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Superior Court of California
County of Los Angeles

NOV 1 6 2016

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

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

13 VICTOR I. AVILA, as an individual, on behalf
of himself, and all persons similarly situated,

14 Plaintiff,

15 v.

17 DIRECTV, LLC, a California limited liability
company authorized to do business in the state
18 of California, and DOES 1 to 10 inclusive,

19 Defendant.

CASE NO.: _____ **BC 6 4 0 7 0 1**

CLASS & REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, INJUNCTIVE RELIEF AND
CIVIL PENALTIES:**

- (1) FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION (Lab. Code §§ 510, 1194, and 1197);
- (2) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (Lab. Code § 226);
- (3) FAILURE TO PAY WAGES OWED (Lab. Code §§ 201, 202, and 203);
- (4) UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code § 17200 et seq.); and
- (5) PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Lab. Code § 2698 et seq.).

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Victor I. Avila (hereinafter "Plaintiff"), by and through his attorneys of
2 record, brings this action on behalf of himself and all persons similarly situated, against
3 Defendant DIRECTV, LLC (hereinafter "Defendant" or "DirecTV") on the following grounds:

4 INTRODUCTION

5 1. This class action is brought on behalf of all current and former employees of
6 DirecTV who held a non-exempt hourly position as a field service technician in the state of
7 California, who were not paid for all hours worked, who were not provided with accurate wage
8 statements, and who were not paid all wages due upon termination of the employer/employee
9 relationship.

10 2. Plaintiff seeks damages, injunctive relief, and restitutionary disgorgement, as
11 well as reasonable attorneys' fees and litigation costs, as provided under California law.

12 3. All allegations in this Complaint are based upon information and belief, except
13 those allegations that pertain to Plaintiff named herein and his counsel, which are based upon
14 personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to
15 have evidentiary support after a reasonable opportunity for further investigation and discovery.

16 JURISDICTION AND VENUE

17 4. This Court has jurisdiction over this action pursuant to California Code of Civil
18 Procedure ("Code Civ. Proc.") § 410.10. Pursuant to Code Civ. Proc. § 382 and California
19 Business and Professions Code ("Bus. & Prof. Code") § 17203, Plaintiff brings this action on
20 behalf of himself, and on behalf of all persons within the Class, as defined below.

21 5. This Court has personal jurisdiction over Defendant because Defendant
22 conducts business in the state of California and has caused injuries in the county of Los
23 Angeles through its acts and omissions, and by its violations of the California Labor Code and
24 California Business and Professions Code.

25 6. Venue as to Defendant is proper in this judicial district, pursuant to Code Civ.
26 Proc. § 395(a). Defendant transacts business, maintains an office, and/or resides in Los
27 Angeles County and is otherwise within this Court's jurisdiction for purposes of service of
28

1 process. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly
2 situated within the county of Los Angeles and the state of California.

3 7. Pursuant to Rule 3.400 of the California Rules of Court and local rule 3.3(k) of
4 the Los Angeles Superior Court, this case shall be deemed a complex action because it is filed
5 as a class action and involves specialized case management, extensive discovery and evidence,
6 difficult and/or novel issues, and is likely to require extensive post judgment supervision.

7 **CLASS DEFINITION**

8 8. The proposed Class consists of all current and former non-exempt employees of
9 DirecTV who held an hourly position as a field service technician in the state of California,
10 who were not paid for all hours worked, who were not provided with accurate wage statements,
11 and who were not paid all wages due upon termination of the employer/employee relationship
12 during the period commencing on the date that is within four years prior to the filing of this
13 Complaint and through the present date (hereinafter the "Class Period"). To the extent that
14 equitable tolling operates to toll the claims by the Class against Defendant, the Class Period
15 should be adjusted accordingly.

16 9. Members of the Class are all "employees" as the term is used in the California
17 Labor Code (hereinafter "Lab. Code") and the California Industrial Welfare Commission's
18 (hereinafter "IWC") Wage Orders regulating wages, hours, and working conditions in the state
19 of California.

20 **THE PARTIES**

21 **A. PLAINTIFF**

22 10. Plaintiff Victor I. Avila, at all material times mentioned herein:

- 23 (a) Was and is a resident of Los Angeles County;
- 24 (b) Was employed by DirecTV as a field service technician from March
25 2010 to February 10, 2016;
- 26 (c) Was paid an hourly wage;
- 27 (d) Was required by Defendant to load and unload equipment from his
28 company service vehicle at the beginning and end of each workday

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- without being compensated for the time it took to complete those tasks;
- (e) Was required to attend morning meetings at the regional office on a regular basis, where he was instructed to clock in at the office location for the meeting, and was instructed to clock out after the meeting. Plaintiff was then required to clock in again once he reached the location of his first scheduled appointment. Plaintiff was not compensated for the time between the end of required meetings and his scheduled start times, despite attending the mandatory meetings;
- (f) Was provided with inaccurate and incomplete wage statements by Defendant;
- (g) Was not paid all wages owed upon termination of the employer/employee relationship;
- (h) Was subject to Defendant's unfair business practices.

B. DEFENDANT

11. Defendant DirecTV is a California limited liability company authorized to do business in California. According to its website (directv.com), DirecTV is a provider of digital television entertainment services to various communities throughout California.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code Civ. Proc. § 474. Plaintiff will amend his complaint to allege the true names and capacities of Does 1 through 10 when they are ascertained.

13. At all times mentioned herein, the acts alleged to have been done by Defendant are also alleged to have been done by the unascertained defendants mentioned above, and by each of their agents and employees who acted within the scope of their agency and/or employment.

14. At all times mentioned herein, the acts and omissions of each of the defendants concurrently contributed to the various acts and omissions of each and every one of the other

1 defendants in proximately causing the wrongful conduct, harm, and damages alleged herein.
2 Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of
3 the acts or omissions complained herein. Each defendant and all doe defendants were and are
4 acting with the authority of each and every other defendant and are acting as agents of each and
5 every other defendant or doe defendant.

6 **FACTUAL ALLEGATIONS**

7 15. Plaintiff Victor I. Avila was employed by DirecTV as a field service technician
8 from March 2010 to February 10, 2016. As a field service technician, Plaintiff was paid an
9 hourly wage and was responsible for installing, troubleshooting, and upgrading satellite TV
10 systems, while managing and improving service and rapport with customers.

11 16. DirecTV employs a number of field service technicians throughout the state of
12 California. At all times during the Class Period, Defendant owned, managed, and/or operated
13 the various branches located throughout the state of California.

14 17. As a matter of company policy, Plaintiff and other putative Class Members were
15 permitted to bring their company service vehicles home. The company service vehicles contain
16 a GPS tracking system. Plaintiff and other members of the putative Class were not permitted to
17 use the company service vehicles for personal use. At the beginning and end of each workday
18 they were required to load and unload equipment from their company service vehicles. In fact,
19 Defendant required employees to notify them by email when they were done unloading the
20 truck at the end of each work day. It took Plaintiff and others approximately 30 minutes to load
21 and unload their company service vehicles each workday. Plaintiff and other members of the
22 putative Class were not compensated for the time they spent loading and unloading their
23 company service vehicles at the beginning and end of each workday.

24 18. As a matter of company practice, Defendant required Plaintiff and other
25 members of the putative Class to attend regularly scheduled meetings at the beginning of the
26 workday for which they were compensated by clocking in at the start of the meeting and
27 clocking out of at the end. Plaintiff and other putative Class Members were not permitted to
28 clock back in until they reached the location of their first work assignment for the date. Often

1 the time between the end of the scheduled meeting and the scheduled start time was not
2 sufficient enough to permit Plaintiff or members of the putative Class to use the time for his or
3 her own purposes. Additionally, Plaintiff and other putative Class Members often remained
4 under the control of Defendant as they frequently used this time to gather and load additional
5 equipment and materials into their vehicles before leaving for their first scheduled
6 appointment. Defendant failed to compensate Plaintiff and other putative Class Members for
7 the time spent between the end of the meeting and their scheduled start time at the work
8 location, despite the fact that Plaintiff and putative Class Members had started their workday
9 by attending the mandatory meeting at the regional office location and the fact that members of
10 the putative Class remained under the control of Defendant and performed compensable labor.

11 19. Plaintiff believes that Defendant uses its timekeeping software to keep track of
12 all time worked, meal periods, drive time, and assignments.

13 20. Plaintiff believes that Defendant knew or should have known that Plaintiff and
14 members of the putative Class were not being compensated for all hours worked because
15 Defendant required its field service technicians to load and unload their company service
16 vehicles prior to the start of their workday and after the end of the scheduled workday without
17 compensation. Additionally, Defendant requires employees to attend regular meetings, for
18 which they are paid, but then fails to pay employees for the time and labor spent between the
19 end of the meeting and the employee's scheduled start time at their first scheduled
20 appointment. Defendant controls the timing and scheduling of the meetings and its employees.
21 Defendant therefore willfully failed to compensate Plaintiff and putative Class Members for all
22 time worked.

23 21. Plaintiff and other members of the putative Class did not receive compensation
24 for all time worked. As such, their wage statements provided by Defendant were an inaccurate
25 representation of their time worked and their entitled compensation.

26 22. Upon termination of the employer/employee relationship, Plaintiff and
27 applicable putative Class Members failed to promptly receive compensation from Defendant
28 for all wages earned.

1 23. Pursuant to Code Civ. Proc. § 382, Plaintiff brings this class action on behalf of
2 himself and all other putative Class Members.

3 24. Plaintiff Victor I. Avila has complied with all the requirements provided by
4 Lab. Code § 2699. Pursuant to Lab. Code § 2699.3(a)(2)(A) Plaintiff brings this representative
5 action on behalf of himself and all other aggrieved employees.

6 25. Plaintiff believes that Defendant's records may reveal other labor code
7 violations. In the event, Plaintiff discovers other violations through the discovery process
8 Plaintiff will amended this complaint.

9 **CLASS ALLEGATIONS**

10 26. Plaintiff brings this action on behalf of himself and on behalf of all persons
11 within the defined Class, outlined in paragraph 8.

12 27. This class action meets the statutory prerequisites for the maintenance of a class
13 action, as set forth in Code Civ. Proc. § 382 and California Civil Code ("Civ. Code") § 1781, in
14 that:

15 (a) The persons who comprise the Class are so numerous that the joinder of
16 all such persons is impracticable and the disposition of their claims as a
17 class will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
19 issues that are raised in this Complaint are common to the Class and will
20 apply uniformly to every member of the Class, and as a practical matter
21 be dispositive of the interests of the other members not party to the
22 adjudication;

23 (c) The party opposing the Class has acted or has refused to act on grounds
24 generally applicable to the Class, thereby making final injunctive relief
25 or corresponding declaratory relief appropriate with respect to the Class
26 as a whole; and

27 (d) Common questions of law and fact exist as to the members of the Class
28 and predominate over any questions affecting only individual members,

1 and a class action is superior to other available methods for the fair and
2 efficient adjudication of the controversy, including consideration of:

- 3 i. The interests of Class Members in individually controlling the
4 prosecution or defense of a separate actions;
- 5 ii. The extent and nature of any litigation concerning the controversy
6 already commenced by or against members of the Class;
- 7 iii. The desirability or undesirability of concentrating the litigation of
8 the claims in this particular forum; and
- 9 iv. The difficulties likely to be encountered in the management of a
10 class action.

11 28. The Court should permit this action to be maintained as a class action pursuant
12 to Code Civ. Proc. § 382 and Civ. Code § 1781 because:

- 13 (a) Questions of law and fact common to the Class are substantially similar
14 and predominate over any questions affecting only individual members;
- 15 (b) A class action is superior to any other available method for the fair and
16 efficient adjudication of Class Members' claims;
- 17 (c) The members of the Class are so numerous that it is impractical to bring
18 all Class Members before the Court;
- 19 (d) Plaintiff's claims are typical of the claims of the Class;
- 20 (e) Plaintiff and the other members of the Class will not be able to obtain
21 effective and economic legal redress unless the action is maintained as a
22 class action;
- 23 (f) There is a community of interest in obtaining appropriate legal and
24 equitable relief for the common law and statutory violations and other
25 improprieties alleged, and in obtaining adequate compensation for the
26 damages that Defendant's actions have inflicted upon the Class;
- 27 (g) Plaintiff can, and will, fairly and adequately protect the interest of the
28 Class;

- 1 (h) There is a community of interest in ensuring that the combined assets
2 and available insurance of Defendant is sufficient to adequately
3 compensate the members of the Class for the injuries sustained; and
4 (i) Defendant has acted or refused to act on grounds generally applicable to
5 the Class, thereby making final injunctive relief appropriate with respect
6 to the Class as a whole.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

10 **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**

11 [Lab. Code §§ 510, 1194, and 1197]

12 29. Plaintiff realleges and incorporates by this reference, as though fully set forth
13 herein, all paragraphs of this Complaint.

14 30. The term “wages” is defined by Lab. Code § 200(a) to include “all amounts for
15 labor performed by employees of every description, whether the amount is fixed or ascertained
16 by the standard of time...or other method of calculation.” Subsection (b) further defines
17 “labor” to include all “labor, work or service whether rendered or performed under contract,
18 subcontract, partnership...”

19 31. Lab. Code § 204 establishes an employee’s right to be paid wages in a timely
20 fashion.

21 32. Lab. Code § 1197 provides: “The minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a lower wages
23 than the minimum so fixed is unlawful.”

24 33. Pursuant to California law, an employer must pay each employee “not less than
25 the applicable minimum wage for all hours worked in the payroll period, whether the
26 remuneration is measured by time, piece, commission, or otherwise.” (*Gonzalez v. Downtown*
27 *LA Motors, LP* (2013) 215 Cal.App.4th 36, 44.)

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34. Lab. Code § 510(a) provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week, and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. (Emphasis added.)

35. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*See Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

36. California Labor Code § 1194(a) states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to 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.

37. Defendant requires Plaintiff and other members of the putative Class to load and unload their company service vehicles prior to their scheduled start time and after their scheduled end time, which takes approximately 30 minutes. Plaintiff and other putative Class Members are not compensated for this time. Loading and unloading equipment from company service vehicles is compensable labor pursuant to California law. As such, Plaintiff and putative Class Members should be paid at least minimum wage and/or the applicable rate of overtime compensation for their time worked.

38. Defendant also requires Plaintiff and members of the putative Class to attend meetings, for which they are paid, but refuses to compensate Plaintiff and other putative Class Members for the time between the end of the meeting and their respective start times at their first appointment. Plaintiff and putative Class Members regularly started their workday with a

1 meeting at the regional office. They also used any additional time after the meetings to gather
2 and load additional equipment into their company service vehicles. Often the time between the
3 end of the meeting and the scheduled start time was not sufficient enough to permit the
4 employee to use the time for his or her own purposes. Gathering and loading additional
5 equipment is compensable labor pursuant to California law. Additionally, California's
6 continuous workday doctrine requires employees to be compensated for time accrued after the
7 start of the workday, when they are subject to the employer's control, and cannot use the time
8 for their own purpose. Since Plaintiff and other putative Class Members were subject to the
9 employer's control by participating in activities necessary to prepare for work assignments and
10 did not have the opportunity to use the time for their own purposes, the continuous workday
11 applies. As such, Plaintiff and other members of the putative Class should be paid at least
12 minimum wage and/or the applicable rate of overtime compensation for their time worked.

13 39. At all relevant times, Plaintiff and other members of the Class worked more
14 than eight hours in a single workday and/or more than 40 hours in a workweek due to
15 Defendant's requirement.

16 40. Defendant knowingly failed to compensate Plaintiff and the putative Class for
17 their time.

18 41. By virtue of Defendant's unlawful failure to compensate Plaintiff and putative
19 Class Members for their time worked, Class Members have suffered, and will continue to
20 suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional
21 limits of this Court and which will be ascertained according to proof at trial.

22 42. Having received less than the legal minimum wage and/or applicable rate of
23 overtime compensation, Plaintiff and putative Class Members are entitled to and now seek to
24 recover all wages owed, penalties, including penalties pursuant to Lab. Code § 558, as well as
25 interest, reasonable attorneys' fees and costs pursuant to Lab. Code § 1194.

26 43. Plaintiff, on behalf of himself and putative Class Members, requests further
27 relief as described in the below prayer.

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1 **SECOND CAUSE OF ACTION**

2 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

3 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

4 **[Lab. Code § 226]**

5 44. Plaintiff realleges and incorporates by this reference, as though fully set forth
6 herein, all paragraphs of this Complaint.

7 45. California Labor Code § 226 states in pertinent part:

8 Every employer shall, semimonthly or at the time of each
9 payment of wages, furnish each of his or her employees, either as
10 a detachable part of the check, draft, or voucher paying the
11 employee's wages, or separately when wages are paid by personal
12 check or cash, an accurate itemized statement in writing showing
13 (1) gross wages earned, (2) total hours worked by the
14 employee..., (4) all deductions..., (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid...,
16 (8) the name and address of the legal entity that is the employer,
17 and (9) all applicable hourly rates in effect during each period and
18 the corresponding number of hours worked at each hourly rate by
19 the employee..."

20 46. Lab. Code § 226(e)(1) further provides:

21 An employee suffering injury as a result of knowingly and
22 intentional failure by an employer to comply with subdivision (a)
23 is entitled to recover the greater of all actual damages or fifty
24 dollars (\$50) for the initial pay period in which a violation occurs
25 and one hundred dollars (\$100) per employee for each violation
26 in a subsequent pay period, not to exceed an aggregate penalty of
27 four thousand (\$4,000), and is entitled to an award of costs and
28 reasonable attorneys' fees.

47. Lab. Code § 226(h) states, "an employee may also bring an injunctive
relief to ensure compliance with this section, and is entitled to an award of costs and
reasonable attorneys' fees."

48. An injury occurs where the employer fails to provide accurate information and
the employee cannot "promptly and easily determine" the total number of hours worked or the
"applicable hourly rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate." (Lab. Code § 226(a)(9)-(e)(2)(B)(i).)

1 49. Lab. Code § 226(e)(2)(c) explains that the phrase “promptly and easily
2 determine” means that “a reasonable person would be able to readily ascertain the information
3 without reference to documents or information.”

4 50. Plaintiff and other members of the putative Class received wage statements that
5 did not properly reflect all hours worked, nor did the wage statements include their entitled
6 compensation. As a result, Plaintiff and other members of the putative Class received
7 inaccurate and incomplete wage statements.

8 51. Pursuant to Lab. Code § 226(e), Plaintiff and putative Class Members are
9 entitled to, and seek to, recover liquidated damages in the amount of \$50 for the initial
10 violation and \$100 for each subsequent violation per employee, not to exceed \$4,000.

11 52. Additionally, under Lab. Code § 226(h), Plaintiff and putative Class Members
12 are entitled to, and seek, injunctive relief to ensure that Defendant complies with Lab. Code §
13 226.

14 53. Plaintiff and the putative Class are entitled to, and seek, attorneys’ fees and
15 costs as provided under Lab. Code § 266(h).

16 54. Plaintiff, on behalf of himself and Class Members, also requests further relief as
17 described in the below prayer.

18 **THIRD CAUSE OF ACTION**

19 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

20 **FAILURE TO PAY WAGES OWED**

21 **[Lab. Code §§ 201, 202, and 203]**

22 55. Plaintiff realleges and incorporates by this reference, as though fully set forth
23 herein, all paragraphs of this Complaint.

24 56. The term “wages” is defined by Lab. Code § 200(a) to include “all amounts for
25 labor performed by employees of every description, whether the amount is fixed or ascertained
26 by the standard of time...or other method of calculation.” Subsection (b) further defines
27 “labor” to include all “labor, work or service whether rendered or performed under contract,
28 subcontract, partnership...”

1 57. Labor Code § 201(a) provides: "If an employer discharges an employee, the
2 wages earned and unpaid at the time of discharge are due and payable immediately."

3 58. According to Labor Code § 202(a):

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

11 59. Labor Code § 203 further provides:

12 If an employer willfully fails to pay, without abatement or
13 reduction, in accordance with §§ 201, 201.3, 201.5, 202, and
14 205.5, any wages of an employee who is discharged or who quits,
15 the wages of the employee shall continue as a penalty from the
16 due date thereof at the same rate until paid or until an action
17 thereof is commenced; but the wages shall not continue for more
18 than 30 days.

17 60. A number of Class Members, including Plaintiff, are no longer employed by
18 Defendant. At the time of separation, Plaintiff and other members of the putative Class did not
19 receive the compensation that they were entitled to for all hours worked. To date, Defendant
20 has not paid the wages owed to Plaintiff and the applicable putative Class Members as required
21 under California law.

22 61. As a consequence of Defendant's willful and deliberate refusal to tender such
23 wages, Plaintiff and affected putative Class Members are entitled to, and seek, a maximum 30
24 days' wages at their daily rate of pay as a waiting time penalty pursuant to Lab. Code § 203.

25 62. Plaintiff, on behalf of himself and Class Members, requests further relief as
26 described in the below prayer.

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1 **FOURTH CAUSE OF ACTION**

2 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

3 **UNFAIR BUSINESS PRACTICES**

4 **[Bus. & Prof. Code § 17200 et seq.]**

5 63. Plaintiff realleges and incorporates by this reference, as though fully set forth
6 herein, all paragraphs of this Complaint.

7 64. As codified in California Business and Professions Code § 17200 et seq.,
8 California’s Unfair Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or
9 fraudulent business act or practice.”

10 65. The UCL permits a cause of action to be brought if a practice violates some
11 other law. In effect, the “unlawful” prong of the UCL makes a violation of the underlying law
12 a per se violation of Bus. & Prof. Code § 17200. (*Cel-Tech Commc’ns, Inc. v. Los Angeles*
13 *Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or
14 state, statutory, or common law – can serve as a predicate for a § 17200 “unlawful” violation.
15 (*See Farmers Ins. Exch. v. Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

16 66. Under the UCL, a practice may be “unfair” even if some other law does not
17 specifically proscribe it. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134,
18 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the “unfair”
19 standard is intentionally broad to allow courts maximum discretion is prohibiting new schemes
20 to defraud. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-181.)

21 67. A business act or practice is deemed “fraudulent” under Bus. & Prof. Code §
22 17200 where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court*,
23 (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or
24 damages is not required. (*Id.*) The fraudulent prong may be used to attack the deceptive manner
25 in which otherwise lawful contract terms are presented to an individual. (*See Boschma v.*
26 *Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may
27 be unlawful under § 17200 if it is “couched in such a manner that is likely to mislead or
28 deceive..., such as by failing to disclose other relevant information.” (*Id.*)

1 68. As discussed in the preceding paragraphs, Defendant's business practices
2 violate all three prongs of California's UCL.

3 Unlawful:

4 69. As described herein, Defendant violated the California Labor Code by refusing
5 to compensate putative Class Members for time spent loading and unloading their company
6 service vehicles at the beginning and end of each workday. Failing to compensate employees
7 for all time worked is a clear violation of California law, and thus a per se violation of the
8 UCL. (*See Cel-Tech Comm'ens, Inc. v. Los Angeles Cellular Tel. Co., supra*, 20 Cal.4th at
9 180.) Additionally, Defendant violated California law by failing to compensate putative Class
10 Members for the time spent between the end of meetings and their respective start times,
11 despite the fact that Plaintiff and members of the putative Class performed labor, and/or the
12 time was insufficient for personal use.

13 70. Defendant also failed to furnish accurate wage statements to members of the
14 putative Class, as well as failed to pay Class Members prompt wages owed upon termination.

15 71. Defendant has therefore engaged in unlawful business practices pursuant to Bus.
16 & Prof. Code § 17200.

17 Unfair:

18 72. It is inherently unfair for Defendant to require technicians to load and unload
19 their service vehicles prior to their scheduled start time and after their scheduled end time
20 without compensation. It is also unfair for Defendant to set up a scheme where employees are
21 required to attend a meeting, and then does not pay the employees for the time between the end
22 of the meeting and their respective start times, despite the fact that the employees perform
23 labor by gathering and loading additional equipment. Moreover, employees were often unable
24 to use this time for their own use.

25 73. Defendant also violates the unfair prong of the UCL by failing to provide
26 Plaintiffs and members of the putative Class with accurate wage statements; and failing to
27 properly compensate employees upon termination of the employer/employee relationship.

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1 Fraudulent:

2 74. Defendant's practice of providing Plaintiff and putative Class Members with
3 inaccurate and incomplete wage statements is not only unlawful, but constitutes a fraudulent
4 business practice under the UCL. This is particularly true as Plaintiff and other members of the
5 putative Class are likely to be, and actually are deceived, as to their earned wages because they
6 are unable to determine from their wage statements whether or not they were paid for all work
7 performed.

8 75. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent
9 business practices, Plaintiff and members of the putative Class have suffered injury-in-fact and
10 have lost wages rightfully owed to them.

11 76. Through their unlawful, unfair, and fraudulent conduct, Defendant has been
12 unjustly enriched by receiving and continuing to receive benefits and profits at the expense of
13 Plaintiff and putative Class Members. Therefore, pursuant to Bus. & Prof. Code § 17200,
14 Defendant should be enjoined from this activity and made to disgorge all ill-gotten gains and
15 restore Plaintiff and other members of the putative Class the wages wrongfully withheld from
16 them.

17 77. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has
18 continued, and there is no indication that Defendant will refrain from such activity in the
19 future. Plaintiff believes and alleges that if Defendant is not enjoined from the conduct
20 described herein, Defendant will continue to violate California law at the expense of its
21 employees. Accordingly, Plaintiff requests that that the Court issue a preliminary and
22 permanent injunction.

23 78. Plaintiff, on behalf of himself and Class Members, requests further relief as
24 described in the below prayer.

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1 **FIFTH CAUSE OF ACTION**

2 **(By Plaintiff Individually and on Behalf of the Class against Defendant and Does 1-10)**

3 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

4 **[Lab. Code § 2698 et seq.]**

5 79. Plaintiff realleges and incorporates by this reference, as though fully set forth
6 herein, all paragraphs of this Complaint.

7 80. California Labor Code § 2698 et seq., also known as the Private Attorneys
8 General Act of 2004 ("PAGA"), expressly provides that any provision of the California Labor
9 Code allowing for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development ("LWDA"), or any of its departments, divisions, commissions, boards, agencies,
11 or employees, for a violation of the California Labor Code, may be recovered through a civil
12 action brought by an aggrieved employee on behalf of himself or herself, and other current or
13 former employees. These penalties are in addition to any other relief available under the Labor
14 Code, and pursuant to § 2699(i), must be allocated seventy-five percent (75%) to the LWDA
15 and twenty-five percent (25%) to the aggrieved employees.

16 81. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by
17 DirecTV from March 2010 to February 10, 2016 and suffered one or more violations of the
18 California Labor Code as set forth above.

19 82. Plaintiff has complied with the procedures specified in Lab. Code § 2699.3,
20 since a letter was sent to the LWDA by email on August 23, 2016 giving notice of Plaintiff's
21 PAGA claims and a copy was simultaneously sent by certified mail to Defendant's agent for
22 service of process.

23 83. The LWDA had until October 27, 2016, to provide notice of whether it intended
24 to investigate the alleged violations. As of the date of this Complaint, the LWDA has not
25 provided notice of whether it intends to investigate the alleged violations. Therefore, pursuant
26 to Lab. Code § 2699.3, Plaintiff has the right to pursue his claims under PAGA in a
27 representative capacity.

28

1 84. Plaintiff seeks to recover for its PAGA claim through a representative action as
2 permitted by California law. Pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969,
3 PAGA claims do not require class certification.

4 85. Plaintiff bases his claim on the following violations committed by Defendant, as
5 set forth above, of the California Labor Code as permitted by Lab. Code § 2699.5:

- 6 (a) Failure to pay minimum wages and overtime compensation in violation
7 of Lab. Code §§ 510, 1194, and 1197;
- 8 (b) Failure to provide accurate wage statements in violation of Lab. Code §
9 226(a);
- 10 (c) Failure to pay wages owed in violation of Lab. Code §§ 201, 202, and
11 203.

12 86. Lab. Code § 2699(f) provides in pertinent part:

13 For all provisions of this code except those for which a civil
14 penalty is specifically provided, there is established a civil
15 penalty for a violation of these provisions as follows:

16 ...

17 (2) If, at the time of the alleged violation, the person employs one
18 or more employees, the civil penalty is one hundred (\$100) for
19 each aggrieved employee per pay period for the initial violation
20 and two hundred dollars (\$200) for each aggrieved employee per
21 pay period for each subsequent violation.

22 87. As described herein, Defendant failed to compensate Plaintiff and other
23 aggrieved employees for all of their time spent loading and unloading their company service
24 vehicles in violation of California law. As well as failed to compensate Plaintiff and other
25 aggrieved employees for their spent between the end of required meetings and their scheduled
26 start time, despite engaging in labor. Thus, Plaintiff is entitled to, and seeks, the applicable
27 penalty outlined in PAGA in addition to the full unpaid balance of minimum wages and/or
28 overtime compensation, including interest thereon as provided by Lab. Code §§ 558 and 1194.

29 88. As described herein, Defendant failed to provide Plaintiff and other aggrieved
30 employees with accurate wage statements because the statements provided to employees did

1 not accurately reflect all time worked. As such, Plaintiff is entitled to, and seeks, the applicable
2 penalty outlined by PAGA, in addition to an award of costs and reasonable attorneys' fees as
3 provided by Lab. Code § 226(e)(1).

4 89. As described herein, Defendant failed to pay all wages owed upon termination
5 of the employer/employee relationship in violation of California law. Therefore, Plaintiff is
6 entitled to, and seeks, the applicable penalty outlined by PAGA, in addition to a maximum 30
7 days' wages at the daily rate of pay as a waiting time penalty pursuant to Lab. Code § 203.

8 90. Plaintiff, on behalf of himself and Class Members, requests further relief as
9 described in the below prayer.

10 **PRAYER FOR RELIEF**

11 Plaintiff prays for judgment against Defendant and in favor of the Class Action as
12 follows:


- 13 (a) For an order determining that this action may be maintained as a class
14 action with the named Plaintiff as the class representative;
- 15 (b) For the attorneys appearing on the above caption to be appointed as class
16 counsel;
- 17 (c) For an order determining that the PAGA cause of action may be
18 maintained as a representative action;
- 19 (d) For Plaintiff to serve as the PAGA representative for all aggrieved
20 employees and for the state of California;
- 21 (e) For an order determining that this action may be maintained as a
22 representative action with the named Plaintiff as the representative;
- 23 (f) For damages pursuant to Lab. Code § 226;
- 24 (g) For all minimum wages and overtime compensation owed pursuant to
25 Lab. Code §§ 510, 1194 and 1197.1;
- 26 (h) For waiting time penalties pursuant to Lab. Code § 203;
- 27 (i) For all liquidated damages pursuant to Lab. Code §§ 226(e), 1194.4(a),
28 and 1197.1;

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- (j) For civil penalties pursuant to Lab. Code §§ 558 and 1197;
- (k) For PAGA penalties pursuant to Lab. Code § 2699(f);
- (l) For injunctive relief pursuant to Lab. Code § 226(h) and Bus. & Prof. Code § 17203;
- (m) For disgorged profits from Defendant's unfair, unlawful, and fraudulent business practices;
- (n) For reasonable attorneys' fees and costs of suit pursuant to Lab. Code §§226(e)(1), 2699(g), 1194, and/or other applicable law;
- (o) For pre-judgment and post-judgment interest as provided by law;
- (p) For appropriate equitable relief;
- (q) For all such other and further relief, as may be allowed under the law, and that the Court may deem just and proper.

Dated: November 10, 2016

CLARK LAW GROUP

By: 

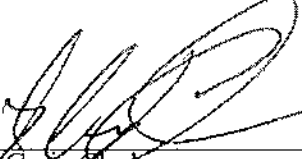
 R. Craig Clark
 Dawn M. Berry
 Attorneys for Plaintiff and Putative Class

DEMAND FOR JURY TRIAL

Plaintiff and the putative Class hereby demand a jury trial on all issues so triable.

Dated: November 10, 2016

CLARK LAW GROUP

By: 

 R. Craig Clark
 Dawn M. Berry
 Attorneys for Plaintiff and Putative Class