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all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON, an individual, and  
SAUL CEDILLOS, an individual, on behalf of  
themselves and all others similarly situated,  
  
Plaintiffs,  
  
v.  
  
NEW-INDY TRIPAQ, LLC, a Delaware  
limited liability company; TRIPLE A  
CONTAINERS, INC., a California  
corporation; MCDONALD PACKAGING,  
INC., a surrendered Delaware corporation;  
BRAD MCCROSKEY, an individual;  
MONTEBELLO CONTAINER COMPANY  
LLC, a Delaware limited liability company;  
PROACTIVE PACKAGING AND DISPLAY,  
LLC, a California limited liability company;  
and DOES 1 through 100, inclusive,  
  
Defendants.

**FILED**  
Superior Court of California  
County of Los Angeles  
**03/11/2022**  
Sherri R. Carter, Executive Officer / Clerk of Court  
By:           D. Tamayo           Deputy

CASE NO.: 20STCV17118  
**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**  
  
1. FAILURE TO PAY OVERTIME WAGES;  
2. FAILURE TO PAY MINIMUM WAGES;  
3. FAILURE TO PROVIDE MEAL PERIODS  
OR COMPENSATION IN LIEU THEREOF;  
4. FAILURE TO PROVIDE REST PERIODS  
OR COMPENSATION IN LIEU THEREOF;  
5. FAILURE TO PAY DUE WAGES AT  
TERMINATION;  
6. FAILURE TO ISSUE ACCURATE  
ITEMIZED WAGE STATEMENTS;  
7. FAILURE TO INDEMNIFY;  
8. VIOLATION OF BUSINESS AND  
PROFESSIONS CODE § 17200, *et seq.*;  
9. PENALTIES PER LABOR CODE § 210;  
10. PENALTIES PER LABOR CODE § 226.3  
11. PENALTIES PER LABOR CODE § 558;  
12. PENALTIES PER LABOR CODE § 2699

**DEMAND FOR JURY TRIAL**  
[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff SALVADOR RINCON (“Mr. Rincon”) and Saul Cedillos (“Mr. Cedillos” and together with Mr. Rincon, “Plaintiffs”), on behalf of themselves and all others similarly situated, and alleges as follows:

## **GENERAL ALLEGATIONS**

### **INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on behalf of Plaintiffs and all other current and former similarly situated employees employed by or formerly employed by NEW-INDY TRIPAQ LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“TRIPAQ”), TRIPLE A CONTAINERS, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“TRIPLE A CONTAINERS”), MCDONALD PACKAGING, INC., a surrendered Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“MCDONALD PACKAGING”), BRAD MCCROSKEY (“MR. MCCROSKEY”), an individual, MONTEBELLO CONTAINER COMPANY LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“MONTEBELLO”), and PROACTIVE PACKAGING AND DISPLAY, LLC, a dissolved California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“PROACTIVE” and collectively with TRIPAQ, TRIPLE A CONTAINERS, MCDONALD PACKAGING, MR. MCCROSKEY, MONTEBELLO and DOES 1 through 100, as further defined below, “Defendants”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against TRIPAQ, MONTEBELLO, PROACTIVE, TRIPLE A CONTAINERS, MCDONALD PACKAGING, MR. MCCROSKEY, and any of their respective subsidiaries or affiliated companies within the State of California (TRIPAQ, MONTEBELLO, PROACTIVE, TRIPLE A CONTAINERS, MCDONALD PACKAGING, MR. MCCROSKEY, and, with DOES 1 through 100, as further defined below, “PAGA Defendants”), as a proxy of the Labor and Workforce Development Agency of the State

1 of California (“LWDA”), on behalf of Mr. Cedillos and all other current and former non-exempt  
2 employees of Defendants working within the Civil Penalty Period, as further defined herein, and,  
3 as it pertains to the alleged claims for violations of the Labor Code, including but not limited to,  
4 failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section  
5 226, Labor Code section 246, *et seq.*, Labor Code section 2802, on behalf of all employees of  
6 Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

7         3.         For at least four (4) years prior to the filing of this action and continuing to the  
8 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and other non-  
9 exempt employees in the State of California in violation of California state wage and hour laws as  
10 a result of, without limitation, Plaintiffs and similarly situated employees, at times, working over  
11 eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven  
12 consecutive work days in a work week without being properly compensated for hours worked in  
13 excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours  
14 worked on the seventh consecutive work day in a work week by, among other things, at times,  
15 failing to accurately track and/or pay for all minutes actually worked, including, without  
16 limitation, by detrimentally rounding and/or editing of time entries and by paying some overtime  
17 minutes worked at less than one-and-a-half (1.5) or two (2) times the “regular rate” of pay, as  
18 applicable.

19         4.         For at least four (4) years prior to the filing of this Action and continuing to the  
20 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and other non-  
21 exempt employees in the State of California in violation of California state wage and hour laws as  
22 a result of, among other things, at times, failing to accurately track and/or pay for all minutes  
23 actually worked, including but not limited to, by detrimental rounding and/or editing of time  
24 entries.

25         5.         For at least four (4) years prior to the filing of this Action and continuing to the  
26 present, Defendants have, on occasion, failed to provide Plaintiffs and other similarly situated  
27 employees or former employees within the State of California a thirty (30) minute uninterrupted  
28 meal period for days on which the employees worked more than five (5) hours in a work day and a

1 second thirty (30) minute uninterrupted meal period for days on which employees worked in  
2 excess of ten (10) hours in a work day, and failed, at times, to provide compensation for such  
3 unprovided meal periods as required by California wage and hour laws.

4 6. For at least four (4) years prior to the filing of this action and continuing to the  
5 present, Defendants have, on occasion, failed to provide Plaintiffs and similarly situated  
6 employees or former employees within the State of California rest periods of at least ten (10)  
7 minutes per four (4) hours worked or major fraction thereof and failed, at times, to provide  
8 compensation for such unprovided rest periods as required by California wage and hour laws.

9 7. For at least three (3) years prior to the filing of this action and continuing to the  
10 present, Defendants have failed, on occasion, to pay Plaintiffs and other similarly situated  
11 employees the full amount of their wages owed to them upon termination and/or resignation as  
12 required by Labor Code sections 201 and 202 as a result of their occasional failure to pay wages as  
13 herein mentioned.

14 8. For at least one (1) year prior to the filing of this Action and continuing to the  
15 present, Defendants have, at times, failed to furnish Plaintiffs and similarly situated employees  
16 within the State of California with itemized wage statements that accurately reflect gross wages  
17 earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay  
18 period and the corresponding number of hours worked at each hourly rate; and other such  
19 information as required by Labor Code section 226, subdivision (a). As a result thereof,  
20 Defendants have, at times as herein mentioned, further failed to furnish employees with an  
21 accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

22 9. For at least three (3) years prior to the filing of this Action and continuing to the  
23 present, Defendants have, at times, failed to indemnify Plaintiffs and other similarly situated and  
24 aggrieved employees or former employees within the State of California for expenses incurred,  
25 including without limitation, for the separate laundering of work uniforms and for use of a  
26 personal cell phone, in furtherance of their work duties, in violation of, among other authorities,  
27 Labor Code section 2802.

28 10. Plaintiffs, on behalf of themselves and all other similarly situated employees, bring

1 this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226,  
2 226.7, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section  
3 11010, seeking overtime wages, minimum wages, payment of premium wages for missed meal  
4 and rest periods, penalties, other such provisions of California law, and reasonable attorneys' fees  
5 and costs.

6 11. Plaintiffs, on behalf of themselves and all other similarly situated employees,  
7 pursuant to California Business and Professions Code sections 17200 through 17208, also seeks  
8 (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the  
9 establishment of appropriate and effective means to prevent further violations, as well as all  
10 monies owed but withheld and retained by Defendants to which Plaintiffs and Class Members are  
11 entitled, as well as restitution of amounts owed.

## 12 **PARTIES**

### 13 **A. Plaintiff**

14 12. Plaintiff, SALVADOR RINCON, is a resident of the State of California. At all  
15 relevant times herein, Mr. Rincon is informed and believes, and based thereon alleges that  
16 Defendants employed him as a non-exempt employee, with duties that included, but were not  
17 limited to, assembling wooden components for various packaging. Mr. Rincon began working for  
18 Defendants in approximately February of 2010 and worked through approximately the end May of  
19 2017.

20 13. Plaintiff, SAUL CEDILLOS, is a resident of the State of California. At all relevant  
21 times herein, Mr. Cedillos is informed and believes, and based thereon alleges that Defendants  
22 employed him as a non-exempt employee, with duties that included, but were not limited to,  
23 working on machinery, building repairs, production, organizing, unpacking, and fixing doors. Mr.  
24 Cedillos began working for Defendants in approximately July of 2020 and worked through  
25 approximately the October of 2020.

### 26 **B. Defendants**

27 14. Plaintiffs are informed and believe and based thereon allege that defendant  
28 TRIPAQ is, and at all times relevant hereto was, a limited liability company organized and

1 existing under and by virtue of the laws of the State of Delaware, with its principal place of  
2 business in the County of Los Angeles, State of California.

3 15. Plaintiffs are informed and believe and based thereon allege that defendant TRIPLE  
4 A CONTAINERS is, and at all times relevant hereto was, a corporation organized and existing  
5 under and by virtue of the laws of the State of California with its principal place of business in the  
6 County of Los Angeles, State of California.

7 16. Plaintiffs are informed and believe and based thereon allege that defendant  
8 MCDONALD PACKAGING is, and at all times relevant hereto was, a surrendered corporation  
9 organized and existing under and by virtue of the laws of the State of Delaware which had its  
10 principal place of business in the County of Los Angeles, State of California.

11 17. Plaintiffs are informed and believe and based thereon allege that defendant MR.  
12 MCCROSKEY is, and at all times relevant hereto was, an individual residing in California, as  
13 well as Co-Chair of TRIPAQ, Chief Executive Officer of TRIPLE A CONTAINERS,  
14 MCDONALD PACKAGING, and DOES 1 through 100, as further defined below. Plaintiffs are  
15 further informed and believe and based thereon alleges that MR. MCCROSKEY violated, or  
16 caused to be violated, the above-referenced and below-referenced Labor Code provisions in  
17 violation of Labor Code section 558.1.

18 18. Plaintiffs are informed and believe and based thereon allege that defendant  
19 PROACTIVE is, and at all times relevant hereto was, a limited liability company organized and  
20 existing under and by virtue of the laws of the State of California which did business in the  
21 County of Los Angeles, State of California.

22 19. Plaintiffs are informed and believe and based thereon allege that defendant  
23 MONTEBELLO is, and at all times relevant hereto was, a limited liability company organized and  
24 existing under and by virtue of the laws of the State of Delaware which did business in the County  
25 of Los Angeles, State of California.

26 **ALTER EGO, AGENCY, AND JOINT EMPLOYER ALLEGATIONS**

27 20. Plaintiffs are informed and believe and based thereon allege that all the times  
28 mentioned herein, each of the Defendants was the agent, principal, employee, employer,

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such  
3 agency, employment, joint venture, and conspiracy.

4 21. All of the acts and conduct described herein of each and every corporate defendant  
5 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
6 employers, and the officers and management-level employees of said corporate employers. In  
7 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
8 their said employees, agents, and representatives, and each of them; and upon completion of the  
9 said employees, agents, and representatives, and each of them; and upon completion of the  
10 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
11 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
12 acquiesced, authorized, and approved of each and all of the said acts and conduct of the  
13 aforementioned corporate employees, agents and representatives.

14 22. The true names and capacities, whether individual, corporate, associate, or  
15 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to  
16 Plaintiffs, who therefore sues defendants by such fictitious names under Code of Civil Procedure  
17 section 474. Plaintiffs are informed and believe and based thereon allege that each of the  
18 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts  
19 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true  
20 names and capacities of the defendants designated hereinafter as DOES when such identities  
21 become known. Plaintiffs are informed and believe, and based thereon allege, that each defendant  
22 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a  
23 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each  
24 defendant are legally attributable to the other defendants.

25 23. Plaintiffs are further informed and believe, and based thereon allege, that there  
26 exists such a unity of interest and ownership between TRIPAQ, TRIPLE A CONTAINERS,  
27 MCDONALD PACKAGING, MR. MCCROSKEY, PROACTIVE, MONTEBELLO, and DOES  
28 1 through 100, that the individuality and separateness of defendants have ceased to exist.

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2 24. Plaintiffs are informed and believe, and based thereon alleges that despite the  
3 formation of the purported corporate existence of TRIPAQ, TRIPLE A CONTAINERS,  
4 MCDONALD PACKAGING, PROACTIVE, MONTEBELLO, and DOES 1 through 50, inclusive  
5 (the “Alter Ego Defendants”), they, and each of them, are one and the same with MR.  
6 MCCROSKEY and DOES 51 through 100 (“Individual Defendants”), and each of them, due to,  
7 but not limited to, the following reasons:

8 a. The Alter Ego Defendants are completely dominated and controlled by the  
9 Individual Defendants, or some of them, who personally committed the wrongful and illegal acts  
10 and violated the laws as set forth in this Complaint, and who has hidden and currently hide behind  
11 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some other  
12 wrongful or inequitable purpose;

13 b. The Individual Defendants derive actual and significant monetary benefits by and  
14 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as  
15 the funding source for the Individual Defendants’ own personal expenditures;

16 c. Plaintiffs are informed and believe and thereon allege that the Individual  
17 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to  
18 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a  
19 statute, or accomplishing some other wrongful or inequitable purpose;

20 d. Plaintiffs are informed and believe and thereon allege that the business affairs of  
21 the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned  
22 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the  
23 same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times  
24 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the  
25 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all  
26 relevant times mentioned herein were, the alter egos of the Individual Defendants;

27 e. The recognition of the separate existence of the Individual Defendants and the Alter  
28 Ego Defendants would promote injustice insofar that it would permit defendants to insulate

1 themselves from liability to Plaintiffs for violations of the California Government Code, Civil  
2 Code, Labor Code, and other statutory violations. The corporate existence of these defendants  
3 should thus be disregarded in equity and for the ends of justice because such disregard is necessary  
4 to avoid fraud and injustice to Plaintiffs, and all other similarly situated employees, herein;

5 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual  
6 Defendants (and vice versa), and the fiction of their separate corporate existence must be  
7 disregarded;

8 g. As a result of the aforementioned facts, among others, Plaintiffs are informed and  
9 believe, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants, and  
10 each of them, are joint employers by virtue of a joint enterprise, and that Plaintiffs were an  
11 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiffs performed  
12 services for each and every defendant, and to the mutual benefit of all defendants, and all  
13 defendants shared control of Plaintiffs and all other similarly situated employees, either directly or  
14 indirectly, and in the manner in which defendants' business was and is conducted.

15 25. As such, Defendants, and each of them, are either solely, and/or jointly and  
16 severally, liable for the damages alleged in Plaintiffs' operative complaint.

17 26. Whenever, in this Complaint, reference is made to "Defendants," such allegations  
18 refer to the conduct, acts and/or omissions of defendants TRIPAQ, TRIPLE A CONTAINERS,  
19 MCDONALD PACKAGING, PROACTIVE, MONTEBELLO, MR. MCCROSKEY and DOES 1  
20 through 100 acting individually, jointly and/or severally.

### 21 **JURISDICTION**

22 27. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
23 of Civil Procedure section 410.10.

24 28. Venue is proper in Los Angeles County, California pursuant to Code of Civil  
25 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the  
26 causes of action complained of herein arose; the county in which the employment relationship  
27 began; the county in which performance of the employment contract, or part of it, between  
28 Plaintiffs and Defendants was due to be performed; the county in which the employment contract,

1 or part of it, between Plaintiffs and Defendants was actually performed; the unlawful acts alleged  
2 herein have a direct effect on Plaintiffs and those similarly situated within the county and the State  
3 of California, and because Defendants employ numerous Class Members in Los Angeles County  
4 and the State of California.

5 29. Mr. Cedillos is an “aggrieved employee” under PAGA, as he was employed by the  
6 PAGA Defendants during the applicable statutory period and suffered one or more of the Labor  
7 Code violations set forth herein. Accordingly, Mr. Cedillos seeks to recover civil penalties, as the  
8 term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the  
9 Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*  
10 (“PAGA”) plus reasonable attorneys’ fees and costs, for Mr. Cedillos and all other aggrieved  
11 current and former employees of the PAGA Defendants during the Civil Penalty Period.

12 30. Specifically, Mr. Cedillos seeks to recover PAGA civil penalties through a  
13 representative action permitted by PAGA and the California Supreme Court in, among other  
14 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities,  
15 class certification of the PAGA allegations described herein is not required.

16 31. During the period beginning one (1) year preceding the provision of notice to the  
17 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), the  
18 PAGA Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226,  
19 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1197.5,  
20 1198.5, 2699, 2802, and 2810.5, among others.

21 32. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
22 such as Mr. Cedillos, on behalf of Mr. Cedillos and all other aggrieved current and former  
23 employees within the statutory period, to bring a civil action to recover civil penalties pursuant to  
24 the procedures specified in Labor Code section 2699.3.

25 33. Mr. Cedillos has complied with the procedures for bringing suit specified in Labor  
26 Code section 2699.3. On or around November 17, 2020, and September 28, 2021, Mr. Cedillos  
27 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to the  
28 PAGA Defendants of the specified provisions of the Labor Code alleged to have been violated by

1 it. The LWDA did not provide notice of its intention to investigate the PAGA Defendants' alleged  
2 violations within sixty-five (65) calendar days of the November 17, 2020, postmarked date of the  
3 herein-described notice sent by Mr. Cedillos to the LWDA and the PAGA Defendants and  
4 anticipates that the LWDA will not elect to investigate the alleged violations made in the  
5 Amended September 28, 2021, notice letter.

### 6 **FACTUAL BACKGROUND**

7 34. Plaintiffs and other similarly situated employees have not been paid, during the  
8 relevant liability periods, wages for all time worked, including overtime wages, as a result of,  
9 including but not limited to, Defendants at times failing to pay overtime wages to Plaintiffs and  
10 other non-exempt employees in the State of California in violation of California state wage and  
11 hour laws as a result of, without limitation, Plaintiffs and similarly situated employees  
12 occasionally working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per  
13 week or seven (7) consecutive work days in a work week without being properly compensated for  
14 the hours worked in excess of (8) hours per day, twelve (12) hours per day, forty (40) hours per  
15 week, or seven (7) consecutive work days in a workweek at the proper overtime rate of pay.  
16 Specifically, among other things, Defendants, at times, failing to accurately track and/or pay for all  
17 minutes actually worked, including, without limitation, by detrimentally rounding and/or editing  
18 of time entries and by paying some overtime minutes worked at less than one-and-a-half (1.5) or  
19 two (2) times the "regular rate" of pay, as applicable.

20 35. Plaintiffs and other similarly situated employees, on occasion, have not been paid  
21 during the relevant liability periods, minimum wages for all regular hours worked, as a result of,  
22 among other things, Defendants, at times, failing to accurately track and/or pay for all minutes  
23 actually worked, including but not limited to, detrimental rounding and/or editing of time entries.

24 36. Defendants failed, at times, during the relevant liability periods, to provide  
25 Plaintiffs and similarly situated employees or former employees within the State of California a  
26 thirty (30) minute, uninterrupted, and timely meal period for days on which the employees worked  
27 more than five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and timely meal  
28 period for days on which employees worked in excess of ten (10) hours in a workday; and/or

1 compensation for such unprovided meal periods as required by California wage and hour laws.

2 / / /

3 37. Defendants failed, at times, to provide Plaintiffs and similarly situated employees  
4 or former employees within the State of California rest periods of at least ten (10) minutes per four  
5 (4) hours worked or major fraction thereof and failed, at times, to provide compensation for such  
6 unprovided rest periods as required by California wage and hour laws.

7 38. At the time Plaintiffs' employment and the employment of other former employees  
8 of Defendants ended by termination or resignation, Defendants willfully failed, at times, due to its  
9 occasional failure to pay wages described herein, all wages owed at the time of separation of  
10 employment.

11 39. Defendants have, at times, as herein mentioned, failed to comply with Labor Code  
12 section 226, subdivision (a) by not providing itemized wage statements accurately showing,  
13 including but not limited to, gross wages earned; total hours worked; net wages earned; all  
14 applicable hourly rates in effect during the pay period and the corresponding number of hours  
15 worked at each hourly rate; and other such information as required by Labor Code section 226,  
16 subdivision (a).

17 40. Defendants have failed, at times, to reimburse Plaintiffs and similarly situated  
18 employees, during the relevant liability periods, as required under Labor Code section 2802 for the  
19 costs incurred in separately laundering work uniforms and for personal use of cell phones, in  
20 furtherance of their work duties, in violation of, among other authorities, Labor Code section  
21 2802.

22 41. Plaintiffs and other similarly situated employees or former employees at all times  
23 pertinent hereto were not exempt from the payment of overtime wages, minimum wages, payment  
24 of premium wages for missed rest periods, waiting time penalties, and other such provisions of  
25 California law, and the implementing rules and regulations of the IWC California Wage Orders.

26 **CLASS ACTION ALLEGATIONS**

27 42. Plaintiffs bring this action on behalf of themselves and all others similarly situated,  
28 as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a

1 class of all current and former non-exempt employees of Defendants within the State of California  
2 at any time commencing four (4) years preceding the filing of Plaintiffs' complaint up until the  
3 time that notice of the class action is provided to the class (collectively referred to as "Class  
4 Members").

5 43. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision  
6 (b) to amend or modify the class description with greater specificity or further division into  
7 subclasses or limitation to particular issues.

8 44. This action has been brought and may properly be maintained as a class action  
9 under the provisions of Code of Civil Procedure section 382 because there is a well-defined  
10 community of interest in the litigation and the proposed Class is easily ascertainable.

11 **A. Numerosity**

12 45. The potential Class Members as defined are so numerous that joinder of all the  
13 members of the Class is impracticable. While the precise number of Class Members has not been  
14 determined yet, Plaintiffs are informed and believe that there are at least eighty (80) Class  
15 Members employed by Defendants within the State of California, which may be higher due to  
16 employee turnover. Plaintiffs allege Defendants' employment records would provide information  
17 as to the number and location of all Class Members. Joinder of all members of the proposed Class  
18 is not practicable.

19 **B. Commonality**

20 46. There are questions of law and fact common to Class Members. These common  
21 questions include, but are not limited to:

- 22 (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing  
23 to adequately track, and therefore adequately pay, wages for time worked  
24 by Class Members by either detrimentally rounding and/or editing time  
25 worked by Class Members?
- 26 (b) Did Defendants violate Labor Code sections 510 and 1194 by failing to pay  
27 overtime at the proper rate of pay?
- 28 (c) Are Class Members entitled to liquidated damages under Labor Code

1 section 1194.2 for Defendants' failure to pay minimum wages for all hours  
2 worked?

3 / / /

4 (d) Did Defendants violate Labor Code section 512 by not providing Class  
5 Members with compliant meal periods?

6 (e) Did Defendants violate Labor Code section 226.7 by not providing Class  
7 Members with additional wages for missed or interrupted meal periods?

8 (f) Did Defendants violate Labor Code section 512 by not providing Class  
9 Members with rest periods?

10 (g) Did Defendants violate Labor Code section 226.7 by not providing Class  
11 Members with additional wages for missed rest periods?

12 (h) Did Defendants violate Labor Code sections 201 and 202 by failing to pay  
13 Class Members upon termination or resignation all wages earned?

14 (i) Are Defendants liable to Class Members for penalty wages under Labor  
15 Code section 203?

16 (j) Did Defendants violate Labor Code section 226, subdivision (a) by not  
17 furnishing Class Members with accurate wage statements?

18 (k) Did Defendants violate Labor Code section 2802 by requiring employees to,  
19 on occasion, incur expenses from the separate laundering of their work  
20 uniforms and use of personal cell phones for work purposes?

21 (l) Did Defendants violate the Unfair Competition Law, Business and  
22 Professions Code section 17200, *et seq.*, by their unlawful practices as  
23 alleged herein?

24 (m) Are Class Members entitled to restitution of wages under Business and  
25 Professions Code section 17203?

26 (n) Are Class Members entitled to costs and attorneys' fees?

27 (o) Are Class Members entitled to interest?

28 C. **Typicality**

47. The claims of Plaintiffs herein alleged are typical of those claims which could be alleged by any Class members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged herein.

#### D. Adequacy of Representation

48. Plaintiffs will fairly and adequately represent and protect the interest of Class Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and hour class actions.

### E. Superiority of Class Action

49. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to Class Members predominate over any questions affecting only individual Class Members. Class Members, as further described therein, have been damaged and are entitled to recovery by reason of Defendants' illegal policy and/or practices, including, without limitation, occasionally failing to pay overtime wages and minimum wages; at times failing to provide meal and rest breaks or compensation in lieu thereof; occasionally failing to pay all wages due upon termination and/or resignation; and occasionally providing compliant wage statements.

50. Class action treatment will allow those similarly situated to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

### FIRST CAUSE OF ACTION

**(Failure to Pay Overtime Wages – Against All Defendants)**

51. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

52. At all times relevant to this Complaint, Labor Code section 510 was in effect and

1 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in  
2 one workday and any work in excess of forty hours in any one workweek . . . shall be  
3 compensated at the rate of no less than one and one-half times the regular rate of pay for an  
4 employee.”

5 53. At all times relevant to this Complaint, Labor Code section 510 further provided  
6 that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than  
7 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on  
8 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular  
9 rate of pay.”

10 54. At all times mentioned, Plaintiffs and Class Members, on occasion, worked for  
11 Defendants during shifts that consisted of more than eight (8) hours in a workday, more than  
12 twelve (12) hours in a workday, and/or more than forty (40) hours in a workweek, and/or seven (7)  
13 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as  
14 a result of, including but not limited to, Defendants, occasionally, failing to accurately track and/or  
15 pay for all minutes actually worked, including, without limitation, by detrimentally rounding  
16 and/or editing of time entries and by paying some overtime minutes worked at less than one-and-  
17 a-half (1.5) or two (2) times the “regular rate” of pay, as applicable.

18 55. Accordingly, by occasionally requiring Plaintiffs and Class Members to work  
19 greater than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per  
20 workweek, and/or seven (7) straight workdays without properly compensating overtime wages at  
21 the proper overtime rate of pay, Defendants on occasion willfully violated the provisions of the  
22 Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California  
23 law.

24 56. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have,  
25 at times been deprived of overtime wages in amounts to be determined at trial, and are entitled to  
26 recovery of such amounts, plus interest and penalties thereon, attorneys’ fees and costs, pursuant  
27 to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil  
28 Code section 3287.

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4 **SECOND CAUSE OF ACTION**

5 **(Failure to Pay Minimum Wages – Against All Defendants)**

6 57. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
7 the preceding paragraphs of this Complaint as though fully set forth hereat.

8 58. At all relevant times, Plaintiffs and Class Members were employees of Defendants  
9 covered by Labor Code section 1197 and applicable Wage Orders.

10 59. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and  
11 Class Members were entitled to receive minimum wages for all hours worked or otherwise under  
12 Defendants' control.

13 60. Defendants, at times, failed to pay Plaintiffs and Class Members minimum wages  
14 for all minutes worked as a result of, including but not limited to, Defendants, at times, failing to  
15 accurately track and/or pay for all minutes actually worked, including but not limited to,  
16 detrimental rounding or editing of employee time entries.

17 61. As a result of Defendants' occasional unlawful conduct, Plaintiffs and Class  
18 Members have suffered damages in an amount, subject to proof, to the extent they were not paid  
19 minimum wages for all minutes worked or otherwise due.

20 62. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure  
21 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled  
22 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated  
23 damages, reasonable attorneys' fees and costs of suit.

24 **THIRD CAUSE OF ACTION**

25 **(Failure to Provide Meal Periods – Against All Defendants)**

26 63. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
27 the preceding paragraphs of this Complaint as though fully set forth hereat.

28 64. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer

1 shall employ an employee for a work period of more than five (5) hours without a timely meal  
2 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her  
3 duties. Furthermore, no employer shall employ an employee for a work period of more than ten  
4 (10) hours per day without providing the employee with a second timely meal period of not less  
5 than thirty (30) minutes in which the employee is relieved of all of his or her duties.

6 65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
7 with a meal period as provided in the applicable Wage Order of the Industrial Welfare  
8 Commission, the employer shall pay the employee one (1) additional hour of pay at the  
9 employee's regular rate of compensation for each workday that the meal period is not provided.

10 66. Plaintiffs and Class Members were, at times, during the relevant time period, not  
11 provided with compliant meal periods as contemplated under the law.

12 67. By their occasional failure to provide Plaintiffs and Class Members with the meal  
13 periods contemplated by Labor Code section 512, among other California authorities, and  
14 occasional failure to provide compensation for such unprovided meal periods, as alleged above,  
15 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage  
16 Orders.

17 68. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have at  
18 times suffered damages in an amount, subject to proof, to the extent they were not paid additional  
19 pay owed for missed, untimely, interrupted and/or incomplete meal periods.

20 69. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid  
21 additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to  
22 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under  
23 Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil  
24 Code section 3287.

#### 25 **FOURTH CAUSE OF ACTION**

##### 26 **(Failure to Provide Rest Periods – Against All Defendants)**

27 70. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
28 the preceding paragraphs of this Complaint as though fully set forth hereat.

1 71. California law and applicable Wage Orders require that employers “authorize and  
2 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
3 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-  
4 half (3 ½ ) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
5 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)  
6 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be  
7 provided thirty (30) minutes of paid rest period.

8 72. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
9 with a meal period or rest period as provided in the applicable Wage Order of the Industrial  
10 Welfare Commission, the employer shall pay the employee one additional hour of pay at the  
11 employee’s regular rate of compensation for each work day that the rest period is not provided.

12 73. By their occasional failure to provide Plaintiffs and Class Members with the rest  
13 periods contemplated by California law, and occasional failure to provide compensation for such  
14 unprovided rest periods, as alleged above, Defendants at times willfully violated the provisions of  
15 Labor Code section 226.7 and applicable Wage Orders.

16 74. As a result of Defendants’ unlawful conduct, Plaintiffs and Class Members have at  
17 times suffered damages in an amount, subject to proof, to the extent they were not paid additional  
18 pay owed for missed rest periods.

19 75. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and  
20 Civil Code section 3287, Plaintiffs and Class Members are entitled to recover the full amount of  
21 their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

## 22 **FIFTH CAUSE OF ACTION**

### 23 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

24 76. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
25 the preceding paragraphs of this Complaint as though fully set forth hereat.

26 77. At all relevant times, Plaintiffs and Class Members were employees of Defendants  
27 covered by Labor Code sections 201 and 202.

28 78. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were

entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

79. Plaintiffs are informed and believe, and based thereon alleges, that Defendants, due to the occasional failure to provide wages as mentioned above, at times failed to pay Plaintiffs and Class Members all wages earned and unpaid, including overtime wages and minimum wages, prior to resignation or termination in accordance with Labor Code sections 201 or 202.

80. Defendants' occasional failure to pay Plaintiffs and Class Members all wages earned prior to termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202.

81. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members are entitled to all wages earned prior to termination that Defendants, at times, failed to pay them.

82. Pursuant to Labor Code section 203, Plaintiffs and Class Members are entitled to penalty wages from the date their earned and unpaid wages were due, upon termination, until paid, up to a maximum of thirty (30) days.

83. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have at times suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination.

84. Pursuant to Labor Code sections 203, 218 and 218.5, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover penalty wages under Labor Code section 203, reasonable attorneys' fees on their unpaid wages, and costs of suit.

85. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections

1 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
2 waiting time penalties, interest, and other costs of suit on the waiting time penalties, as well.

3 / / /

4 **SIXTH CAUSE OF ACTION**

5 **(Failure to Issue Accurate Itemized Wage Statements – Against All Defendants)**

6 86. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
7 the preceding paragraphs of this Complaint as though fully set forth hereat.

8 87. At all relevant times, Plaintiffs and Class Members were employees of Defendants  
9 covered by Labor Code section 226.

10 88. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members  
11 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate  
12 itemized statement that accurately reflects, among other things, gross wages earned; total hours  
13 worked; net wages earned; and all applicable hourly rates in effect during the pay period and the  
14 corresponding number of hours worked at each hourly rate.

15 89. Plaintiffs are informed and believe, and based thereon allege, that at all relevant  
16 times, Defendants, due to the occasional failure to pay due wages for the reasons described herein,  
17 also failed, at times, to issue wage statements that accurately set out amounts due to, among other  
18 things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates  
19 in effect during the pay period and the corresponding number of hours worked at each hourly rate.

20 90. Thus, Defendants, as herein mentioned, occasionally failed to provide Plaintiffs and  
21 Class Members accurate itemized wage statements in accordance with Labor Code section 226,  
22 subdivision (a).

23 91. Defendants' failure to provide Plaintiffs and Class Members with accurate wage  
24 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiffs  
25 and the other members of the Wage Statement Class with accurate wage statements, but willfully  
26 provided wage statements that Defendants knew were not accurate.

27 92. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have  
28 suffered injury. The absence of accurate information on their wage statements has delayed timely

1 challenge to Defendants' unlawful pay practices; requires discovery and mathematical  
2 computations to determine the amount of wages owed; causes difficulty and expense in attempting  
3 to reconstruct time and pay records; and led to submission of inaccurate information about wages  
4 and amounts deducted from wages to state and federal governmental agencies.

5 93. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members  
6 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
7 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
8 pay period, not to exceed an aggregate \$4,000.00 per employee.

9 94. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
10 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to  
11 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
12 attorneys' fees, and costs of suit.

### 13 **SEVENTH CAUSE OF FACTION**

#### 14 **(Failure to Indemnify – Against All Defendants)**

15 95. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
16 the preceding paragraphs as though fully set forth hereat.

17 96. At all relevant times, Plaintiffs and Class Members were employees or former  
18 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

19 97. Labor Code section 2802, subdivision (a) provides that "an employer shall  
20 indemnify his or her employee for all necessary expenditures or losses incurred by the employee  
21 in direct consequence of the discharge of his or her duties . . ."

22 98. For three (3) years prior to the filing of the Complaint in this Action through the  
23 present, Defendants required Plaintiffs and Class Members, or some of them, to incur necessary  
24 expenditures or losses in direct consequence of the discharge of their duties or at the obedience to  
25 the directions of Defendants that included, without limitation: the separate laundering of work  
26 uniforms and for costs incurred using personal cellular phones for work-related purposes.

27 99. During that time period, Plaintiffs are informed and believe, and based thereon  
28 allege that Defendants failed and refused, and still fail and refuse to reimburse Plaintiffs and Class

Members for those losses and/or expenditures.

100. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount subject to proof, to the extent they were not reimbursed for the herein-described losses and/or expenditures.

101. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

### **EIGHTH CAUSE OF ACTION**

#### **(Unfair Competition – Against All Defendants)**

102. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

103. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

104. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class Members have suffered injury in fact and lost money or property. Plaintiffs and Class Members have been, on occasion, deprived of overtime compensation; minimum wage compensation; provision of meal breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof; provision of all wages upon termination or resignation; and provision of accurate, itemized wage statements, among other things.

105. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class Members are entitled to restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiffs and Class Members is necessary to prevent Defendants from

1 becoming unjustly enriched by their failure to comply with the Labor Code.

2 106. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil  
3 Procedure section 1032 and interest under Civil Code section 3287.

4 **NINTH CAUSE OF ACTION**

5 **(Civil Penalties Under Labor Code § 210 – Against the PAGA Defendants)**

6 107. Mr. Cedillos re-alleges each and every allegation set forth in the preceding  
7 paragraphs and incorporates each by reference as though fully set forth hereat.

8 108. At all relevant times herein, Labor Code section 204, requires and required that:  
9 “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid  
10 for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed, and labor  
11 performed between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, shall be paid for  
12 between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

13 109. At all relevant times herein, Labor Code section 210, subdivision (a) states and  
14 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in  
15 this article, every person who fails to pay the wages of each employee as provided in Sections  
16 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)  
17 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and  
18 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars  
19 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

20 110. At all relevant times herein, the PAGA Defendants have had a consistent policy or  
21 practice of failing to pay Mr. Cedillos and/or Aggrieved Employees during their employment on a  
22 timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Mr.  
23 Cedillos and other Aggrieved Employees are entitled to recover civil penalties for the PAGA  
24 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100)  
25 for each Aggrieved Employees for each initial violation per employee, and two hundred dollars  
26 (\$200) for each Aggrieved Employees for each subsequent violation in connection with each  
27 payment that was made in violation of Labor Code section 204.

28 **TENTH CAUSE OF ACTION**

**(Civil Penalties Under Labor Code § 226.3 – Against PAGA Defendants)**

111. Mr. Cedillos re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

112. The PAGA Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Class Members with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer and/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and other such information as required by Labor Code section 226, subdivision (a).

113. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226."

114. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in this section are in addition to any other penalty provided by law."

115. Mr. Cedillos is informed and believes, and based thereon alleges, that the PAGA Defendants had and have a policy or practice of failing to furnish Aggrieved Employees, including, without limitation, Mr. Cedillos and other Aggrieved Employees, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate in effect during the pay period; the legal name of the employer; and other such information as required by Labor Code section 226, subdivision (a).

116. Pursuant to Labor Code section 226.3, Mr. Cedillos and other Aggrieved Employees are entitled to recover civil penalties for the PAGA Defendants' violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each

1 Aggrieved Employees per pay period for the initial violation, and one thousand dollars (\$1,000)  
2 for each Aggrieved Employees per pay period for each subsequent violation.

3 / / /

4 **ELEVENTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 558 – Against PAGA Defendants)**

6 117. Mr. Cedillos re-alleges each and every allegation set forth in the preceding  
7 paragraphs and incorporates each by reference as though fully set forth hereat.

8 118. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other  
9 person acting on behalf of an employer who violates, or causes to be violated . . . any provision  
10 regulating hours and days of work in any of the Industrial Welfare Commission” shall be subject  
11 to a civil penalty as follows:

12 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and  
13 for each pay period for which the employee was underpaid in addition to an  
14 amount sufficient to recover underpaid wages;

15 (2) For each subsequent violation, one hundred dollars (\$100) for each  
16 underpaid employee for each pay period for which the employee was  
17 underpaid in addition to an amount sufficient to recover underpaid wages;

18 (3) Wages recovered pursuant to this section shall be paid to the affected  
19 employee.”

20 119. Mr. Cedillos is informed and believes, and based thereon alleges, that the PAGA  
21 Defendants, and each of them, violated, or caused to be violated, the Labor Code sections  
22 described herein, including causing Mr. Cedillos and other Aggrieved Employees not to: be paid  
23 overtime wages and minimum wages; receive meal and rest periods or compensation in lieu  
24 thereof; be paid timely wages during their employment and after their employment separation;  
25 and/or be paid out all paid time off and/or vacation wages owed at the proper rate of pay.

26 120. As a direct and proximate result of the herein-described Labor Code violations,  
27 pursuant to Labor Code section 558, Mr. Cedillos and other Aggrieved Employees are entitled to  
28 recover civil penalties for the PAGA Defendants’ herein-described Labor Code violations in the

1 amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation,  
2 and one hundred dollars (\$100) for each Class Member per pay period for each subsequent  
3 violation.

4 **TWELFTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 1197.1 – Against PAGA Defendants)**

6 121. Mr. Cedillos re-alleges each and every allegation set forth in the preceding  
7 paragraphs and incorporates each by reference as though fully set forth hereat.

8 122. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other  
9 person acting either individually or as an officer, agent, or employee of another person, who pays  
10 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or  
11 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,  
12 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to  
13 Section 203 as follows:

14 (1) For any initial violation that is intentionally committed, one hundred dollars  
15 (\$100) for each underpaid employee for each pay period for which the  
16 employee is underpaid. This amount shall be in addition to an amount  
17 sufficient to recover underpaid wages, liquidated damages pursuant to  
18 Section 1194.2, and any applicable penalties imposed pursuant to Section  
19 203.

20 (2) For each subsequent violation for the same specific offense, two hundred  
21 fifty dollars (\$250) for each underpaid employee for each pay period for  
22 which the employee is underpaid regardless of whether the initial violation is  
23 intentionally committed. This amount shall be in addition to an amount  
24 sufficient to recover underpaid wages, liquidated damages pursuant to  
25 Section 1194.2, and any applicable penalties imposed pursuant to Section  
26 203.

27 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant  
28 to Section 203, recovered pursuant to this section shall be paid to the

1 affected employee.”

2 123. Mr. Cedillos is informed and believes, and based thereon alleges, that the PAGA  
3 Defendants caused Mr. Cedillos and Aggrieved Employees not to be paid minimum wages as a  
4 result of the PAGA Defendants, without limitation, routinely failing to pay Mr. Cedillos or other  
5 Aggrieved Employees wages for all hours worked or otherwise under the PAGA Defendants’  
6 control due to, without limitation, routinely failing to accurately track and/or pay for all hours  
7 actually worked; detrimental rounding or manipulation of time entries; paying straight pay instead  
8 of overtime or otherwise failing to pay overtime hours at the proper overtime rate of pay;  
9 engaging, suffering, or permitting employees to work off the clock.

10 124. As a direct and proximate result of the herein-described Labor Code violations,  
11 pursuant to Labor Code section 1197.1, Mr. Cedillos and other Aggrieved Employees are entitled  
12 to recover civil penalties for the PAGA Defendants’ herein-described Labor Code violations in the  
13 amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial  
14 violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employees per pay period  
15 for each subsequent violation.

16 **THIRTEENTH CAUSE OF ACTION**

17 **(Civil Penalties Under Labor Code § 2699 – Against PAGA Defendants)**

18 125. Mr. Cedillos re-alleges each and every allegation set forth in the preceding  
19 paragraphs and incorporates each by reference as though fully set forth hereat.

20 126. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other  
21 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed  
22 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or  
23 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil  
24 action brought by an aggrieved employee on behalf of himself or herself and other current or  
25 former employees pursuant to the procedures specified in Labor Code section 2699.3.

26 127. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the  
27 Labor Code except those for which a civil penalty is specifically provided, the established civil  
28 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the

1 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each  
2 Class Member per pay period for the initial violation and two hundred dollars (\$200) for each  
3 Class Member per pay period for each subsequent violation.

4 128. Mr. Cedillos is informed and believes and based thereon alleges that the PAGA  
5 Defendants, and each of them, violated the Labor Code sections described herein, including,  
6 without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and  
7 rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay  
8 timely wages during employment and after employment separation; provide employees the  
9 opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in  
10 furtherance of their work duties; provide notice as required under Labor Code section 2810.5;  
11 provide the proper accrual and use of paid sick leave; paying employees all owed paid time off  
12 and vacation time owed by separation at the proper rate of pay; and failed to timely pay wages  
13 during employment, entitling Plaintiffs and other Aggrieved Employees to civil penalties for each  
14 of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision  
15 (f).

16 Moreover, Mr. Cedillos and other Aggrieved Employees within the State of California  
17 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in  
18 connection with their herein-described claims for civil penalties.

19 **DEMAND FOR JURY TRIAL**

20 129. Plaintiffs demand a trial by jury on all causes of action contained herein.

21 **PRAYER**

22 WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs prays  
23 for judgment against Defendants as follows:

- 24 A. An order certifying this case as a Class Action;  
25 B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs'  
26 counsel as class counsel;  
27 C. Damages for all wages earned and owed, including minimum and overtime wages  
28 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;

- 1 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 2 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 3 among other Labor Code sections, 512, 558.1 and 226.7;
- 4 F. Waiting time penalties under Labor Code sections 203 and 558.1;
- 5 G. Penalties for inaccurate wage statements under Labor Code section 226,
- 6 subdivision (e);
- 7 H. Reimbursement for costs incurred in furtherance of work duties under Labor Code
- 8 section 2802;
- 9 I. Preliminary and permanent injunctions prohibiting Defendants from further
- 10 violating the California Labor Code and requiring the establishment of appropriate
- 11 and effective means to prevent future violations;
- 12 J. Restitution of wages and benefits due which were acquired by means of any unfair
- 13 business practice, according to proof;
- 14 K. An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 15 1197.1, and 2699;
- 16 L. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 17 210, 226.3, 558, 1197.1, and 2699;
- 18 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 19 N. For attorneys' fees in prosecuting this action;
- 20 O. For costs of suit incurred herein; and
- 21 P. For such other and further relief as the Court deems just and proper.

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23 Dated: March 11, 2022

BIBIYAN LAW GROUP, P.C.

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25 BY: 

DIEGO AVILES

26 DAVID D. BIBIYAN

27 Attorneys for Plaintiff SALVADOR RINCON and  
28 SAUL CEDILLOS, on behalf of themselves and all  
others similarly situated.

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On March 11, 2022, I caused a true and correct copy of the foregoing documents(s) described as **FIRSTAMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere:

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**Counsel for Defendant New-Indy Tripaq, LLC**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 11, 2022 at Beverly Hills, California.



Emanuel Munguia