.
4 (“Defendant”) removes this action from the Superior Court of the State of California for the
5 County of Alameda to the United States District Court for the Northern District of California
6 pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. As discussed below, this Court has original
7 jurisdiction over this matter pursuant to the Class Action Fairness Act (“CAFA”).

8 **I. THE STATE COURT ACTION**

9 1. On December 3, 2019, plaintiff Ernest Cuadra filed a Class Action Complaint
10 (“Complaint”) in the Superior Court of the State of California, County of Alameda, entitled *Ernest*
11 *Cuadra, on behalf of himself and others similarly situated, Plaintiff v. FedEx Ground Package*
12 *System, Inc., a Delaware Corporation; FedEx, a business entity unknown; and Does 1 to 100,*
13 *inclusive, Defendants*, which was assigned case number RG19045340 (the “State Court Action”).
14 The Complaint asserts claims for: (1) Failure to Pay Minimum Wage or Overtime Wages in
15 violation of the California Labor Code §§ 510, 1194, 1197, 1198, and the Wage Orders; (2) Failure
16 to Provide all Legally Required and Compliant Meal Periods in violation of California Labor Code
17 § 226.7; 512, 198 and the Wage Orders; (3) Failure to Provide all Legally Required and Compliant
18 Rest Periods in violation of California Labor Code § 226.7, 1198 and the Wage Orders; (4) Failure
19 to Provide Complete and Accurate Wage Statements in violation of California Labor Code § 226;
20 (5) Failure to Timely Pay Unpaid Wages Due At Time of Separation of Employment in violation of
21 California Labor Code §§ 201, 202 and 203; and (6) Unfair Business Practices in Violation of
22 Business and Professions Code Section 17200, *et seq.*

23 2. On February 24, 2020, Defendant, through its counsel of record, signed a Notice
24 and Acknowledgment of Receipt-Civil, acknowledging receipt of the Complaint, as well as other
25 documents filed in the State Court Action. Declaration of Alexander M. Chemers (“Chemers
26 Decl.”) ¶ 2. A true and correct copy of the Complaint is attached as **Exhibit A** to this Notice of
27 Removal.
28

1 3. As further required by 28 U.S.C. § 1446(a), Defendant hereby provides this Court
2 with copies of all process, pleadings, and orders received by Defendant in this action. True and
3 correct copies of these documents are attached as **Exhibit B** to this Notice of Removal. Defendant
4 has not been served with any pleadings, process, or orders besides those attached. Chemers Decl.,
5 ¶ 3.

6 4. For unknown reasons, Plaintiff names “FEDEX” separately from FedEx Ground
7 Package System, Inc., which is the only appropriately named defendant in this case.

8 5. Plaintiff has not yet identified any of the fictitious “Doe” defendants identified in
9 the Complaint, and the citizenship of “Doe” defendants is disregarded for the purposes of removal.
10 28 U.S.C. § 1441(a); *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

11 6. This Notice is Timely. This Notice of Removal is timely filed as it is filed less than
12 one year from the date this action was commenced and within 30 days of the service upon
13 Defendant.¹ 28 U.S.C. § 1446(b); *Murphy Bros., Inc v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344
14 (1999) (30-day deadline to remove commences upon service of the summons and complaint).

15 **II. JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

16 7. This action is one over which this Court has original jurisdiction under CAFA and is
17 one which may be removed by Defendant pursuant to 28 U.S.C. §§ 1441 and 1453, because the
18 number of potential class members exceeds 100, the parties are citizens of different states, and the
19 amount in controversy exceeds the aggregate value of \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2)
20 and (d)(6).

21 **A. The Size of the Putative Class Exceeds 100**

22 8. In the Complaint, Plaintiff defines the proposed class as: “All current and former
23 non-exempt warehouse employees required to pass through [Defendant’s] mandatory security
24 checks employed in California at any time within the four years prior to the filing of the initial
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26 _____
27 ¹ Pursuant to Section 415.30(c) of the California Code of Civil Procedure, “[s]ervice of a summons
28 . . . is deemed complete on the date a written acknowledgement of receipt of summons is executed,
if such acknowledgement thereafter is returned to the sender.” Thus, Plaintiff’s Complaint was
deemed served on February 24, 2020, the date that Defendant’s counsel signed a Notice and
Acknowledgment of Receipt-Civil.

1 complaint in this action and through the date notice is mailed to a certified class” Ex. A, ¶ 27
2 (A).

3 9. Defendant’s employment records show that there are thousands of current and
4 former employees who fall within Plaintiff’s proposed class. For example, plaintiff Ernest Cuadra
5 alleged that he “was employed by [Defendant] in a non-exempt position within the 4 years prior to
6 filing of the complaint.” Ex. A, ¶ 3. Even if the proposed class is limited to only those persons
7 holding the non-exempt warehouse “Full-Time Package Handler” or “Part-Time Package Handler”
8 positions in California within the four-year period prior to the filing of this lawsuit, there would be
9 at least 16,592 putative class members. Declaration of Andrea K. Cox (“Cox Decl.”), ¶ 9.

10 **B. The Parties Are Diverse**

11 10. Citizenship of Defendant. Pursuant to 28 United States Code § 1332(c), “a
12 corporation shall be deemed to be a citizen of any State by which it has been incorporated and of
13 the State where it has its principal place of business.” The United States Supreme Court
14 established the proper test for determining a corporation’s principal place of business for purposes
15 of diversity jurisdiction in *The Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). The Supreme Court
16 concluded that the “‘principal place of business’ is best read as referring to the place where a
17 corporation’s officers direct, control, and coordinate the corporation’s activities.” *Id.* at 1184. The
18 Court further clarified that the principal place of business is the place where the corporation
19 “maintains its headquarters – provided that the headquarters is the actual center of direction,
20 control, and coordination.” *Id.*

21 11. At all times on or after the date this action was filed, defendant FedEx Ground
22 Package System, Inc. has been a citizen of the states of Pennsylvania and Delaware. Defendant has
23 its principal place of business in Moon Township, Pennsylvania, as that is the location of its
24 headquarters from which its officers direct, coordinate, and control its business operations. Cox
25 Decl., ¶¶ 3-6. In addition, Defendant is incorporated in the State of Delaware. *Id.*, ¶ 2. Defendant
26 is neither incorporated in California, nor does it have a principal place of business in California.
27 *Id.*, ¶¶ 2-6. Accordingly, for purposes of determining diversity, Defendant is regarded as a citizen
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1 of Pennsylvania and Delaware, and not a citizen of California.²

2 12. Citizenship of Plaintiff and putative class members. For diversity purposes, an
3 individual is a “citizen” of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*,
4 704 F.2d 1088, 1090 (9th Cir. 1983). An individual’s domicile is the place he resides with the
5 intention to remain or to which he intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
6 857 (9th Cir. 2001).

7 13. The Complaint alleges that “Plaintiff is and was domiciled and resident and citizen
8 of California and a resident and citizen of California and was employed by [Defendant] in a non-
9 exempt position within the four years prior to the filing of this complaint.” Ex. A, ¶ 3. Likewise,
10 Defendant’s employment records confirm that throughout his employment with Defendant,
11 Plaintiff lived in the State of California, including the home address that Plaintiff provided for
12 payroll purposes and the addresses shown on Plaintiff’s driver’s license, which was issued by the
13 State of California. Cox Decl., ¶ 8. Thus, Plaintiff is a citizen of the State of California.

14 14. Members of the proposed class, who by definition are or were employed in
15 California, are presumed to be primarily citizens of the State of California. *See, e.g., Lew v. Moss*,
16 797 F.2d 747, 750 (9th Cir. 1986) (“place of employment” an important factor weighing in favor of
17 citizenship). Thus, even if Plaintiff was somehow a citizen of Pennsylvania or Delaware (and there
18 is no evidence that he is), there is no possible way that the thousands of putative class members, all
19 of whom worked in California (Ex. A, ¶ 17), were also citizens of Pennsylvania or Delaware.

20 15. Accordingly, the minimal diversity of citizenship requirements under 28 U.S.C. §
21 1332(d)(2) are met because Defendant is a citizen of Pennsylvania and Delaware while Plaintiff, a
22 putative class member, is a citizen of California.

23 **C. The Amount in Controversy Exceeds an Aggregate of \$5,000,000**

24 16. Plaintiff has not alleged a specific amount in controversy in the Complaint. In order
25 to remove a class action pursuant to CAFA, the amount in controversy must exceed \$5,000,000,
26 and it is the removing party’s burden to establish “by a preponderance of evidence, that the
27

28 ² The citizenship of fictitiously named “Doe” defendants is disregarded for purposes of removal.
28 U.S.C. § 1441(a); *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

1 aggregate amount in controversy exceeds the jurisdictional minimum.” *Rodriguez v. AT&T*
 2 *Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). To do so, the removing defendant must
 3 “produce underlying facts showing only that it is *more likely than not* that the amount in
 4 controversy exceeds \$5,000,000.00, assuming the truth of the allegations plead in the Complaint.”
 5 *Muniz v. Pilot Travel Ctrs. LLC*, No. CIV. S-07-0325 FCD EFB, 2007 WL 1302504, at *5 (E.D.
 6 Cal. May 1, 2007) (emphasis in original).

7 17. In considering the evidence submitted by the removing defendant, the Court must
 8 “look beyond the complaint to determine whether the putative class action meets the [amount in
 9 controversy] requirements,” adding “the potential claims of the absent class members” and
 10 attorneys’ fees. *Rodriguez*, 728 F.3d at 981 (citing *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct.
 11 1345, 185 L.Ed. 2d 439 (2013)); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 705 (9th Cir.
 12 2007). Furthermore, “[i]n considering whether the amount in controversy is clear from the face of
 13 the complaint, a court must assume that the allegations of the complaint are true and that a jury will
 14 return a verdict for the plaintiff on all claims made in the complaint.” *Altamirano v. Shaw Indus.,*
 15 *Inc.*, C-13-0939 EMC, 2013 WL 2950600, at *4 (N.D. Cal. June 14, 2013) (citing *Korn v. Polo*
 16 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)); *see also Muniz*, 2007 WL
 17 1302504, at *3.

18 18. While Defendant denies the validity of Plaintiff’s claims and requests for relief and
 19 does not concede in any way that the allegations in the Complaint are accurate, that Plaintiff’s
 20 claims are amenable to classwide treatment, or that Plaintiff or the purported class are entitled to
 21 any of the requested relief, the allegations in the Complaint show it is more likely than not that the
 22 amount in controversy exceeds the jurisdictional minimum. *See Guglielmino*, 506 F.3d at 700.

23 19. As described further below, as well as in the concurrently filed declaration from
 24 Andrea K. Cox,³ the amount in controversy exceeds the jurisdictional minimum of \$5,000,000.

25 _____
 26 ³ For purposes of effecting removal pursuant to 28 U.S.C. § 1332(d), declarations from defendants
 27 and their counsel constitute sufficient evidence to establish the amount in controversy. *See, e.g.,*
 28 *Muniz*, 2007 WL 1302504, at *2, *5 (relying on the evidence submitted by the defendant in the
 form of a declaration from its employee relations manager, which “set forth the underlying facts
 needed to calculate the amount in controversy,” and a declaration from its counsel, which
 calculated the amount in controversy based on the underlying facts and in light of the laws
 governing the plaintiff’s claims, and finding that the defendant had shown that “it is more likely

1 **1. Defendant’s Estimate of the Amount in Controversy**

2 20. In determining the amount in controversy to support its Notice of Removal,
3 Defendant relies here on a conservative estimate of the amount in controversy based only on
4 damages sought by Plaintiff as a result of the alleged: (1) unpaid minimum wages for work
5 performed in excess of 40 hours in one workweek or in excess of 8 hours in one day; (2) failure to
6 provide legally required and legally compliant meal periods; and (3) failure to provide legally
7 required and legally compliant rest periods. Because the amounts in controversy for these claims
8 alone satisfy the jurisdictional minimum requirement of \$5 million, Defendant does not include
9 additional analyses for estimates of the amounts placed in controversy by Plaintiff’s other
10 allegations in the Complaint, including potential damages sought for the allegations of: (1) failure
11 to pay overtime wages; (2) failure to provide complete and accurate wage statements; (3) failure to
12 timely pay all wages owed upon termination and (4) unfair, unlawful, and harmful business
13 practices.

14 21. Defendant has also based its removal calculations on current and former employees
15 who held the warehouse Package Handler position, rather than the broader class proposed by
16 Plaintiff. If necessary, Defendant could and would supplement this Notice of Removal to include
17 estimates of the additional amounts in controversy based on the other allegations contained in the
18 Complaint.

19 **(a) The Amount Placed in Controversy by the Minimum Wage**
20 **Claim**

21 22. In his First Cause of Action, Plaintiff alleges that Defendant “failed to compensate
22 these employees with wages at least at a minimum wage rate for all time worked” Ex. A, ¶ 12.

23 23. Plaintiff further specifically alleges that Defendant failed to properly compensate
24 Plaintiff and the putative class members as follows:

25 _____
26 than not that the jurisdictional threshold of \$5,000,000.00 is met”); *Jasso v. Money Mart Express,*
27 *Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at *4 (N. D. Cal. Mar. 1, 2012) (finding there was
28 “adequate foundation” for the declaration submitted by the defendant’s human resources director
regarding “the numbers of employees, payperiods [sic] and average rates of pay during the
applicable limitations periods,” which was derived from a compilation of “information that is kept
in the normal course of business,” and relying on the declaration to find that the defendant had met
its burden to establish the amount in controversy in excess of CAFA’s jurisdictional threshold).

1 Defendant required Plaintiff and other warehouse employees to go
 2 through security screening at the beginning of their shift, any time
 3 they left the premises during meal or rest breaks or returned from
 4 leaving the premises during meal or rest breaks, and at the end of
 5 their shift. The time spent going through the security check included
 6 time that Plaintiff and other warehouse employees had to wait while
 7 other employees were also lined up to go through security screening
 8 and walking from the security screening location to the time clock or
 9 walking from the time clock to the security screening location. Even
 10 though the security screening was a requirement by [Defendant],
 [Defendant] did not pay wages to Plaintiff or other warehouse
 employees for the time they waited in line or went through the
 security screening at the beginning of their shift, any time they left
 the premises during meal breaks or returned from leaving the
 premises [sic] during meal breaks, at the end of their shift, or the
 time spent walking from the security screening location to the time
 clock or walking from the time clock to the security screening
 location...[Defendant] did not pay any additional wages to Plaintiff or
 other warehouse employees for this time.

11 *Id.* at ¶ 11. Thus, Plaintiff alleges that Defendant failed to compensate Plaintiff and the putative
 12 class members for time worked on a daily basis.

13 24. Labor Code Section 1194(a) provides:

14 Notwithstanding any agreement to work for a lesser wage, any
 15 employee receiving less than the legal minimum wage or the legal
 16 overtime compensation applicable to the employee is entitled to
 17 recover in a civil action the unpaid balance of the full amount of this
 minimum wage or overtime compensation, including interest
 thereon, reasonable attorney's fees, and costs of suit.

18 25. Based on Defendant's records, the approximate number of current and former
 19 employees who held the non-exempt positions of Full-Time Package Handler or Part-Time
 20 Package Handler in California from March 6, 2019 to March 13, 2020 ("Applicable Period")⁴ is at
 21 least 16,592. Cox Decl., ¶ 9. The hourly rate of the putative class members was at least \$12.00 per
 22 hour during this period.⁵ *Id.*

23 _____
 24 ⁴ Certain Part-Time Package Handlers and Full-Time Package Handlers in California may have
 25 been included in previous class action settlements, including *Steven Hernandez v. FedEx Ground*
 26 *Package System, Inc., et al.*, N.D. Cal, No. 3:17-cv-03763-JSC (settlement covering period through
 27 March 5, 2019). Because these employees may have released claims that are asserted on their
 behalfs in this litigation, Defendant has excluded from its calculations any periods that were
 covered by these previous settlements, and instead focused its calculations on the period starting
 March 6, 2019. Cox Decl., ¶ 10.

28 ⁵ From January 1, 2019 through December 31, 2019, the hourly rate of pay for putative class
 members was at least \$12.00 per hour. Cox Decl., ¶ 11. From January 1, 2020 through the present,
 the hourly rate of pay for putative class members has been at least \$13.00 per hour. *Id.* For

1 26. Defendant's calculation of Plaintiff's claims for unpaid minimum wages is
 2 **\$3,100,884** (\$12 x 1 x 258,407). The computation of the amount in controversy is based on a
 3 conservative calculation that the 16,592 non-exempt Full-Time Package Handlers or Part-Time
 4 Package Handlers worked 258,407 weeks during the Applicable Period, that each putative class
 5 member earned a regular rate of \$12.00 per hour, and that each putative class member incurred one
 6 hour of unpaid minimum wage for every week of work.⁶ Cox Decl., ¶¶ 9, 11.

7 27. An estimate of one hour of unpaid wages for every week of work has been accepted
 8 by the federal courts as a reasonable and conservative figure. See *Jasso v. Money Mart Express,*
 9 *Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at *5-6 (N. D. Cal. Mar. 1, 2012) (holding that
 10 calculating at least one violation per week was a "sensible reading of the alleged amount in
 11 controversy"); *Patel v. Nike Retail Servs., Inc.*, 58 F. Supp. 3d 1032, 1042 (N.D. Cal. 2014)
 12 (approving one hour of unpaid wages "to be appropriately considered toward the amount in
 13 controversy"); *Ray v. Wells Fargo Bank, N.A.*, No. CV 11-01477 AHM (JCx), 2011 WL 1790123,
 14 at *6-7 (C.D. Cal. May 9, 2011) (same). This is especially the case where, as here, the plaintiff
 15 fails to provide specific allegations concerning the frequency of which he worked unpaid wages
 16 without being provided the requisite compensation. See *Byrd v. Masonite Corp.*, No. EDCV 16-35
 17 JGB (KKX), 2016 WL 2593912, at *5 (C.D. Cal. May 5, 2016).

18 28. Consequently, the amount placed in controversy by the Minimum Wage Claim is at
 19 least \$3,100,884.

20 **(b) The Amount Placed in Controversy by the Failure to Provide**
 21 **Required Meal Periods Claim**

22 29. In his Second Cause of Action, Plaintiff alleges that Defendant "failed to afford
 23 employees meal periods in compliance with the law" and "failed to pay Plaintiff and similarly
 24 situated employees one hour of pay at their regular rate of pay for each workday Plaintiff and
 25 _____

26 purposes of these calculations, Defendant has conservatively used the lowest hourly rate of \$12.00.
 27 Again, Defendant's calculations exclusively rely on the time period starting March 6, 2019.

28 ⁶ In light of the Complaint's allegations that Defendant's purported failure to pay minimum wage
 and/or overtime wages for all time worked was extensive, "it is reasonable to assume a 100%
 violation rate in calculating the amount in controversy for this cause of action." *Altamirano v.*
Shaw Industries, Inc., No. C-13-0939 EMC, 2013 WL 2950600, *11 (N.D. Cal. June 14, 2013).

1 employees did not receive all legally required and legally compliant meal periods.” Ex. A. ¶¶ 39-
2 40.

3 30. Plaintiff further alleges the following:

4 Defendant implemented policies which failed to provide Plaintiff and other
5 current and former warehouse employees with all meal periods as required by and
6 in compliance with the law, including fully duty free and timely meal periods.
7 Warehouse employees were required to only take a thirty minute meal break but
8 were also required to pass through security checks and/or wait in line for
9 employees passing through security checks and/or walk between time clocks and
10 security screening locations during their meal period if leaving/entering the
11 premises during meal periods resulting in [Defendant] providing less than thirty
12 minute meal break. In addition, [Defendant] discouraged employees from taking
13 a meal period off-premises by limiting an employees’ ability to take a full 30
14 minute meal period off-premises by requiring the employees to pass through
15 security checks during their meal period time if leaving/entering the premises
16 during meal periods while continuing to limit their meal periods to only thirty
17 minutes.

18 Ex. A, ¶ 38.

19 31. Under California law, employees who are not provided meal periods are entitled to
20 one hour of premium pay for each day that a meal period is not provided. *See Marlo v. United*
21 *Parcel Serv., Inc.*, 2009 WL 1258491, at *7 (C.D. Cal. May 5, 2009). Meal period claims are
22 properly considered in determining the amount in controversy. *See, e.g., Muniz*, 2007 WL
23 1302504, at *4; *Helm v. Alderwoods Grp., Inc.*, 2008 WL 2002511, at *8 (N.D. Cal. May 7, 2008).

24 32. When determining the amount placed in controversy by a plaintiff’s allegations
25 regarding a common “practice” of meal period violations like those alleged by Plaintiff in the
26 Complaint, an estimate of one meal period violation for every week of work is both reasonable and
27 conservative. *See Campbell v. Vitran Exp., Inc.*, 471 Fed. Appx. 646, 649 (9th Cir. 2012); *Mackall*
28 *v. Healthsource Glob. Staffing, Inc.*, No. 16-CV-03810-WHO, 2016 WL 4579099, at *5 (N.D. Cal.
Sept. 2, 2016) (acknowledging that multiple decisions from California district courts have
recognized assumptions of one missed meal period per week as “reasonable in light of policy and
practice allegations and allegations that defendants’ ‘regularly’ denied class member breaks”);
Unutoa v. Interstate Hotels & Resorts, Inc., No. 2:14-CV-09809-SVW-PJ, 2015 WL 898512, at *3
(C.D. Cal. Mar. 3, 2015) (approving of defendant’s calculation that proposed class members

1 missed one required meal period per week).

2 33. Based on a review of Defendant's business records, 16,592 putative class members
3 worked 258,407 workweeks during the Applicable Period and received a minimum hourly rate of
4 \$12.00 during that time. Cox Decl. ¶¶ 9, 11.

5 34. Based on a conservative analysis of a violation rate of only one (1) meal period
6 violation per employee, per week, Defendant's calculation of Plaintiff's claim for failure to provide
7 legally compliant meal periods is **\$3,100,884**. The computation of the amount in controversy is
8 based on conservative calculations that the 16,592 non-exempt Full-Time Package Handlers or
9 Part-Time Package Handlers worked 258,407 weeks during the Applicable Period, that each
10 putative class member earned a regular rate of \$12.00 per hour, and that each putative class
11 member incurred one missed meal period penalty per workweek. Cox Decl., ¶¶ 9; 11.

12 35. Consequently, the amount placed in controversy by the Meal Period Claim is
13 \$3,100,884.

14 (c) **The Amount Placed in Controversy by the Failure to Authorize**
15 **and Permit Rest Breaks Claim**

16 36. In his Third Cause of Action, Plaintiff alleges that Defendant "failed to provide
17 Plaintiff and other warehouse employees with uninterrupted duty free 10 minute rest periods for
18 each four hours or major fraction thereof worked" and "failed to pay Plaintiff and similarly situated
19 employees one hour of pay at their regular rate of pay for each workday Plaintiff and employees
20 did not receive all timely and legally compliant rest periods." Ex. A. ¶¶ 45-46.

21 37. As with meal period violations, an estimate of one rest break violation per week of
22 work is both reasonable and conservative where, as here, the Plaintiff contends that Defendant
23 "employed policies and procedures which failed to provide Plaintiff" and other employees with rest
24 breaks. *Id.* at ¶ 19; *see, e.g., Campbell*, 471 Fed. Appx. at 649; *Mackall*, 2016 WL 4579099, at *5;
25 *Unutoa*, 2015 WL 898512, at *3. As such, Plaintiff's allegation is for a regular violation to
26 provide each member of the putative class a compliant rest break.

27 38. Defendant's calculation of Plaintiff's claim for rest break violations is largely
28 similar to that of alleged meal break violations. This computation is based on conservative

1 estimates of a violation rate of only one (1) rest break violation per employee, per week,
 2 Defendant's calculation of Plaintiff's claim for failure to authorize and permit legally compliant
 3 rest breaks periods is **\$3,100,884**. The computation of the amount in controversy is based on
 4 conservative calculations that the 16,592 non-exempt Full-Time Package Handlers or Part-Time
 5 Package Handlers worked 258,407 weeks during the Applicable Period, that each putative class
 6 member earned a regular rate of \$12.00 per hour, and that each putative class member incurred one
 7 missed rest break penalty per workweek. Cox Decl., ¶¶ 9; 11.

8 39. Consequently, the amount placed in controversy by the Rest Break Claim is
 9 \$3,100,884.

10 (d) **Attorneys' Fees Further Increase the Amount in Controversy**

11 40. When an award of attorneys' fees is authorized by statute, the request for attorneys'
 12 fees is properly considered in determining the amount in controversy for removal purposes. *See*
 13 *Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018) ("We conclude that
 14 if a plaintiff would be entitled under a contract or statute to future attorney's fees, such fees are at
 15 stake in the litigation and should be included in the amount in controversy."); *Muniz*, 2007 WL
 16 1302504 at *3 ("In measuring the amount in controversy, a court must assume that the allegations
 17 of the complaint are true and that a jury will return a verdict for the plaintiffs on all claims made in
 18 the complaint.").

19 41. Here, Plaintiff claims that he is entitled to attorneys' fees under the California Labor
 20 Code. Ex. A, ¶¶ 1, 28(B)(vii), and *id.* Prayer For Relief.

21 42. The Court may consider all attorneys' fees that at the time of removal can
 22 reasonably be anticipated will be incurred over the life of the case. *See Fritsch*, 889 F.3d at 794
 23 ("Because the law entitles [Plaintiff] to an award of attorneys' fees if he is successful, such future
 24 attorneys' fees are at stake in the litigation, and must be included in the amount in controversy.");
 25 *Goldberg v. CPC Int'l*, 678 F.2d 1365, 1367 (9th Cir. 1982) (noting that "potential attorneys' fees"
 26 could be considered for purposes of meeting the amount in controversy requirement); *Haase v.*
 27 *Aerodynamics Inc.*, No. 2:09-cv-01751-MCE-GGH, 2009 WL 3368519, at *5 (E.D. Cal. 2009)
 28 ("[B]ecause attorney's fees are expressly authorized by statute, such fees may be included in

1 determining the amount in controversy”); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d
2 1004, 1011 n.4 (N.D. Cal. 2002) (“While an estimate of the amount in controversy must be made
3 based on facts known at the time of removal, that does not imply that items such as future income
4 loss, damages, or attorneys’ fees likely to be incurred cannot be estimated at the time of removal.”);
5 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1034-35 (N.D. Cal. 2002) (stating that “the measure
6 of fees should be the amount that can reasonably be anticipated at the time of removal, not merely
7 those already incurred” and noting that “attorney’s fees cannot be precisely calculated” but making
8 projection of likely fees based on the court’s “twenty-plus years’ experience” overseeing similar
9 cases).

10 43. As detailed above, the amount in controversy for just three of Plaintiff’s claims is at
11 least \$9,302,652.00. The amount in controversy could be further increased by at least 25% to
12 account for potential attorneys’ fees. Attorneys’ fees awards in other employment actions show
13 that attorneys’ fees awards in wage-and-hour class actions often exceed 25% of the underlying
14 amount in controversy. *See Muniz v. Pilot Travel Centers LLC*, 2007 WL 1302504 at *4, n.8
15 (noting that in California, where wage and hour class actions have settled prior to trial, it is not
16 uncommon for an attorneys’ fee award to be in the realm of 25% to 30% of the settlement); *see*
17 *also Jasso*, 2012 WL 699465, at *7 (noting that “it is well established that the Ninth Circuit ‘has
18 established 25% of the common fund as a benchmark award for attorney fees’”) (quoting *Hanlon v.*
19 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)).

20 44. Accordingly, Defendant conservatively estimates that Plaintiff’s attorneys’ fees in
21 this matter are likely to be at least 25% of the amount placed in controversy through Plaintiff’s
22 claims.

23 (e) **Summary of Defendant’s Calculations**

24 45. As described above, a reasonable and conservative estimate of the amount in
25 controversy presented by Plaintiff’s minimum wage, meal period, and rest break claims exceed
26 \$5,000,000. Indeed, these three claims alone have placed at least \$11,628,315.00 in controversy,
27 as follows:
28

Claim	Estimated Exposure
Minimum Wage Claim	\$3,100,884
Meal Period Claim	\$3,100,884
Rest Break Claim	\$3,100,884
Sub-Total	\$9,302,652
25% Attorneys' Fees	\$2,325,663
TOTAL	\$11,628,315

Consequently, the amount placed in controversy by Plaintiff's claims exceeds the \$5,000,000 jurisdictional threshold of 28 U.S.C. § 1332(d).

III. DEFENDANT HAS SATISFIED THE REMAINING REMOVAL REQUIREMENTS

46. Venue is Proper. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is filed in the District in which the action is pending. The Superior Court of the State of California for the County of Alameda is located within the Northern District of California. Therefore, venue is proper in this Court because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

47. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendant are attached as Exhibits to this Notice.

48. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice is being served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the Superior Court of California for the County of Alameda. Notice of compliance shall be filed promptly afterward with this Court.

49. As required by Federal Rule of Civil Procedure 7.1 and Local Rule 3-15, Defendant concurrently filed its Certificate of Interested Parties and Disclosure Statement.

50. Finally, in the event this Court has any question regarding the propriety of this Notice of Removal, Defendant requests that the Court issue an Order to Show Cause so that Defendant may have an opportunity to more fully brief the basis for this removal.

1 WHEREFORE, Defendant removes the above-captioned action to the United States District
2 Court for the Northern District of California.

3 DATED: March 25, 2020

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

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By: /s/ Alexander M. Chemers
Evan R. Moses
Alexander M. Chemers

Attorneys for Defendant
FEDEX GROUND PACKAGE SYSTEM, INC.

EXHIBIT A

1 Joseph Lavi, Esq. (State Bar No. 209776)
jlavi@lelawfirm.com
2 Jordan D. Bello, Esq. (State Bar No. 243190)
jbello@lelawfirm.com
3 **LAVI & EBRAHIMIAN, LLP**
8889 W. Olympic Blvd., Suite 200
4 Beverly Hills, California 90211
Telephone: (310) 432-0000
5 Facsimile: (310) 432-0001

ENDORSED
FILED
ALAMEDA COUNTY

DEC 3 - 2019

CLERK OF THE SUPERIOR COURT

AMRIT KHAN

6 Attorneys for PLAINTIFF
ERNEST CUADRA on behalf of himself and others
7 similarly situated.

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11 ERNEST CUADRA on behalf of himself and
others similarly situated.

Case No.:

RG19045340

FAX FILE

12 PLAINTIFF,

CLASS ACTION

13 vs.

PLAINTIFF ERNEST CUADRA'S
COMPLAINT FOR:

14 FEDEX GROUND PACKAGE SYSTEM, INC.,
15 a Delaware corporation; FEDEX, a business
entity unknown; and DOES 1 to 100, Inclusive.

16 DEFENDANTS.

- 17 1. FAILURE TO PAY MINIMUM WAGE OR OVERTIME WAGES FOR ALL HOURS WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1197, 1198, AND THE WAGE ORDERS
- 18 2. FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 226.7, 512, 1198, AND THE WAGE ORDERS
- 19 3. FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7, 1198, AND THE WAGE ORDERS
- 20 4. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226

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5. **FAILURE TO TIMELY PAY UNPAID WAGES DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

6. **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff ERNEST CUADRA (“Plaintiff”), who alleges and complains against defendants FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX., and DOES 1 to 50, inclusive, (hereinafter, collectively referred to as “Defendants” or “DEFENDANTS”), and DOES 51 to 100 as follows:

I. INTRODUCTION

1. This is a wage and hour class action lawsuit on behalf of Plaintiff and other current and former non-exempt employees of DEFENDANTS in California seeking within the applicable statute of limitations periods (taking into account any tolling, if applicable): unpaid minimum wage, liquidated damages, and overtime premium for hours worked which were not compensated with wages, unpaid meal and rest period premium wages for Defendant’s failure to provide all legally required and legally compliant meal and rest periods, statutory penalties for failure to provide accurate and complete wage statements and failure to timely pay all unpaid wages following separation of employment; injunctive relief and other equitable relief, reasonable attorney’s fees pursuant to Labor Code sections 226(e), 1194, costs, and interest, if applicable, brought on behalf of Plaintiff and others similarly situated.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff and the Class Members’ claims because Plaintiff’s lawsuit seeks permanent injunction, damages, and restitution for himself and the class in excess of \$25,000 and DEFENDANTS employed class members and injuries occurred in locations

1 throughout California including in Alameda County at its warehouse locations at 8455 Pardee Drive,
2 Oakland California 94621 and 1600 63rd St., Emeryville, CA 94608.

3 **III. PARTIES**

4 3. Plaintiff brings this action on behalf of himself and other members of the general
5 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is
6 filed are current, former and/or future employees of DEFENDANTS who worked, work, or will work
7 for DEFENDANTS as non-exempt hourly employees in California. At all times mentioned herein,
8 the currently named Plaintiff is and was domiciled and a resident and citizen of California and was
9 employed by DEFENDANTS in a non-exempt position within the 4 years prior to the filing of the
10 complaint.

11 4. Plaintiff is informed and believes and thereon alleges that Defendant FEDEX
12 GROUND PACKAGE SYSTEM, INC. is a foreign entity domiciled and a citizen of Delaware and
13 Pennsylvania, incorporated in Delaware with its principal place of business in Pennsylvania, is
14 authorized to do business within the State of California, and is doing business in the State of California
15 and/or that Defendants DOES 51-75 are, and at all times relevant hereto were persons acting on behalf
16 of FEDEX GROUND PACKAGE SYSTEM, INC. who violated or caused to be violated provisions
17 of the Labor Code and/or the Industrial Welfare Commission's wage orders regulating hours and days
18 of work. Plaintiff is informed and believes and thereon alleges that FEDEX GROUND PACKAGE
19 SYSTEM, INC. was Plaintiff's employer and suffered and permitted Plaintiff and similarly situated
20 non-exempt employees to work and exercised control over the wages, hours and working conditions
21 of employment of Plaintiff and similarly situated non-exempt employees.

22 5. Plaintiff is informed and believes and thereon alleges that Defendant FEDEX is a
23 business entity unknown authorized to do business within the State of California, and is doing
24 business in the State of California and/or that Defendants DOES 76-100 are, and at all times relevant
25 hereto were persons acting on behalf of FEDEX who violated or caused to be violated provisions of
26 the Labor Code and/or the Industrial Welfare Commission's wage orders regulating hours and days
27 of work. Plaintiff is informed and believes and thereon alleges that FEDEX was Plaintiff's employer
28 and suffered and permitted Plaintiff and similarly situated non-exempt employees to work and

1 exercised control over the wages, hours and working conditions of employment of Plaintiff and
2 similarly situated non-exempt employees.

3 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1 through
4 50 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff
5 that employed PLAINTIFF and the similarly situated California non-exempt employees, permitted
6 Plaintiff and similarly situated non-exempt employees to work, and exercised control over the wages,
7 hours and working conditions of employment of Plaintiff and similarly situated non-exempt
8 employees.

9 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
10 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
11 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
12 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
13 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the
14 Industrial Welfare Commission's wage orders regulating hours and days of work.

15 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
16 sues said defendants by said fictitious names, and will amend this complaint when the true names and
17 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by
18 law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants
19 is in some manner responsible for the events and allegations set forth in this complaint.

20 9. Plaintiff makes the allegations in this complaint without any admission that, as to any
21 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
22 reserves all of Plaintiff's right to plead in the alternative.

23 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

24 10. **Failure to pay minimum wage, or overtime wages if applicable, for all hours**
25 **worked to non-exempt employees:** In California, an employer is required to pay an employee for
26 all "hours worked" which includes all time that an employee is under control of the employer and
27 including all time that the employee is suffered and permitted to work whether or not the employee
28 is required to work. This includes time an employee is required to be present at a certain location

1 whether or not the employee is working, including meal times. (*Mendiola v. CPS Security Solutions,*
2 *Inc.* (2015) 60 Cal.4th 833, 840-842, *Morillion vs. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.)
3 Labor Code sections 1194, 1197 and the Wage Orders require that an employer compensate
4 employees for “hours worked” at least at a minimum wage rate of pay as established by the wage
5 orders. Labor Code sections 510, 1194 and the Wage Orders require that an employer compensate
6 employees for “hours worked” at a higher rate of pay when an employee works over a certain number
7 of hours: 1.5 times the regular rate of pay for hours worked over 8 hours up to 12 hours in a workday,
8 over 40 hours in a workweek, or up to 8 hours on a seventh day of work in a workweek or 2 times the
9 regular rate of pay for hours worked over 12 hours in a workday.

10 11. At times during the four years prior to the filing of the Complaint, DEFENDANTS
11 used policies and procedures which failed to provide warehouse employees with wages at the
12 applicable minimum wage rate and/or overtime rate for all the time they actually worked.
13 DEFENDANTS operate warehouse locations in California, including but not limited to locations in
14 the cities of Oakland, Emeryville, and City of Industry. At times during the four years prior to the
15 filing of the Complaint, DEFENDANTS required Plaintiff and other warehouse employees to go
16 through security screening at the beginning of their shift, any time they left the premises during meal
17 or rest breaks or returned from leaving the premises during meal or rest breaks, and at the end of their
18 shift. This time spent going through the security check included time that Plaintiff and other
19 warehouse employees had to wait while other employees were also lined up to go through security
20 screening and walking from the security screening location to the time clock or walking from the time
21 clock to the security screening location. Even though the security screening was a requirement by
22 DEFENDANTS, DEFENDANTS did not pay wages to Plaintiff or other warehouse employees for
23 the time they waited in line or went through security screening at the beginning of their shift, any
24 time they left the premises during meal breaks or returned from leaving the premises during meal
25 breaks, at the end of their shift, or time spent walking from the security screening location to the time
26 clock or walking from the time clock to the security screening location. The security screening
27 occurred outside of the Plaintiff and other warehouse employees’ recorded work time (i.e., outside of
28 the time employees were “clocked in”) and DEFENDANTS did not pay any additional wages to

1 Plaintiff or other warehouse employees for this time. In addition, at times Plaintiff and other
2 warehouse employees worked “overtime” consisting of hours worked in excess of 8 up to 12 hours
3 in a workday, over 40 hours in a workweek, up to 8 hours on any seventh consecutive day in a
4 workweek, hours worked in excess of 12 hours in a workday, or over 8 hours on any seventh
5 consecutive day in a workweek. To the extent the time spent waiting in line or passing through
6 security checks was during these overtime hours, DEFENDANTS did not pay additional wages at an
7 overtime rate (i.e., 1.5 times the employees’ regular rate of pay for hours in excess of 8 up to 12 hours
8 in a workday, over 40 hours in a workweek, up to 8 hours on any seventh consecutive day in a
9 workweek and 2 times the employees’ regular rate of pay for hours in excess of 12 hours in a workday
10 or over 8 hours on any seventh consecutive day in a workweek) to the employees.

11 12. As a result of these policies, DEFENDANTS failed to compensate these employees
12 with wages at least at a minimum wage rate for all time worked and at an overtime rate for all overtime
13 hours worked when the employees had already worked in excess of 8 up to 12 hours in a workday,
14 over 40 hours in a workweek, up to 8 hours on any seventh consecutive day in a workweek, hours
15 worked in excess of 12 hours in a workday, or over 8 hours on any seventh consecutive day in a
16 workweek.

17 13. DEFENDANTS’ policies and procedures were applied to all non-exempt warehouse
18 employees in California at times during the four years prior to the filing of the Complaint and resulted
19 in non-exempt warehouse employees working time which was not compensated any wages in
20 violation of Labor Code sections 510, 1194, 1197, 1198 and the Wage Orders. DEFENDANTS owe
21 wages at a minimum wage rate, or overtime rate if applicable, for unpaid time to each of their
22 California non-exempt warehouse employees who did not receive wages for all hours worked based
23 on DEFENDANTS’ failure to pay wages for mandatory security screening and related activities (e.g.,
24 waiting in line and walking between time clock and screening location).

25 14. **Failure to pay premium wages to non-exempt warehouse employees to**
26 **compensate them for workdays Defendants failed to provide all legally required and/or legally**
27 **compliant meal breaks:** California law requires employers to provide employees with a 30-minute
28 uninterrupted meal period for each five hours of work before the end of each five hour period of work

1 during which time the employee is relieved of all duties and employer control. (Wage Orders, subd.
2 11; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1039, 1041.) If the employee is not
3 relieved of all duties during a 30 minute meal period, the meal period is considered "on duty" and the
4 entire meal period is counted as time worked. (Wage Orders, subd. 11.) The employer satisfies this
5 obligation if it relieves its employees of all duty, relinquishes control over their activities and permits
6 them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or
7 discourage them from doing so. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
8 1040.) If an employee is not free to leave the work place during a meal period, the employee is not
9 relieved of all duties during the meal period and is subject to the control of the employer and does not
10 comply with the requirement of an employee being relieved of all duties during their meal. (*Bono*
11 *Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.) Further, an employer cannot impede
12 or discourage an employee from taking a meal period off premises and which they are relieved of all
13 duties and control of the employer. (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1039.) If an
14 employer fails to provide an employee a meal period in accordance with the law, the employer must
15 pay the employee one hour of pay at the employee's regular rate of compensation for each work day
16 that a legally required meal period was not provided or was not duty free. (*Id.*)

17 15. DEFENDANTS implemented policies which failed to provide Plaintiff and other
18 current and former warehouse employees with all meal periods as required by and in compliance with
19 the law, including full duty free and timely meal periods. Warehouse employees were required to only
20 take a thirty minute meal break but were also required to pass through security checks and/or wait in
21 line for employees passing through security checks and walking between time clocks and security
22 locations during their meal period time if leaving/entering the premises during meal periods resulting
23 in DEFENDANTS providing less than a 30 minute meal break. In addition, DEFENDANTS
24 discouraged employees from taking a meal period off-premises by limiting an employees' ability to
25 take a full 30 minute meal period off-premises by requiring the employees to pass through security
26 checks during their meal period time if leaving/entering the premises during meal periods while
27 continuing to limit their meal periods to only thirty minutes.

28 16. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of

1 pay for each workday Plaintiff and similarly situated employees did not receive all legally required
2 and legally compliant meal periods due to DEFENDANTS' warehouse security procedures.

3 17. This practice resulted in Plaintiff and all other similarly situated employees working
4 at warehouses not receiving wages to compensate them for workdays which DEFENDANTS did not
5 provide them with all legally required and legally compliant meal periods in compliance with
6 California law.

7 18. **Failure to pay premium wages to non-exempt warehouse employees to**
8 **compensate them for workdays Defendants failed to provide all legally required and/or legally**
9 **compliant rest breaks:** California law states that "[e]very employer shall authorize and permit all
10 employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
11 The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
13 an employee a rest period in accordance with the applicable provisions of this order, the employer
14 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
15 workday that the rest period is not provided." (Wage Orders, subd. 12; see Lab. Code § 226.7.) Under
16 California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six
17 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
18 more than 10 hours up to 14 hours, and so on." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
19 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work
20 period. (Wage Orders, subd.12.) In addition, if an employer requires employees to stay on the
21 premises during the rest period, they are under control of the employer and they are not relieved of
22 all duties in violation of California law. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
23 257, 271.) If an employer fails to provide an employee a timely and legally compliant rest period, the
24 employer must pay the employee one hour of pay at the employee's regular rate of compensation for
25 each work day that a legally required meal period was not provided or was not duty free. (Wage
26 Orders, subd. 12.)

27 19. At times, DEFENDANTS employed policies and procedures which failed to provide
28 Plaintiff and other warehouse employees with uninterrupted duty free 10 minute rest periods for each

1 four hours or major fraction thereof worked. As noted above, DEFENDANTS required Plaintiff and
2 other warehouse employees to go through security screening at the beginning of their shift, any time
3 they left the premises during meal or rest breaks or returned from leaving the premises during meal
4 or rest breaks, and at the end of their shift. This time spent passing through security checks and/or
5 waiting in line for employees passing through security checks was uncompensated time which caused
6 portions of Plaintiff's and other employees' rest period to be not relieved of all duties and employer
7 control and/or less than a 10 minute rest breaks being given for each 4 hours or major fraction thereof
8 worked. Plaintiff and other warehouse employees were required to only take a ten minute break but
9 were also required to pass through security checks and/or wait in line for employees passing through
10 security checks during their rest period time if leaving/entering when leaving the premises for a rest
11 period resulting in less than a 10 minute rest break being provided, limiting an employees' ability to
12 take a full 10 minute rest period off-premises, and/or discouraging employees from taking a rest
13 period off-premises.

14 20. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of
15 pay for each workday Plaintiff and employees did not receive all timely and legally compliant rest
16 periods due to DEFENDANTS' security procedures.

17 21. This practice resulted in Plaintiff and all other similarly situated California non-
18 exempt employees not receiving wages to compensate them for workdays which DEFENDANTS did
19 not provide them with all legally required and/or legally compliant rest periods in compliance with
20 California law.

21 22. **Pay Stub Violations:** California Labor Code section 226(a) provides (inter alia) that,
22 upon paying an employee his or her wages, the employer must "furnish each of his or her employees
23 ... an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the
24 employee, except for any employee whose compensation is solely based on a salary and who is
25 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece
27 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions
28 made on written orders of the employee may be aggregated and shown as one item, (5) net wages

1 earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the
2 employee and the last four digits of his or her social security number or employee number, (8) the
3 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked at each hourly rate by the
5 employee.”

6 23. At times during the one year prior to the filing of the Complaint, DEFENDANTS
7 failed to provide accurate and complete wage statements to Plaintiff and other non-exempt employees.
8 At times during the one year prior to the filing of the Complaint, DEFENDANTS did not accurately
9 state Plaintiff and other warehouse employees’ gross wages earned, total hours worked, net wage
10 earned, and number of hours worked at each hourly rate by the employees. DEFENDANTS
11 inaccurately set forth this information because DEFENDANTS failed to account for the hours worked
12 and wages earned by employees during the time they were required to wait in line for and go through
13 mandatory security checks at the beginning of their shift and walk between time clocks and security,
14 any time they left the premises during meal breaks or returned from leaving the premises during meal
15 breaks, and at the end of their shift, as also described above. DEFENDANTS also failed to account
16 for and pay for meal and rest period premium wages for its failure to provide legally compliant and
17 all legally required meal and rest periods due to its requirement that employees pass through and wait
18 in line for mandatory security checks during meal and rest breaks, as described above in more detail.
19 Thus, the wage statements provided to employees were inaccurate because they did not include the
20 hours worked and wages earned by employees during security screening time and/or meal and rest
21 period premiums that should have been paid.

22 24. At times during the one year prior to the filing of the Complaint, DEFENDANTS
23 applied these policies and procedures to Plaintiff and other non-exempt employees in California
24 which resulted in DEFENDANTS failing to provide complete and accurate wage statements to non-
25 exempt employees in compliance with Labor Code section 226, subdivision (a).

26 25. **Failure to Pay Former California Non-Exempt Employees All Wages Due at**
27 **Time of Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
28 employee’s employment ends. The wages are due immediately upon termination (Lab. Code §201)

1 or within 72 hours of resignation (Lab. Code §202).

2 26. At times during the four years prior to the filing of the complaint to the present,
3 DEFENDANTS failed to pay Plaintiff and other non-exempt employees with all wages as mentioned
4 in more detail above (including unpaid minimum wage and/or overtime, meal period premium wages,
5 and rest period premium wages as a result of Defendants' mandatory security procedure as alleged
6 above in more detail) during their employment and never paid these amounts after Plaintiff and other
7 California employees separated employment with DEFENDANTS. As a result, DEFENDANTS
8 failed to pay those employees timely after each employee's termination and/or resignation in violation
9 of Labor Code sections 201 and 202. As a result, DEFENDANTS failed to pay those employees
10 timely after each employee's termination and/or resignation in violation of Labor Code sections 201
11 and 202.

12 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

13 27. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
14 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

15 A. **Minimum Wage Class:** All current and former non-exempt warehouse
16 employees required to pass through Defendant's mandatory security checks employed in California
17 at any time within the four years prior to the filing of the initial complaint in this action and through
18 the date notice is mailed to a certified class, who were not paid wages at the legal minimum wage rate
19 for all hours worked.

20 B. **Overtime Class:** All current and former non-exempt warehouse employees
21 required to pass through Defendant's mandatory security checks employed in California at any time
22 within the four years prior to the filing of the initial complaint in this action and through the date
23 notice is mailed to a certified class, who were not paid overtime wages for all overtime hours worked
24 during time periods he or she had already worked in excess of 8 hours in a day, 40 hours in a week,
25 or were working on a seventh consecutive day of work.

26 C. **Meal Period Class:** All current and former non-exempt warehouse employees
27 required to pass through Defendant's mandatory security checks employed in California at any time
28 within the four years prior to the filing of the initial complaint in this action and through the date

1 notice is mailed to a certified class who worked more than 5 hours in a shift and did not receive meal
2 periods during which they were relieved of all duties and control of Defendants for 30 minutes for
3 each five hours of worked provided prior to the end of each work period of five hours.

4 D. **Rest Period Class:** All current and former non-exempt warehouse employees
5 required to pass through Defendant's mandatory security checks employed in California at any time
6 within the four years prior to the filing of the initial complaint in this action and through the date
7 notice is mailed to a certified class who worked more than 3.5 hours in a shift and did not receive
8 wages to compensate employees for workdays Defendants failed to provide rest periods that the
9 employees were relieved of all duties and control by Defendants.

10 E. **Wage Statement Class:** All current and former non-exempt warehouse
11 employees required to pass through Defendant's mandatory security checks employed in California
12 at any time within the one year prior to the filing of the initial complaint in this action and through
13 the date notice is mailed to a certified class who received inaccurate or incomplete wage statements.

14 F. **Waiting Time Class:** All non-exempt warehouse employees required to pass
15 through Defendant's mandatory security checks employed in California and whose employment
16 ended with Defendant at any time within the three years prior to the filing of the initial complaint in
17 this action and through the date notice is mailed to a certified class and he or she did not timely receive
18 all unpaid wages following his or her separation of employment.

19 G. **California Class:** All aforementioned classes are here collectively referred to
20 as the "California Class".

21 28. There is a well-defined community of interest in the litigation and the classes are
22 ascertainable:

23 A. **Numerosity:** While the exact number of class members in each class is
24 unknown to plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
25 all members is impractical under the circumstances of this case.

26 B. **Common Questions Predominate:** Common questions of law and fact exist
27 as to all members of the Plaintiff classes and predominate over any questions that affect only
28 individual members of each class. The common questions of law and fact include, but are not limited

1 to:

2 i. Whether Defendants failed to pay wages for all hours worked to the
3 Minimum Wage Class and Overtime Class;

4 ii. Whether Defendants failed to provide legally required and legally
5 compliant meal breaks or owed meal period premiums to the Meal Period Class;

6 iii. Whether Defendants failed to provide all legally required and legally
7 compliant rest breaks or owed rest period premiums to the Rest Period Class;

8 iv. Whether Defendants failed to provide the Wage Statement Class
9 Members with accurate and complete itemized wage statements;

10 v. Whether Defendants failed to provide the Waiting Time Class
11 Members with all unpaid wages following separation of employment;

12 vi. Whether Defendants committed unlawful business acts or practices
13 within the meaning of Business and Professions Code section 17200 *et seq.*;

14 vii. Whether Class Members are entitled to unpaid wages, penalties,
15 interest, fees and other relief in conjunction with his claims; and

16 viii. Whether, as a consequence of Defendant's unlawful conduct, the Class
17 Members are entitled to restitution, and/or equitable relief;

18 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in
19 each of the classes. Plaintiff and members of the Minimum Wage Class and/or Overtime Class
20 sustained damages and/or loss of vested wages based on Defendants' failure to pay wages for all
21 hours worked by not compensating mandatory security screening time. Plaintiff and members of the
22 Meal Period and Rest Period Classes sustained damages and/or loss of vested wages based on
23 Defendants' failure to provide wages for workdays Defendants failed to provide all legally compliant
24 meal periods and rest periods. Plaintiff and the members of the Wage Statement Class sustained
25 damages arising out of Defendants' failure to furnish them with accurate and/or complete itemized
26 wage statements in compliance with Labor Code section 226. Plaintiff and the members of the
27 Waiting Time Class sustained damages arising out of Defendants' failure to timely pay all wages
28 following separation of employment in compliance with Labor Code section 201 and 202.

1 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
2 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
3 other class members. Plaintiff's Counsel is qualified to conduct the litigation.

4 E. **Superiority:** A class action is superior to other available means for the fair and
5 efficient adjudication of this controversy. Because individual joinder of all members of each class is
6 impractical, class action treatment will permit a large number of similarly situated persons to
7 prosecute their common claims in a single forum simultaneously, efficiently, and without the
8 unnecessary duplication of effort and expense that numerous individual actions would engender. The
9 expenses and burdens of individual litigation would make it difficult or impossible for individual
10 members of each class to redress the wrongs done to them, while important public interests will be
11 served by addressing the matter as a class action. The cost to and burden on the court system of
12 adjudication of individualized litigation would be substantial, and substantially more than the costs
13 and burdens of a class action. Individualized litigation would also present the potential for inconsistent
14 or contradictory judgments.

15 F. **Public Policy Consideration:** Employers throughout the state violate wage
16 and hour laws. Current employees are often afraid to assert their rights out of fear of direct or indirect
17 retaliation. Former employees are fearful of bringing actions because they perceive their former
18 employers can blacklist them in their future endeavors through negative references and by other
19 means. Class actions provide the class members who are not named in the complaint with a type of
20 anonymity that allows for vindication of their rights.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGE OR OVERTIME WAGES FOR ALL HOURS**
23 **WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1197, 1198, AND**

24 **THE WAGE ORDERS**

25 **(Against DEFENDANTS FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX, and**

26 **DOES 1 to 50 by the Minimum Wage Class and Overtime Class)**

27 29. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
28 by reference.

1 30. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
2 Wage Class and Overtime Class were non-exempt employees of DEFENDANTS in California and
3 covered by California Labor Code sections 510, 1194, 1197, 1198 and the Wage Orders.

4 31. In California, an employer is required to pay an employee for all “hours worked”
5 which includes all time that an employee is under control of the employer and including all time that
6 the employee is suffered and permitted to work whether or not the employee is required to work. This
7 includes time an employee is required to be present at a certain location whether or not the employee
8 is working, including meal times. (*Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833,
9 840-842, *Morillion vs. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.) Labor Code sections 1194,
10 1197 and the Wage Orders require that an employer compensate employees for “hours worked” at
11 least at a minimum wage rate of pay as established by the wage orders. Labor Code sections 510,
12 1194 and the Wage Orders require that an employer compensate employees for “hours worked” at a
13 higher rate of pay when an employee works over a certain number of hours: 1.5 times the regular rate
14 of pay for hours worked over 8 hours up to 12 hours in a workday, over 40 hours in a workweek, or
15 up to 8 hours on a seventh day of work in a workweek or 2 times the regular rate of pay for hours
16 worked over 12 hours in a workday.

17 32. At times during the four years prior to the filing of the Complaint, DEFENDANTS
18 used policies and procedures which failed to provide warehouse employees with wages at the
19 applicable minimum wage rate and/or overtime rate for all the time they actually worked.
20 DEFENDANTS operate warehouse locations in California, including but not limited to locations in
21 the cities of Oakland, Emeryville, and City of Industry. At times during the four years prior to the
22 filing of the Complaint, DEFENDANTS required Plaintiff and other warehouse employees to go
23 through security screening at the beginning of their shift, any time they left the premises during meal
24 breaks or returned from leaving the premises during meal breaks, and at the end of their shift. This
25 time spent going through the security check included time that Plaintiff and other warehouse
26 employees had to wait while other employees were also lined up to go through security screening
27 and/or time spent walking between the time clocks and security screening locations. Even though the
28 security screening was a requirement by DEFENDANTS, DEFENDANTS did not pay wages to

1 Plaintiff or other warehouse employees for the time they waited in line or went through security
2 screening at the beginning of their shift, any time they left the premises during meal breaks or returned
3 from leaving the premises during meal breaks, and at the end of their shift. The security screening
4 occurred outside of the Plaintiff and other warehouse employees' recorded work time (i.e., outside of
5 the time employees were "clocked in") and DEFENDANTS did not pay any additional wages to
6 Plaintiff or other warehouse employees for this time. In addition, at times Plaintiff and other
7 warehouse employees worked overtime consisting of hours worked in excess of 8 up to 12 hours in a
8 workday, over 40 hours in a workweek, up to 8 hours on any seventh consecutive day in a workweek,
9 hours worked in excess of 12 hours in a workday, or over 8 hours on any seventh consecutive day in
10 a workweek. To the extent the time spent waiting in line or passing through security checks or walking
11 between time clock and screening location was during these overtime hours, DEFENDANTS did not
12 pay additional wages at an overtime rate to the employees.

13 33. DEFENDANTS' policies and procedures were applied to all non-exempt employees
14 in California at times during the four years prior to the filing of the Complaint and resulted in non-
15 exempt employees working time which was not compensated any wages in violation of Labor Code
16 sections 510, 1194, 1197, 1198, and the Wage Orders.

17 34. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum
18 Wage Class and Overtime Class have suffered damages in an amount subject to proof, to the extent
19 that they were not paid minimum wage for all hours worked or overtime wages for all overtime hours
20 worked.

21 35. Pursuant to California Labor Code sections 510, 1194, 1197, 1198 and the Wage
22 Orders, Plaintiff and the Minimum Wage Class and Overtime Class are entitled to recover unpaid
23 wages at the applicable minimum wage rate plus liquidated damages, applicable overtime rate,
24 interest thereon, and attorneys' fees and costs.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT**
27 **MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 226.7, 512, 1198 AND**
28 **THE WAGE ORDERS**

1 **(Against DEFENDANTS FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX, and DOES**
2 **1 to 50 by the Meal Period Class)**

3 36. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein
4 by reference.

5 37. At all times relevant to this Complaint, Plaintiff and the members of the Meal Period
6 Class were non-exempt employees of Defendants in warehouses in California and covered by
7 California Labor Code sections 226.7, 512, 1198, and the Wage Orders. California law requires an
8 employer to provide an employee an uninterrupted meal period of no less than 30-minutes before the
9 end of a 5 hour work period during which employees are relieved of all duties. (Lab. Code §§226.7,
10 512, 1198; Wage Orders, subd. 11.) If the employee is not relieved of all duties during a 30 minute
11 meal period, the meal period is considered "on duty" and the entire meal period is counted as time
12 worked. (Wage Orders, subd. 11.) If an employee is not free to leave the work place during a meal
13 period, the employee is not relieved of all duties during the meal period and is subject to the control
14 of the employer and does not comply with the requirement of an employee being relieved of all duties
15 during their meal. (*Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.) Further,
16 an employer cannot impede or discourage an employee from taking a meal period off premises and
17 which they are relieved of all duties and control of the employer. (*Brinker v. Superior Court* (2012)
18 53 Cal.4th 1004, 1039.) If an employer fails to provide an employee a meal period in accordance with
19 the law, the employer must pay the employee one hour of pay at the employee's regular rate of
20 compensation for each work day that a legally required meal period was not provided or was not duty
21 free. (*Id.*)

22 38. DEFENDANTS implemented policies which failed to provide Plaintiff and other
23 current and former warehouse employees with all meal periods as required by and in compliance with
24 the law, including full duty free and timely meal periods. Warehouse employees were required to only
25 take a thirty minute meal break but were also required to pass through security checks and/or wait in
26 line for employees passing through security checks and/or walk between time clocks and security
27 screening locations during their meal period time if leaving/entering the premises during meal periods
28 resulting in DEFENDANTS providing less than a thirty minute meal break. In addition,

1 DEFENDANTS discouraged employees from taking a meal period off-premises by limiting an
2 employees' ability to take a full 30 minute meal period off-premises by requiring the employees to
3 pass through security checks during their meal period time if leaving/entering the premises during
4 meal periods while continuing to limit their meal periods to only thirty minutes.

5 39. Defendants also failed to pay Plaintiff and similarly situated employees one hour of
6 pay at their regular rate of pay for each workday Plaintiff and employees did not receive all legally
7 required and legally compliant meal periods.

8 40. Because Defendants failed to afford employees meal periods in compliance with the
9 law, Defendants are liable to Plaintiff and the Meal Period Class for one hour of additional pay at the
10 regular rate of compensation for each workday that Defendants did not provide all meal periods in
11 compliance with the law.

12 41. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages and all other
13 relief allowable including a missed meal break wage for each workday the employees were not
14 provided with all legally required meal periods in compliance with the law.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT**
17 **REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7, 1198, AND THE**
18 **WAGE ORDERS**

19 **(Against DEFENDANTS FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX, and DOES**
20 **1 to 50 by the Rest Period Class)**

21 42. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein
22 by reference.

23 43. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period
24 Class were non-exempt employees of DEFENDANTS in California and covered by California Labor
25 Code section 226.7 and the Wage Orders.

26 44. California law states that "[e]very employer shall authorize and permit all employees
27 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
28 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)

1 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
2 an employee a rest period in accordance with the applicable provisions of this order, the employer
3 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
4 workday that the rest period is not provided." (Wage Orders, subd. 12; see Lab. Code § 226.7.) Under
5 California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six
6 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
7 more than 10 hours up to 14 hours, and so on." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
8 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work
9 period. (Wage Orders, subd. 12.) In addition, if an employer requires employees to stay on the
10 premises during the rest period, they are under control of the employer and they are not relieved of
11 all duties in violation of California law. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
12 257, 271.) If an employer fails to provide an employee a timely and legally compliant rest period, the
13 employer must pay the employee one hour of pay at the employee's regular rate of compensation for
14 each work day that a legally required meal period was not provided or was not duty free. (Wage
15 Orders, subd. 12.)

16 45. At times, DEFENDANTS employed policies and procedures which failed to provide
17 Plaintiff and other warehouse employees with uninterrupted duty free 10 minute rest periods for each
18 four hours or major fraction thereof worked. As noted above, DEFENDANTS required Plaintiff and
19 other warehouse employees to go through security screening at the beginning of their shift, any time
20 they left the premises during meal or rest breaks or returned from leaving the premises during meal
21 or rest breaks, and at the end of their shift. This time spent passing through security checks and/or
22 waiting in line for employees passing through security checks was uncompensated time which caused
23 portions of Plaintiff's and other employees' rest period to be not relieved of all duties and employer
24 control and/or less than a 10 minute rest breaks being given for each 4 hours or major fraction thereof
25 worked. Plaintiff and other warehouse employees were required to only take a ten minute break but
26 were also required to pass through security checks and/or wait in line for employees passing through
27 security checks during their rest period time if leaving/entering when leaving the premises for a rest
28 period resulting in less than a 10 minute rest break being provided, limiting an employees' ability to

1 take a full 10 minute rest period off-premises, and/or discouraging employees from taking a rest
2 period off-premises.

3 46. DEFENDANTS also failed to pay Plaintiff and similarly situated employees one hour
4 of pay at their regular rate of pay for each workday Plaintiff and employees did not receive all timely
5 and legally compliant rest periods.

6 47. Because DEFENDANTS failed to afford employees rest periods in compliance with
7 the law, DEFENDANTS are liable to Plaintiff and the Rest Period Class for one hour of additional
8 pay at the regular rate of compensation for each workday that Defendants did not provide all rest
9 periods in compliance with the law.

10 48. Plaintiff, on behalf of himself and the Rest Period Class, seeks damages and all other
11 relief allowable including a premium rest break wage for each workday the employees were not
12 provided with all rest periods in compliance with the law.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN**
15 **VIOLATION OF LABOR CODE SECTION 226**

16 **(Against DEFENDANTS FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX, and DOES**
17 **1 to 50 by the Wage Statement Class)**

18 49. Plaintiff incorporates by reference all paragraphs above as if fully alleged herein.

19 50. At all relevant times, Plaintiff and the other members of the Wage Statement Class
20 were non-exempt employees of DEFENDANTS and covered by Labor Code Section 226.

21 51. Pursuant to Labor Code Section 226, subdivision (a), Plaintiff and the other members
22 of the class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
23 wage statement accurately stating the following:

24 (1) gross wages earned, (2) total hours worked by the employee, except
25 for any employee whose compensation is solely based on a salary and
26 who is exempt from payment of overtime under subdivision (a) of
27 Section 515 or any applicable order of the Industrial Welfare
28 Commission, (3) the number of piece-rate units earned and any
applicable piece rate if the employee is paid on a piece-rate basis, (4)
all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is
2 paid, (7) the name of the employee and his or her social security
3 number, except that by January 1, 2008, only the last four digits of his
4 or her social security number or an employee identification number
5 other than a social security number may be shown on the itemized
6 statement, (8) the name and address of the legal entity that is the
7 employer, and (9) all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly
9 rate by the employee.

6 52. At times during the one year prior to the filing of the Complaint, DEFENDANTS
7 failed to provide accurate and complete wage statements to Plaintiff and other non-exempt warehouse
8 employees. At times during the one year prior to the filing of the Complaint, DEFENDANTS did not
9 accurately state Plaintiff and other warehouse employees' gross wages earned, total hours worked,
10 net wage earned, and number of hours worked at each hourly rate by the employees. DEFENDANTS
11 inaccurately set forth this information because DEFENDANTS failed to account for the hours worked
12 and wages earned by employees during the time they were required to wait in line for and go through
13 mandatory security checks at the beginning of their shift and walk between time clocks and security,
14 any time they left the premises during meal breaks or returned from leaving the premises during meal
15 breaks, and at the end of their shift, as also described above. DEFENDANTS also failed to account
16 for and pay for meal and rest period premium wages for its failure to provide legally compliant and
17 all legally required meal and rest periods due to its requirement that employees pass through and wait
18 in line for mandatory security checks during meal and rest breaks, as described above in more detail.
19 Thus, the wage statements provided to employees were inaccurate because they did not include the
20 hours worked and wages earned by employees during security screening time and/or meal and rest
21 period premiums that should have been paid.

22 53. DEFENDANTS' failure to provide Plaintiff and members of the Wage Statement Class
23 with accurate and complete wage statements was knowing and intentional. DEFENDANTS
24 knowingly and intentionally put in place practices which deprived employees of wages, i.e., failed to
25 pay or account for security screening time and wages and/or meal and rest period premium wages
26 owed for violations due to security screening, and resulted in DEFENDANTS' knowing and
27 intentional providing of inaccurate wage statements.

28 54. As a derivative result of the failure to pay wages and as a pattern and practice in

1 violation of Labor Code section 226, subdivision (a) and the IWC Wage Orders §7(A),
2 DEFENDANTS did not and do not maintain accurate records pertaining to the total hours worked for
3 DEFENDANTS by the members of the Wage Statement Class, including but not limited to, the
4 periods of time spent waiting for and in security screenings, minimum wage overtime wages owed
5 for that time, meal and rest period premium wages owed, total daily hours worked, total hours worked
6 per pay period, and the total hours worked at each hourly rate of pay.

7 55. As a result of DEFENDANTS unlawful conduct, Plaintiff and members of the Class
8 have suffered injury in that the wage statements inaccurately stated and/or failed to state the
9 aforementioned items of information and Plaintiff and the members of the class could not promptly
10 and easily determine from the wage statement alone an accurate statement of: the gross wages earned,
11 the total hours worked, the net wages earned, and the applicable hourly rates in effect during the pay
12 period and corresponding number of hours worked at each hourly rate.

13 56. The Wage Statement Class suffered injury as a result of DEFENDANTS' failure to
14 maintain accurate records for the members of the Wage Statement Class in that the members of the
15 Wage Statement Class were not timely provided written accurate itemized statements showing all
16 requisite information including but not limited to total hours worked by the employee, net wages
17 earned and all applicable hourly rates in effect during the pay period and the corresponding number
18 of hours worked at each hourly rate, in violation of Labor Code §226 and the IWC Wage Orders
19 §7(A), such that the members of the Wage Statement Class were misled by DEFENDANTS as to the
20 correct information regarding various items, including but not limited to. total hours worked by the
21 employee, net wages earned and all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate. The actual injuries suffered by the
23 members of the Wage Statement Class as a result of DEFENDANTS' knowing and intentional failure
24 to maintain accurate records for the members of the Wage Statement Class include but are not limited
25 to: (a) Confusion over whether they received all wages owed them by DEFENDANTS; (b) The
26 difficulty and expense of attempting to reconstruct time and pay records; (c) Being forced to engage
27 in mathematical computations to analyze whether DEFENDANTS' wages in fact compensated for all
28 hours worked; (d) The inability to accurately calculate wage rates complicated by the fact that wage

1 statement information required by Labor Code §226 is not accurate; (e) That such practice prevents
2 the members of the Wage Statement Class from being able to effectively challenge information on
3 their wage statements; and/or (f) The difficulty and expense of filing and maintaining this lawsuit,
4 and the discovery required to collect and analyze the very information that California law requires.

5 57. Pursuant to Labor Code Section 226(e), Plaintiff and members of the Wage Statement
6 Class are entitled to recover actual damages or fifty dollars for the initial pay period in which a
7 violation of Labor Code Section 226 occurred and one hundred dollars for each violation of Labor
8 Code Section 226 in a subsequent pay period, not to exceed an aggregate penalty of four thousand
9 dollars per employee.

10 58. Pursuant to Labor Code Section 226(g), Plaintiff and members of the Wage Statement
11 Class are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
12 Labor Code Section 226(a). Injunctive relief is warranted because DEFENDANTS continue to
13 provide currently employed members of the Class with inaccurate wage statements in violation of
14 Labor Code Section 226(a) and currently employed members of the Class have no adequate legal
15 remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
16 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS comply
17 with Labor Code Section 226(a). (Lab. Code §226, subd. (h).)

18 59. Pursuant to Labor Code Sections 226(e) and 226(g), Plaintiff and members of the Class
19 are entitled to recover the full amount of penalties due under Labor Code Section 226(e), reasonable
20 attorney fees, and costs of suit.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY UNPAID WAGES DUE AT TIME OF SEPARATION OF**
23 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
24 **(Against DEFENDANTS FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX, and DOES**
25 **1 to 50 by the Waiting Time Class)**

26 60. Plaintiff incorporates all paragraphs above as if fully alleged herein.

27 61. At all relevant times, Plaintiff and the other members of the Waiting Time Class were
28 non-exempt warehouse employees of DEFENDANTS in California and covered by Labor Code

1 Sections 201 or 202. Plaintiff's employment was terminated in May 2019, but Plaintiff has never been
2 paid his unpaid wages for time spent passing through mandatory security checks and/or meal and rest
3 period premiums owed as a result of Defendant not providing meal periods and rest periods because
4 of its mandatory security checks during meal and rest breaks.

5 62. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of Waiting Time
6 Classes were entitled upon termination to timely payment of all wages earned and unpaid prior to
7 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to
8 discharge immediately upon termination. Employees who resigned were entitled to payment of all
9 wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if
10 they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid
11 prior to resignation at the time of resignation.

12 63. During the three years prior to the filing of the Complaint, DEFENDANTS failed to
13 pay Plaintiff and the Waiting Time Class with all wages as alleged above (i.e., minimum
14 wage/overtime, meal and rest period premium wages) during their employment and never paid these
15 amounts after the employees separated employment from DEFENDANTS. The unpaid wages
16 included the unpaid overtime unpaid and earned during periods the additional remuneration was
17 earned as described in more detail above. DEFENDANTS failure to pay these

18 64. DEFENDANTS' failure to pay Plaintiff and members of the Waiting Time Class all
19 unpaid wages prior to termination or within 72 hours of resignation in accordance with Labor Code
20 Sections 201 or 202 was willful. DEFENDANTS had the ability to pay all wages earned by hourly
21 workers prior to termination or within 72 hours of resignation in accordance with Labor Code Sections
22 201 or 202, but intentionally adopted policies or practices incompatible with the requirements of
23 Labor Code Sections 201 or 202. DEFENDANTS' practices are described in further detail above.
24 When DEFENDANTS failed to timely pay hourly workers all unpaid wages earned at the time of
25 termination or within 72 hours of resignation, DEFENDANTS knew what they were doing and
26 intended to do what they did.

27 65. Pursuant to Labor Code Section 201 or 202, Plaintiff and members of the Waiting
28 Time Class are entitled to all wages earned prior to termination that DEFENDANTS did not pay

1 them.

2 66. Pursuant to Labor Code Section 203, Plaintiff and members of the Waiting Time
3 Classes are entitled to continuation of their wages, from the day their earned and unpaid wages were
4 due upon termination until paid, up to a maximum of 30 days.

5 67. Pursuant to Labor Code Sections Plaintiff and members of the Waiting Time Class are
6 entitled to recover the full amount of their unpaid wages, continuation wages under Section 203, and
7 interest thereon.

8 **SIXTH CAUSE OF ACTION**

9 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS**

10 **CODE SECTION 17200, *et seq.***

11 **(Against DEFENDANTS FEDEX GROUND PACKAGE SYSTEM, INC., FEDEX and DOES**
12 **1 to 50 by the California Class)**

13 68. Plaintiff incorporates all paragraphs above as if fully alleged herein.

14 69. The unlawful conduct of Defendants alleged herein constitutes unfair competition
15 within the meaning of Business and Professions Code Section 17200. This unfair conduct includes
16 DEFENDANTS' use of policies and procedures which resulted in DEFENDANTS' failure to provide:
17 minimum wage or applicable overtime wages for all hours worked, meal and rest period premium
18 wages, complete and accurate wage statements, and timely payment of final wages, all as described
19 in more detail above. Due to DEFENDANTS' unfair and unlawful business practices in violation of
20 the Labor Code, DEFENDANTS have gained a competitive advantage over other comparable
21 companies doing business in the State of California that comply with their obligations to provide their
22 employees with: wages at the applicable rate for all hours worked, meal and rest period premium
23 wages when employees weren't provided all legally required and compliant meal and rest periods,
24 complete and accurate wage statements, and timely payment of final wages, all as described in more
25 detail above.

26 70. As a result of DEFENDANTS' unfair competition as alleged herein, Plaintiff and
27 members of the California Class have suffered injury in fact and lost money or property, as described
28 in more detail above and are entitled to restitution and/or injunctive relief.

1 subject to any permissible tolling;

2 4. For liquidated damages pursuant to Labor Code section 1194.2;

3 5. For pre-judgment interest, including but not limited to that recoverable under
4 California Labor Code section 1194, and post-judgment interest;

5 6. For attorneys' fees and costs of suit, including but not limited to that recoverable under
6 California Labor Code section 1194; and,

7 7. For such and other further relief, in law and/or equity, as the Court deems just or
8 appropriate.

9 **ON THE SECOND CAUSE OF ACTION:**

10 1. That the Defendants be found to have violated the meal break provisions of the Labor
11 Code and the IWC Wages Orders as to the Plaintiff and the Meal Period Class;

12 2. For damages, according to proof, including unpaid wages;

13 3. For any and all legally applicable penalties;

14 4. For pre-judgment interest, including but not limited to that recoverable under
15 California Labor Code section 218.6, and post-judgment interest; and

16 5. For such and other further relief, in law and/or equity, as the Court deems just or
17 appropriate.

18 **ON THE THIRD CAUSE OF ACTION:**

19 1. That the Defendants be found to have violated the rest break provisions of the Labor
20 Code and the IWC Wages Orders as to the Plaintiff and the Rest Period Class;

21 2. For damages, according to proof, including unpaid wages;

22 3. For any and all legally applicable penalties;

23 4. For pre-judgment interest, including but not limited to that recoverable under
24 California Labor Code section 218.6, and post-judgment interest; and

25 5. For such and other further relief, in law and/or equity, as the Court deems just or
26 appropriate

27 **ON THE FOURTH CAUSE OF ACTION:**

28 1. That the Defendants be found to have violated the provisions of the Labor Code

1 regarding proper itemized paystubs as to the Wage Statement Class;

2 2. For damages and/or penalties, according to proof, including damages and/or statutory
3 penalties under Labor Code section 226(e) and any other legally applicable damages or penalties
4 incurred during the relevant statute of limitations subject to any permissible tolling;

5 3. For pre-judgment interest and post-judgment interest;

6 4. For attorneys' fees and costs of suit, including but not limited to that recoverable
7 under California Labor Code section 226(e); and,

8 5. For such and other further relief, in law and/or equity, as the Court deems just or
9 appropriate.

10 **ON THE FIFTH CAUSE OF ACTION:**

11 1. That the Defendants be found to have violated the provisions of the Labor Code
12 regarding payment of wages due upon resignation or termination as to the Waiting Time Class;

13 2. For damages and/or penalties, according to proof, including damages and/or statutory
14 penalties under Labor Code section 203 and any other legally applicable damages or penalties during
15 the relevant statute of limitations subject to any permissible tolling;

16 3. For pre-judgment interest, including under California Labor Code section 218.6, and
17 post-judgment interest; and,

18 4. For such and other further relief, in law and/or equity, as the Court deems just or
19 appropriate.

20
21 **ON THE SIXTH CAUSE OF ACTION:**

22 1. That the Defendants be found to have violated Business and Professions Code section
23 17200 for the conduct alleged herein as to all Classes;

24 2. A declaratory judgment that the practices complained herein are unlawful;

25 3. An injunction against Defendants enjoining them, and any and all persons acting in
26 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
27 herein;

28 4. For restitution to the full extent permitted by law; and,

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5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: December 2, 2019

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 

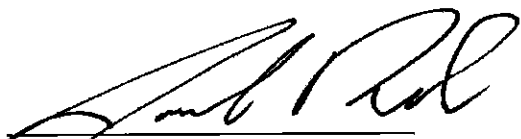
Joseph Lavi, Esq.
Jordan D. Bello, Esq.
Attorneys for PLAINTIFF
ERNEST CUADRA and Other Class Members

DEMAND FOR JURY TRIAL

PLAINTIFF ERNEST CUADRA demands a trial by jury for himself and the Class on all claims so triable.

Dated: December 2, 2019

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 

Joseph Lavi, Esq.
Jordan D. Bello, Esq.
Attorneys for PLAINTIFF
ERNEST CUADRA and Other Class Members

ClassAction.org

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