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Superior Court of California
County of Los Angeles

03/05/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

Attorneys for Plaintiff MIGUEL ANGEL GALVAN,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MIGUEL ANGEL GALVAN, on behalf
of himself and all others similarly situated,

Plaintiffs,

v.

NEW-INDY TRIPAQ, LLC, a Delaware
limited liability company; MONTEBELLO
CONTAINER COMPANY, LLC, a
Delaware limited liability company; and
DOES 1 to 10, inclusive,

Defendants.

CLASS ACTION

Case No. 23STCV31148

FIRST AMENDED COMPLAINT FOR:

- 1. FAILURE TO PAY ALL WAGES;**
- 2. FAILURE TO PROVIDE ALL MEAL PERIODS;**
- 3. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS;**
- 4. FAILURE TO PAY PREMIUM WAGES AT THE LEGAL PAY RATE;**
- 5. FAILURE TO FULLY REIMBURSE WORK EXPENSES;**
- 6. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;**
- 7. VIOLATIONS OF LABOR CODE §§ 201-202;**
- 8. PENALTIES UNDER LABOR CODE § 2699; and**
- 9. UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Action filed: December 21, 2023

Trial date: None Set

Plaintiff Miguel Angel Galvan, an individual on behalf of himself and all others similarly situated (collectively referred to as "Plaintiffs"), hereby files this First Amended Complaint against Defendants New-Indy TriPAQ, LLC, Montebello Container Company, LLC and Does 1 to 10 (collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the

basis of that information and belief, allege as follows:

I.

INTRODUCTION

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code, California Business and Professions Code, the applicable Wage Orders issued by the California Industrial Welfare Commission (the "IWC Wage Orders") and related common law principles.

2. Plaintiffs' action seeks monetary damages including full restitution from Defendants as a result of Defendants' unlawful, fraudulent, and/or unfair business practices.

3. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four years preceding the filing of the original Complaint herein, plus 179 days under Cal. Rules of Court, Appendix I, Emergency Rule No. 9, up to and through the time of trial for this matter although this should not automatically be considered the statute of limitations for any cause of action herein.

4. For introductory and general information only (and not to be considered a proposed class definition), the relevant individuals in this action are Defendants' non-exempt employees who were subjected to Defendants' policies and practices as described herein. Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

SUMMARY OF CLAIMS

5. With regard to Defendants' non-exempt employees, Defendants have:

- a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;
- b. Failed to provide all legally-required meal periods;
- c. Failed to authorize and permit all paid legally-required rest periods;
- d. Failed to pay meal and/or rest period penalty premium wages at the legal pay rate;
- e. Failed to reimburse for all work-related expenses;

- f. Failed to timely furnish accurate itemized wage statements;
- g. Violated Labor Code §§ 201-202;
- h. Incurred penalties under Labor Code §§ 2698, et seq.; and
- i. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF MIGUEL ANGEL GALVAN

6. Plaintiff Miguel Angel Galvan is an individual over the age of 18 and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff Miguel Angel Galvan worked for Defendants as a non-exempt employee from approximately August 30, 2022, to October 5, 2023, including in Cerritos, California, which is in Los Angeles County, California.

8. Plaintiff Miguel Angel Galvan seeks recovery herein from Defendants because with regard to Plaintiff Miguel Angel Galvan, while acting for Defendants in his capacity as a non-exempt employee, Defendants have:

- a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;
- b. Failed to provide all legally-required meal periods;
- c. Failed to authorize and permit all paid legally-required rest periods;
- d. Failed to pay meal and/or rest period penalty premium wages at the legal pay rate;
- e. Failed to reimburse for all work-related expenses;
- f. Failed to timely furnish accurate itemized wage statements;
- g. Violated Labor Code §§ 201-202;
- h. Incurred penalties under Labor Code §§ 2698, et seq.; and
- i. Conducted unfair business practices.

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1 DEFENDANT NEW-INDY TRIPAQ, LLC

2 9. Defendant New-Indy TriPAQ, LLC, is now and/or at all times mentioned in this
3 Complaint was a Delaware limited liability company and the owner and operator of an industry,
4 business, and/or facilities licensed to do business and actually doing business in the State of
5 California.

6 DEFENDANT MONTEBELLO CONTAINER COMPANY, LLC

7 10. Defendant Montebello Container Company, LLC, is now and/or at all times
8 mentioned in this Complaint was a Delaware limited liability company and the owner and
9 operator of an industry, business, and/or facilities licensed to do business and actually doing
10 business in the State of California.

11 ALTER EGO BETWEEN NEW-INDY TRIPAQ, LLC, AND MONTEBELLO CONTAINER
12 COMPANY, LLC

13 11. Plaintiff is informed and believes and, on that basis, alleges that there exists, and
14 at all relevant times there has existed, a unity of interest and ownership between Defendants
15 New-Indy TriPAQ, LLC, and Montebello Container Company, LLC, such that any separateness
16 and individuality between them have ceased. Adherence to the fiction of Defendants New-Indy
17 TriPAQ, LLC, and Montebello Container Company, LLC, being separate business entities would
18 permit abuse of any corporate privilege, sanction fraud, and promote injustice.

19 DOES 1 TO 10, INCLUSIVE

20 12. Does 1 to 10, inclusive, are now and/or at all times mentioned in this Complaint
21 were licensed to do business and/or actually doing business in California.

22 13. Plaintiffs do not know the true names or capacities, whether individual, partner or
23 corporate, of Does 1 to 10, inclusive and for that reason, Does 1 to 10 are sued under such
24 fictitious names under California Code of Civil Procedure § 474.

25 14. Plaintiffs will seek leave of court to amend this Complaint to allege such names
26 and capacities as soon as they are ascertained.

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1 ALL DEFENDANTS

2 15. Defendants, and each of them, are now and/or at all times mentioned in this
3 Complaint were in some manner legally responsible for the events, happenings, and circumstances
4 alleged in this Complaint.

5 16. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
6 practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

7 17. Defendants, and each of them, are now and/or at all times mentioned in this
8 Complaint were the agents, servants, and/or employees of some or all other Defendants, and
9 vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all
10 times mentioned in this Complaint were acting within the course and scope of that agency,
11 servitude, and/or employment.

12 18. Defendants, and each of them, are now and/or at all times mentioned in this
13 Complaint were members of and/or engaged in a joint venture, partnership, and common
14 enterprise, and were acting within the course and scope and in pursuance of said joint venture,
15 partnership, and common enterprise.

16 19. Defendants, and each of them, at all times mentioned in this Complaint concurred
17 and contributed to the various acts and omissions of each and every one of the other Defendants
18 in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

19 20. Defendants, and each of them, at all times mentioned in this Complaint approved
20 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
21 this Complaint.

22 21. Defendants, and each of them, at all times mentioned in this Complaint aided and
23 abetted the acts and omissions of each and every one of the other Defendants thereby
24 proximately causing the damages alleged in this Complaint.

25 **III.**

26 **JURISDICTION AND VENUE**

27 22. The California Superior Court has jurisdiction in this matter due to Defendants'
28 aforementioned violations of California statutory law and/or related common law principles.

- 1 c. All California citizens employed by Defendants as non-exempt employees (as
2 defined, supra) during the appropriate time period who were subjected to
3 Defendants' policies and practices regarding paid rest periods as specifically
4 described herein (hereinafter, the "Rest Period Class");
- 5 d. All California citizens employed by Defendants as non-exempt employees (as
6 defined, supra) during the appropriate time period who were subjected to
7 Defendants' policies and practices regarding the payment of meal and/or rest
8 period penalty premium wages as specifically described herein (hereinafter,
9 the "Premium Rate Class");
- 10 e. All California citizens employed by Defendants as non-exempt employees (as
11 defined, supra) during the appropriate time period who were subjected to
12 Defendants' policies and practices regarding business expense reimbursement
13 as specifically described herein (hereinafter, the "Reimbursements Class");
- 14 f. All California citizens employed by Defendants as non-exempt employees (as
15 defined, supra) during the appropriate time period who were derivatively
16 subjected to Defendants' policies and practices regarding itemized wage
17 statements as specifically described herein (hereinafter, the "Derivative Wage
18 Statement Class");
- 19 g. All formerly-employed California citizens employed by Defendants as non-
20 exempt employees (as defined, supra) during the appropriate time period who
21 were derivatively subjected to Defendants' policies and practices regarding
22 Labor Code § 203 and the payment of final wages as specifically described
23 herein (hereinafter, the "Derivative LC 203 Class"); and
- 24 h. All California citizens employed by Defendants as non-exempt employees (as
25 defined, supra) during the appropriate time period regarding whom
26 Defendants have engaged in unlawful, unfair and/or fraudulent business acts
27 or practices prohibited by Business & Professions Code §§ 17200, et seq. as
28 specifically described herein (hereinafter, the "17200 Class").

1 28. The Wage Class, Meal Period Class, Rest Period Class, Premium Rate Class,
2 Reimbursements Class, Derivative Wage Statement Class, Derivative LC 203 class, and the
3 17200 Class hereinafter collectively referred to as the “Classes.”

4 29. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
5 necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a
6 class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

7 30. Numerosity (Code of Civil Procedure § 382):

- 8 a. The potential quantity of members of the Classes as defined is so numerous
9 that joinder of all members is unfeasible and impractical;
- 10 b. The disposition of the claims of the members of the Classes through this class
11 action will benefit both the parties and this Court;
- 12 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
13 however, it is estimated that the membership of the Classes numbers greater
14 than 100 individuals; and
- 15 d. The quantity and identity of such membership is readily ascertainable via
16 inspection of Defendants’ records.

17 31. Superiority (Code of Civil Procedure § 382): The nature of this action and the
18 nature of the laws available to Plaintiffs make the use of the class action format particularly
19 efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein,
20 as follows:

- 21 a. California has a public policy that encourages the use of the class action
22 device;
- 23 b. By establishing a technique whereby the claims of many individuals can be
24 resolved at the same time, the class suit both eliminates the possibility of
25 repetitious litigation and provides small claimants with a method of obtaining
26 redress for claims which would otherwise be too small to warrant individual
27 litigation;

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- 1 c. This case involves large corporate Defendants and a large number of
2 individual Class members with many relatively small claims and common
3 issues of law and fact;
- 4 d. If each individual member of the Classes was required to file an individual
5 lawsuit, the large corporate Defendants would necessarily gain an
6 unconscionable advantage because Defendants would be able to exploit and
7 overwhelm the limited resources of each individual member of the Classes
8 with Defendants' vastly superior financial and legal resources;
- 9 e. Requiring each individual member of the Classes to pursue an individual
10 remedy would also discourage the assertion of lawful claims by the members
11 of the Classes who would be disinclined to pursue an action against
12 Defendants because of an appreciable and justifiable fear of retaliation and
13 permanent damage to their lives, careers, and well-being;
- 14 f. Proof of a common business practice or factual pattern, of which the members
15 of the Classes experienced, is representative of the Classes herein and will
16 establish the right of each of the members of the Classes to recover on the
17 causes of action alleged herein;
- 18 g. Absent class treatment, the prosecution of separate actions by the individual
19 members of the Classes, even if possible, would likely create:
- 20 i) a substantial risk of each individual plaintiff presenting in separate,
21 duplicative proceedings the same or essentially similar arguments and
22 evidence, including expert testimony;
- 23 ii) a multiplicity of trials conducted at enormous expense to both the
24 judicial system and the litigants;
- 25 iii) inconsistent or varying verdicts or adjudications with respect to the
26 individual members of the Classes against Defendants;
- 27 iv) potentially incompatible standards of conduct for Defendants; and
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1 v) potentially incompatible legal determinations with respect to individual
2 members of the Classes which would, as a practical matter, be
3 dispositive of the interest of the other members of the Classes who are
4 not parties to the adjudications or which would substantially impair or
5 impede the ability of the members of the Classes to protect their
6 interests.

7 h. The claims of the individual members of the Classes are not sufficiently large
8 to warrant vigorous individual prosecution considering all of the concomitant
9 costs and expenses attendant thereto;

10 i. Courts seeking to preserve efficiency and other benefits of class actions
11 routinely fashion methods to manage any individual questions; and

12 j. The Supreme Court of California urges trial courts, which have an obligation
13 to consider the use of innovative procedural tools to certify a manageable
14 class, to be procedurally innovative in managing class actions.

15 32. Well-defined Community of Interest: Plaintiffs also meet the established
16 standards for class certification, as follows:

17 a. Typicality: The claims of Plaintiff Miguel Angel Galvan are typical of the
18 claims of all members of the Classes he seeks to represent because all
19 members of the Classes sustained injuries and damages arising out of
20 Defendants' common course of conduct in violation of law and the injuries
21 and damages of all members of the Classes were caused by Defendants'
22 wrongful conduct in violation of law, as alleged herein.

23 b. Adequacy: Plaintiff Miguel Angel Galvan:

24 i) is an adequate representative of the Classes he seeks to represent;

25 ii) will fairly protect the interests of the members of the Classes;

26 iii) has no interests antagonistic to the members of the Classes; and

27 iv) will vigorously pursue this suit via attorneys who are competent, skilled
28 and experienced in litigating matters of this type.

- 1 c. Predominant Common Questions of Law or Fact: There are common
2 questions of law and/or fact as to the members of the Classes which
3 predominate over questions affecting only individual members of the Classes,
4 including, without limitation:
- 5 i) Whether Defendants paid the legal and appropriate straight time pay,
6 minimum wage pay and/or overtime pay for all work hours to the
7 members of the Wage Class;
 - 8 ii) Whether Defendants failed and continue to fail to provide legally-
9 required meal periods to the members of the Meal Period Class in
10 violation of the Labor Code and Section 11 of the IWC Wage Orders;
 - 11 iii) Whether Defendants failed and continue to fail to authorize and permit
12 paid legally-required rest periods to the members of the Rest Period
13 Class in violation of the Labor Code and Section 12 of the IWC Wage
14 Orders;
 - 15 iv) Whether Defendants paid the legal and appropriate pay rate for meal
16 and/or rest period penalty premium wages to the members of the
17 Premium Rate Class;
 - 18 v) Whether Defendants failed to fully reimburse for all work-related
19 expenses incurred by the members of the Reimbursements Class;
 - 20 vi) Whether Defendants derivatively failed to timely furnish accurate,
21 itemized and legal wage statements to the members of the Derivative
22 Wage Statement Class;
 - 23 vii) Whether Defendants are derivatively liable under Labor Code § 203 to
24 the members of the Derivative LC 203 Class;
 - 25 viii) Whether Defendants' conduct constitutes unfair competition within the
26 meaning of Business & Professions Code §§ 17200, et seq.;
 - 27 ix) Whether the members of the Classes are entitled to compensatory
28 damages, and if so, the means of measuring such damages;

1 employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2018,
2 to December 31, 2018, inclusive, - eleven dollars (\$11) per hour.” Under Labor Code §
3 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum wage
4 shall be as follows: “From January 1, 2019, to December 31, 2019, inclusive, - twelve dollars
5 (\$12) per hour.” Under Labor Code § 1182.12(b)(1)(D), for any employer who employs 26 or
6 more employees, the minimum wage shall be as follows: “From January 1, 2020, to December
7 31, 2020, inclusive, - thirteen dollars (\$13) per hour.” Under Labor Code § 1182.12(b)(1)(E), for
8 any employer who employs 26 or more employees, the minimum wage shall be as follows:
9 “From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars (\$14) per hour.”
10 Finally, under Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more
11 employees, the minimum wage shall be as follows: “From January 1, 2022, and until adjusted by
12 subdivision (c) - fifteen dollars (\$15) per hour.”

13 38. Labor Code § 1194(a) states, “Notwithstanding any agreement to work for a
14 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid
16 balance of the full amount of this minimum wage or overtime compensation, including interest
17 thereon, reasonable attorney’s fees, and costs of suit.”

18 39. Further, under Labor Code § 1197, payment of less than the minimum wage fixed
19 by the Labor Commission is unlawful.

20 40. Under Labor Code § 1198, it is unlawful to employ persons for longer than the
21 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
22 Wage Order(s).

23 41. Under the IWC Wage Order(s), Defendants are required to pay the members of
24 the Wage Class for all hours worked, meaning the time during which an employee is subject to
25 the control of an employer, including all the time the employee is suffered or permitted to work,
26 whether or not required to do so.

27 42. Defendants, as a matter of established company policy and procedure, at each and
28 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 1 a. Administered a uniform company policy and practice as to the pay policies
2 regarding the members of the Wage Class;
- 3 b. Required the members of the Wage Class to spend unpaid time under
4 Defendants' control for work-related tasks without compensation, including
5 but not limited to:
- 6 i) Requiring performance of work-related tasks at the beginning of their
7 shifts before clocking in and/or at the end of their shifts after clocking
8 out;
- 9 ii) Reducing or manipulating the recorded hours that employees have
10 worked by time-shaving; and/or
- 11 iii) Requiring them to wait in a line of employees before being able to clock
12 in and/or out of their meal periods;
- 13 c. And as such, Defendants suffered, permitted, and/or required the members of
14 the Wage Class to work without paying for all time they were under
15 Defendants' control.

16 43. Because Defendants required the members of the Wage Class to remain under
17 Defendants' control without paying therefore, this resulted in the members of the Wage Class
18 earning less than the legal minimum wage in the State of California.

19 44. Defendants' pattern, practice, and uniform administration of corporate policy
20 regarding illegal employee compensation as described herein is unlawful and creates an
21 entitlement, under Labor Code § 218, to recovery by Plaintiffs and the members of the Wage
22 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
23 appropriate rate.

24 45. Further, Defendants' pattern and practice in uniform administration of corporate
25 policy regarding Defendants' failure to pay the legal minimum wage to the members of the
26 Wage Class as described herein is unlawful and creates entitlement, under Labor Code § 1194(a),
27 to recovery by the members of the Wage Class, in a civil action, for the unpaid balance of the
28 full amount of the unpaid minimum wages owed, calculated as the difference between the

1 straight time compensation paid and the applicable minimum wage, including interest thereon.

2 46. Under Labor Code § 1194.2(a) (which provides that in any action under Labor
3 Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the
4 Wage Class seek recovery of liquidated damages on the straight-time portion of uncompensated
5 hours of work (not including the overtime portion thereof) in an amount equal to the wages
6 unlawfully unpaid and interest thereon.

7 47. That calculation of individual damages for the members of the Wage Class may at
8 some point be required does not foreclose the possibility of taking common evidence on
9 questions regarding their entitlement to overtime compensation.

10 48. Under Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287, the members of
11 the Wage Class seek recovery of pre-judgment interest on all amounts recovered herein.

12 49. Under Labor Code §§ 218.5 and/or 1194, the members of the Wage Class request
13 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ALL MEAL PERIODS**

16 **(On Behalf of the Meal Period Class)**

17 **(Against All Defendants)**

18 50. Plaintiffs incorporate by reference and reallege each and every one of the
19 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
20 forth herein.

21 51. Labor Code § 226.7(b) provides, "An employer shall not require an employee to
22 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
23 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
24 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

25 52. Labor Code § 512 provides, "An employer may not employ an employee for a
26 work period of more than five hours per day without providing the employee with a meal period
27 of not less than 30 minutes, except that if the total work period per day of the employee is no
28 more than six hours, the meal period may be waived by mutual consent of both the employer and

1 employee. An employer may not employ an employee for a work period of more than 10 hours
2 per day without providing the employee with a second meal period of not less than 30 minutes,
3 except that if the total hours worked is no more than 12 hours, the second meal period may be
4 waived by mutual consent of the employer and the employee only if the first meal period was not
5 waived.”

6 53. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
7 amend working condition orders with respect to break periods, meal periods, and days of rest for
8 any workers in California consistent with the health and welfare of those workers.”

9 54. Section 11(C) of the IWC Wage Orders provides that “Unless the employee is
10 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
11 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
12 only when the nature of the work prevents an employee from being relieved of all duty and when
13 by written agreement between the parties an on-the-job paid meal period is agreed to. The
14 written agreement shall state that the employee may, in writing, revoke the agreement at any
15 time.”

16 55. Section 11(D) of the IWC Wage Order(s) provides “If an employer fails to
17 provide an employee a meal period in accordance with the applicable provisions of this order, the
18 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
19 compensation for each workday that the meal period is not provided.”

20 56. On one or more occasions, the members of the Meal Period Class worked over
21 five hours per shift and therefore were entitled to an uninterrupted meal period of not less than
22 30 minutes prior to exceeding five hours of employment.

23 57. Further, on one or more occasions, some members of the Meal Period Class
24 worked over 10 hours per shift and therefore were entitled to an uninterrupted second meal
25 period of not less than 30 minutes prior to exceeding 10 hours of employment.

26 58. The members of the Meal Period Class did not validly or legally waive their meal
27 periods, by mutual consent with Defendants or otherwise.

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1 59. The members of the Meal Period Class did not enter into any written agreement
2 with Defendants agreeing to an on-the-job paid meal period.

3 60. As a matter of Defendants' established company policy, Defendants failed to
4 always comply with the meal period requirements established by Labor Code §§ 226.7, 512, and
5 516 and Section 11 of the IWC Wage Order(s) by failing to always provide the members of the
6 Meal Period Class with a first and in some cases a second legally compliant meal period.

7 61. Under Section 11(B) of the IWC Wage Order(s) and Labor Code § 226.7(c),
8 which states "If an employer fails to provide an employee a meal or rest or recovery period in
9 accordance with a state law, including, but not limited to, an applicable statute or applicable
10 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
11 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
12 pay the employee one additional hour of pay at the employee's regular rate of compensation for
13 each workday that the meal or rest or recovery period is not provided," the members of the Meal
14 Period Class are entitled to damages in an amount equal to one additional hour of pay at each
15 employee's regular rate of compensation for each work day that one or more meal periods were
16 not provided to them, in a sum to be proven at trial.

17 62. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Meal
18 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

21 **(On Behalf of the Rest Period Class)**

22 **(Against All Defendants)**

23 63. Plaintiffs incorporate by reference and reallege each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
25 forth herein.

26 64. Labor Code § 226.7(b) provides, "An employer shall not require an employee to
27 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
28 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

1 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

2 65. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
3 amend working condition orders with respect to break periods, meal periods, and days of rest for
4 any workers in California consistent with the health and welfare of those workers.”

5 66. Section 12(A) of the IWC Wage Order(s) states, “Every employer shall authorize
6 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
7 of each work period. The authorized rest period time shall be based on the total hours worked
8 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
9 However, a rest period need not be authorized for employees whose total daily work time is less
10 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
11 worked for which there shall be no deduction from wages.”

12 67. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269, the
13 California Supreme Court held that “during rest periods employers must relieve employees of all
14 duties and relinquish control over how employees spend their time.” The court further held that a
15 policy that “tethered by time and policy to particular locations” is inconsistent with the required
16 relinquishment of control. (*Ibid.*) The court noted that employees must be free to “[take
17 a] brief walk,” or “take care of other personal matters ...like pumping breast milk ...or
18 completing a phone call to arrange child care.” (*Id.* at p. 270.)

19 68. Section 12(B) of the IWC Wage Order(s) states, “If an employer fails to provide
20 an employee a rest period in accordance with the applicable provisions of this order, the
21 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
22 compensation for each workday that the rest period is not provided.”

23 69. The members of the Rest Period Class sometimes worked over four hours per
24 shift. Further, the members of the Rest Period Class sometimes worked over six hours per shift
25 and in some cases over 10 hours per shift.

26 70. The members of the Rest Period Class were entitled to a rest period of not less
27 than 10 minutes for every four hours of work or major fraction thereof.

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71. As a matter of Defendants' established company policy, Defendants failed to always authorize and permit legally-compliant rest periods. Defendants did not authorize and permit rest periods for shifts every four hours or major fraction thereof, failed to relinquish control over how employees spent their break time due to a policy that states in pertinent part "employees may not leave the premises or be absent from their work areas beyond the allotted time," prevented the members of the Rest Period Class from taking uninterrupted rest periods, and/or exerted coercion against the taking of legally protected breaks by using Defendants' rest period policy to prevent the members of the Rest Period Class to forbid members of the Rest Period Class from leaving Defendants' facilities.

72. Under Section 12 of the IWC Wage Order(s) and Labor Code § 226.7(b) which states “if an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided,” the members of the Rest Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee’s regular rate of compensation for each work day that one or more rest periods were not so provided.

73. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Rest Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

FOURTH CAUSE OF ACTION

FAILURE TO PAY PREMIUM WAGES AT THE LEGAL PAY RATE

(On Behalf of the Premium Rate Class)

(Against All Defendants)

74. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

75. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.”

1 76. Section 11(C) of the IWC Wage Orders provides that “Unless the employee is
2 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
3 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
4 only when the nature of the work prevents an employee from being relieved of all duty and when
5 by written agreement between the parties an on-the-job paid meal period is agreed to. The
6 written agreement shall state that the employee may, in writing, revoke the agreement at any
7 time.”

8 77. Section 11(D) of the IWC Wage Order(s) provides that “If an employer fails to
9 provide an employee a meal period in accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
11 compensation for each workday that the meal period is not provided.”

12 78. Section 12(A) of the IWC Wage Order(s) states, “Every employer shall authorize
13 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
14 of each work period. The authorized rest period time shall be based on the total hours worked
15 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
16 However, a rest period need not be authorized for employees whose total daily work time is less
17 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
18 worked for which there shall be no deduction from wages.”

19 79. Section 12(B) of the IWC Wage Order(s) states, “If an employer fails to provide
20 an employee a rest period in accordance with the applicable provisions of this order, the
21 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
22 compensation for each workday that the rest period is not provided.”

23 80. The “regular rate of pay” includes “all [applicable] remuneration paid to, or on
24 behalf of the employee.” (29 U.S.C. § 207(3).) The California Industrial Welfare Commission
25 applies this standard for determining an employee’s regular rate of pay for overtime calculation
26 purposes.

27 81. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, states in pertinent
28 part, “Under California law, employers must provide employees with overtime pay when

1 employees work more than a certain amount of time. ... To calculate overtime pay, [Labor Code]
2 section 510(a) requires an employer to compensate an employee by a multiple of the employee's
3 'regular rate of pay.' ... If an employer does not provide an employee with a compliant meal,
4 rest, or recovery period, section 226.7, subdivision (c) (section 226.7(c)) requires the employer to
5 'pay the employee one additional hour of pay at the employee's regular rate of compensation.'
6 The question here is whether the Legislature intended 'regular rate of compensation' under
7 section 226.7(c) to have the same meaning as 'regular rate of pay' under section 510(a), such that
8 the calculation of premium pay for a noncompliant meal, rest, or recovery period, like the
9 calculation of overtime pay, must account for not only hourly wages but also other
10 nondiscretionary payments for work performed by the employee. We hold that the terms are
11 synonymous: 'regular rate of compensation' under section 226.7(c), like 'regular rate of pay'
12 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages."

13 82. As a matter of Defendants' established company policy, Defendants failed to
14 always comply with the meal and/or rest period premium penalty payment requirements
15 established by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, Labor Code §§
16 226.7, 512, and 516, and Section 11 and/or 12 of the IWC Wage Order(s).

17 83. Under Section 11(D) and/or Section 12 of the IWC Wage Order(s) and Labor
18 Code § 226.7(b)/(c), which states "if an employer fails to provide an employee a meal or rest
19 period in accordance with an applicable order of the Industrial Welfare Commission, the
20 employer shall pay the employee one additional hour of pay at the employee's regular rate of
21 compensation for each work day that the meal or rest period is not provided," the members of the
22 Premium Rate Class were entitled to damages in an amount equal to one additional hour of pay
23 at each employee's regular rate of compensation for each work day that a meal and/or rest period
24 was not provided, in a sum to be proven at trial.

25 84. However, Defendants, as a matter of established company policy and procedure,
26 at each and every one of the individual facilities owned and/or operated by Defendants,
27 consistently:

28 ///

- 1 a. Administered a uniform company policy and practice regarding the payment
2 of wages, including premium pay, to the members of the Premium Rate Class;
3 b. Paid the members of the Premium Rate Class meal and/or rest period premium
4 wages not at the regular rate of pay, but at a base rate of pay or otherwise,
5 and/or not including all applicable remuneration paid to, or on behalf of the
6 employee; and
7 c. As such, failed to pay the members of the Premium Rate Class all
8 compensation owed, as required by law.

9 85. Defendants' pattern, practice and uniform administration of corporate policy
10 regarding illegal employee compensation as described herein is unlawful and creates an
11 entitlement, under Labor Code §§ 218 and 1194(a), to recovery by the members of the Premium
12 Rate Class, in a civil action, for the unpaid balance of the full amount of the meal and/or rest
13 period premiums owing.

14 86. That calculation of individual damages for the members of the Premium Rate
15 Class may at some point be required does not foreclose the possibility of taking common
16 evidence on questions regarding their entitlement to overtime compensation.

17 87. Under Labor Code §§ 218.6 and 1194(a), and Civil Code § 3287, the members of
18 the Premium Rate Class seek recovery of pre-judgment interest on all amounts recovered herein.

19 88. Under Labor Code §§ 218.5 and/or 1194, the members of the Premium Rate Class
20 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO FULLY REIMBURSE WORK EXPENSES**

23 **(On Behalf of the Reimbursements Class)**

24 **(Against All Defendants)**

25 89. Plaintiffs incorporate by reference and reallege each and every one of the
26 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
27 forth herein.

28 ///

1 90. Under Labor Code § 2802(a), “an employer shall indemnify his or her employee
2 for all necessary expenditures or losses incurred by the employee in direct consequence of the
3 discharge of his or her duties, or of his or her obedience to the directions of the employer.”

4 91. Labor Code § 2804 states in pertinent part, “Any contract or agreement, express
5 or implied, made by any employee to waive the benefits of this article or any part thereof is null
6 and void, and this article shall not deprive any employee or his personal representative of any
7 right or remedy to which he is entitled under the laws of this State.”

8 92. As a matter of Defendants’ established company policy, the members of the
9 Reimbursements Class were and are required by Defendants to personally incur necessary
10 expenditures in direct consequence of the discharge of their duties, including but not limited to
11 the use of personal mobile devices and the purchase of special gear for work-related activities.

12 93. Defendants are legally required to reimburse the members of the Reimbursements
13 Class for all necessary expenditures.

14 94. Defendants failed to fully and reasonably reimburse the members of the
15 Reimbursements Class for all necessary expenditures, including but not limited to the
16 aforementioned expenditures.

17 95. As a proximate result of the aforementioned violations of Labor Code § 2802(a),
18 the members of the Reimbursements Class are entitled to recovery from Defendants of the
19 unpaid balance for all necessary expenditures, including but not limited to the aforementioned
20 expenditures.

21 96. As a proximate result of the aforementioned violations of Labor Code § 450(a)
22 and § 2802(a), the members of the Reimbursements Class have been damaged in an amount
23 according to proof at the time of trial.

24 97. Under Labor Code § 2802(b), the members of the Reimbursements Class request
25 that the Court award interest at the same rate as judgments in civil actions, accruing from the
26 date on which each member of the Reimbursements Class incurred the necessary expenditure or
27 loss.

28 ///

1 98. Under Labor Code § 2802(c), the members of the Reimbursements Class request
2 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

3 **SIXTH CAUSE OF ACTION**

4 **DERIVATIVE FAILURE TO TIMELY**

5 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

6 **(On Behalf of the Derivative Wage Statement Class)**

7 99. Plaintiffs incorporate by reference and reallege each and every one of the
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
9 forth herein.

10 100. Labor Code § 226(a) states in pertinent part, "Every employer shall, semimonthly
11 or at the time of each payment of wages, furnish each of his or her employees, either as a
12 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
13 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
14 gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages
15 earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and
16 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
17 each the pay period and the corresponding number of hours worked at each hourly rate by the
18 employee...."

19 101. Further, the IWC Wage Orders § 7(A) states in pertinent part, "(A) Every
20 employer shall keep accurate information with respect to each employee including the following:
21 (3) Time records showing when the employee begins and ends each work period. Meal periods,
22 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
23 in the payroll period and applicable rates of pay...."

24 102. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A),
25 California employers are required to maintain accurate records pertaining to the total hours
26 worked for Defendants by the members of the Derivative Wage Statement Class, including but
27 not limited to, beginning and ending of each work period, meal period and split shift interval, the
28 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

1 103. As a pattern and practice, in violation of Labor Code § 226(a) and the IWC Wage
2 Orders § 7(A), Defendants did not and still do not furnish each of the members of the Derivative
3 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
4 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
5 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
6 number of hours worked at each hourly rate by each respective individual.

7 104. As set forth herein in prior causes of action, Defendants failed to pay the members
8 of the Derivative Wage Statement Class all wages due and owing.

9 105. As a derivative result of this failure to pay wages and as a pattern and practice in
10 violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants did not and do
11 not maintain accurate records pertaining to the total hours worked for Defendants by the
12 members of the Derivative Wage Statement Class, including but not limited to, beginning and
13 ending of each work period, meal period interval, total daily hours worked, total hours worked
14 per pay period, and the applicable rates of pay.

15 106. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
16 employee suffers injury if the employer fails to provide accurate and complete information as
17 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
18 promptly and easily ascertain requisite information without reference to other documents or
19 information.

20 107. Here, the members of Derivative Wage Statement Class suffered injury because,
21 due to Defendants' failure to pay all wages due and owing, Defendants derivatively failed to
22 provide accurate and complete information as required by one or more items listed in Labor
23 Code § 226(a)(1)-(9).

24 108. In addition, the members of the Derivative Wage Statement Class have suffered
25 injury as a result of Defendants' failure to maintain accurate records for the members of the
26 Derivative Wage Statement Class in that the members of the Derivative Wage Statement Class
27 were not timely provided written accurate itemized statements showing all requisite information,
28 including but not limited to total hours worked by the employee, net wages earned and all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate, in violation of Labor Code § 226 and the IWC Wage Orders § 7(A),
3 such that the members of the Derivative Wage Statement Class were misled by Defendants as to
4 the correct information regarding various items, including but not limited to total hours worked
5 by the employee, net wages earned and all applicable hourly rates in effect during the pay period
6 and the corresponding number of hours worked at each hourly rate.

7 109. The actual injuries suffered by the members of the Derivative Wage Statement
8 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for
9 the members of the Derivative Wage Statement Class include but are not limited to:

- 10 a. Confusion over whether they received all wages owed them by Defendants;
- 11 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 12 c. Being forced to engage in mathematical computations to analyze whether
13 Defendants' wages in fact compensated for all hours worked;
- 14 d. The inability to accurately calculate wage rates complicated by the fact that
15 wage statement information required by Labor Code § 226 is missing;
- 16 e. That such practice prevents the members of the Derivative Wage Statement
17 Class from being able to effectively challenge information on their wage
18 statements; and/or
- 19 f. The difficulty and expense of filing and maintaining this lawsuit, and the
20 discovery required to collect and analyze the very information that California
21 law requires.

22 110. Under Labor Code § 226(e), the members of the Derivative Wage Statement
23 Class are entitled to \$50.00 per employee for the initial pay period in which a violation
24 hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not
25 exceeding an aggregate penalty of \$4,000.00.

26 111. Under Labor Code § 226(g), the currently-employed members of the Derivative
27 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
28 Labor Code § 226.

1 112. Under Labor Code §§ 226(e)/(g), the members of the Derivative Wage Statement
2 Class are also entitled to an award of costs and reasonable attorneys' fees.

3 **SEVENTH CAUSE OF ACTION**

4 **DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202**

5 **(On Behalf of the Derivative LC 203 Class)**

6 **(Against All Defendants)**

7 113. Plaintiffs incorporate by reference and reallege each and every one of the
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
9 forth herein.

10 114. Labor Code § 203 provides that if an employer willfully fails to pay, without
11 abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an
12 employee who is discharged or who quits, the wages of the employee shall continue at the same
13 rate, for up to 30 days from the due date thereof, until paid or until an action therefor is
14 commenced.

15 115. The members of the Derivative LC 203 Class are no longer employed by
16 Defendants as they were either discharged from or quit Defendants' employ.

17 116. Defendants had a consistent and uniform policy, practice, and procedure of
18 willfully failing to pay the earned wages of Defendants' former employees, as set forth above,
19 according to amendment or proof.

20 117. As set forth above, Defendants willfully failed to pay the members of the
21 Derivative LC 203 Class their entire wages due and owing at the time of their termination or
22 within seventy-two hours of their resignation and failed to pay those sums for up to 30 days
23 thereafter.

24 118. Defendants' willful failure to pay wages to the members of the Derivative LC 203
25 Class violates Labor Code § 203 because Defendants knew or should have known wages were
26 due to the members of the Derivative LC 203 Class, as set forth above, but Defendants failed to
27 pay them.

28 ///

1 119. Thus, the members of the Derivative LC 203 Class are entitled to recovery under
2 Labor Code § 203.

3 **EIGHTH CAUSE OF ACTION**
4 **PENALTIES UNDER LABOR CODE § 2699**
5 **(On Behalf of the Aggrieved Employees)**
6 **(Against All Defendants)**

7 120. Plaintiffs incorporate by reference and reallege each and every one of the
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
9 forth herein.

10 **A. FAILURE TO PAY SICK PAY AT THE LEGAL PAY RATE**

11 121. Labor Code § 246(a) states: “(a) An employee who, on or after July 1, 2015,
12 works in California for the same employer for 30 or more days within a year from the
13 commencement of employment is entitled to paid sick days as specified in this section.”

14 122. Labor Code § 246(b)(1) states: “An employee shall accrue paid sick days at the
15 rate of not less than one hour per every 30 hours worked, beginning at the commencement of
16 employment or the operative date of this article, whichever is later, subject to the use and accrual
17 limitations set forth in this section.”

18 123. Labor Code § 246(l) states: “For the purposes of this section, an employer shall
19 calculate paid sick leave using any of the following calculations:

20 (1) Paid sick time for nonexempt employees shall be calculated in the same
21 manner as the regular rate of pay for the workweek in which the employee
22 uses paid sick time, whether or not the employee actually works overtime in
23 that workweek.

24 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
25 employee’s total wages, not including overtime premium pay, by the
26 employee’s total hours worked in the full pay periods of the prior 90 days of
27 employment.”

28 ///

1 124. Defendants, as a matter of established company policy and procedure, at each and
2 every one of the individual facilities owned and/or operated by Defendants, during the relevant
3 time period:

4 a. Administered a uniform company policy and practice as to the pay policies
5 regarding Plaintiff and all other similarly situated aggrieved employees; and

6 b. Failed to pay Plaintiff and all other similarly situated aggrieved employees for
7 paid sick days in a manner that fully complies with Labor Code § 246(l).

8 125. Defendants' pattern, practice, and uniform administration of corporate policy
9 regarding illegal employee compensation as described herein is unlawful and creates an
10 entitlement, under Labor Code §§ 246, 248.5, and/or 2699, et seq., to recovery by Plaintiff and
11 all other similarly situated aggrieved employees, in a civil action, to the extent allowed by law.

12 **B. FAILURE TO MAINTAIN TEMPERATURE PROVIDING REASONABLE**
13 **COMFORT**

14 126. Labor Code § 1198 requires an employer to comply with the standard conditions
15 of labor for California employees as set forth by the IWC Wage Orders.

16 127. IWC Wage Orders § 15 states in pertinent part, "(A) The temperature maintained
17 in each work area shall provide reasonable comfort consistent with industry-wide standards for
18 nature of the process and the work performed. (B) If excessive heat or humidity is created by the
19 work process, the employer shall take all feasible means to reduce excessive heat or humidity to
20 a degree providing reasonable comfort. Where the nature of the employment requires a
21 temperature of less than 60° F, a heated room shall be provided to which employees may retire
22 for warmth and such room shall be maintained at not less than 68°. (C) A temperature of not less
23 than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours
24 of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of
25 this section."

26 128. Labor Code § 6720 requires the California Division of Occupational Safety and
27 Heath to propose an indoor heat illness standard by January 1, 2019. Cal/OSHA's draft standard
28 applies its proposed regulations to "all indoor work areas where the temperature equals or

exceeds 82 degrees Fahrenheit when employees are present.”

129. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, during the relevant time period:

a. Administered a uniform company policy and practice as to the temperature policies regarding Plaintiff and the other aggrieved employees; and

b. Subjected Plaintiff and the other aggrieved employees to excessive heat and/or humidity resulting in temperature equaling or exceeding 82° F and/or excessive cold temperatures during cold times of the year.

130. Defendants’ pattern, practice and uniform administration of corporate policy regarding failure to provide reasonably comfortable temperatures as described herein is unlawful and creates an entitlement to recovery by Plaintiff and all other similarly situated aggrieved employees, in a civil action, to the extent allowed by law.

C. PENALTIES ASSESSED

131. Under Labor Code § 2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, board agencies or employees, such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code § 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, as follows:

a. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of \$100 for each aggrieved employee per pay period for the initial violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;

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- 1 b. As applicable, civil penalties under Labor Code § 558 (in addition to and
2 entirely independent and apart from any other penalty provided in the Labor
3 Code), for violations of Labor Code §§ 500-556, in the amount of \$50 for
4 each underpaid aggrieved employee for each pay period the aggrieved
5 employee was underpaid, and \$100 for each subsequent violation for each
6 underpaid employee for each pay period for which the employee was
7 underpaid;
- 8 c. As applicable, for civil penalties under Labor Code § 1197.1 (in addition to
9 and entirely independent and apart from any other penalty provided in the
10 Labor Code), for violations of Labor Code §§ 1194 and 1197, in the amount
11 of \$100 for each underpaid aggrieved employee for each pay period the
12 aggrieved employee was intentionally underpaid, and \$250 for each
13 subsequent violation for each underpaid aggrieved employees regardless of
14 whether the initial violation was intentionally committed;
- 15 d. As applicable, for civil penalties under Labor Code § 210 (in addition to and
16 entirely independent and apart from any other penalty provided in the Labor
17 Code), for each employee who is/was not paid wages in accordance with
18 Labor Code §§ 204 and 204b in the amount of a civil penalty of \$100 for each
19 aggrieved employee per pay period for each initial violation, and \$200 for
20 each aggrieved employee per pay period for each subsequent violation;
- 21 e. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and
22 entirely independent and apart from any other penalty provided in the Labor
23 Code), for each violation of Labor Code § 226(a), in the amount of \$250 for
24 each aggrieved employee per pay period for each violation and \$1,000 for
25 each aggrieved employee per pay period for each subsequent violation;
- 26 f. As applicable, for civil penalties under Labor Code § 248.5(e) (in addition to
27 and entirely independent and apart from any other penalty provided in the
28 Labor Code), for each violation of Labor Code § 246(l); and

g. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

132. In addition, Plaintiff seeks and is entitled to 75% of all penalties obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and 25% to Plaintiff and all other similarly situated aggrieved employees.

133. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs under Labor Code §§ 2699(g)(1) and any other applicable statute.

134. Labor Code § 2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

135. Labor Code § 2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

136. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code § 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such, Labor Code § 2699.3(a) and § 2699.3(c) apply to this action.

137. On December 21, 2023, Plaintiffs complied with Labor Code § 2699.3(a) and Labor Code § 2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA

1 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
2 been violated, including the facts and theories to support the alleged violations. Attached hereto
3 as Exhibit 1 is Plaintiffs' LWDA letter.

4 138. Labor Code § 2699.3(a) further states in pertinent part: "(2)(A) The agency shall
5 notify the employer and the aggrieved employee or representative by certified mail that it does
6 not intend to investigate the alleged violation within 60 calendar days of the postmark date of the
7 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
8 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
9 aggrieved employee may commence a civil action pursuant to Section 2699."

10 139. As of February 24, 2024 (65 calendar days after Plaintiffs' December 21, 2023,
11 LWDA letter was filed online), Plaintiffs had not received any notification that the LWDA
12 intended to investigate the alleged violations. As such, Plaintiffs have complied with Labor Code
13 § 2699.3(a) and have been given authorization therefrom to commence a civil action which
14 includes a cause of action under Labor Code § 2699.

15 140. Further, as of January 23, 2024 (33 calendar days after Plaintiffs' December 21,
16 2023, LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received
17 from Defendants written notice by certified mail that the alleged violations have been cured,
18 including a description of actions taken. As such, Plaintiffs have complied with Labor Code §
19 2699.3(c) and have been given authorization therefrom to commence a civil action which
20 includes a cause of action under Labor Code § 2699.

21 **NINTH CAUSE OF ACTION**
22 **UNFAIR BUSINESS PRACTICES**
23 **(On Behalf of the 17200 Class)**
24 **(Against All Defendants)**

25 141. Plaintiffs incorporate by reference and reallege each and every one of the
26 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
27 forth herein.

28 ///

1 142. Business & Professions Code § 17200 provides, in pertinent part, “unfair
2 competition shall mean and include any unlawful, unfair or fraudulent business act.”

3 143. Business & Professions Code § 17205 provides that unless otherwise expressly
4 provided, the remedies or penalties provided for unfair competition “are cumulative to each other
5 and to the remedies or penalties available under all other laws of this state.”

6 144. Business & Professions Code § 17204 provides that an action for any relief from
7 unfair competition may be prosecuted by any person who has suffered injury in fact and has lost
8 money or property as a result of such unfair competition.

9 145. Defendants have engaged in unlawful, unfair and fraudulent business acts or
10 practices prohibited by Business & Professions Code § 17200, including those set forth in the
11 preceding and foregoing paragraphs of the complaint, thereby depriving the members of the
12 17200 Class of the minimum working standards and conditions due to them under the Labor
13 Code and/or the IWC Wage Orders, as specifically described herein.

14 146. Defendants have engaged in unfair business practices in California by practicing,
15 employing and utilizing the employment practices outlined in the preceding paragraphs,
16 specifically, by requiring employees to perform the labor services complained of herein without
17 the requisite compensation.

18 147. Defendants’ use of such practices constitutes an unfair business practice and
19 unfair competition and provides an unfair advantage over Defendants’ competitors.

20 148. Plaintiffs have suffered injury in fact and have lost money or property as a result
21 of such unfair competition.

22 149. Plaintiffs seek full restitution from Defendants, as necessary and according to
23 proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by
24 means of the unfair practices complained of herein.

25 150. Further, if Defendants are not enjoined from the conduct set forth above,
26 Defendants will continue to practice, employ, and utilize the employment practices outlined in
27 the preceding paragraphs.

28 ///

151. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

152. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

a. That the Court issue an Order certifying the Classes herein, appointing all named Plaintiffs as representative of all others similarly situated, and appointing all law firms representing all named Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Pay All Wages:

b. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

c. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code § 1194.2(a);

d. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;

e. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287;

f. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Second Cause of Action for Failure to Provide Meal Periods:

g. For one hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a meal or rest period was not provided;

h. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

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1 As to the Third Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

2 i. For one hour of pay at the regular rate of compensation for each member of the
3 Rest Period Class for each workday that a meal or rest period was not provided;

4 j. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code
5 § 3287;

6 As to the Fourth Cause of Action for Failure to Pay Premium Wages At the Legal Pay Rate:

7 k. For damages, as set forth in Labor Code § 1194(a) and the IWC Wage Order(s)
8 regarding wages due and owing, according to proof;

9 l. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and
10 Civil Code § 3287;

11 m. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5
12 and/or 1194(a);

13 As to the Fifth Cause of Action for Unpaid Reimbursement for Work Expenses:

14 n. For recovery of the unpaid balance for all necessary expenditures and losses
15 incurred in direct consequence of the discharge of Defendants' duties;

16 o. For interest thereon at the same rate as judgments in civil actions, accruing from
17 the date on which each member of the Reimbursements Class incurred the necessary expenditure
18 or loss, under Labor Code § 2802(b);

19 p. For reasonable attorneys' fees and costs under Labor Code § 2802(c);

20 As to the Sixth Cause of Action for Derivative Failure to Timely Furnish Accurate Itemized

21 Wage Statements

22 q. For recovery as authorized by Labor Code § 226(e);

23 r. For an award of costs and reasonable attorneys' fees under Labor Code §§
24 226(e)/(g);

25 As to the Seventh Cause of Action for Derivative Violations of Labor Code §§ 201-202:

26 s. For recovery as authorized by Labor Code § 203;

27 ///

28 ///

1 As to the Eighth Cause of Action for Penalties Under Labor Code § 2699:

2 t. As applicable, for civil penalties under Labor Code § 2699(f), in addition to and
3 entirely independent and apart from other penalties in the Labor Code and for Labor Code
4 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
5 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
6 subsequent violation;

7 u. As applicable, for civil penalties under Labor Code § 558, in addition to and
8 entirely independent and apart from other penalties in the Labor Code, as follows:

9 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
10 employee for each pay period for which the employee was underpaid; and

11 ii. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
12 underpaid employee for each pay period for which the employee was
13 underpaid;

14 v. As applicable, for civil penalties under Labor Code § 1197.1, in addition to and
15 entirely independent and apart from other penalties in the Labor Code, as follows:

16 i. For any initial violation that is intentionally committed, \$100 for each
17 aggrieved underpaid employee for each pay period for which the employee
18 was underpaid; and

19 ii. For each subsequent violation, regardless of whether the initial violation is
20 intentionally committed, \$250 for each aggrieved underpaid employee for
21 each pay period for which the employee was underpaid;

22 w. As applicable, for civil penalties under Labor Code § 210, in addition to and
23 entirely independent and apart from other penalties in the Labor Code, in the amount of \$100 for
24 each aggrieved employee per pay period for each violation, and \$200 for each aggrieved
25 employee per pay period for each subsequent violation;

26 x. As applicable, for civil penalties under Labor Code § 226.3, in addition to and
27 entirely independent and apart from other penalties in the Labor Code, in the amount of \$250 for
28 each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved

employee per pay period for each subsequent violation;

y. As applicable, for civil penalties under Labor Code § 248.5(e) (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 246(l);

z. As applicable, for reasonable attorneys' fees and costs incurred under Labor Code § 2699(g)(1) and any other applicable statute; and

aa. For such relief as this Court may deem just and proper;

As to the Ninth Cause of Action for Unfair Business Practices:

bb. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

cc. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

dd. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, home telephone number and, if available, email address;

ee. For an Order requiring Defendants to make full restitution and payment under California law;

ff. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;

gg. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his or her money;

hh. For all other appropriate injunctive, declaratory and equitable relief;

ii. For interest to the extent permitted by law;

jj. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action under Code of Civil Procedure § 1021.5, Business & Professions Code §§ 17200, et seq., Labor Code § 1194 and/or any other applicable provision of law;

///

kk. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

DEMAND FOR JURY TRIAL

Dated: March 5, 2024

By:

Emil Davtyan, Esq.
Gregg Lander, Esq.
Vanessa M. Ruggles, Esq.
Attorneys for Plaintiffs

EXHIBIT 1

December 21, 2023

Submitted at <https://www.dir.ca.gov> with \$75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfiling@dir.ca.gov

Re: New-Indy TriPAQ, LLC and Montebello Container Company, LLC (collectively the “Employer”)

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employer

From: Miguel Angel Galvan (the “Employee”), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period each Employer was and is a member of and/or engaged in a joint venture, partnership and common enterprise, and was acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise. Further, during this time period, each Employer employed the Employee and all other similarly situated aggrieved employees as non-exempt employees and utilized consistent policies and procedures regarding the Employee and all such other aggrieved employees, as follows:

First, the Employee and other aggrieved employees spent time under the Employer’s control but were not paid therefore. For example, the Employer required the Employee and other aggrieved employees to perform work-related tasks at the beginning of their shifts before clocking in and/or at the end of their shifts after clocking out and to inordinately wait in a line of employees before being able to clock in and/or out for meal periods. Further, the Employer engaged in unlawful time shaving by reducing or manipulating the recorded hours that employees have worked, leading to underpayment of wages. In these circumstances, the Employer failed to pay all straight time, minimum, and/or overtime wages due for the time the Employee and other aggrieved employees were subject to the Employer’s control, in violation of Labor Code §§ 510, 1194, 1197, and 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and other aggrieved employees, because the Employer failed to relinquish all control and/or because meal breaks were missed, interrupted, short and/or late. The Employee and other aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shift. The Employer would call the employees, on the walkie-talkie, during meal breaks. Employees sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the



applicable Industrial Wage Order ¶ 11 and owes penalties under Labor Code §§ 2699(f) and/or 558.

Third, the Employer failed to always authorize and permit paid rest breaks to the Employee and other aggrieved employees. The Employee and other aggrieved employees did not always get full ten-minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. Additionally, the Employer did not relinquish all control of the Employee and other aggrieved employees during rest breaks, because the Employer has a policy that states in pertinent part "...employees may not leave the premises...". As such, the Employee and other aggrieved employees were not always authorized and permitted legally compliant rest breaks and were not always provided legally compliant rest breaks. The Employer did not pay a rest period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7 and 516, and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Fourth, the Employer sometimes paid the Employee and other aggrieved employees premium pay for meal and/or rest period violations. However, the Employer failed to always comply with the meal and/or rest period penalty payment requirements established by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, Labor Code §§ 226.7, 512, 516, and Section 11 and/or 12 of the IWC Wage Order(s). Specifically, the Employer failed to always include all forms of remuneration in the calculation of the regular rate of pay. As such, the Employer owes the Employee and other aggrieved employees unpaid wages, in violation of Labor Code §§ 1194 and 226.7(c) and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Fifth, the Employee and other aggrieved employees incurred expenses while performing reasonable and necessary work-related duties, including but not limited to for the use of their personal mobile devices and work-required gear. The Employer failed to reimburse for any expenses. As such, the Employer violated Labor Code § 2802 by failing to reimburse the Employee and other aggrieved employees for all business expenses reasonably incurred in the course of their required work duties and owes penalties under Labor Code § 2699(f).

Sixth, regarding wage statements, under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because of the Employer failed to pay all wages as set forth above, the Employer issued improper wage statements to the Employee and other aggrieved employees, and the Employer has derivatively violated Labor Code § 226 and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Seventh, because the Employer failed to pay all wages as set forth above, the Employee and other aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. Therefore, because the Employer failed to pay all wages as set forth above, the Employer derivatively violated Labor Code §§ 201-202, and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Eighth, the Employer failed to always provide the Employee and other aggrieved employees with paid sick days paid at the regular rate of pay. The Employee and other aggrieved employees were paid certain forms of non-discretionary pay, including but not limited to "Shift 2" pay. However, the Employer did not include all forms of remuneration in the sick pay rate in violation of Labor Code § 246(l) and owes penalties under Labor Code §§ 2699(a)/(f) and/or 558.



Ninth, and finally, the Employee and other aggrieved employees were subjected by the Employer to excessive heat and/or excessive cold temperatures throughout the year. Labor Code § 1198 requires that “the standard conditions of labor fixed by the commission shall be the...standard conditions of labor for employees. The employment of any employee...under conditions of labor prohibited by the order is unlawful.” Under the applicable IWC Wage Order, § 15:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth and such room shall be maintained at not less than 68°. (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Here, the Employer failed to provide the Employee and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by, inter alia, providing adequate air conditioning, heat, ventilation, etc. Therefore, the Employer violated Labor Code § 1198, and owes penalties under Labor Code § 2699(f).

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee’s grievances and proposed remedies, under the Labor Code, PAGA, and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee’s demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.



PAGA Administrator
Re: New-Indy TriPaq, LLC, et al.
December 21, 2023
Page 4

Thank you for your consideration.

Regards,

Emil Davtyan
Gregg Lander
Vanessa M. Ruggles

cc: (via Certified Mail)

New-Indy TriPaq, LLC
c/o SCHWARZ PARTNERS, LP
Laura E. Gorman, Esq.
10 W Carmel Drive, Suite 300
Carmel, IN 46032

Montebello Container Company, LLC
One Patriot Place
Foxborough, MA 020305

1 **PROOF OF SERVICE**

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

3 I, the undersigned, am over the age of 18 years and not a party to this action. My business
4 address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located
in Los Angeles County, where the service herein occurred.

5 On the date of execution hereof, I caused to be served the following attached document/s:

6 **FIRST AMENDED COMPLAINT**

7 on the interested parties in this action, addressed as follows:

8 Attorneys for Defendants New-Indy TriPAQ, LLC
9 and Montebello Container Company, LLC:

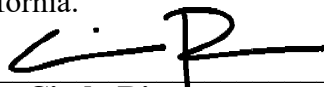
10 Alexander M. Chemers, Esq.
11 OGLETREE, DEAKINS, NASH, SMOAK & STEWART
400 South Hope Street, Suite 1200
Los Angeles, CA 90071-2818
Tel.: (213) 330-0802 / Fax: (213) 239-9045
12 Email: Alexander.Chemers@ogletreedeakins.com

13 using the following service method:

14 **X VIA ELECTRONIC MAIL:** Service by electronic mail to parties who have already
15 appeared in this post-January 1, 2019 proceeding was made pursuant to the procedures specified
in California Code of Civil Procedure § 1010.6(b). The electronic mail was sent to electronic
16 service address(es) that has/have been previously confirmed by email.

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

18 Executed on **March 5, 2024**, at Los Angeles, California.

19 
20 **Cindy Rivas**