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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, TAFITI SHEKUR, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL DIRECT INC., DPWN HOLDINGS (USA), INC.; DEUTSCHE POST BETEILIGUNGEN HOLDING GMBH; EUROMARKET DESIGNS, INC. d/b/a CRATE & BARREL; OFFICE DEPOT, INC.; SEARS HOLDINGS CORPORATION; WILLIAMS-SONOMA, INC.; JC PENNEY COMPANY, INC.; LA-Z-BOY, INC.; RESTORATION HARDWARE HOLDINGS INC.; D/B/A RESTORATION HARDWARE; IKEA, INC.,

Defendants.

Consolidated Cases:
CASE NO. 12-CV-04137-JCS
CASE NO. 13-CV-03091-JCS

CLASS ACTION

ANSWER AND AFFIRMATIVE DEFENSES TO CONSOLIDATED FIRST AMENDED COMPLAINT

ANSWER

Defendants Exel Direct Inc., DPWN Holdings (USA), Inc., and Deutsche Post Beteiligungen Holding GmbH ("Exel Defendants"), pursuant to Fed. R. Civ. P. 8(b), and for their answer to Plaintiffs' Consolidated First Amended Complaint (the "First Amended Complaint"), state as follows:

I. INTRODUCTION

1. Exel Defendants admit Plaintiffs bring this case as a class action, but deny the case is suitable for class action treatment and deny the remaining allegations in Paragraph 1 of the First Amended Complaint.

2. Exel Defendants admit Plaintiffs seek damages, penalties, and interest for purported violations of California law but deny the remaining allegations in Paragraph 2 of the First Amended Complaint, including that any violation of the law occurred.

3. Exel Defendants admit Plaintiffs seek injunctive relief and restitution but deny the remaining allegations in Paragraph 3 of the First Amended Complaint, including that Plaintiffs are entitled to injunctive relief or restitution.

4. Exel Defendants admit Plaintiffs seek to recover penalties under the Private Attorneys General Act of 2004 for purported violations of California law, that on June 1, 2012 Plaintiff Tafiti Shekur provided Exel Direct Inc. written notice of provisions of the California Labor Code allegedly violated, including the purported facts and theories to support the alleged violations, and that 33 days have passed since the mailing of that written notice. Without information sufficient to form a belief as to the allegations that Plaintiff provided written notice to the Labor and Workforce Development Agency (LWDA), Sears Holdings Management Corp., Sears Logistics Services, Inc., Sears, Roebuck and Co., and Sears Outlet Stores, LLC, or that Plaintiff received a letter from the LWDA stating its intent to investigate Plaintiff's claims, Exel Defendants deny the same. Exel Defendants deny the remaining allegations in Paragraph 4.

5. Exel Defendants admit Plaintiffs seek to recover attorneys' fees and costs for purported violations of California law but deny the remaining allegations in Paragraph 5 of the First Amended Complaint, including that Plaintiffs are entitled to attorneys' fees and costs.

II. VENUE AND JURISDICTION

6. Exel Defendants admit the case of *Villalpando v. Exel Direct Inc.*, No. 12-cv-04137-JCS was originally filed in the Superior Court of California, Alameda County, on June 14, 2012, naming Exel Direct Inc. and Does 1-50 as defendants. Exel Defendants admit that on August 6, 2012, Exel Direct Inc. filed a petition for removal in this Court premised on the Class Action Fairness Act. Exel Defendants admit that on September 5, 2012, Plaintiff Villalpando filed a motion to remand to state court and that the Court denied the motion, finding federal diversity jurisdiction pursuant to the Class Action Fairness Act. Exel Defendants deny the remaining allegations in Paragraph 6.

7. Exel Defendants admit the allegations in Paragraph 7 of the First Amended Complaint.

8. Exel Defendants admit the allegations in Paragraph 8 of the First Amended Complaint.

9. Exel Defendants admit Exel Direct Inc. transacts business in Alameda County and that venue is proper in this judicial district, but deny Plaintiffs have cited the proper basis for such jurisdiction.

III. THE PARTIES

A. Plaintiff

10. Exel Defendants deny the allegations in Paragraph 10 of the First Amended Complaint.

11. Exel Defendants are without sufficient knowledge to form a belief as to whether Plaintiff Daniel Villalpando is a resident of Oakley, California in Contra Costa County and therefore deny the same. Exel Defendants deny the remaining allegations in Paragraph 11 of the First Amended Complaint.

12. Exel Defendants deny the allegations in Paragraph 12 of the First Amended Complaint.

13. Exel Defendants are without sufficient knowledge to form a belief as to whether Plaintiff Tafiti Shekur is a citizen of the State of California, residing in Sacramento, California, and therefore deny the same. Exel Defendants deny the remaining allegations in Paragraph 13 of the First Amended Complaint.

B. Defendants

14. Exel Defendants admit Exel Direct Inc. is engaged in business in California and headquartered in Ohio but deny the remaining allegations in Paragraph 14 of the First Amended Complaint.

15. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant Euromarket Designs, Inc. is wholly owned by Otto GmbH, is incorporated in Wilmington, Delaware, or has sixteen (16) stores located in California, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 15 of the First Amended Complaint.

16. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant Office Depot, Inc. is a Delaware corporation with its corporate headquarters located in Boca Raton, Florida, or has numerous retail stores located in California, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 16 of the First Amended Complaint.

17. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant Sears Holdings Corporation is incorporated in Delaware, has its headquarters in Illinois, or is a retailer with stores throughout California and the United States, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 17 of the First Amended Complaint.

18. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant Williams-Sonoma, Inc. is incorporated in Delaware, has its headquarters in San

Francisco, California, or has multiple retail locations as well as its headquarters in California, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 18 of the First Amended Complaint.

19. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant JC Penney Company, Inc. is incorporated in Delaware, is headquartered in Plano, Texas, or is a retailer engaged in the business of selling home furnishings, clothing, and accessories to customers located in California and throughout the United States, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 19 of the First Amended Complaint.

20. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant LA-Z-BOY, Inc. is incorporated and headquartered in Michigan or is a retailer engaged in the business of selling furniture to customers throughout the United States, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 20 of the First Amended Complaint.

21. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant Restoration Hardware Holdings Inc. is incorporated in Wilmington, Delaware, is headquartered in California, and has multiple stores located in California, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 21 of the First Amended Complaint.

22. Exel Defendants are without sufficient knowledge to form a belief as to whether Defendant Ikea Inc. is incorporated in Wilmington, Delaware, is headquartered in the Netherlands, or has multiple stores located in California, and thus deny the same. Exel Defendants deny the remaining allegations in Paragraph 22 of the First Amended Complaint.

23. Exel Defendants deny the allegations in Paragraph 23 of the First Amended Complaint.

24. Exel Defendants deny the allegations in Paragraph 24 of the First Amended Complaint.

IV. FACTUAL ALLEGATIONS

25. Exel Defendants deny the allegations in Paragraph 25 of the First Amended Complaint.

26. Exel Defendants deny the allegations in Paragraph 26 of the First Amended Complaint.

27. Exel Defendants deny the allegations in Paragraph 27 of the First Amended Complaint.

28. Exel Defendants deny the allegations in Paragraph 28 of the First Amended Complaint.

29. Exel Defendants deny the allegations in Paragraph 29 of the First Amended Complaint.

30. Exel Defendants deny the allegations in Paragraph 30 of the First Amended Complaint.

31. Exel Defendants admit the Independent Truckman's Agreement was written only in English, but deny the remaining allegations in Paragraph 31.

32. Exel Defendants admit the allegations in Paragraph 32 of the First Amended Complaint.

33. Exel Defendants deny the allegations in Paragraph 33 of the First Amended Complaint.

34. Exel Defendants deny the allegations in Paragraph 34 of the First Amended Complaint.

35. Exel Defendants deny the allegations in Paragraph 35 of the First Amended Complaint.

36. Exel Defendants deny the allegations in Paragraph 36 of the First Amended Complaint.

37. Exel Defendants deny the allegations in Paragraph 37 of the First Amended Complaint.

38. Exel Defendants deny the allegations in Paragraph 38 of the First Amended Complaint.

39. Exel Defendants deny the allegations in Paragraph 39 of the First Amended Complaint.

40. Exel Defendants deny the allegations in Paragraph 40 of the First Amended Complaint.

41. Exel Defendants deny the allegations in Paragraph 41 of the First Amended Complaint.

42. Exel Defendants deny the allegations in Paragraph 42 of the First Amended Complaint.

43. Exel Defendants deny the allegations in Paragraph 43 of the First Amended Complaint.

44. Exel Defendants deny the allegations in Paragraph 44 of the First Amended Complaint.

45. Exel Defendants deny the allegations in Paragraph 45 of the First Amended Complaint.

46. Exel Defendants deny the allegations in Paragraph 46 of the First Amended Complaint.

47. Exel Defendants deny the allegations in Paragraph 47 of the First Amended Complaint.

48. Exel Defendants deny the allegations in Paragraph 48 of the First Amended Complaint.

49. Exel Defendants deny the allegations in Paragraph 49 of the First Amended Complaint.

50. Exel Defendants deny the allegations in Paragraph 50 of the First Amended Complaint.

51. Exel Defendants deny the allegations in Paragraph 51 of the First Amended Complaint.

52. Exel Defendants deny the allegations in Paragraph 52 of the First Amended Complaint.

53. Exel Defendants deny the allegations in Paragraph 53 of the First Amended Complaint.

54. Exel Defendants deny the allegations in Paragraph 54 of the First Amended Complaint.

55. Exel Defendants deny the allegations in Paragraph 55 of the First Amended Complaint.

56. Exel Defendants deny the allegations in Paragraph 56 of the First Amended Complaint.

57. Exel Defendants deny the allegations in Paragraph 57 of the First Amended Complaint.

58. Exel Defendants deny the allegations in Paragraph 58 of the First Amended Complaint.

59. Exel Defendants deny the allegations in Paragraph 59 of the First Amended Complaint.

60. Exel Defendants deny the allegations in Paragraph 60 of the First Amended Complaint.

61. Exel Defendants deny the allegations in Paragraph 61 of the First Amended Complaint.

62. Exel Defendants deny the allegations in Paragraph 62 of the First Amended Complaint.

63. Exel Defendants deny the allegations in Paragraph 63 of the First Amended Complaint.

64. Exel Defendants deny the allegations in Paragraph 64 of the First Amended Complaint.

65. Exel Defendants deny the allegations in Paragraph 65 of the First Amended Complaint.

66. Exel Defendants deny the allegations in Paragraph 66 of the First Amended Complaint.

67. Exel Defendants deny the allegations in Paragraph 67 of the First Amended Complaint.

68. Exel Defendants deny the allegations in Paragraph 68 of the First Amended Complaint.

69. Exel Defendants deny the allegations in Paragraph 69 of the First Amended Complaint.

70. Exel Defendants deny the allegations in Paragraph 70 of the First Amended Complaint.

71. Exel Defendants deny the allegations in Paragraph 71 of the First Amended Complaint.

72. Exel Defendants deny the allegations in Paragraph 72 of the First Amended Complaint.

73. Exel Defendants deny the allegations in Paragraph 73 of the First Amended Complaint.

74. Exel Defendants deny the allegations in Paragraph 74 of the First Amended Complaint.

75. Exel Defendants deny the allegations in Paragraph 75 of the First Amended Complaint.

V. CLASS ALLEGATIONS

76. Exel Defendants admit Plaintiffs bring this case as a class action but deny the remaining allegations in Paragraph 76 of the First Amended Complaint, including that this case is suitable for class action treatment.

77. Exel Defendants deny the allegations in Paragraph 77 of the First Amended Complaint.

78. Exel Defendants deny the allegations in Paragraph 78, including subparagraphs (a) through (ff), of the First Amended Complaint.

79. Exel Defendants deny the allegations in Paragraph 79 of the First Amended Complaint.

80. Exel Defendants deny the allegations in Paragraph 80 of the First Amended Complaint.

81. Exel Defendants deny the allegations in Paragraph 81 of the First Amended Complaint.

82. Exel Defendants deny the allegations in Paragraph 82 of the First Amended Complaint.

83. Exel Defendants deny the allegations in Paragraph 83 of the First Amended Complaint.

84. Exel Defendants deny the allegations in Paragraph 84 of the First Amended Complaint.

85. Exel Defendants deny the allegations in Paragraph 85 of the First Amended Complaint.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Failure to Pay Minimum Wages
California Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1;
IWC Wage Order No. 9; and Minimum Wage Order
(Against All Defendants)

86. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 85 of the First Amended Complaint.

87. Exel Defendants deny the allegations in Paragraph 87 of the First Amended Complaint.

88. Exel Defendants deny the allegations in Paragraph 88 of the First Amended Complaint.

89. Exel Defendants deny the allegations in Paragraph 89 of the First Amended Complaint.

90. Exel Defendants admit the allegations in Paragraph 90 of the First Amended Complaint.

91. Exel Defendants deny the allegations in Paragraph 91 of the First Amended Complaint.

92. Exel Defendants deny the allegations in Paragraph 92 of the First Amended Complaint.

93. Exel Defendants deny the allegations in Paragraph 93 of the First Amended Complaint.

94. Exel Defendants deny the allegations in Paragraph 94 of the First Amended Complaint.

95. Exel Defendants deny the allegations in Paragraph 95 of the First Amended Complaint.

96. Exel Defendants deny the allegations in Paragraph 96 of the First Amended Complaint.

97. Exel Defendants deny the allegations in Paragraph 97 of the First Amended

Complaint.

98. Exel Defendants deny the allegations in Paragraph 98 of the First Amended Complaint.

99. Exel Defendants deny the allegations in Paragraph 99 of the First Amended Complaint.

100. Exel Defendants deny the allegations in Paragraph 100 of the First Amended Complaint.

101. Exel Defendants deny the allegations in Paragraph 101 of the First Amended Complaint.

SECOND CAUSE OF ACTION
Failure to Pay Overtime Compensation
California Labor Code §§ 510, 515.5, 1194, and 1198 *et seq*., and IWC Wage Order No. 9
(Against All Defendants)

102. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 101 of the First Amended Complaint.

103. Exel Defendants deny the allegations in Paragraph 103 of the First Amended Complaint.

104. Exel Defendants deny the allegations in Paragraph 104 of the First Amended Complaint.

105. Exel Defendants deny the allegations in Paragraph 105 of the First Amended Complaint.

106. Exel Defendants deny the allegations in Paragraph 106 of the First Amended Complaint.

107. Exel Defendants deny the allegations in Paragraph 107 of the First Amended Complaint.

THIRD CAUSE OF ACTION
Failure to Pay for All Hours Worked in Violation of California Labor Code §§ 201, 202, 204, and 221-223

108. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 107 of the First Amended Complaint.

109. Exel Defendants admit the allegations in Paragraph 109 of the First Amended Complaint.

110. Exel Defendants deny the allegations in Paragraph 110 of the First Amended Complaint.

111. Exel Defendants deny the allegations in Paragraph 111 of the First Amended Complaint.

112. Exel Defendants deny the allegations in Paragraph 112 of the First Amended Complaint.

113. Exel Defendants deny the allegations in Paragraph 113 of the First Amended Complaint.

114. Exel Defendants deny the allegations in Paragraph 114 of the First Amended Complaint.

115. Exel Defendants deny the allegations in Paragraph 115 of the First Amended Complaint.

116. Exel Defendants deny the allegations in Paragraph 116 of the First Amended Complaint.

117. Exel Defendants deny the allegations in Paragraph 117 of the First Amended Complaint.

FOURTH CAUSE OF ACTION
Failure to Provide Meal Periods, or Compensation in Lieu Thereof
California Labor Code §§ 226.7 and 512; and Cal.Code Regs.,
Title 8 § 11090 section 7 & 11
(Against All Defendants)

118. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 117 of the First Amended Complaint.

119. Exel Defendants deny the allegations in Paragraph 119 of the First Amended Complaint.

120. Exel Defendants deny the allegations in Paragraph 120 of the First Amended Complaint.

121. Exel Defendants deny the allegations in Paragraph 121 of the First Amended Complaint.

122. Exel Defendants deny the allegations in Paragraph 122 of the First Amended Complaint.

123. Exel Defendants deny the allegations in Paragraph 123 of the First Amended Complaint.

124. Exel Defendants deny the allegations in Paragraph 124 of the First Amended Complaint.

FIFTH CAUSE OF ACTION
Failure to Provide Rest Periods, or Compensation in Lieu Thereof
California Labor Code §§ 226.7 and Cal. Code Regs., Title 8 § 11090 Section 12
(Against All Defendants)

125. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 124 of the First Amended Complaint.

126. Exel Defendants deny the allegations in Paragraph 126 of the First Amended Complaint.

127. Exel Defendants deny the allegations in Paragraph 127 of the First Amended Complaint.

128. Exel Defendants deny the allegations in Paragraph 128 of the First Amended Complaint.

129. Exel Defendants deny the allegations in Paragraph 129 of the First Amended Complaint.

SIXTH CAUSE OF ACTION
Unlawful Deductions from Wages
California Labor Code § 204, 218, 218.6, 221, 223, and 400-410;
California Civil Code § 3287(a); IWC Wage Order No. 9; and
Title 8 C.C.R. § 11090, Section 8
(Against All Defendants)

130. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 129 of the First Amended Complaint.

131. Exel Defendants deny the allegations in Paragraph 131 of the First Amended Complaint.

132. Exel Defendants deny the allegations in Paragraph 132 of the First Amended Complaint.

133. Exel Defendants deny the allegations in Paragraph 133 of the First Amended Complaint.

134. Exel Defendants deny the allegations in Paragraph 134 of the First Amended Complaint.

135. Exel Defendants deny the allegations in Paragraph 135 of the First Amended Complaint.

136. Exel Defendants deny the allegations in Paragraph 136 of the First Amended Complaint.

137. Exel Defendants deny the allegations in Paragraph 137 of the First Amended Complaint.

138. Exel Defendants deny the allegations in Paragraph 138 of the First Amended Complaint.

139. Exel Defendants deny the allegations in Paragraph 139 of the First Amended Complaint.

SEVENTH CAUSE OF ACTION
Cost of Physical Examinations
California Labor Code § 222.5
(Against All Defendants)

140. Consistent with the Court's March 28th, 2014 Order Granting in Part and Denying in Part Motion to Dismiss (ECF No. 122) (the "Dismissal Order"), Plaintiffs' Seventh Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 140 of the First Amended Complaint.

141. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Seventh Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 141 of the First Amended Complaint.

142. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Seventh Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 142 of the First Amended Complaint.

143. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Seventh Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 143 of the First Amended Complaint.

EIGHTH CAUSE OF ACTION
Coerced Purchases
California Labor Code § 450 *et seq.*
(Against All Defendants)

144. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Eighth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 144 of the First Amended Complaint.

145. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Eighth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 145 of the First Amended Complaint.

146. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Eighth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 146 of the First Amended Complaint.

147. Consistent with the Dismiss Order (ECF No. 122), Plaintiffs' Eighth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 147 of the First Amended Complaint.

NINTH CAUSE OF ACTION
Reimbursement of Business Expenses
California Labor Code § 2800, 2802, and 2804
(Against All Defendants)

148. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 147 of the First Amended Complaint.

149. Exel Defendants admit the allegations in Paragraph 149 of the First Amended Complaint.

150. Exel Defendants admit the allegations in Paragraph 150 of the First Amended Complaint.

151. Exel Defendants deny the allegations in Paragraph 151, including subparagraphs (a-e), of the First Amended Complaint.

152. Exel Defendants admit the allegations in Paragraph 152 of the First Amended Complaint.

153. Exel Defendants deny the allegations in Paragraph 153 of the First Amended Complaint.

154. Exel Defendants deny the allegations in Paragraph 154 of the First Amended Complaint.

TENTH CAUSE OF ACTION
Failure to Keep Accurate Payroll Records
California Labor Code §§ 1174 and 1174.5
(Against All Defendants)

155. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 154 of the First Amended Complaint.

156. Exel Defendants deny the allegations in Paragraph 156 of the First Amended Complaint.

157. Exel Defendants deny the allegations in Paragraph 157 of the First Amended Complaint.

ELEVENTH CAUSE OF ACTION
Failure to Furnish Accurate Wage Statements
California Labor Code § 226
(Against All Defendants)

158. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 157 of the First Amended Complaint.

159. Exel Defendants deny the allegations in Paragraph 159 of the First Amended Complaint.

160. Exel Defendants deny the allegations in Paragraph 160 of the First Amended Complaint.

161. Exel Defendants deny the allegations in Paragraph 161 of the First Amended Complaint.

162. Exel Defendants deny the allegations in Paragraph 162 of the First Amended Complaint.

163. Exel Defendants deny the allegations in Paragraph 163 of the First Amended Complaint.

TWELFTH CAUSE OF ACTION
Waiting Time Penalties
California Labor Code §§ 201-203
(Against All Defendants)

164. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 163 of the First Amended Complaint.

165. Exel Defendants deny the allegations in Paragraph 165 of the First Amended Complaint.

166. Exel Defendants deny the allegations in Paragraph 166 of the First Amended Complaint.

167. Exel Defendants deny the allegations in Paragraph 167 of the First Amended Complaint.

THIRTEENTH CAUSE OF ACTION
Willful Misclassification of Individual as Independent Contractor
California Labor Code §§ 226.8
(Against All Defendants)

168. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Thirteenth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 168 of the First Amended Complaint.

169. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Thirteenth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 169 of the First Amended Complaint.

170. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Thirteenth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 170 of the First Amended Complaint.

171. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Thirteenth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 171 of the First Amended Complaint.

172. Consistent with the Dismissal Order (ECF No. 122), Plaintiffs' Thirteenth Cause of Action has been dismissed with prejudice and therefore Exel Defendants need not respond to the allegations in Paragraph 172 of the First Amended Complaint.

FOURTEENTH CAUSE OF ACTION
Unfair Competitive and Unlawful Business Practices
California Business and Professions Code §§ 17200, *et seq*.
(Against All Defendants)

173. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 172 of the First Amended Complaint.

174. Exel Defendants deny the allegations in Paragraph 174 of the First Amended Complaint.

175. Exel Defendants deny the allegations in Paragraph 175 of the First Amended Complaint.

176. Exel Defendants deny the allegations in Paragraph 176 of the First Amended Complaint.

177. Exel Defendants deny the allegations in Paragraph 177, including subparagraphs (a) through (q), of the First Amended Complaint.

178. Exel Defendants deny the allegations in Paragraph 178 of the First Amended Complaint.

179. Exel Defendants deny the allegations in Paragraph 179 of the First Amended Complaint.

180. Exel Defendants deny the allegations in Paragraph 180 of the First Amended Complaint.

FIFTEENTH CAUSE OF ACTION
Statutory Penalties Pursuant to PAGA (Labor Code §§ 2699, *et seq.*
(On behalf of All Aggrieved Employees)

181. Exel Defendants incorporate by reference their responses to the allegations in Paragraphs 1 through 180 of the First Amended Complaint.

182. Exel Defendants deny the allegations in Paragraph 182 of the First Amended Complaint.

183. Exel Defendants deny the allegations in Paragraph 183 of the First Amended Complaint.

184. Exel Defendants deny the allegations in Paragraph 184 of the First Amended Complaint.

185. Exel Defendants deny the allegations in Paragraph 185 of the First Amended Complaint.

186. Exel Defendants deny the allegations in Paragraph 186, including subparagraphs (a) and (b), of the First Amended Complaint.

187. Exel Defendants admit that on or about June 1, 2012 Plaintiff Tafiti Shekur provided Exel Direct Inc. written notice of provisions of the California Labor Code allegedly violated, including the purported facts and theories to support the alleged violations. Exel Defendants are without sufficient knowledge to form a belief as to the remaining allegations in Paragraph 187 of the First Amended Complaint and therefore deny the same.

188. Exel Defendants admit that more than 33 days have passed since the mailing of Plaintiff Tafiti Shekur's written notice to Exel Direct Inc. Exel Defendants are without sufficient knowledge to form a belief as to the remaining allegations in Paragraph 188 of the First Amended Complaint and therefore deny the same.

189. Exel Defendants deny the allegations in Paragraph 189 of the First Amended Complaint.

VII. PRAYER FOR RELIEF

Exel Defendants deny that Plaintiffs are entitled to any other relief requested in Paragraphs (a)-(cc) of the First Amended Complaint's Prayer for Relief.

AFFIRMATIVE DEFENSES

1. As independent contractors, Plaintiffs are not entitled to any of the relief requested.

2. Some or all of Plaintiffs' recovery, if any, must be reduced by the doctrine of set off, rescission, and/or restitution.

3. Plaintiffs' claims for damages are barred, in whole or in part, by Plaintiffs' failure to mitigate their damages.

4. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

5. Some or all of Plaintiffs' claims are barred by the doctrine of unclean hands and/or the doctrine of waiver. To the extent that Exel Defendants provided Plaintiffs with the opportunity to take a meal or rest break and they declined, failed or refused to do so, Plaintiffs cannot recover.

6. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

7. Some or all of Plaintiffs' claims are barred because Exel Defendants have paid Plaintiffs in full.

8. Plaintiffs are exempt from the payment of overtime under state law under Wage Order No. 9-2001 § 3(L).

9. Some or all of Plaintiffs' claims imposing penalties would be inequitable and unjust and are therefore barred because a good faith dispute exists as to whether additional compensation is due and owing and Exel Defendants have not intentionally or willfully failed to pay such additional compensation.

10. Plaintiffs' claims are barred, in whole or in part, by the doctrine of avoidable consequences.

11. Plaintiffs' claims must be dismissed to the extent they relate to work activities performed outside California because the California Labor Code does not apply to work activities performed outside the state.

12. Plaintiffs' claims are barred, in whole or in part, because the alleged practices are not unfair, the public is not likely to be deceived by any alleged practices, Exel Defendants gained no competitive advantage by such practices, and the benefits of the alleged practices outweigh any harm or other impact they may cause.

13. Plaintiffs' claims are barred, in whole or in part, because Exel Defendants' business practices are not and were not "unlawful," "unfair," or "fraudulent" as those terms are defined and utilized in California Business and Professions Code § 17200 in that they complied with all applicable statutes and regulations regarding the payment of wages.

14. The imposition of replicating penalties, as applied to the alleged facts and circumstances of this case, would violate Exel Defendants' due process rights under the Fourteenth Amendment of the U.S. Constitution and under the Constitution and laws of the State of California. *Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005); *Ratner v. Chemical Bank New York Trust Co.*, 54 F.R.D. 412 (S.D.N.Y. 1972).

15. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

16. Some or all of Plaintiffs' claims are barred because Plaintiffs consented to the alleged conduct of Exel Defendants.

17. Some or all of Plaintiffs' claims should be reduced by the doctrine of set off.

18. This action does not meet the requirements for class action treatment, and Plaintiffs cannot satisfy the requirements for maintenance of a class action, including, without limitation, ascertainability, predominance, typicality, adequacy, and superiority.

19. Plaintiffs have been fully compensated for any wages owed, and, by accepting the payments made to them, have effectuated an accord and satisfaction of their claims.

20. All actions taken by Exel Defendants toward Plaintiffs were lawful and not in violation of public policy.

21. Exel Defendants have not willfully or intentionally failed to pay any compensation to Plaintiffs so as to justify an award of penalties or fees to Plaintiffs on that basis.

22. Any claim for penalties is unconstitutional under the U.S. Constitution and the California Constitution.

23. To the extent Plaintiffs seek to recover equitable relief, Plaintiffs are not entitled to such relief because they have an adequate remedy at law.

24. Some or all of Plaintiffs' claims are barred because, at all times, Exel Defendants acted in good faith, did not engage in any unfair business practices, and did not otherwise violate any applicable laws.

25. California Business and Profession Code § 17200, et seq., is unconstitutional, vague and over broad in the manner in which Plaintiffs claim that the statutes apply to Exel Defendants' business practices and thus constitutes a violation of Exel Defendants' rights to due process and equal protection.

26. Pre-judgment interest may not be granted because the damages claimed by Plaintiffs are not sufficiently certain to allow an award of pre-judgment interest.

27. Some or all of Plaintiffs' claims under California law are preempted under the Supremacy Clause of the U.S. Constitution, U.S. CONST. art. VI, cl. 2, because (a) California's meal and rest break rules conflict with the federal hours of service regulations, 49 C.F.R. Part 395, by imposing a different standard than that carefully set at the federal level by the Federal Motor Carrier Safety Administration ("FMCSA"); (b) the FMCSA's regulation of the hours of service of drivers in interstate commerce through the federal hours of service regulations, 49 C.F.R. Part 395, leaves no room for additional or supplemental state regulation of drivers' hours of service; and/or (c) the California statutes, regulations and/or rules upon which Plaintiffs base their claims affect Exel Defendants' prices, routes, and services within the meaning of the express preemption provision of the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501.

28. Plaintiffs have waived their rights to some or all of the meal and rest breaks by failing to take breaks provided to them as required by law, by choosing to take breaks that were authorized and permitted, or by waiving the right to take breaks.

29. Plaintiffs' claims regarding Exel Defendants' alleged failure to provide meal and rest breaks under California law are barred because they are an undue burden upon interstate commerce in violation of the Commerce Clause of the U.S. Constitution, U.S. CONST. art. I, § 8, cl. 3.

30. Plaintiffs have been fully reimbursed for any expenses sought under California Labor Code § 2802 through Plaintiffs' compensation structure.

31. Plaintiffs cannot recover alleged unpaid meal and rest break compensation under California Business and Professions Code § 17200 because any such compensation required under the applicable California Labor Code provisions are not subject to equitable relief.

32. Exel Defendants have paid to Plaintiffs, on a timely basis and with proper itemization, all wages to which Plaintiffs were entitled.

33. Some or all of Plaintiffs' claims for penalties are barred on the ground that a good faith dispute exists as to whether additional compensation is due and owing, thereby precluding a finding that Exel Defendants have intentionally or willfully failed to pay any such additional compensation.

34. Without admitting that Plaintiffs have been damaged in any sum whatsoever or at all, Exel Defendants are informed and believe and, based on such information and belief, allege that, if Plaintiffs have suffered any damages as alleged in the First Amended Complaint, such damages were proximately caused in whole or in part by Plaintiffs' own acts or omissions, and any damages otherwise recoverable by Plaintiffs should be reduced in the proportion to which such damages resulted from their own conduct.

35. Plaintiffs' claims for penalties, including waiting time penalties under California Labor Code § 203, are barred because (a) a good faith, bona fide dispute exists or existed as to whether additional compensation is or was owed, pursuant to California Labor Code §§ 201, 202 and 203; (b) Exel Defendants have not intentionally or willfully failed to pay each additional compensation, and (c) to impose penalties in this action would be inequitable and unjust.

36. Even assuming for the sake of argument that Exel Defendants violated a statute in the California Labor Code or California Business and Professions Code, or an Industrial Welfare Commission Wage Order, any such violation was a result of an act or omission in good faith, and Exel Defendants had reasonable grounds for believing such act or omission was not a violation of any statute, order, regulation or policy.

37. Some or all of Plaintiffs' claims are barred because Plaintiffs lack standing to assert those claims.

38. Plaintiffs have failed to allege a claim upon which liquidated damages may be awarded. Accordingly, Plaintiffs' claim for liquidated damages is barred.

39. Plaintiffs have failed to allege a claim upon which exemplary or punitive damages may be awarded, and Exel Defendants have not engaged in such willful or intentionally wrongful conduct upon which an award of such damages could be based. Accordingly, to the extent Plaintiffs seek exemplary or punitive damages, such claim for damages is barred.

40. Plaintiffs lack standing to recover PAGA penalties on behalf of other allegedly "aggrieved employees" and are barred from recovering such penalties without first satisfying the requirements of Fed. R. Civ. P. 23.

41. Without waiving their ability to oppose class certification and explicitly asserting their opposition to the propriety of class treatment, if the Court does certify a class in this case over Exel Defendants' objections, then Exel Defendants assert the affirmative defenses set forth above against each and every member of the certified class.

42. Exel Defendants will rely on all defenses lawfully available to it at the time of trial and reserve the right to amend their answer and affirmative defenses to include additional defenses after the completion of discovery.

WHEREFORE, Exel Defendants requests judgment as follows:

(a) That this action not be certified as a class action;

(b) That Plaintiffs take nothing by way of the First Amended Complaint;

(c) That judgment be entered against Plaintiffs and in favor of Exel Defendants;

(d) That Exel Defendants be awarded its attorney fees and costs incurred in this case; and

(e) That Exel Defendants be awarded all other necessary and proper relief.

Dated: April 11, 2014

Respectfully submitted,

/s/ James H. Hanson
James H. Hanson

Attorney for Defendants,
Exel Direct Inc., DPWN Holdings (USA), Inc., and
Deutsche Post Beteiligungen Holdings GmbH

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2014 a copy of the foregoing was filed electronically. Notice of this filing was sent to Todd M. Schneider, Schneider Wallace Cottrell Konecky, LLP at tschneider@schneiderwallace.com; Joshua G. Konecky, Schneider Wallace Cottrell Konecky LLP, at jkonecky@schneiderwallace.com, Guy Burton Wallace, Schneider Wallace Cottrell Konecky LLP, at gwallace@schneiderwallace.com, Robert Ira Spiro, Spiro Law Corporation, at ira@spiromoore.com, Denise L. Diaz, Spiro Law Corporation, at denise@diaz-law.com, Jennifer Connor, Spiro Law Corporation, at jennifer@spirolawcorp.com and Jeffrey D. Homes, Blanchard Law Group, APC, at jeffholmesjh@gmail.com, by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ James H. Hanson
James H. Hanson

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