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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 24 2014

BY *Jilali Waide*
JILALI WAIDE, DEPUTY

5 Attorneys for Plaintiffs James Van Den Hende, Fred Schroeder and the Putative Class

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SAN BERNARDINO

9 JAMES VAN DEN HENDE, an Individual;
10 and FRED SCHROEDER, an Individual, for
themselves and those similarly situated,

11 Plaintiffs,

12 v.

13 DPI SPECIALTY FOODS, INC.
14 a Delaware Corporation doing
business in California;
15 DPI SPECIALTY FOODS WEST, INC.,
a Delaware Corporation doing
16 business in California; and
DOES 1 through 100, Inclusive,

17 Defendants.

CASE NO. CIVRS1304516

Complaint filed June 28, 2013

PUTATIVE CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR:**

- 1) UNFAIR COMPETITION;
- 2) FAILURE TO PAY OVERTIME WAGES;
- 3) FAILURE TO REIMBURSE BUSINESS EXPENSES;
- 4) UNLAWFUL DEDUCTIONS FROM COMMISSIONS;
- 5) FAILURE TO PAY WAGES UPON TERMINATION;
- 6) FAILURE TO PAY MINIMUM WAGE;
- 7) PAYSTUB VIOLATIONS;
- 8) CIVIL PENALTIES UNDER CALIFORNIA LABOR CODE AND PRIVATE ATTORNEY'S GENERAL ACT OF 2004

1 Plaintiff James Van Den Hende, an individual ("PLAINTIFF VAN DEN HENDE"),
2 and Plaintiff Fred Schroeder, an individual ("PLAINTIFF SCHROEDER"), on behalf of
3 themselves and all other similarly situated current and former employees (collectively
4 "PLAINTIFFS") of Defendants DPI Specialty Foods, Inc. and DPI Specialty Foods West, Inc.
5 (collectively "DPI" and/or "DEFENDANTS"), allege upon information and belief, except for
6 their own acts and knowledge, which is based on their personal knowledge, the following:

7 1. At all times herein mentioned, PLAINTIFF VAN DEN HENDE was an
8 individual and resident of the County of San Bernardino, State of California.

9 2. At all times herein mentioned, PLAINTIFF SCHROEDER was an individual
10 and resident of the County of Riverside, State of California.

11 3. At all times herein mentioned, DPI is and was a Delaware corporation regularly
12 conducting business in San Bernardino, California.

13 4. Venue is appropriate in the County of San Bernardino because PLAINTIFF
14 VAN DEN HENDE and PLAINTIFF SCHROEDER and other members of the putative class
15 performed at least some work in the County of San Bernardino for which they were not paid
16 and DPI does business in the County of San Bernardino.

17 5. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER are ignorant
18 of the true names and capacities of Defendants DOES 1 through 100, inclusive, and by reason
19 thereof sue said Defendants by their fictitious names. PLAINTIFF VAN DEN HENDE and
20 PLAINTIFF SCHROEDER will ask leave of Court to amend this complaint to allege the true
21 names and capacity of said Doe Defendants when same have been fully and finally
22 ascertained.

23 **BACKGROUND OF JAMES VAN DEN HENDE**

24 6. PLAINTIFF VAN DEN HENDE began his employment with DPI 16 years ago.

25 7. PLAINTIFF VAN DEN HENDE is currently employed at DPI.

26 8. At all relevant times herein, PLAINTIFF VAN DEN HENDE has held the
27 position of Sales Representative for DPI.

28 9. PLAINTIFF VAN DEN HENDE is paid commission wages.

1 10. PLAINTIFF VAN DEN HENDE regularly works overtime for DPI.

2 11. Regardless of how many hours PLAINTIFF VAN DEN HENDE works, he is
3 never compensated for his overtime hours.

4 12. DPI regularly deducts from PLAINTIFF VAN DEN HENDE's commissions
5 based on products that are either spoiled, defective or damaged, despite the fact that these
6 "lost" products are ones which PLAINTIFF VAN DEN HENDE was not entitled to
7 commission and without regard to whether PLAINTIFF VAN DEN HENDE was the cause of
8 these "lost" products being damaged, spoiled, or defective.

9 13. PLAINTIFF VAN DEN HENDE drives several hundred miles for DPI each
10 month with his personal vehicle and was required to maintain insurance on his personal
11 vehicle in excess of the minimums mandated by California law. DPI has not fully reimbursed
12 PLAINTIFF VAN DEN HENDE for his travel costs or insurance costs in excess of the State-
13 mandated minimums.

14 14. PLAINTIFF VAN DEN HENDE has and continues to regularly attend
15 mandatory meetings, including, but not limited to, mandatory monthly district meetings,
16 mandatory annual meetings, mandatory training sessions, and mandatory food shows, none of
17 which are compensated by DEFENDANTS, and none of which are commissionable.

18 15. PLAINTIFF VAN DEN HENDE performs several tasks throughout his regular
19 work day, including, but not limited to, auditing stores he services for DPI, assembling and
20 disassembling displays for DPI product, and waiting for and performing computer downloads
21 mandated by DEFENDANTS, none of which are compensated by DEFENDANTS, and none
22 of which are commissionable.

23 **BACKGROUND OF FRED SCHROEDER**

24 16. PLAINTIFF SCHROEDER began his employment with DPI 10 years ago.

25 17. PLAINTIFF SCHROEDER retired from DPI on or around July 26, 2013.

26 18. At all relevant times herein, PLAINTIFF SCHROEDER held the position of
27 Sales Representative for DPI.

28 19. PLAINTIFF SCHROEDER was paid commission wages.

1 WAGE SUBCLASS (collectively, the "SUBCLASSES"):

- 2 a. **OVERTIME SUBCLASS:** The OVERTIME SUBCLASS represents and
3 consists of each Sales Representative employee of DPI in California who, within
4 the four-year period preceding the initial filing of this Complaint and through the
5 present, worked overtime as a commissioned Sales Representative but was not
6 compensated for said overtime.
- 7 b. **COMMISSION DEDUCTION SUBCLASS:** The COMMISSION
8 DEDUCTION SUBCLASS represents and consists of each Sales Representative
9 employee of DPI in California who, within the four-year period preceding the
10 initial filing of this Complaint and through the present, had their commissions
11 deducted as a result of goods that were returned due to spoiling, damage or
12 defect.
- 13 c. **MILEAGE SUBCLASS:** The MILEAGE SUBCLASS represents and consists of
14 each Sales Representative employee of DPI in California who, within four years
15 preceding the initial filing of this Complaint and through the present, incurred
16 business-related travel expenses, including increased insurance premiums, in the
17 execution of his or her job duties at DPI, for which he or she was not
18 reimbursed.
- 19 d. **WAITING-TIME SUBCLASS:** The WAITING-TIME SUBCLASS represents
20 and consists of each Sales Representative employee of DPI in California who,
21 within four years preceding the initial filing of this Complaint and through the
22 present, where terminated (whether willfully or otherwise) from DPI and were
23 not compensated for all of their wages owed at that time.
- 24 e. **MINIMUM WAGE SUBCLASS:** The MINIMUM WAGE SUBCLASS
25 represents and consists of each Sales Representative employee of DPI in
26 California who, within four years preceding the initial filing of this Complaint
27 and through the present, performed work for DPI for which they were not
28 compensated at the minimum wage.

1 27. While the exact number of OVERTIME SUBCLASS, COMMISSION
2 DEDUCTION SUBCLASS, MILEAGE SUBCLASS, WAITING-TIME SUBCLASS, and
3 MINIMUM WAGE SUBCLASS members are unknown to PLAINTIFF VAN DEN HENDE
4 and PLAINTIFF SCHROEDER at this time, PLAINTIFF VAN DEN HENDE and
5 PLAINTIFF SCHROEDER allege on information and belief that the total number of members
6 of each of the SUBCLASSES exceeds 100 persons, and the exact number may be ascertained
7 through appropriate discovery and from records maintained by DPI and its agents.

8 28. There is a well-defined community of interest in the questions about law and fact
9 affecting the SUBCLASSES that PLAINTIFF VAN DEN HENDE and PLAINTIFF
10 SCHROEDER represent.

11 29. As for the OVERTIME SUBCLASS, the questions of common or general
12 interest include the fact that DPI maintained a policy whereby it compensated PLAINTIFF
13 VAN DEN HENDE and PLAINTIFF SCHROEDER and the OVERTIME SUBCLASS on a
14 commission-only basis, but would not pay them overtime. These questions are such that proof
15 of a state of facts common to the members of the SUBCLASSES will entitle each member to
16 the relief requested in this Complaint.

17 30. As for the COMMISSION DEDUCTION SUBCLASS, the questions of
18 common or general interest include the fact that DPI maintained a policy whereby it
19 compensated PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
20 COMMISSION DEDUCTION SUBCLASS on a commission-only basis, but would deduct
21 from their commissions for products that were either returned as a result of spoiling, damage
22 or defect, without regard to whether or not PLAINTIFF VAN DEN HENDE and PLAINTIFF
23 SCHROEDER and the COMMISSION DEDUCTION SUBCLASS were responsible for said
24 spoiling, damage or defect, and without regard to whether the spoiled, damaged, or defective
25 products were products which PLAINTIFF and the COMMISSION DEDUCTION
26 SUBCLASS earned a commission for stocking. These questions are such that proof of a state
27 of facts common to the members of the SUBCLASSES will entitle each member to the relief
28 requested in this Complaint.

1 31. As for the MILEAGE SUBCLASS, the questions of common or general interest
2 include the fact that DPI maintained a policy whereby it did not reimburse PLAINTIFF VAN
3 DEN HENDE and PLAINTIFF SCHROEDER and the MILEAGE SUBCLASS for all
4 expenses incurred in the course of carrying out their job duties for the benefit of DPI. Further,
5 within the last four years DPI maintained an express policy of paying its employees a flat
6 monthly fee for mileage reimbursement which did not suffice to reimburse the employees for
7 all the miles actually driven. Further, within the last four years DPI maintained an express
8 policy of requiring its employees to maintain insurance coverage on their personal vehicles in
9 excess of the minimum mandated by the state of California. These questions are such that
10 proof of a state of facts common to the members of the SUBCLASSES will entitle each
11 member to the relief requested in this Complaint.

12 32. As for the WAITING-TIME SUBCLASS, the questions of common or general
13 interest include the fact that PLAINTIFF SCHROEDER and the WAITING-TIME
14 SUBCLASS were terminated (whether willfully or otherwise) from DPI and were not
15 compensated for all of their wages owed at that time. These questions are such that proof of a
16 state of facts common to the members of the SUBCLASSES will entitle each member to the
17 relief requested in this Complaint.

18 33. As for the MINIMUM WAGE SUBCLASS, the questions of common or general
19 interest include the fact that PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER
20 and the MINIMUM WAGE SUBCLASS performed work for DPI for which they received no
21 compensation, even at the applicable minimum wage. These questions are such that proof of a
22 state of facts common to the members of the SUBCLASSES will entitle each member to the
23 relief requested in this Complaint.

24 34. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
25 members of the SUBCLASSES have no plain, speedy, or adequate remedy at law against DPI,
26 other than by maintenance of this class action, because PLAINTIFF VAN DEN HENDE and
27 PLAINTIFF SCHROEDER are informed and believe, and on information and belief allege,
28 that the damage to each member of the SUBCLASSES is relatively small and that it would be

1 economically infeasible to seek recovery against DPI other than by a class action.

2 35. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER will fairly and
3 adequately represent the interests of the members of the SUBCLASSES, because PLAINTIFF
4 VAN DEN HENDE and PLAINTIFF SCHROEDER are themselves a member of the
5 SUBCLASSES and their claims are typical of those in the SUBCLASSES.

6 **FIRST CAUSE OF ACTION**

7 **(Action brought by PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER**
8 **and the SUBCLASSES for Unfair Competition**
9 **Against DPI and DOES 1 through 100)**

10 36. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
11 SUBCLASSES refer to paragraphs 1 through 35, and incorporate the same by reference as
12 though fully set forth at length.

13 37. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
14 aforementioned SUBCLASSES are/were employees who have been working for DPI within
15 four years of the date of filing this Complaint.

16 38. DEFENDANTS, and each of them, are a "person" as that term is defined under
17 the Business and Professions Code section 17201.

18 39. Business and Professions Code section 17200 *et seq.* defines unfair competition
19 as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
20 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as
21 follows:

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

40. Labor Code section 200 defines "wages" as including all amounts for labor

1 performed by employees of every description, whether the amount is fixed or ascertained by
2 the standard of time, task, piece, *commission basis*, or other method of calculation.

3 41. Labor Code section 204(a) provides: "(a) All wages, other than those mentioned
4 in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due
5 and payable twice during each calendar month, on days designated in advance by the employer
6 as the regular paydays."

7 42. Labor Code section 204(b)(1), provides: "Notwithstanding any other provision
8 of this section, all wages earned for labor in excess of the normal work period shall be paid no
9 later than the payday for the next regular payroll period."

10 43. Labor Code section 221 provides: "It shall be unlawful for any employer to
11 collect or receive from an employee any part of wages theretofore paid by said employer to
12 said employee."

13 44. Labor Code section 510(a), provides, in part: "Any work in excess of eight hours
14 in one workday and any work in excess of 40 hours in any one workweek and the first eight
15 hours worked on the seventh day of work in any one workweek shall be compensated at the
16 rate of no less than one and one-half times the regular rate of pay for an employee. Any work
17 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
18 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
19 seventh day of a workweek shall be compensated at the rate of no less than twice the regular
20 rate of pay of an employee. Nothing in this section requires an employer to combine more than
21 one rate of overtime compensation in order to calculate the amount to be paid to an employee
22 for any hour of overtime work."

23 45. Labor Code section 1194(a) provides, in relevant part: "Notwithstanding any
24 agreement to work for a lesser wage, any employee receiving less than the legal minimum
25 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
26 civil action the unpaid balance of the full amount of this minimum wage or overtime
27 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

28 46. Labor Code section 2802(a) provides, in relevant part: "An employer shall

1 indemnify his or her employee for all necessary expenditures or losses incurred by the
2 employee in direct consequence of the discharge of his or her duties, or his or her obedience to
3 the directions of the employer.”

4 47. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
5 OVERTIME SUBCLASS allege that DEFENDANTS failed to pay them all overtime wages
6 owed. In particular, DEFENDANTS refused to pay PLAINTIFF VAN DEN HENDE and
7 PLAINTIFF SCHROEDER and the OVERTIME SUBCLASS for all hours worked.

8 48. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
9 COMMISSION DEDUCTION SUBCLASS allege that DEFENDANTS unlawfully collected
10 and/or received from PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and
11 the COMMISSION DEDUCTION SUBCLASS a portion of their earned wages. In particular,
12 DEFENDANTS deducted commissions earned by PLAINTIFF VAN DEN HENDE and
13 PLAINTIFF SCHROEDER and the COMMISSION DEDUCTION SUBCLASS for products
14 that were either returned as a result of spoiling, damage or defect, without regard to whether or
15 not PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the COMMISSION
16 DEDUCTION SUBCLASS were responsible for said spoiling, damage or defect, and without
17 regard to whether the spoiled, damaged, or defective products were ones on which
18 PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the COMMISSION
19 DEDUCTION SUBCLASS earned a commission.

20 49. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
21 MILEAGE SUBCLASS allege that DEFENDANTS failed to reimburse them for all expenses
22 incurred as a result of driving their vehicles in execution of their job duties.

23 50. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
24 MINIMUM WAGE SUBCLASS allege that DEFENDANTS failed to compensate them for
25 work performed for, and mandated by, DEFENDANTS at the applicable minimum wage.

26 51. By the conduct alleged herein, DEFENDANTS have engaged and continue to
27 engage in a business practice which violates California law, including but not limited to Labor
28 Code sections 200, 204, 221, 510, 1194, and 2802 and the applicable IWC Wage Orders. As a

1 result, the DEFENDANTS' policies, practices, and procedures alleged herein constitute an
2 unlawful business practice.

3 52. By and through the conduct described herein, DEFENDANTS have engaged in
4 unfair, unlawful, and deceptive practices by failing to compensate PLAINTIFF VAN DEN
5 HENDE and PLAINTIFF SCHROEDER, and the other members of the OVERTIME
6 SUBCLASS, for any hours they worked in excess of eight hours, up to and including 12 hours,
7 in any workday, and for the first eight hours worked on the seventh consecutive day of work in
8 a workweek in violation of Business and Professions Code section 17200 *et seq.*, and in
9 violation of Labor Code Section 510(a) and have thereby deprived PLAINTIFF VAN DEN
10 HENDE and PLAINTIFF SCHROEDER, and the other members of the OVERTIME
11 SUBCLASS, of fundamental rights and privileges and caused them economic injury as herein
12 alleged.

13 53. By and through the conduct described herein, DEFENDANTS have engaged in
14 unfair competition by deducting from commissions earned on products stocked by
15 PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the other members of
16 the COMMISSION DEDUCTION SUBCLASS without regard to whether the deductions
17 were based on items that were returned, defective or damages as a result of the negligence or
18 acts of PLAINTIFF and the other members of the COMMISSION DEDUCTION
19 SUBCLASS. As herein alleged, DEFENDANTS' conduct was unlawful in that, with respect
20 to PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and all members of the
21 COMMISSION DEDUCTION SUBCLASS, DEFENDANTS uniformly violated California
22 law and regulations, including but not limited to Labor Code section 221.

23 54. By and through the conduct described herein, DEFENDANTS have engaged in
24 unfair, unlawful, and deceptive practices by failing to reimburse PLAINTIFF VAN DEN
25 HENDE and PLAINTIFF SCHROEDER, and the other members of the MILEAGE
26 SUBCLASS, all miles driven in carrying out their job duties for DPI and failing to comply
27 with the requirements of California law with respect to mileage reimbursement in violation of
28 Labor Code Section 2802 and Business and Professions Code section 17200 *et seq.*, and have

1 failed to reimburse them for the excess insurance coverage they were required to maintain on
2 their personal vehicles, and have thereby deprived PLAINTIFF, and the other members of the
3 MILEAGE SUBCLASS, of fundamental rights and privileges and caused them economic
4 injury as herein alleged.

5 55. By and through the conduct described herein, DEFENDANTS have engaged in
6 unfair, unlawful, and deceptive practices by failing to compensate PLAINTIFF VAN DEN
7 HENDE and PLAINTIFF SCHROEDER, and the other members of the MINIMUM WAGE
8 SUBCLASS at the applicable minimum wage for work performed for, and mandated by
9 DEFENDANTS.

10 56. By the conduct alleged herein, DEFENDANTS have engaged and continue to
11 engage in business practices that are likely to deceive and which are unfair to DEFENDANTS'
12 employees. The DEFENDANTS' policies, practices, and procedures alleged herein constitute
13 unfair business practices.

14 57. The employment of PLAINTIFF VAN DEN HENDE and PLAINTIFF
15 SCHROEDER and the SUBCLASSES with DEFENDANTS are not covered by a collective-
16 bargaining agreement.

17 58. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER, and the other
18 members of the SUBCLASSES are entitled to, and do, seek such relief as may be necessary to
19 restore to them the money that DEFENDANTS may have acquired by way of its unfair
20 business practices, or of which PLAINTIFF VAN DEN HENDE and PLAINTIFF
21 SCHROEDER, and other members of the SUBCLASSES, have been deprived, by means of
22 the above described unlawful, unfair and/or deceptive business practices, which includes, for
23 PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the MILEAGE
24 SUBCLASS, all unreimbursed travel expenditures and attendant interest and penalties, and,
25 for PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the COMMISSION
26 DEDUCTION SUBCLASS, the unlawfully deducted commissions which were otherwise
27 earned, and for PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
28 OVERTIME SUBCLASS, all uncompensated hours and attendant interest and penalties.

1 not covered by a collective bargaining agreement.

2 64. Labor Code section 200 defines "wages" as including all amounts for labor
3 performed by employees of every description, whether the amount is fixed or ascertained by
4 the standard of time, task, piece, commission basis, or other method of calculation.

5 65. Labor Code section 204(a) provides: "(a) All wages, other than those mentioned
6 in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due
7 and payable twice during each calendar month, on days designated in advance by the employer
8 as the regular paydays."

9 66. Labor Code section 204(b)(1), provides: "Notwithstanding any other provision
10 of this section, all wages earned for labor in excess of the normal work period shall be paid no
11 later than the payday for the next regular payroll period."

12 67. Labor Code section 510(a), provides, in part: "Any work in excess of eight hours
13 in one workday and any work in excess of 40 hours in any one workweek and the first eight
14 hours worked on the seventh day of work in any one workweek shall be compensated at the
15 rate of no less than one and one-half times the regular rate of pay for an employee. Any work
16 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
17 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
18 seventh day of a workweek shall be compensated at the rate of no less than twice the regular
19 rate of pay of an employee. Nothing in this section requires an employer to combine more than
20 one rate of overtime compensation in order to calculate the amount to be paid to an employee
21 for any hour of overtime work."

22 68. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
23 OVERTIME SUBCLASS allege that they are non-exempt employees and, thus, are entitled to
24 overtime compensation.

25 69. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
26 OVERTIME SUBCLASS allege that they worked significant overtime.

27 70. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
28 OVERTIME SUBCLASS allege that DEFENDANTS failed to pay for all overtime worked.

1 **THIRD CAUSE OF ACTION**

2 **(Action brought by PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER**
3 **and the COMMISSION DEDUCTION SUBCLASS for Unlawfully Deducted**
4 **Commissions Against DPI and DOES 1 through 100)**

5 71. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
6 COMMISSION DEDUCTION SUBCLASS refer to paragraphs 1 through 70, and incorporate
7 same by reference as though fully set forth at length.

8 72. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
9 COMMISSION DEDUCTION SUBCLASS were employed by DEFENDANTS in California
10 within the four years prior to the filing of this Complaint.

11 73. The employment of PLAINTIFF and the COMMISSION DEDUCTION
12 SUBCLASS was and is not covered by a collective bargaining agreement.

13 74. Labor Code section 221 provides: "It shall be unlawful for any employer to
14 collect or receive from an employee any part of wages theretofore paid by said employer to
15 said employee."

16 75. As alleged herein, DEFENDANTS maintained a policy whereby they would
17 deduct commissions earned by PLAINTIFF VAN DEN HENDE and PLAINTIFF
18 SCHROEDER and the COMMISSION DEDUCTION SUBCLASS for products that were
19 either returned as a result of spoiling, damage or defect, without regard to whether or not
20 PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the COMMISSION
21 DEDUCTION SUBCLASS were responsible for said spoiling, damage or defect, and without
22 regard to whether the spoiled, damaged, or defective products were ones on which
23 PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the COMMISSION
24 DEDUCTION SUBCLASS earned a commission for stocking.

25 76. DEFENDANTS' actions violated the premise articulated in *Hudgins v. Neiman*
26 *Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, in which the Court noted that a deduction
27 from commission wages is unlawful, especially where "[t]he deduction is unpredictable, and is
28 taken without regard to whether the losses were due to factors beyond the employee's control"

1 *and* that “an employer could not make its employees insurers of its business losses.”

2 77. By the actions alleged herein, DEFENDANTS violated Labor Code section 221.

3 78. By the actions alleged herein, PLAINTIFF VAN DEN HENDE and PLAINTIFF
4 SCHROEDER and the COMMISSION DEDUCTION suffered harm.

5 **FOURTH CAUSE OF ACTION**

6 **(Action brought by PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER**
7 **and the MILEAGE SUBCLASS for Unreimbursed Business Expenses**
8 **Against DPI and DOES 1 through 100)**

9 79. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
10 MILEAGE SUBCLASS refer to paragraphs 1 through 78, and incorporate same by reference
11 as though fully set forth at length.

12 80. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
13 MILEAGE SUBCLASS were employed by DEFENDANTS in California within the four
14 years prior to the filing of this Complaint.

15 81. The employment of PLAINTIFF VAN DEN HENDE and PLAINTIFF
16 SCHROEDER and the MILEAGE SUBCLASS was and is not covered by a collective
17 bargaining agreement.

18 82. Labor Code section 2802(a) provides, in relevant part: “An employer shall
19 indemnify his or her employee for all necessary expenditures or losses incurred by the
20 employee in direct consequence of the discharge of his or her duties, or his or her obedience to
21 the directions of the employer.”

22 83. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
23 MILEAGE SUBCLASS allege that DEFENDANTS failed to reimburse them for all travel
24 costs incurred in execution of their job duties, including mileage and amounts paid for
25 maintaining insurance coverage on their personal automobiles in excess of the State-mandated
26 levels.

27 84. DEFENDANTS violated Labor Code section 2802 by not reimbursing
28 PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the MILEAGE

1 SUBCLASS for all business related travel costs.

2 85. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
3 MILEAGE SUBCLASS have suffered damages by virtue of DEFENDANTS' failure to
4 comply with Labor Code section 2802 in that each was denied the full amount of his/her
5 reimbursable mileage expenses.

6 86. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
7 MILEAGE SUBCLASS have been available and ready to receive reimbursements owed them.

8 87. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
9 MILEAGE SUBCLASS have never refused to receive any travel reimbursement payment.

10 **FIFTH CAUSE OF ACTION**

11 (Action brought by PLAINTIFF SCHROEDER and all SUBCLASSES for
12 **Waiting-Time Penalties Against DPI and DOES 1 through 100)**

13 88. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER refer to
14 paragraphs 1 through 87, and incorporate same by reference as though fully set forth at length.

15 89. Pursuant to California Labor Code section 203, it is alleged that DEFENDANTS
16 have willfully failed to pay without abatement or reduction all of the wages of PLAINTIFF
17 SCHROEDER and the WAITING-TIME SUBCLASS.

18 90. DEFENDANTS are aware that they owe the wages claimed, yet have willfully
19 failed to make payment.

20 91. As a result of DEFENDANTS willful failure to pay all wages owed at
21 termination, PLAINTIFF SCHROEDER and the WAITING-TIME SUBCLASS seek wages
22 and penalties pursuant to Labor Code section 203. According to Labor Code section 203,
23 these penalties consist of up to 30 days of pay for PLAINTIFF SCHROEDER and the
24 WAITING-TIME SUBCLASS at their regular rates of pay, including overtime.

25 92. PLAINTIFF SCHROEDER and the WAITING-TIME SUBCLASS have been
26 available and ready to receive wages owed to them.

27 93. PLAINTIFF SCHROEDER and the WAITING-TIME SUBCLASS have never
28 refused to receive any payment, nor have PLAINTIFF SCHROEDER and the WAITING-

1 TIME SUBCLASS been absent from their regular place of residence.

2 94. DEFENDANTS' failure to pay wages due and owing to PLAINTIFF
3 SCHROEDER and the WAITING-TIME SUBCLASS as indicated in prior paragraphs was
4 willful. DEFENDANTS have knowingly refused to pay any portion of the amount due and
5 owing PLAINTIFF SCHROEDER and the WAITING-TIME SUBCLASS.

6 95. Pursuant to Labor Code sections 218.5, PLAINTIFF SCHROEDER and the
7 WAITING-TIME SUBCLASS request the Court to award them reasonable attorney's fees and
8 costs incurred in this action.

9 96. PLAINTIFF SCHROEDER and the WAITING-TIME SUBCLASS also request
10 all unpaid wages, Labor Code section 203 penalties and interest. The exact amount of actual
11 wages and Labor Code section 203 penalties owed will not be fully ascertained until discovery
12 is completed. Until DEFENDANTS produce the necessary documents for an accounting,
13 PLAINTIFF SCHROEDER and the WAITING-TIME SUBCLASS are unable to determine
14 the exact amount of wages and Labor Code section 203 penalties owed.

15 **SIXTH CAUSE OF ACTION**

16 **(Action brought by PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER**
17 **and all SUBCLASSES for Failure to Pay Minimum Wage**
18 **Against DPI and DOES 1 through 100)**

19 97. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the
20 MINIMUM WAGE SUBCLASS refer to paragraphs 1 through 96, and incorporate same by
21 reference as though fully set forth at length.

22 98. California Labor Code Sections 1182.12, 1194, 1197, 1198, and other statutes
23 and regulations, require employers to pay their non-exempt employees a statutory minimum
24 wage. PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the MINIMUM
25 WAGE SUBCLASS were not exempt from the minimum wage requirements.
26 DEFENDANTS violated the above statutes and regulations as well as Labor Code Section
27 216, when they failed to pay PLAINTIFF VAN DEN HENDE and PLAINTIFF
28 SCHROEDER and the MINIMUM WAGE SUBCLASS for all hours that they worked.

1 compensation is solely based on a salary and who is exempt from
2 payment of overtime under subdivision (a) of Section 515 or any
3 applicable order of the Industrial Welfare Commission, (3) the
4 number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis, (4) all deductions, provided,
6 that all deductions made on written orders of the employee may be
7 aggregated and shown as one item, (5) net wages earned, (6) the
8 inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and his or her social security number, (8) the
10 name and address of the legal entity that is the employer, and (9) all
11 applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the
13 employee.”

14 103. Labor Code section 226(e), provides:

15 “(e) An employee suffering injury as a result of a knowing and
16 intentional failure by an employer to comply with subdivision (a) is
17 entitled to recover the greater of all actual damages or fifty
18 dollars (\$50) for the initial pay period in which a violation occurs
19 and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not exceeding an aggregate penalty of four
21 thousand dollars (\$4,000), and is entitled to an award of costs and
22 reasonable attorney's fees.”

23 104. Here, DEFENDANTS have failed to provide PLAINTIFF VAN DEN HENDE
24 and PLAINTIFF SCHROEDER and the SUBCLASSES wage statements that comply with the
25 requirements of Labor Code section 226(a).

26 105. As a result of DEFENDANTS’ failure to provide accurate wage statements
27 pursuant to the abovementioned statutes, PLAINTIFF VAN DEN HENDE and PLAINTIFF
28 SCHROEDER and the SUBCLASSES have been injured.

1 110. As permitted by PAGA, for DEFENDANTS' violation of the aforementioned
2 statutes, PLAINTIFF VAN DEN HENDE requests civil penalties under various provisions of
3 the Labor Code against DEFENDANTS, plus reasonable attorneys' fees and costs, in amounts
4 to be proven at trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and
7 the SUBCLASSES demand judgment against DEFENDANTS, and each of them, as follows:

- 8 1. For wages owed according to proof;
- 9 2. For prejudgment interest at the statutory rate;
- 10 3. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 1194,
11 2802 and 2699;
- 12 4. For an equitable order, ordering DEFENDANTS to pay PLAINTIFF VAN DEN
13 HENDE and PLAINTIFF SCHROEDER and the OVERTIME SUBCLASS all
14 wages and interest they are owed;
- 15 5. For an equitable order, ordering DEFENDANTS to pay PLAINTIFF VAN DEN
16 HENDE and PLAINTIFF SCHROEDER and the DEDUCTION COMMISSION
17 SUBCLASS for all unlawfully deducted commissions and interest which they
18 are owed;
- 19 6. For an equitable order, ordering DEFENDANTS to reimburse PLAINTIFF VAN
20 DEN HENDE and PLAINTIFF SCHROEDER and the MILEAGE SUBCLASS
21 for all uncompensated miles driven for which they are owed and for the
22 difference in insurance premiums paid and required as minimums by the State of
23 California, and interest thereon;
- 24 7. For an equitable order, ordering DEFENDANTS to pay PLAINTIFF VAN DEN
25 HENDE and PLAINTIFF SCHROEDER and the WAITINGTIME SUBCLASS
26 for all unlawfully withheld wages and interest which they are owed;
- 27 8. For an equitable order, ordering DEFENDANTS to pay PLAINTIFF VAN DEN
28 HENDE and PLAINTIFF SCHROEDER and the MINIMUM WAGE

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SUBCLASS for all unlawfully withheld wages, liquidated damages under Labor Code Section 1194.2, and interest which they are owed;

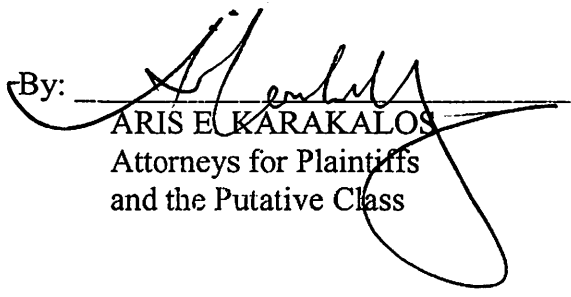
- 9. For an appointment of a receiver to perform an accounting of all monies owed to PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the SUBCLASSES;
- 10. For any and all injunctive relief this Court deems necessary pursuant to Business and Professions Code section 17203;
- 11. For prejudgment interest pursuant to Civil Code section 3288 on all amounts claimed;
- 12. For interest on the amounts identified above as provided by Labor Code section 2802(b);
- 13. For the payment of attorney's fees and costs pursuant to Labor Code sections 2802(c), and as otherwise provided by law;
- 14. For civil penalties according to proof;
- 15. For costs of suit; and
- 16. For any other and further relief that the Court considers just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF VAN DEN HENDE and PLAINTIFF SCHROEDER and the SUBCLASSES hereby demand a trial by jury.

Dated: July 22, 2014

PALAY LAW FIRM
A Professional Corporation

By: 
ARIS E. KARAKALOS
Attorneys for Plaintiffs
and the Putative Class

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to the
3 within action. My business address is PALAY LAW FIRM, 121 N. Fir Street, Suite F, Ventura,
4 California 93001. On July 22, 2014, I served the within documents:

5 **SECOND AMENDED COMPLAINT**

6 X by transmitting via facsimile the document(s) listed above to the fax number(s) set forth
7 below on this date before 5:00 p.m.

8 X by placing the document(s) listed above in a sealed envelope with postage thereon fully
9 prepaid, in the United States mail at Ventura, California addressed as set forth below.

10 **SEE ATTACHED MAILING LIST**

11 _____ by placing the document(s) listed above in a sealed envelope and depositing for pick-
12 up in a designated FedEx box via **FedEx Overnight** delivery at Ventura, California
addressed as set forth below.

13 _____ by personally delivering the document(s) listed above to the person(s) at the address(es)
14 set forth below.

15 I am readily familiar with the firm's practice of collection and processing correspondence for
16 mailing. Under that practice it would be deposited with U.S. postal service on that same day with
17 postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the
18 party served, service is presumed invalid if postal cancellation date or postage meter date is more than
19 one day after date of deposit for mailing in affidavit.

20 X (State) I declare under penalty of perjury under the laws of the State of California that
21 the above is true and correct.

22 _____ (Federal) I declare that I am employed in the office of a member of the bar of this court
23 at whose direction the service was made.

24 Executed on July 22, 2014, at Ventura, California.

25 
26 _____
27 DEANNA N. CERDA
28

1 **Re: Van Den Hende v. DPI Specialty Foods, Inc.**
2 **San Bernardino County Superior Court, Rancho Cucamonga District**
3 **Case No. CIVRS1304516**

4 **MAILING LIST**

5 Dawn T. Collins
6 Vicky H. Lin
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8 400 S. Hope Street, Suite 1200
9 Los Angeles, CA 90071
10 Telephone: (213) 239-9800
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13 ***Counsel for Defendants DPI Specialty Foods, Inc. & DPI Specialty Foods West, Inc.***