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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

SEP 14 2020

BY 
ASHLEE BAYLESS BERUETY

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
HUGO TRONCOSO

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
HUGO TRONCOSO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

HUGO TRONCOSO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ARANDA TOOLING, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVDS2014042

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198);**
- (3) **FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) **FAILURE TO AUTHORIZE AND
PERMIT ALL REST PERIODS
(LABOR CODE §§ 226.7, 516);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE**

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**(7) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

DEMAND FOR JURY TRIAL UNLIMITED CIVIL CASE

1 Plaintiff Hugo Troncoso (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 ARANDA TOOLING, INC., a California corporation and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this FAC
7 for recovery of unpaid wages and penalties under California Business and Professions Code § 17200
8 *et seq.*, Labor Code §§ 226 *et seq.*, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, and
9 Industrial Welfare Commission Wage Order 1 (“Wage Order 1”), in addition to seeking declaratory
10 relief and restitution. This FAC is brought pursuant to California Code of Civil Procedure § 382. This
11 Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in
12 controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a)
15 and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of
16 San Bernardino. Defendants own, maintain offices, transact business, have agent(s) within the County
17 of San Bernardino, and/or otherwise are found within the County of San Bernardino, and Defendants
18 are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding the
22 filing of the lawsuit¹ in this action and within the statute of limitations periods applicable to each cause
23 of action pled herein, Plaintiff was employed by Defendants as a non-exempt, hourly employee.

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26 ¹ Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180
27 days are suspended from April 6, 2020 through October 1, 2020. Accordingly, the relevant time
28 period for each cause of action pled herein have been calculated based on a filing date of April 6,
2020. *See*, Cal. Rules of Court, emergency rule 9.

1 Plaintiff's job position was General Machinist. Plaintiff was, and is, a victim of Defendants' policies
2 and/or practices complained of herein, lost money and/or property, and has been deprived of the rights
3 guaranteed by Labor Code §§ 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698,
4 *et seq.*, and California Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law");
5 and Wage Order 1, which sets employment standards for the occupations in the manufacturing industry,
6 which includes the industry in which Plaintiff worked for Defendants.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four years
8 preceding April 6, 2020 and continuing to the present and continuing to the present, Defendants did
9 (and continue to do) business as an automotive and customer metal stamping, metal fabrication, tool
10 and die and welding service company.

11 5. Defendants employed Plaintiff and other, similarly-situated non-exempt, hourly
12 employees within, among other counties, San Bernardino County and the state of California and,
13 therefore, were (and are) doing business in San Bernardino County and the State of California.

14 6. Plaintiff does not know the true names or capacities, whether individual, partner, or
15 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
17 this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and
18 based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate,
19 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
20 Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the unlawful employment
21 practices, wrongs, injuries and damages complained of herein.

22 7. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

24 8. At all times herein mentioned, each of said Defendants participated in the doing of the
25 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
26 and each of them, were the agents, servants, and employees of each and every one of the other
27 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
28 within the course and scope of said agency and employment. Defendants, and each of them, approved

of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

10. Plaintiff was employed by Defendants as a non-exempt, hourly employee from approximately July 13, 2015 through approximately November 2019, at which time Plaintiff went on a leave of absence. Plaintiff worked at Defendants' manufacturing facility in Chino, California.

11. During his employment with Defendants, Plaintiff was generally scheduled to work from 6:00 a.m. to 2:30 p.m., Monday through Friday. Defendants kept track of Plaintiff's time worked by requiring Plaintiff to clock in and clock out using his thumbprint and entering his employee identification number.

12. Throughout Plaintiff's employment with Defendants, Defendants would keep track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round Plaintiff's work time such that Plaintiff would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and/or shave in Defendants' favor such that Plaintiff was routinely underpaid for his time worked, including minimum wages. Further, Plaintiff and other non-exempt, hourly employees often worked over eight hours in a day and/or 40 hours in a week, and Defendants' policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

13. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all legally required meal periods due to Defendants' meal period policies and practices. Specifically, Defendants used a bell to signify the start and stop of a meal period and required employees to be at their work stations ready to resume work by the time the bell signifying the end of a meal period rang, which resulted in meal periods of less than 30 minutes in violation of California law.

14. In addition, at least during a portion of the relevant time period, Defendants also failed

1 to keep any records of meal periods taken by Plaintiff, in violation of California law. As a result,
2 Plaintiff is informed and believes that Defendants unlawfully automatically deducted thirty minutes
3 from Plaintiff's work time each shift for his meal period regardless of whether a meal period was taken
4 or not. Defendants' policies and practices resulted in the failure by Defendants to provide lawful meal
5 periods and failure to pay wages (including minimum and overtime wages) to Plaintiff and other non-
6 exempt, hourly employees.

7 15. For example, on June 25, 2018, Plaintiff clocked in at 5:53 a.m. and clocked out at 2:43
8 p.m. Despite being on the clock for eight hours and fifty minutes, Defendants only paid Plaintiff for
9 eight hours, not eight hours and fifty minutes. Defendants' policies and practices of time
10 shaving/rounding, auto-deducting for alleged meal periods and/or using bell schedules resulted not only
11 in the failure to provide lawful meal periods, but also in the failure to pay Plaintiff and other non-
12 exempt, hourly employees for all wages earned, including minimum and overtime wages.

13 16. Although Plaintiff was not provided with all legally-compliant meal periods to which
14 he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for
15 each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.
16 Upon information and belief during at least a portion of the class period, Defendants maintained no
17 payroll code or other mechanism for the payment of meal period premium payments under Labor Code
18 § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt, hourly
19 employees.

20 17. Plaintiff was also not authorized and permitted to take all legally required and compliant
21 rest periods due to Defendants' rest period policies and practices. Defendants' policies and practices
22 required Plaintiff and non-exempt, hourly employees to clock in and clock out for rest periods, at least
23 during a portion of the relevant time period. Defendants also used a bell to signify the start and stop
24 of a rest period and required employees to be at their work stations ready to resume work by the time
25 the bell signifying the end of a rest period rang, which resulted in short rest periods. Therefore,
26 Defendants' rest period policies and practices fail to authorize and permit paid net 10-minute rest
27 periods for every four hours worked, or *major fraction thereof*. Despite Defendants' failure to
28 authorize and permit all required rest periods due to their uniform and unlawful policies/practices,

Defendants did not provide Plaintiff with an hour of pay at his regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit their non-exempt, hourly employees to take all legally compliant rest periods.

18. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal period and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt, hourly employees in California who were subjected to Defendants' timekeeping policies and practices, during the four years immediately preceding April 6, 2020 and continuing to the present, The Overtime Class consists of all of Defendants' current and former non-exempt, hourly employees in California who worked more than eight hours per day and/or forty hours per week and were subjected to Defendants' timekeeping policies and practices, during the four years immediately preceding April 6, 2020 and continuing to the present.
- b. The Meal Period Class consists of all of Defendants' current and former non-exempt, hourly employees who worked at least one shift in excess of 5.0 hours.
- c. The Rest Period Class consists of all of Defendants' current and former non-exempt, hourly employees in California who worked at least one shift in excess of 3.5 hours during the four years immediately preceding April 6, 2020 and continuing to the present.
- d. The Wage Statement Class consists of all members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; and/or (iv) Rest Period Class; during the one year immediately preceding April 6, 2020 and continuing to the present.
- e. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class and/or (v) Wage Statement Class.

20. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;
- ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

23. **Predominance of Common Questions:** Common questions of law and fact

predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, and meal period policies and practices, and rest period policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt, hourly employee in California during the statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not permitted and authorized to take all required rest periods, did not receive meal period or rest period premium wages when he was not provided compliant meal periods or rest periods, and was not provided with accurate, itemized wage statements.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein.

1 If each employee were required to file an individual lawsuit, Defendants would necessarily gain an
2 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
3 each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring
4 each member of the Classes to pursue an individual remedy would also discourage the assertion of
5 lawful claims by employees who would be disinclined to file an action against their former and/or
6 current employer for real and justifiable fear of retaliation and permanent damages to their careers at
7 subsequent employment. Further, the prosecution of separate actions by the individual class members,
8 even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
9 with respect to the individual class members against Defendants herein; and which would establish
10 potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect
11 to individual class members which would, as a practical matter, be dispositive of the interest of the
12 other class members not parties to adjudications or which would substantially impair or impede the
13 ability of the class members to protect their interests. Further, the claims of the individual members of
14 the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the
15 concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 19 are
16 maintainable as a Class under § 382 of the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

19 **(AGAINST ALL DEFENDANTS)**

20 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 28. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194, 1197 and
22 1198 which provide that all non-exempt, hourly employees are entitled to all minimum wages for all
23 hours worked, and provide a private right of action for the failure to pay all minimum wage
24 compensation for all work performed.

25 29. At all times relevant herein, Defendants were required to properly compensate Plaintiff
26 and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code
27 §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4 requires an employer to pay to
28 every employee on the established payday for the period involved not less than the applicable minimum

1 wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the
2 Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the
3 members of the Minimum Wage Class at least minimum wages for such hours.

4 30. At all times relevant herein, Defendants lacked good faith and had no reasonable
5 grounds for believing that their practices in failing to pay all minimum wages owed at the applicable
6 rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of
7 the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to
8 Plaintiff and the members of the Minimum Wage Class, also owe liquidated damages in an amount
9 equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

10 31. The foregoing practices and policies are unlawful and create entitlement to recovery by
11 Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of
12 minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages,
13 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558,
14 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5
15 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

18 **(AGAINST ALL DEFENDANTS)**

19 32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198
21 which provide that all non-exempt, hourly employees are entitled to all overtime wages for all overtime
22 worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action
23 for the failure to pay all overtime compensation for overtime work performed.

24 34. At all times relevant herein, Defendants were required to properly compensate Plaintiff
25 and the members of the Overtime Class for all overtime hours worked pursuant to California Labor
26 Code §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order 1, Section 3 require an
27 employer to pay an employee "one and one-half (1½) times the regular rate of pay" for work in excess
28 of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage

Order 1, Section 3 also require an employer to pay an employee double the employee's regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours.

35. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt, hourly employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

38. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 1, including interest thereon, statutory penalties, civil penalties, and costs of suit.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS**

3 **(AGAINST ALL DEFENDANTS)**

4 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 40. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516 establish the right of
6 employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest
7 time for each four (4) hour period worked, or major fraction thereof.

8 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of
9 the Rest Period Class to take all required rest periods.

10 42. The foregoing violations create an entitlement to recovery by Plaintiff and members of
11 the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including
12 interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California
13 Labor Code §§ 226.7, 516, 558, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil
14 Code §§ 3287(b) and 3289.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

17 **(AGAINST ALL DEFENDANTS)**

18 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly
20 and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of
21 the Wage Statement Class with complete and accurate wage statements with respect to their actual
22 regular and overtime hours worked, total gross wages earned, and total net wages earned in violation
23 of Labor Code § 226 *et seq.*

24 45. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class
25 with complete and accurate itemized wage statements resulted in actual injury, as said failures led to,
26 among other things, the non-payment of all earned overtime and minimum wages, and meal period
27 premium wages, and deprived them of the information necessary to identify the discrepancies in
28 Defendants' reported data.

46. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal periods, authorize and permit all required rest periods, or pay premium payments in lieu thereof.

49. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

50. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

51. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt, hourly employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

1 **SEVENTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 53. Defendants have committed several Labor Code violations against Plaintiff, members of
6 the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of
7 Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
8 representative action against Defendants to recover the civil penalties due to Plaintiff, the members of
9 the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor
10 Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
11 each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
12 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
13 unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation
14 pursuant to Labor Code § 1197.1; (3) \$250.00 for each initial violation and \$1,000.00 for each
15 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period (4) \$50.00 for each
16 initial violation for each underpaid employee for each pay period for which the employee was underpaid
17 in addition to an amount sufficient to recover underpaid wages and \$100.00 for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an amount sufficient
19 to recover underpaid wages pursuant to Labor Code § 558; and/or (5) \$100.00 for each initial violation
20 and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor
21 Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 22 a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay
23 Plaintiff and other aggrieved employees all overtime compensation earned;
- 24 b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff
25 and other aggrieved employees the statutory minimum wage for all hours worked;
- 26 c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally
27 required meal periods and failing to pay meal period premiums to Plaintiff and other
28 aggrieved employees;

- 1 d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally
2 required rest periods and failing to pay rest period premiums to Plaintiff and other
3 aggrieved employees; and
4 e) Defendant violated Labor Code § 226 by failing to furnish Plaintiff and other
5 aggrieved employees with accurate and compliant itemized wage statements; and
6 f) Defendant violated Labor Code § 1174 by failing to maintain accurate records on
7 behalf of Plaintiff and other aggrieved employees.

8 54. On July 9, 2020, Plaintiff notified Defendants via certified mail, and notified the
9 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
10 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under
11 California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified
12 in Paragraph 53 (a)-(f). Now that at least sixty-five days have passed from Plaintiff notifying
13 Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends
14 to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a
15 claim under the Private Attorneys General Act with respect to these violations.

16 55. Plaintiff was compelled to retain the services of counsel to file this court action to
17 protect his interests and the interests of other aggrieved employees, and to assess and collect the civil
18 penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is
19 entitled to recover under California Labor Code § 2699(g).

20 **PRAYER**

21 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this
22 suit is brought against Defendants, as follows:

- 23 1. For an order certifying the proposed Classes;
24 2. For an order appointing Plaintiff as representative of the Classes;
25 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
26 4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages,
27 and penalties according to proof pursuant to Labor Code §§ 558, 1194, 1194.2 and 1197;
28 5. Upon the Second Cause of Action, for compensatory, consequential, general and special

1 damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

2 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
3 damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

4 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special
5 damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

6 8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to
7 Labor Code § 226 *et seq.*;

8 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Class of
9 all money and/or property unlawfully acquired by Defendants by means of any acts or practices
10 declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

11 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved
12 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a)
13 and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
14 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to
15 Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;
16 (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code
17 § 1197.1; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
18 to Labor Code § 226.3 per employee per pay period (4) \$50.00 for each initial violation for each
19 underpaid employee for each pay period for which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages and \$100.00 for each underpaid employee for each pay
21 period for which the employee was underpaid in addition to an amount sufficient to recover underpaid
22 wages pursuant to Labor Code § 558; and/or (5) \$100.00 for each initial violation and \$200.00 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for which no
24 civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 53 (a)-(g)
25 above.

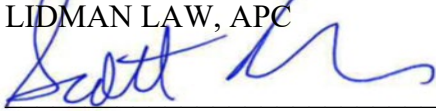
26 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §
27 218.6 and Civil Code §§ 3287 and 3289;

28 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5

1 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

2 13. For such other and further relief the Court may deem just and proper.

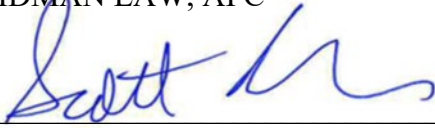
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4 Dated: September 14, 2020

5 Respectfully submitted,
6 LIDMAN LAW, APC
7 By: 
8 Scott M. Lidman
9 Attorneys for Plaintiff
10 HUGO TRONCOSO

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

13
14 Dated: September 14, 2020

15 Respectfully submitted,
16 LIDMAN LAW, APC
17 By: 
18 Scott M. Lidman
19 Attorneys for Plaintiff
20 HUGO TRONCOSO
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